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REDESIGNING THE UNITED NATIONS

This article examines the case for United Nations reform, assessed from the perspectives of what the author terms "design principles": instruments used to appraise organizational performance and to contemplate alternatives. Applied to the constitutional climate of the United Nations today, the article examines, *inter alia*, the contemporary issues surrounding the expansion of permanent membership in the Security Council and the assessment of the General Assembly's continuing vitality.

> Every thinker puts some portion of an apparently stable world in peril and no one can wholly predict what will emerge in its place.
>
> John Dewey

BECAUSE the words we select carry hidden assumptions that provide a matrix for thought and action, those words should be chosen with great care. The words, "reinventing government", which Vice-President Gore has made current, have novelty and contemporary political value precisely because they provide a certain frisson of iconoclasm. At heart, however, these words are quite conservative, for, by implication, reinvention validates the need for government and its functions. It confirms them as necessary, undertaking to do nothing more than to refashion them more economically, to streamline them. The validity of different parts of any government turns on whether the functions it performs in current and projected contexts are indispensable. Many functions inherited from the past may no longer be necessary or may no longer be necessarily *direct* government functions. Indeed, the very image that the word "government" has come to conjure since the nineteenth century may be due for the rubbish heap: governments as solidity and permanence, bureaucrats in small offices, serial rabbit-warrens in endless corridors in massive marble-clad buildings in a single national capital. That hoary image has been transposed to the international level, where those same endless corridors in massive buildings seem to sprout up like slums around some Latin American city. By their very presence,

these buildings give some the reassurance and others the anxiety that we have an international government.[1]

Do we need these marble-embalmed bureaucracies? International conferences will always be needed to create common policies and express them in treaty form, though the conference of the future may be a teleconference. But, however the law is made, in a world of electronic communication, international secretariats may not be needed to implement the agreements that are reached. Networks of computers may allow public officials in different states to coordinate activities, record compliances or deviations, negotiate extensions or variances or agree that sanctions are appropriate. Secretariats, of some scale, may be required, but many, if not all of these activities may be accomplished by electronic communication, rendering obsolete the nineteenth century material form of government and making unnecessary and wasteful the replication of that pattern for international activities in the twenty-first century. As for their symbolic function, perhaps that will be conveyed by a logo on the screen. Far short of that, it is timely to ask whether many international functions which remain as necessary as ever can be refashioned so that they can be done better and, perhaps, more economically and not necessarily by government or inter-government.

Yet the essentially cautious, if not conservative approach expressed in the idea of "reinventing government", no less than the arresting and unexpected combination of words, may be the best approach here. A world that experienced Mao's "cultural revolution" knows that Thomas Jefferson's wish for a revolution every generation is as romantic as it is excessive. The problem with the Jefferson-Mao approach is not simply that it is impossible or that it ignores the violence and destruction of radical and disjunctive changes, costs that may exceed the benefits the sought changes are supposed to bring, but that it dogmatically preaches discarding the good things from the past along with the bad, simply because they are legacies of the past. Everything new is not necessarily good (or bad) and everything old is not necessarily bad (or good). But, at the very least, from time to time and especially in periods of major social change, all of our basic institutions – the patterns of practices within which we operate and which we have inherited from the past – should be critically appraised in terms of current and projected needs and current and projected goals.

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[1] A recent example may be found in a Report released by an "efficiency board" appointed by the Secretary-General of the United Nations. The Report found "400 ways of doing [things] better." Apparently, the Board did not ask itself whether the activities were worth doing or worth doing by the United Nations, 'The United Nations: The Good News', *The Economist*, 2 September 1996, at 46.

What we all need, in our personal lives and at every level of social organization is not rigid iconoclasm or conservatism, but, at intervals, searching and rigorous appraisal of the validity and viability of our institutional arrangements and fundamental conceptions for securing the social and personal goals we pursue. These institutional patterns are the very environment in which we live. Frequently we come to view them, not as historical choices that we are heir to, but as part of an unchangeable reality. Precisely because these conceptions come to operate at levels of our consciousness so deep that we are unaware of them, a rather radical attitude – a predisposition to reinvent them – may be indispensable, even if the most searching review may ultimately conclude that some institutional practices should be retained because of their merits or because, for all their faults, in the imperfect moment of the imperfect world we inhabit, there are no better, feasible alternatives.

Because appraisals are undertaken, not as an end in themselves, but as a step toward shaping change, it is important to focus on the most critical points, those social structures that shape the rest of group and individual behavior and that must, themselves, be changed if significant adjustments are to be registered in other areas.

A. *The Constitutional Perspective*

All over the world, national constitutional arrangements are being reviewed and new arrangements are being explored. In Sweden, Japan, Korea and the United Kingdom, major constitutional administrative structures have been changed. It is no surprise that demands for fundamental changes in the constitutional documents of the world community are also being lodged with growing frequency and intensity and by small states as well as large ones. This is healthy and a good opportunity to consider the reinvention of the United Nations.

Can we talk of a constitution of the United Nations system? In every group, from the smallest and most evanescent micro-system to the most comprehensive world community, some processes of decision are concerned with establishing, maintaining, amending or terminating the institutions and procedures specialized in making decisions. These particular processes incorporate effective power (which does not necessarily operate in accord with law) and authority (which does) and engage all politically relevant participants who anticipate that they will be affected by them.

In this sense, the political stabilizations they achieve can be a rough barometer of the minimum common interests shared by these actors. They need not, however, reflect the common interests of all the rest, the entire community, whose destiny will be influenced by the structure and operation of these constitutive arrangements. Some groups or strata of the community

may be politically inert or, though aspiring to political power, be politically ineffective.

A more inclusive perspective of common interests would take account of everyone's interests. Ironically, special interests are almost always explicit and often well and expensively delivered. Finding common interests in the cacophonous chorus of "me-this and me-that", however, must often be synthesized by the observer. From the perspective of these common interests, the ultimate test of a constitution is the extent to which it can realistically and efficiently direct key parts of a rough-and-tumble political reality into channels that enhance minimum order and the realization of the community's values.

"Constitutions" are documents in which effective political actors purport to record such agreements to stabilize basic decision institutions. Constitutions have to be read carefully and in context, for they frequently give prominent position to statements of principle, aspiration or myth which the key participants have no intention of making effective, while leaving unstated key constitutive understandings reached by effective elites. In some cases, the entire constitutional document is a fig leaf that serves to cover the interests of the political elites; none of its drafters have any intention of making any of its promises effective. Consider the constitutions of the former communist states. They set out elaborate governmental arrangements; but in reality, only the party counted. In other cases, the constitution may have commenced as a meaningful political statement. Thereafter practices, that were initiated by a constitution, change over time. Effective actors and their legal scholars and ideologists may not want to admit it, wishing instead to continue to draw on the symbolic power which the original constitution may have since acquired.

Even when the constitutional document is a record of agreement about meaningful institutions, explanations of how those institutions worked in the past or how they will work in the future can only be made by reference to the comprehensive constitutive process that produced them, taking account of the elements of effective power and authority that shaped them. The documentary constitution is, at best, a snapshot; the constitutive process is a continuing, political process of which constitutions are a part. This constitutive process does not just happen. It is made, knowingly and unknowingly, by human beings and it can be shaped by human beings who understand and empower themselves and who consciously set out to design or change or reinvent the basic institutional framework of community life. Fantasy may play an important part in artistic, political and even legal creativity. But constitutional design is not a fantasy based on a series of dreamy "wouldn't it be wonderful if's ...." It is an exercise that must grapple with an unyielding reality, the savagery and violence of politics, in which those with naked power try to pursue their special interests: "the strong",

as Thucydides put it, "do what they will, the weak suffer what they must." Constitutional design must attempt to identify remediable pathologies in the performance of constitutive functions and to design realistic alternatives for their achievement to moderate, if not overcome Thucydides' reality.

All constitutional designs must be fashioned from the existing political process, the very monster that has to be brought under control. In secular politics, there is no *deus ex machina*, no magical, powerful force outside the system that can be brought in to subdue it. The trick in creating a constitution is harnessing forces in the effective power process so that they contribute to rather than oppose minimum and optimum order.

The United Nations was a product of this world constitutive process in 1944 and 1945 and its core structure reflected and intentionally used many of the power realities of the time. The United Nations' fundamental document is the Charter. Its central function, its security mechanism, is the Security Council, with its five permanent members-states, the great and near great powers of the epoch, plus six (after 1963, ten) term-members, selected, at two-year intervals, by all the other members of the General Assembly. The asymmetries of power in the Security Council were not a mistake or an oversight. The whole idea was to marshall effective power in pursuit of peace. Indeed, the agreement of the Greats and Near-Greats seemed so necessary for any effective security action, that each of the five permanent members was allowed a power to veto any proposed initiative. As for the contingency for action, the drafters could hardly have allowed more discretion. Whatever the Council characterized as a "threat to the peace", a remarkably subjective concept, justified the application of its plenary powers.

Insofar as security is concerned, the Charter is probably working as it was designed to. When the elite nations perceive what they feel is a threat to the international system – to "international peace and security" – the Security Council can now operate about as well as any political institution. The impressive response to the Iraqi invasion of Kuwait demonstrated that. Even when the Security Council is blocked, the Permanent Members can still operate with a type of international authority, for the Charter says explicitly that nothing in it impairs the "inherent right of individual or collective self-defense." As for Somalia, Georgia, Azerbaijan, Tajikistan, Liberia, Rwanda, Burundi, Chechniya, *et al*, a changing but, alas, growing list of localized tragedies, they are simply not viewed by political elites as international threats. From the perspective of the Permanent Members of the Council and, to be fair, of most politicians in the United States, Western Europe and Japan, these instances of carnage are lamentable, but because, whether correctly or not, they are not perceived by them to be threats to the international system, they do not, in their view, warrant meaningful international action.

The Charter is not a bad piece of drafting. It has served and serves the interests of those who created it, an obvious objective of all draftsmen. Dissatisfactions with the Charter – its problems – are not to be found "within the Charter", or within the shared interests of those who crafted it, but in the larger universe outside it, in the world constitutive process. There, new forces have coalesced, with different conceptions of what type of order the world requires. Virtually all of the 185 governments now in the United Nations are not permanent members of the Security Council, nor have they any expectation of ever serving there. They are, to be sure, concerned about certain aspects of its operations. Less appreciated, but far more important, the non-governmental entities, that are now critical international actors, pursue goals quite different from many of those implicit in the state-centric Charter. Non-state entities have different agendas and different priorities from those of the elites of the states within the UN.

Discussions of Charter reform frequently restrict their attention to the Charter, without relating it to these larger processes. This is peculiar, because the UN was designed to influence this larger process, whose dynamics will determine the UN's success. Reform proposals target a few dramatic but unrealistic or essentially marginal changes that confirm the state-centric structure of the Charter. They ignore a range of constitutive options which, though perhaps less dramatic, are more feasible and could yield substantial improvements in the overall performance of the organization's functions.

Proposals for change are directed at the Charter itself, which is viewed from *within*. Viewed from *outside*, the Charter's chief defect is that it is exclusively an inter-state organization; this cannot be appreciated if one looks only at the Charter, for the whole Charter is premised on *étatism*. The sorts of changes the Charter itself contemplates will only redistribute power *within* this framework. But if one places the Charter in the largest world context, where many transnational and national non-governmental entities now play increasingly critical roles in many decision functions, the restriction on participation in the UN becomes glaringly apparent.

Discussions of UN reform fail to take account of this particular change in international political life. After a period of expansion, the state apparatus is in a process of contraction, externalization of function and, in some cases, even disintegration. In many parts of the world, indispensable social functions, long expected to be performed by the apparatus of the state, are being provided by non-governmental organizations, some local or national, some international. Some of these NGOs are religiously affiliated, others limit their efforts to co-ethnics, but many hold themselves out as general providers. Pre-natal care, water quality, medical treatment, nutrition, physical protection are now, in some contexts, being provided by NGOs. Indeed, many of the protections provided by the NGOs are designed to ward off depredations *by* the government against its citizens. In some places, government

has collapsed. In others, it is disintegrating because of insufficient funds, corruption or the deterioration of the economy off of which it lives.[2]

This development intersects with another trend. Much of modern international law has been a movement to limit the power of state elites or their "sovereignty". Elites do not limit their own power. The remarkable advances made in human rights and in the protection of the environment are mostly the result of the initiatives and continuing efforts of individuals who were not affiliated with states, but were operating through non-governmental organizations. Thanks largely to these non-state entities, human rights and environmental protection have been pushed to the forefront of international legal concerns. If one of the purposes of international constitutional reform is to enhance programs such as human rights and the environment, then an instrumental goal should aim at increasing the role of individuals and groups not affiliated with states.

The fundamental issue in reform of the United Nations, in most general terms, is not "what's good for the UN?" but how the UN can be shaped so that it contributes maximally to the fundamental goals of the world constitutive process: the maintenance of minimum order and the achievement of an optimum public order in which human dignity can flourish. This does not mean that one should toss the UN onto the scrap heap of history. Many features of the United Nations, as currently structured, may be seen, on reexamination, to approximate these goals and should not be tampered with. Others do not and should be radically changed or discarded. In particular, we must urgently address the Charter's failure to empower the people of the world, who called the Organization into existence, in a new world in which technologies of travel and electronic communications permit individuals to engage in unprecedented transnational collaborations of unprecedented effectiveness.

Many of the problems that the United Nations faces derive not from the UN itself, but from world politics of which it is a part. Solving one superficial UN "organizational" problem may simply generate others. The search should be for adjustments in the constitutional mechanisms that can lead to ongoing self-correction.

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[2] Within states, where political parties have weakened and the influence of NGOs of pressure group type has waxed, the result may be a more confrontational politics. NGOs, as voluntary organizations, are likely to be more homogenous. The demands they put forward will not, as a result, have undergone an internal process of compromise, designed to make them compatible with other actors, whose collaboration is necessary for their effectuation. Hence national politics may become more frictive and violent.

B. *Design Principles*

Designing political institutions that will serve as tools for getting or keeping the things we value and at a price that is commensurate with the value secured requires careful attention to five basic principles of social engineering: "context", "power", "future images", "economy" and "feasibility". Let us consider each of them.

1. *Context*

If you want shelter, try as you may, you will not get much with an igloo at the equator or a thatched hut in Antarctica. Context is a critical factor in the design of everything. In order for any construction to be viable and useful, it must take account of and use, where appropriate, the various features of the context. This iron law of contextuality applies with equal force to social and political design. Appraisal of the continuing utility of the inherited design of the United Nations, and the invention of alternative designs for it in the future must take account of the most comprehensive world social, economic and political contexts, as well as their local political and cultural features.

2. *Power*

A second principle which must be fully accounted for in political design is power: the relative capacities of actors to influence events without regard for lawful arrangements. Law-making, in contrast to political philosophy, is a quintessentially political operation, because it must assemble policy-packages that are acceptable to different forces in the power process. It may seem absurd to suggest that anyone appraising the operation of the United Nations or considering designing alternatives would not give full attention to power. Unfortunately, many of the proposals that have been made to adjust the United Nations seem oblivious to the operation of power in international politics. The United Nations has functioned with some minimal efficiency until now precisely because the original design of the Charter did take account of the way that power operates in the international system.

Assessing political power involves more than inventorying planes and tanks and national wealth. A critical question is whether the political process that controls those planes and tanks can be mobilized. For decades, officials in the United Nations have lamented the absence of "political will" in member states, when they were called upon to participate in some United Nations action. In highly authoritarian and centralized systems, the political will of one actor may be the exclusive trigger for the use of whatever national

power is at the disposal of that state. But in democratic polities, in which power is widely dispersed, political leaders, who look powerful from the outside, may be unable to use the military assets at their disposal, unless there is a powerful domestic constituency in favor of it. Hence international assessments of power must take account, not simply of distributions of power between states and the influence this has on the operation of the United Nations, but also of the distribution of power *within* states and the effect that such distributions have on the capacity of the leaders of those states to act internationally.

3. *Future Images*

Political institutions are designed for the future. That means that the designer must have some sense of the likely context and distribution of power at successive moments in time. Without developing cogent assumptions about futures, the designer is, in effect, casting about in the dark. Each of us builds our lives with strands of current behavior based on many, contradictory futures which we assign different probabilities, for at any moment, there are many possible futures. Consider a hypothetical Mr Smith: Smith, like many other people in his social and economic situation, diverts a certain portion of his current income from consumption to a pension fund. This action is premised on a future in which he continues to live beyond an age at which he can or wishes to work. Smith also diverts a certain portion of current income from immediate consumption to make payments on a life insurance policy. This concurrent strand of action is premised on a future in which he will have died long before the future his previous plan anticipates eventuates. The second future concerns plans for dependents or others who survive Smith and for whose welfare he would like to provide.

Smith has thus created two incompatible futures, assigned probabilities to them, and made provision, through the investment of current resources, for the eventuation of either. Smith's constructive futures are not static or impervious to influence by his current behavior. Smith can increase or decrease the probability of one or the other of those futures' eventuation by adjustments in his current behavior, whether in health care, exercise, diet, vocational and recreational risk avoidance and other choices. All of Smith's calculations are based on information that becomes available to him with respect to the consequences of different current options for the eventuation of different futures.

If Smith and those to whom he perforce delegates some of these planning tasks are sophisticated, they will appreciate that his plans involve assumptions about the continuing viability of various political, legal and economic institutions and processes: the insurance industry, its regulatory agencies, an economy that continues to be productive within a political framework

that continues to honor private and public arrangements such as his, a stable ecology, a network of supportive international relationships for his state and so forth. Smith, acting alone, or in concert with others, may be able, in varying degrees, to influence how some of these elements of his constructive futures develop.

Like many other people in our civilization, Smith routinely projects a number of different futures and makes provision for their eventuation, while assuming, within certain limits, that the eventuation of any of them depends in part on what many other human actors do. Smith may have developed additional images of possible futures but assigned them a low probability of eventuation or, at least, a probability of eventuation so low that the diversion of current resources is not warranted. For example, Smith may fantasize that he will receive a bequest from an unknown relative, marry an heiress, or win the national lottery and hence no longer have to divert current income for constructive futures. But if he does not quit his job or draw out his pension fund the moment he buys the lottery ticket, it is clear that he has assigned these futures, however prospectively delectable he finds them, a very low degree of probability.

A disengaged observer would judge Smith rational if the various futures for which he was diverting current resources were probable and correlated to Smith's key personal values. But if Smith over-estimates improbable futures or diverts an exorbitant proportion of current resources to prepare for their eventuation, the observer would conclude that Smith is behaving irrationally, whether on the basis of fantasies of unfulfilled wishes, obsessional neurosis, paranoia or stupidity.

Political and legal planning in our civilization builds on the sorts of assumptions that are common to Smith and hundreds of millions of others. It tries to develop means to imagine and then generate a range of possible futures or what Harold Lasswell felicitously called "future constructs".[3] These constructed futures are perforce exercises in disciplined fantasy that may range from utopias or desirable futures through to dystopias or the most undesirable futures. For each future, probabilities of eventuation must be continuously re-estimated.

The designer of political institutions must generate a range of constructs of the future and ensure that the designs that are being prepared are shaped to perform their functions in the range of the more probable futures that can be constructed. Constructive futures cannot be still-shots taken with a 35 mm camera. If they are to be useful, the future must be conceived

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[3] Harold D Lasswell, 'The Garrison State and Specialists on Violence', 46 Am J'nal of Sociology (1951), at 455-468. See also William Ascher, *Forecasting: An Appraisal for Policy-makers and Planners* (1978).

dynamically as full-fledged motion pictures, replete with rounded characters and plots that develop dynamically and stochastically. The function of these futures, along with the other design principles, is to confirm that the scheme on the drafting board will work in the range of unyielding realities it is likely to confront.

4. *Economy*

There is a tendency among students of international relations and international law to assume that there cannot be too many *good* institutions, as if by the creation of more and more international organizations, one can overcome and transform violent political conditions. The result is overlapping and frequently duplicative institutions concerned with human rights, with development, with health, *etc.* If the society that is paying for these institutions has unlimited resources and feels that these duplicative institutions somehow or other salve its conscience for not doing more meaningful things, then the institutions, at any price, are cheap. But if there is a general shortage of resources, duplicated institutions simply draw resources away from other activities that are important. By investing public funds in functions that do not fulfill their promise, the general image of international efficacy is reduced. Hence the need for design principles that emphasize economy and avoid unnecessary redundancies. To be sure, not every duplication is a redundancy. Multiple institutions sometimes better serve the common interest than might a single one. But the costs of the congestion that is created by overlapping institutions must also be factored in.

5. *Feasibility*

Metternich's famous apothegm, "Politics is the art of the possible", is even more optimistic than its coiner may have believed. Politics is not the art of the possible, but, as Willard has put it, the art of the feasible, what can actually be done. Hence a final principle in political design is one of feasibility. We have already considered the restraints that operate on democratic politicians, especially in foreign affairs. A politician in a country with a large military force may think that a military action under the aegis of the UN to free country X is worth 1000 casualties. If his constituents do not agree, the politician will find that he is the first casualty.

Feasibility is an important element in constitutional design and an important corrective to constitutional dreams. The point has special relevance to discussions about changing the United Nations. No reality-based discussion of Charter revision can ignore Article 108 which allows for amendments by two-thirds of the members of the General Assembly, but requires ratification by all the permanent members of the Security Council in order

for the amendments to come into force. This does not mean that change in the constitutive process is impossible or even that reform of the UN is unattainable, but that international constitutional amendment, in its conventional understanding, is the least likely mode of change.

In earlier essays, these principles have been applied to several aspects of the United Nations. In this essay, I propose to consider the current questions of expanding the Security Council and making the General Assembly more effective.

I

Much current discussion of United Nations constitutional reform focuses on expansion of the permanent membership of the Security Council. Germany and Japan, former acknowledged Great Powers who had been defeated by the United Nations, have largely regained their pre-war status. Each now presses for admission to the Permanent Membership of the Security Council. The United States has publicly expressed support for this expansion. Other plans call for more ambitious reorganizations of the Security Council, with regional seats, through which states in particular regions would circulate, to broad expansion of a non-permanent membership and, to conceptions in which the current Permanent Members would surrender their power, under the Charter, to veto actions that might otherwise have majority support.

All of these proposals involve perforce an amendment to the Charter and will inevitably encounter Article 108 and will fail the design tests of power, context and feasibility. It is exceedingly unlikely that China will accede to a Japanese request for a permanent seat, with veto power, on the Security Council. The United States has indicated that it supports a seat for Germany and Japan, but that expression of friendship is essentially rhetorical, as other Permanent Members will not allow either candidacy to succeed.

Even if one postulates a future in which Japan or Germany or both were admitted to full permanent membership in the United Nations, the problem is, still, not a constitutional issue, other than in a negative sense. The admission of Germany and Japan to permanent membership, with or without the veto, will have no significance for the effectiveness of the Security Council operating under Chapter VII. Indeed, the Council's effectiveness might suffer, not simply because of the increase in numbers and the greater difficulty in reaching agreement, but because neither Germany nor Japan is currently able, under its internal constitutional dispensation, to participate, in any meaningful fashion, in Chapter VII operations. Each is a major player in world politics and economics, but, whether for better or worse, neither is yet a great power, *ie*, a state with a resource base and an internal

political organization that enable its respective elites to clarify global interests and, if necessary, to mobilize sufficient domestic support to enable them to deploy a military force adequate to effect them. Nor would the addition of these aspirants to permanent membership add to the legitimacy of the Security Council. In the eyes of the rest of the world, in Africa, Asia and Latin America, Japan and Germany are more of the same.

Nor, for that matter, would the addition of so-called Third World representative states, such as Brazil or India, as permanent members, increase the effectiveness of the Council. Indeed, it is doubtful if these states would even increase the "legitimacy" of the Council, for neither would present a "Third World" perspective, which is, in any case, not a homogenous concept and which they, as near-great or proto-great powers, could hardly reflect in an authentic manner.

In terms of constitutional effectiveness, the addition of four more states to the Council would probably dilute its effectiveness and, in this respect, represent a constitutional setback, not simply for the United Nations as a whole, but for the General Assembly whose members rely most heavily on the image of credible effectiveness of the Council. It is important to recall that the United Nations Charter is a contract, which, like all contracts, embodies an effort to forge a common interest between parties with dissimilar interests and resources. For the majority of smaller states, the objective was to create an improved collective security system by mobilizing the power of the strongest states, at the same time subjecting them to some degree of control in the Charter mechanisms. For the larger states, who also have a compelling interest in a stable international order, participation in a collective security system was unacceptable if the reality of superior power were not acknowledged in the organization's design. The structure of the Security Council, in which the then strongest powers were given permanent seats and assigned a veto privilege, reflects this accommodation. While it may seem asymmetrical and inequitable, it is, in fact, something of a gain, for the smaller states, in terms of the design principles we have postulated. Consider this part of the Charter design in those terms.

Great powers are states with global interests, military resources to protect them and an internal political and administrative structure allowing elites to deploy them. If explicit authorization by the Security Council had been the only course of action available to the strongest states, they would have had scant incentive to join the United Nations, for each of the powerful states would have been net worse off than if it had been operating in a world without the UN. The Security Council's essential control mechanism – the veto – allowed any Permanent Member to block the action of others through the Council.

The additional component that balances the equation for the Great States is to be found in Article 51 of the Charter, the final provision in Chapter VII:

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

Thus, the United Nations Charter offers the major actors two avenues for lawful coercive action. The first is through an authorization by the Security Council. The second is through individual or collective action for self-defense, which can be taken before the Security Council takes up an issue vital to a state or after the Council has taken the matter up, but has been unable to take the "measures *necessary* to maintain international peace and security" (italics supplied). With the exception of the five Permanent Members, every state in the United Nations can act under Article 51 subject to the potential of a decision by the Security Council expressly prohibiting it. This restraint cannot, however, operate with respect to the Permanent Members, since each has a veto over Council decisions adverse to its interests.

Given the two possible avenues for coercive action by states to protect their interests, action by the Security Council is preferable from the perspective of all the other members of the United Nations. In actions undertaken by the Security Council, the other members of the organization have a potential "non-aligned veto", which, at the very least, can permit them, if they have a common policy, to secure accommodations or concessions from the Permanent Five with respect to particular uses of force.[4] But the members of the General Assembly, who are represented in the Security Council by the Non-Permanent Members, have no control over an action undertaken by one or more Permanent Members as an exercise of the right to individual or collective self-defense under Article 51.

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[4] See W Michael Reisman, 'The Constitutional Crisis in the United Nations', 87:1 AJIL 83 (1993), reprinted in *The Development of the Role of the Security Council, Workshop 1992, Hague Academy of International Law* (Nijhoff, 1993).

One of our design principles admonishes taking account of effective power in appraising or in inventing alternatives within the UN system. That principle is important in assessing the costs to the majority of states in the General Assembly of an expansion of the Security Council. Would such a shift actually give the Assembly more control? The dilution and shift of power within the Council would simply make it an increasingly undesirable arena for the largest states. Instead of taking programs through the Council and necessarily accommodating the interests of the General Assembly as the price of forming the necessary majorities, the General Assembly would see itself entirely circumvented, with the larger states channelling their actions through Article 51.

Nor is it certain that the two governments that are currently pressing for admission to permanent membership in the Security Council stand to realize net gains if they succeed. Insofar as they have an interest in an effective Security Council, they should appreciate that the addition of a new group of Permanent Members, which would probably include, as part of the compromise, several states besides themselves, would change the effectiveness of the Council. Can the futures that they anticipate operate without a Security Council that is minimally capable of addressing the issues which it has been assigned in the international constitutional order? As against this, the same governments should consider whether they can achieve a degree of political influence commensurate with the power they dispose of in the international system in ways that leave the Security Council intact?

For at least one of the suitors for a permanent seat in the Council, the downside of an unsuccessful bid could be steep indeed. In Japan, a failure by the government to secure a permanent place after a publicized campaign could well be interpreted as a rejection of Japan by the rest of the world. This could reinforce latent xenophobic tendencies. Representatives of the Japanese Government have mentioned this danger to other governments as a way of increasing pressure on them to accede to Japanese demands. The dangers may have been exaggerated for tactical purposes, but those who are electing to press the issue within Japan should carefully weigh all the possible consequences in internal as well as external arenas.

II

Since the end of the Cold War, an undercurrent of discontent in the United Nations has swirled about the Security Council. Discontented members of the General Assembly have focused, first, on restraining the permanent members in the Council from broadening their authority by ever-more spacious readings of the contingencies for exercising Chapter VII powers,

and, then, not surprisingly in the light of the first issue, on the question of which additional states will ascend to permanent membership.

The real problem in the United Nations, the real source of constitutional grievances in the organization and, indeed, the real political and moral question in world politics is not the structure of the Security Council. Probing reveals that the most acute dissatisfaction arises from the reduced effectiveness of all the other states in the roles assigned to them in the United Nations and the narrow range of official participation allowed to all the non-governmental entities that have become so active in modern international politics. The real problem is not the Security Council, but the General Assembly, the only arena in which the great majority of states can regularly operate at the multilateral, general international level, the limited and largely marginal tasks assigned to the Assembly, and the inefficient way the Assembly performs even the functions explicitly assigned to it under the Charter. If UN constitutional reform would misfire by weakening or diluting the Security Council, as I have argued above,[5] it would benefit by making the General Assembly more efficient. Happily, many important constitutive initiatives in this area would meet the feasibility test for design, because they are within the province of the Assembly and cannot be blocked by one of the permanent members of the Council withholding ratification of changes.[6]

The General Assembly was created as the place for "the others", those who were politically organized and sought to be politically relevant at the moment the Charter was sealed. In 1945, the others were the other states in the United Nations. In 1995, thanks to the retreat of totalitarianism and the coordinate rise of genuine civic orders[7] in many more countries and the development and diffusion of the technology of global communications, the ranks of the others have swelled. They include a broad and truly diverse class of effective non-governmental entities, which range from corporations and other business units, through politically-oriented pressure and lobbying groups concerned with everything from general problems such as human rights and the environment to specific problems of co-religionists or co-

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5 See also W Michael Reisman, 'The Constitutional Crisis in the United Nations', *ibid*, at 95-99.

6 Art 108 of the UN Charter provides that "[a]mendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council."

7 For an analysis of the relationship between democracy, human rights, and genuine civic order, see Myres S McDougal *et al*, *Human Rights and World Public Order* (1980), at 799-802, 815-60.

ethnics in the various diasporas of the modern world, to gifted individuals who command world attention by virtue of their accomplishments, personal magnetism, or eloquence. In short, the peoples of the world have found their voices and are adapting and inventing various modalities to project them into formal international arenas. The clumsy and rather inelegant term "non-governmental organizations", or NGOs, refers to all those on our planet who are not affiliated with a government but who seek to operate, directly or indirectly in the international political process.

The problem of the revitalization of the General Assembly is inseparable from the problem of finding a role for these various NGOs. Aside from their right to be heard, they are a major source of mobilization, energy, and innovation in international politics. Even with the limitations that formal international law doctrine has imposed on their direct participation, certain NGOs are responsible for some of the most important developments since the establishment of the United Nations. The incorporation of the human rights program into modern international law, to cite only one example, was hardly the result of governmental initiatives. Rather, the dogged agitation and lobbying of human beings operating through NGOs brought the human rights program into existence and continues to vitalize it.

Not all NGOs espouse what an objective observer might call the "common interest". Some represent very special or very well-endowed interests, which they pursue vigorously and skillfully. But the process of discerning the common interest in any political community is necessarily dialectical and is best served by the participation of as many community members as possible, each expressing its own visions and aspirations. That is why the increase in NGO activity of all types is beneficial to the operation of the international system and is morally right. The revitalization and democratization of the Assembly will depend as much on finding authoritative roles for NGOs, as on adapting or creating structures that allow member-state action there to be more efficient.

There is no alchemical formula for transforming reality by conjuring with words and uttering legal incantations. But apparently minor and innocuous changes in social structures can change behavior in important ways. Modest proposals for change in five areas could revise and revitalize the General Assembly to the common benefit. Each proposal is feasible, in the sense that none would require explicit Charter revision and, hence, run the danger of colliding with the real limitations of Article 108.

1. *Making the Assembly's Security Role Effective*

The implementation of security policy must ultimately be the responsibility of an executive committee of restricted membership. This does not mean that no one else has a legitimate interest in participating in security

matters. Since early in the history of the United Nations, the Assembly has sought a role for itself in this area. Barely into its first decade, the Assembly issued its "Uniting for Peace" Resolution,[8] in which it purported to find authority in the Charter to act to discharge the Charter's security functions when the Council was paralyzed. The International Court confirmed the constitutionality of this innovation,[9] but the political outcome in that incident hardly sustained the legal view expressed by the Court. The delinquents did not comply, yet sanctions were not applied. In practice, "Uniting for Peace" has proved an unworkable alternative to an executive committee.

If an executive committee is to remain an instrument of limited power, it must, be controlled. The veto, rather than judicial review, is the contextually appropriate instrument for control of the Council. When the Council's non-permanent membership expanded in 1965, the Assembly wisely used the power it wielded at that moment to create for itself a so-called "non-aligned veto", rather than inserting the International Court into the political breach. The problem has been that the non-aligned, non-permanent members of the Council have never been able to exploit the potential for this Assembly veto. The Assembly could better perform the constitutional control function it has prescribed for itself with regard to the Security Council, without weakening the Council's functions, through a Chapter VII Consultative Committee that would operate when the Council moved into a Chapter VII mode. The Chapter VII Committee would act as a conduit between Council and Assembly, informing the Assembly of the options and implications of Council action and informing the Council, and, in particular, its non-permanent membership, of the views and wishes of the Assembly that had selected it.[10]

2. *Restricting Ceremonial Roles*

Each annual plenary of the General Assembly finds itself engaged for a substantial period by the less than memorable speeches of heads of state, who sweep in and out for their one-night stands. At times, this ceremonial component can consume as much as twenty per cent of an annual Assembly. At a symbolic level, these sessions are not without importance. At the very least, they create the image, if not the substance of a world community and they convey at least the appearance of respect and support for the United

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8 Uniting for Peace, GA Res 377(V), UN GAOR, 5th Sess, Supp (No 20) at 10, UN Doc A/1775 (1950).

9 *Certain Expenses of the United Nations* (1962) ICJ 151 (July 20).

10 See Reisman, *supra,* note 4, at 97-99.

Nations. But the costs of the annual meetings far outweigh the symbolic or substantive benefits they may have. But these ceremonies do nothing to increase the power of the majority of states in the Assembly. Nor do they increase the collective authority of the Assembly, for the Assembly does not "act" on these speeches. It has no authority to do so. The Assembly is essentially a government audience of extras. Most serious, they actually distract attention from the problem of the powerlessness of the Assembly.

Suppose we were to discard the annual plenary meeting of the General Assembly and replace it with a triennial meeting. Triennializing the heretofore annual ceremonial meeting, will free-up time and energy for more substantive activities.

3. *Parliamentarizing the General Assembly*

Major areas that are feasible for growth in the authority and effectiveness of the Assembly are in the international law-making process, oversight of the administration of the UN, the appointment process, and the budget. Improving each of these depends on what we might call "parliamentarizing" the General Assembly.

Generically, the modern democratic parliament is an institution designed to allow active representation and participation of the diverse interests of the community for the purpose of clarifying the common interest in particular social sectors, designing legislative instruments to implement that common interest, appraising the performance of the other institutions of government, ascribing personal or structural responsibility for failures, and developing alternative arrangements. In many modern governments, the parliament also has checking and balancing roles, that have been crafted to control the actions of the executive. In this regard, for example, the parliament may play a role in which it must "advise and consent" to the appointment of persons to long-term roles that are to be performed, independent of other political entities. Even when a parliament is not explicitly assigned that formal power, its collective judgment of the qualifications of candidates or its indication of lack of confidence in them may result in their rejection or removal.

The modern parliament enhances and amplifies its own resources by subdividing into more efficient, functional committees and sub-committees, each of which, in turn, may hold open sessions, to which interested groups and individuals are permitted to present their views on matters within the competence of the committee. Thus, parliaments do not work from "the top down". They are selected and recalled by popular vote and even between elections, important pressure for action continues to percolate from "the bottom up", as many different groups in the polity find points of access.

Committees and sub-committees have their own staff including lawyers. These adjunct bureaucracies provide continuity to the necessarily episodic meetings of the various committees and sub-committees. Thanks to these staff, committees are always in session and always available to those in the rest of the polity who wish to contact them.

There is no world parliament. Nor is the UN General Assembly a parliament in this modern sense. It is composed of national delegations, each of which represents a member-state. Authentic parliamentarians are answerable to their constituencies, but given the heterogeneity of their constituencies, they cannot be mere catspaws. In forging common interests among their diverse constituents, they may develop considerable personal authority. In sharpest contrast, the General Assembly's delegations are internally hierarchical and subject, at every level, to the discipline of their governments. Their members do not have any independent authority, unless they derive it from the political process that has sent them. Nor are the component delegations necessarily representative of the diverse interests in the territories of their states. Many of the states are, alas, dictatorial or authoritarian and rule by suppressing, rather than responding to popular expression within their communities. Hence, even if the various delegations to the General Assembly reach agreement on particular items, such agreements are not likely to reflect a basic common interest of the peoples of the world. Rather, they will incorporate the minimum interests of the often unrepresentative elites that control the delegations.

The structure of the General Assembly that has evolved seems to have been designed to minimize the potential influence of the smaller states that form a numerical majority in it. With six main committees in which all the delegations sit, the resources of smaller states are strained to the point where they can hardly participate actively in many of them. The vast majority of the states in the General Assembly do not have and cannot afford to maintain missions of a size that would permit them to participate effectively in all of the plenary committees, not to speak of the many sub-committees that each plenary committee spawns. Even if the members of the small missions are grimly serious about their responsibilities, there is no way they can prepare for all the meetings or even stay on top of the deluge of materials. Nor can they expect substantial help from home, for the ministries that send them are also very small. Even with these limitations, the Assembly seems to provide rich representation to "states", compared to what it allows the rich variety of non-governmental entities.

For a modern parliament, the General Assembly is inefficiently organized. Its six main committees are too large and the functions of intelligence gathering and processing, of promotion, and of prescription are ineffectively performed. The two standing committees – the Advisory Committee on Administrative and Budgetary Questions and the Committee on Contribu-

tions – are smaller, with eighteen members, but have not played a major role. Confirmation of the low esteem of the committees even among the membership is reflected in spotty attendance records and the inactivity of many who do.

Professor Thomas Franck,[11] has proposed direct popular elections to the Assembly, on the model of the European Parliament in its most evolved form. This proposal will be a very long time in implementation. But it may be possible, within the state-dominated structure of the United Nations, to create an institution that will functionally approximate an international parliament.

Triennializing the current plenary, annual ceremonial meeting of the General Assembly liberates the Assembly from a time-consuming but essentially sterile activity. In the three-year intervals, the meetings of the plenary committees should be reduced. In their place, smaller, regionally representative, functional committees and sub-committees, each with no more than 25 members, can be created. These committees would hold hearings, take testimony, draft resolutions and even more ambitious instruments, and exercise oversight over those parts of the international administration that pertain to the specific functions that are assigned to them.

Each member state would be permitted to sit on a limited number of committees, but would be permitted to observe the deliberations of any other committees and participate, in a limited fashion, in some of their activities. Membership in these committees would be assigned on the basis of interest, with each state choosing to serve on three committees. Where committees are oversubscribed, places would be assigned by lot. Winners would be able to trade or barter their places on choice committees. Each of the committees and sub-committees would have a small, permanent staff to serve it during and between sessions, reassigned from the existing Secretariat.

The rules of these committees and sub-committees would be revised to allow for direct testimony by interested individuals and NGOs as well as by state representatives. For certain activities, the committees would have the right[12] to call witnesses. Once such committees were formed and began to function, NGOs, performing the functions of lobbyists, could begin to

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[11] Thomas Franck, Speech at the Annual Meeting of the Canadian Council on International Law, 21 October 1994.

[12] Without being unduly Hohfeldian, the word "right" is used rather than the word "power", for the committees will not have the formal power to compel appearance. Yet in many areas, the practical effect may be compulsory: if a candidate for a judicial or administrative post on which the Assembly votes, elects not to accept the committee's "invitation", would not the likelihood of that candidate prevailing in the election decline?

direct their attention at them, and in this more refined focus, their energies would be magnified. Since the new committees would be performing important functions, attendance and attention could also be expected to revive. Hopefully, the work of some of these committees would be interesting and important enough to warrant coverage by the media and would thus reach a wider audience and stimulate even more interest and participation.

Among the functional committees that would be formed, the budgetary committee would assume responsibility for reviewing the previous budget and preparing the new annual budget. It could invite testimony and actuarial accountings by personnel in different components of the United Nations regarding previous budgets. Another committee would undertake regular oversight of international administration, with a much broader mandate than that assigned to the current Committee on Review of Administrative Tribunal Judgments. One sub-committee would address the continuing problem of sexual discrimination in the United Nations, a subject on which there has been high-level public hand-wringing, but pitifully little action.

The new committee structure could be phased in experimentally, starting with one or two such functional committees, created by the Assembly with a limited life span, followed by a careful review of their performance. We will consider a number of other such possible committees below.

4. *Enhancing Law-making Functions*

One of the consequences of the improvement of the output of these revised committees would be to make the far less frequent meetings of the plenary General Assembly more meaningful. The Assembly could certainly become a more effective force *within* the administration of the United Nations. But ultimately, the effectiveness of the Assembly in the larger sphere of international politics will depend on the extent to which it can build on its inchoate role in the international law-making process.

In the classical doctrinal sense, conventional international lawmaking requires the consent of the states concerned. That consent is expressed in certain unequivocal modalities that do not include the General Assembly of the United Nations.[13] Hence a role for the Assembly in this area does not, at first glance, seem promising. But law-making may also be conceived of, functionally and dynamically, as a process in which

(i) probable discrepancies between preferences and predictions are identified and attention is focused on them;

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[13] See, *eg*, Vienna Convention on the Law of Treaties, art 1(1), UN Document A/Conf 39/27 (1969), 1155 UNTS 331.

(ii) demand in politically relevant strata for a legal solution to a discrepancy is made more intense;

(iii) the aggregate costs and benefits of alternative arrangements for dealing with the projected discrepancy are assessed; and

(iv) legal instruments are redacted. Viewed functionally, it is clear that considerable preliminary but nonetheless functionally legislative work can be done in a more open and democratic fashion, and many more participants than a limited number of states can play significant roles in the shaping of new law. Accomplishing this is possible.

UN Charter Article 13 assigned the General Assembly a general competence to make recommendations for the progressive development of international law. The Assembly tried to expand this inchoate power in the 1970s into a new mode of lawmaking by resolution. Unfortunately, it produced instruments, like the Charter of Economic Rights and Duties of States,[14] that easily won numerical majorities, but made no effort to incorporate the interests of members of the international community whose numbers were small but whose support was critical for law-making.[15] The only lasting political consequence of these quasi-legislative initiatives was to discredit the Assembly's lawmaking role.

In 1947, the Assembly created an International Law Commission (ILC), then composed of 15, now of 34 members, to prepare instruments of codification and progressive development for submission to the Assembly. The Assembly, if it wished, could then convene a diplomatic conference with a view to their adoption. In its early years, the Commission made a signal contribution to codification in a number of fields of international law for which there was abundant practice, indicative of substantial consensus. But in terms of innovative law-making, especially in new and uncharted fields, the ILC has been less successful because it is the wrong institution for the task. In modern pluralistic systems, law-making is not a "scientific" operation, but rather a robust political process in which groups are formed and press to transform into official policy arrangements they feel will help them and serve the common interest. Thirty-four independent experts, as good as they may be, cannot do this by talking to each other.

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[14] Charter of Economic Rights and Duties of States, GA Res 3281, UN GAOR, 29th Session, Supplement (No 31) at 50, UN Document A/9631 (1975).

[15] See generally, W Michael Reisman, 'International Lawmaking: A Process of Communication', 75 Am Soc Int'l L Proc 101 (1981) (arguing that international law is not made without authority signal and control intention).

The revised committee system suggested above would revitalize the Assembly's law-making role by incorporating non-governmental organizations in the process. NGOs are groups with ideas and with the energy to formulate them in a legal manner, if they have the chance. They can be counted on to recruit persons and invest resources in the research that can provide the intelligence necessary for sound legislation. They will disseminate the results of their lobbying activities before the committees and promote their different view points. Their lawyers will prepare alternative drafts and criticize those that emerge from the committees.

Inter-governmental conferences might not take up the products of these committees and adopt them as treaties, but the results would still become part of the law-making process and inevitably influence treaty making. They would become an unavoidable part of the discussion, commanding attention on the basis of their cogency and quality, which is as it should be.

Changes of this sort do not require approval by the Permanent Members of the Security Council. But they do require approval by the General Assembly. Would the "permanent members" of the Assembly be interested in sharing their power in many sectors of their activity with NGOs? Assembly members know far better than the journalists and observers who may be dazzled by the architecture and the apparent perquisites of Assembly membership that they are the permanent underclass of international politics and that their Assembly is a place where the powerless talk to each other and pretend to make decisions. By restructuring and sharing access with NGOs, the members of the Assembly could actually enhance their power.

5. *Advising and Consenting: Appointment Oversight Roles*

Selecting the best people for the job has been a persistent problem in critical international institutions. Consider one example. The fifteen judges of the International Court of Justice, the principal judicial organ of the United Nations, are elected, in simultaneous parallel elections, by the Security Council and the General Assembly. Although Article 2 of the Statute of the Court (which is part of the United Nations Charter) specifies the intellectual and moral prerequisites of candidate judges, elections to the Court are largely political. Governments commit themselves to particular candidates, not on the basis of their comparative qualities, but on the basis of the government that is sponsoring them. There may be something to be said for a regime of regional distribution of seats on the Court which vouchsafes each region's representation, but what is the justification for allocating seats within regions on political rather than qualitative grounds?

Nor is the situation better with regard to selections for executive posts in international organizations. In some regional organizations, critical

administrative posts are distributed to countries or sub-regions, which, individually or collectively, then designate the candidates who will fill the posts. There is no inclusive quality control.

Sometimes these systems produce candidates of real quality. Sometimes they produce undistinguished candidates or mediocrities. In a few cases, individuals who are professionally or morally unqualified have been selected. Furthermore, many candidates for posts seek re-election, yet prior performance is not examined critically at the international level.

Legal and administrative posts have a great potential for political influence. Obviously, rational political actors will support candidates they believe will serve their interests. In developed democratic systems, this tendency, which could be destructive if it were uncontrolled, has been checked by the evolution of a variety of non-governmental processes that appraise the qualification of candidates *before* they are confirmed in their posts. Thus, the American Bar Association's Standing Committee on the Federal Judiciary regularly appraises candidates for the Federal Judiciary in the United States.[16] The study that is conducted by this Committee of the prior professional record, judgments, where relevant, and publications of the candidate becomes an important factor in the confirmation process. The very prospect of such critical scrutiny may act as some restraint on capricious selections for political appointment, for no politician or faction wishes to be embarrassed by the rejection, on the merits, of a candidate.

Other interest groups publish detailed studies of the records of the candidates, as they impinge on the interests of the groups concerned. These reports, too, become part of the confirmation process. Candidates with mediocre reviews are not confirmed, in large part because of the impact of such reports. Similarly, candidates of quality find their chances enhanced because their performance is carefully appraised in terms of objective professional standards.

Unfortunately, nothing of this sort occurs at the international level. As a result, all of those groups – state and non-state – that are concerned with the quality of international organization commiserate *after* the fact when candidates are appointed or, even worse, accept in a fatalistic fashion that they have no way of influencing the appointment process.

This situation can be changed. Consider elections to the International Court of Justice. The list of candidates is closed several months before the elections are conducted in the Security Council and the General Assembly of the United Nations. Were a consortium of NGOs or national bar as-

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[16] See American Bar Association, *The ABA's Standing Committee on Federal Judiciary: What It is and How It Works* (1991); Laurence H Silberman, 'The American Bar Association and Judicial Nominations', 59 Geo Wash LR 1092 (1992).

sociations to create a joint committee to conduct detailed studies of all of the candidates and to appraise them in terms of "highly qualified", "qualified", "unqualified", and "unacceptable", governments voting in the General Assembly would come under considerable pressure to justify support for unqualified candidates. Such screening and appraisal might ensure that individuals of quality were also elected to the International Law Commission, the Administrative Tribunals, the Human Rights Committee, such international criminal tribunals as are created and other inter-governmental human rights institutions.

By exploiting the available network of international communications, NGOs, if they worked together, could develop an international "advise and consent" procedure that could improve the quality of candidates for international posts. These organizations could do this, even without adjustments in the Assembly. But this function would be greatly enhanced and could synergize with enhancement of the power of the General Assembly, if one of the committees of the revised General Assembly were assigned the task of publicly reviewing candidates. It could then call witnesses to testify about candidates and could even call for the appearance of the candidates themselves in a type of "advise and consent" procedure.

Suppose that, on an experimental basis for five years, the Assembly were to create a "Judicial Review Committee", whose function would be to review the qualifications of candidates for the Court and the UN Administrative Tribunal. As periodic elections approached, the Judicial Review Committee would invite all candidates to appear and answer such questions as members of the committee might wish to pose. The staff of the committee would prepare analyses of writings. NGOs would be permitted to testify as to the qualifications of the different candidates. Committee hearings would be open and states that were not members of the committee could submit questions which would be posed by the chairman of the committee. The result of the hearings would be to inform the Assembly and the international community about the relative qualifications of the different candidates and to lift the level of Assembly participation in the appointment process. If the experiment proved successful, it could be extended to other offices.

CONCLUSION

Design principles can be used to appraise current organizational performance and to invent alternatives. Applied to the Charter of the United Nations, for different constructed futures, they may suggest ways of better identifying present and projected needs of the world community, specifying which

inherited practices should be preserved and which amended, and which must be performed by components of international organizations and which may be assigned to the non-governmental sector.

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