

Legal Framework, Institutional Structures, and Financial Realities

THE CONSTITUTIONAL STRUCTURE

Formally written and ratified as a multilateral treaty, the UN Charter became a de facto constitution with the establishment of the UN organization. Like most constitution makers, the framers had sought to create a document that would facilitate the development of an administrative substructure, allocate responsibilities, grant and circumscribe powers, demarcate jurisdictions—in short, do the jobs that are typical of a national constitution. Also common to every constitution is the enunciation, usually in hortatory language, of the principles and objectives underlying the organization. The framers fulfilled this responsibility more than adequately.

The real test of any constitution comes in the transition from principle to practice. Meeting this test is an ongoing process. Words constantly take on new meanings as different people interpret them and as changing situations and fresh problems call for solutions not in keeping with older interpretations. This is the process of constitution building; it exists because constitution makers can never fully anticipate the changes that will occur. Although the Charter is a lengthy and verbose document, its framers, whether by intent

or accident, wrote much flexibility into it, as the almost fifty-year history of the United Nations indicates.

Constitutional Evolution

Constitutional development for an international organization like the United Nations may closely parallel that of a national constitutional system. A comparison can be a useful enterprise if the analogy is not carried too far. Over the years the U.S. Constitution, for example, has developed largely through the process of executive, legislative, and judicial interpretation. Similarly, the Charter of the United Nations has evolved through interpretation by its members and by its major organs, particularly the General Assembly, the Security Council, the Secretariat, and the International Court of Justice. Custom and usage, where mandates are lacking or ambiguous, have been significant forces in shaping both national constitutional systems and the UN system. In both instances, when the constitutional text has been too confining, ways have been found to bypass or ignore the strict letter of the law. Formal amendments have been adopted only infrequently in U.S. constitutional history and for the United

Nations as well, since there have been only three formal Charter amendments in nearly a half century. Two amendments to the Charter were proposed by the Eighteenth General Assembly in 1963, one enlarging the Security Council from eleven to fifteen and changing its voting majority from seven to nine, the other increasing the size of the Economic and Social Council from eighteen to twenty-seven. Both amendments were ratified and took effect in 1965. A third amendment, which took effect in 1973, enlarged the Economic and Social Council to fifty-four members. For a proposed amendment to take effect it must be approved by a two-thirds vote of the General Assembly and ratified by two-thirds of the members, including all permanent members of the Security Council. Each great power thus retains a veto over all *formal* changes to the Charter, but not over changes brought about by interpretation.

Constitutional development in the United Nations has been largely a political process. As a multilateral treaty, the Charter was a product of extensive international negotiations, with the precise meaning and application of many words and phrases in the Charter masked by the need for agreement at the time of negotiations. Since 1945, difficulties in translations, the vagaries of power politics, conflicts of national interests, the admission of new members, ideological rivalries, and the lack of a final judge have all contributed to the continuing problems of interpretation and development.

Like the U.S. Constitution, the Charter does not establish a definitive constitutional umpire. Who, then, shall decide what the Charter means when questions of jurisdiction, powers, competence, and procedures arise? Should the International Court of Justice as the principal judicial organ appoint itself "guardian of the UN constitutional system" and undertake a role similar to that assumed by the U.S. Supreme Court in the historic case of *Marbury v. Madison*? Should that guardian be the General Assembly, in which all members are represented and on which the Charter has bestowed the power to "discuss any questions or any matters within the scope of the

present Charter or relating to the powers and functions of any organs provided for in the present Charter"? Should each major organ determine the nature and extent of its own jurisdiction and procedures? Should unanimity prevail, as it did traditionally with multilateral treaties, with constitutional issues resolved through agreement of all signatory governments? Or should each member interpret the Charter for itself?

The question of establishing a constitutional umpire was never resolved at San Francisco, nor was it specifically considered. The result has been that all of the preceding methods, and many others, have been used to deal with constitutional issues in the UN system. Decisions on constitutional questions have included interpretations made by presiding officers, by majority and extramajority votes in major organs and other bodies, by decisions of the Secretary-General and other Secretariat officials, by advisory opinions of the Court, and by decisions of member governments made outside the UN framework but based on interpretations of Charter provisions. Thus, most interpretations of the Charter leading to development of the UN system have been made *politically* by political organs or individuals rather than *juridically* by the International Court or some other legal body.

Charter Principles

The analogy between national constitutions and the constitutional system of the United Nations can also be extended to the realm of principles. Underlying the U.S. governmental system, for example, are basic principles that provide the philosophical underpinning and moral justification for the constitutional structure. Most of these principles are also found, explicitly or implicitly, in the UN system, supplemented by others that are more germane to an international body. Those that can be observed or implied from the operations of the United Nations include democracy, self-determination, parliamentarianism, majoritarianism, the rule of law and justice, horizontal federalism (regionalism), and the separation of powers. In addition,

tion, principles set forth in Article 2 of the UN Charter, which members accept by ratifying the Charter, include (1) the sovereign equality of all members, (2) good faith fulfillment of Charter obligations, (3) peaceful settlement of international disputes, (4) nonuse of force or the threat of force for aggressive purposes, (5) support for UN enforcement action, and (6) nonintervention by the United Nations in matters that are essentially within a state's domestic jurisdiction. Together these principles constitute basic rules of international conduct that all member states are ostensibly committed to observe. These rules are a projection into the international arena of purposes and principles already having national validity. In this sense the Charter takes a first step in the direction of an organized international community independent of the organs set up for international decision making. Even in the most democratic of states, these ideals are never perfectly realized, and certainly a great gulf exists between theory and practice in the United Nations. Nevertheless, they can provide guidelines for action and they are frequently invoked in General Assembly debates. Although these and other principles will be discussed throughout the book as they relate to the operations of the United Nations, two of them—domestic jurisdiction and regionalism—will be examined now in their constitutional context.

Domestic Jurisdiction. In federal states such as Canada, Mexico, Germany, and the United States, a written constitution provides for a division of powers between a central government and provincial or "state" subdivisions. In a somewhat related manner, Article 2 of the Charter recognizes a dual authority when it proclaims that nothing in the Charter should be interpreted to "authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state." The application of enforcement measures to maintain peace and security under Chapter VII is specifically excluded from the limiting clause. The domestic jurisdiction clause resembles the Tenth Amendment of the U.S. Constitu-

tion in that it makes explicit a division of powers and responsibilities between two levels of political organization and provides a limitation on the higher level to safeguard the lower from unwarranted intrusions. In effect, this Charter principle suggests that only *international* problems and issues are proper subjects for UN inquiry and action and that *national* questions remain within the complete jurisdiction of member states (unless, of course, the state consents to UN involvement). The Charter leaves open to controversy, however, the questions of who shall determine what is national and what is international, how that determination should be made, and what is meant by "intervene."

Controversy within the organization has also centered on the nature and intent of the domestic jurisdiction clause, with differences over whether it provides a *legal* limitation or merely proclaims a *political* principle. In practice, the latter has generally been accepted, with decisions made by UN organs in keeping with the political realities of the situation. Problems within the Republic of South Africa, for example, have been debated extensively, and resolutions condemning the apartheid system and maltreatment of Africans have been adopted despite repeated invocation by South Africa of the domestic jurisdiction clause. Most UN members took the position that South African apartheid practices, mandated by law until 1991, constituted a threat to international peace and security and were therefore subject to UN jurisdiction. Some states—France and Portugal, for example—invoked the domestic jurisdiction clause for many years in refusing to submit reports to the United Nations on conditions in their colonies, holding that their overseas possessions were part of their "metropolitan territory" and therefore matters of purely local concern. Granting independence to these colonies eventually solved that controversial problem.

Over the years, domestic jurisdiction has become increasingly ineffective as a deterrent to UN action. UN majorities have grown more and more inclined to define UN competence so broadly that virtually nothing is left to domestic jurisdiction.

The arms inspection and reparation requirements imposed on Iraq after the 1991 Gulf War constituted a particularly intrusive invasion of Iraqi jurisdiction, although the international implications were clear enough. UN involvement in internal conflict with the consent of the parties, as in Cambodia and El Salvador, has further blurred the line between domestic and international concerns. Demands for UN intervention to protect human rights, as in Croatia and Bosnia, would also subordinate sovereignty to broader world order values. On the other hand, UN resolutions are generally ineffective when addressed to matters believed by nonconsenting states to be within their domestic jurisdiction except in cases where the organization is willing and able to enforce its mandates. Whether or not observed by UN majorities, the domestic jurisdiction clause reflects a world of sovereign states not yet ready to yield power to the United Nations over their internal affairs.

Regionalism. Interstate cooperation, a halfway house in the U.S. constitutional system between the central government and the state units, has its international counterpart in the form of regionalism. The U.S. Constitution refers to this middle-level organization as "interstate relations"; in its politically activist form it is known as "horizontal federalism," connoting an extensive system of teamwork among states to solve common problems through uniform laws, joint actions, and common agencies.

International regionalism is a recognition by participating governments that not all problems are either national or global in scope. Some international problems may be confined to a geographic region; their solutions may require action by only a limited number of states, or psychological, technical, or administrative difficulties may limit the ability of international agencies to function beyond the region. International regionalism exists, therefore, because groups of states have found it to be the most appropriate means of solving some common problems.

The framers of the UN Charter, although theoretically committed to universalism, recognized the political investment in regional organizations and accepted the feasibility of decentralizing some international operations concerned with security, political action, and economic and social welfare. The framers compromised on the issue by providing that regional organizations would serve as adjuncts of the UN system subject to a measure of control and direction by it. All such arrangements and activities must also be consistent with the purposes and principles of the Charter, although no apparent means exist for enforcing this rule. Under these provisions a host of regional political, security, economic, social, and technical organizations have been established over the past forty years in all areas of the globe.

Collective self-defense, expressly authorized by Article 51 of the Charter, has served as a basis for the construction of numerous regional alliances. The Charter further provides that regional organizations should contribute to security by making "every effort to achieve pacific settlement of local disputes . . . before referring them to the Security Council" (Article 52). The framers assumed that some disputes might be better resolved without inviting the whole world in, and this in turn would reduce the load on the United Nations. In practice both assumptions have to some extent been borne out, although a number of disputes have been referred to the United Nations as well as a regional organization. No clear criteria have emerged, either in theory or in practice, for determining which level is most appropriate. Under the Charter the Security Council could decide to consider a dispute already being handled in a regional forum if it chose to do so.

Another role for regional organizations involves political, economic, and social cooperation.¹ Here, too, collaboration rather than competition has characterized the relationship between the global organization and such groups as the Colombo Plan, the Organization for Economic Cooperation and Development, the Organization of American States, and the European

Community. Economic regionalism, in particular, has flowered as states have tried to solve their trade, balance of payments, economic development, and technical assistance problems through arrangements with neighboring or interdependent states.

Regionalism is offered as either an alternative or a complement to universalism. Debates involving the respective advantages of regionalism and universalism have usually focused on the following points.

Arguments for Regionalism

1. Regionalism permits a sharper focus on local problems.
2. Regionalism involves fewer states than universalism and offers greater propensities for consensus because of common traditions; similar political, economic, and social systems; and the regional nature of the problems to be solved.
3. Regionalism tends to produce greater support from the peoples of the participating states than universalism because of a closer identification of common interests.
4. Regionalism permits a more appropriate handling of administrative, technical, and functional problems than universalism because the organization's machinery is better matched with the nature and scope of its operations.
5. Regionalism is a necessary precursor to effective global cooperation because it lays the groundwork for a broader consensus.

Arguments for Universalism

1. Universalism is a more appropriate means for preserving peace than regionalism since peace is indivisible; a war anywhere in the world threatens to engulf all.
2. Universalism encourages a more effective pooling of resources to attack economic and social problems; a pooling of African regional resources, for example, would result only in a sharing of African poverty.
3. Universalism encourages a consensus of mankind based on universal principles; regional-

ism encourages conflict between rival blocs and economic groups.

4. Universalism recognizes that disease, hunger, illiteracy, and poverty are common to all regions of the world; a common attack carried on by a single organization, therefore, will avoid duplication and make the most effective use of available resources.
5. Universalism as embodied in the United Nations already exercises broader powers over a greater variety of subjects than any regional organization; hence, to speak of regionalism as a necessary precursor to universalism ignores contemporary facts.

Although the arguments on both sides have intrinsic merit, such debates tend to be detached from reality because the operational dichotomy between regionalism and universalism is largely a false one. Both types of international organization exist today; both serve useful purposes, and their functions are usually—if not always—complementary.² In subsequent chapters the functioning of regional organizations will be discussed at appropriate points for comparison with the United Nations and its specialized agencies.

INSTRUMENTS OF POLITICAL DECISION MAKING

UN operations revolve around the functions of six principal organs: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the Secretariat, and the International Court of Justice. The organization and processes of each of these major organs will be discussed in this chapter.

In addition to the six principal organs, eighteen specialized agencies and other autonomous organizations within the overall framework of the United Nations operate in various technical, economic, and social fields (see Figure 2-1). Added to the specialized agencies and related bodies are a number of major programs and organizations that have been created by the United Nations to

deal with specific problem areas. These bodies have their own directors and governing boards but are not legally autonomous because they are subject to the direction of the General Assembly. The major ones are listed in Figure 2-1. Of these programs and organizations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East reports directly to the General Assembly, whereas the rest report to the General Assembly through the Economic and Social Council. Peacekeeping missions, which are created and disbanded as necessary, report to the Security Council. Finally, the UN system includes regional commissions, functional commissions, and a variety of committees that report to the Economic and Social Council and, indirectly, to the General Assembly.

The vast array of agencies and programs subject to supervision by the major organs of the United Nations, or at least reporting to them, testifies to the global nature of the UN *system*, as distinct from the political decision-making apparatus headquartered in New York. The latter is merely the tip of a huge organizational and bureaucratic iceberg with its operations carried on in one way or another in almost every country in the world. Isolated, indeed, is the country or society that has not been touched by one of the many UN programs. Hundreds of millions of individuals have benefited directly, and all human beings stand to gain from UN activities directed toward such objectives as reducing conflict, controlling pollution, and improving health. Specific actions and programs, problems and issues, that emerge from many of these agencies making up the UN system will be covered in later chapters.

The General Assembly

Central to the sprawling UN organization, resembling somewhat the British prototype Parliament at Westminster in its unifying role, the General Assembly functions as the main focus for most UN activities. “Global Parliament,” “Town Meeting of the World,” “Sun of the UN Solar System”—these

and other catchphrases are used to sum up, perhaps somewhat inaccurately, the General Assembly’s widely diffused activities and diverse roles. Unlike the Security Council, which pays homage to the elitism of great power politics, the Assembly effuses the democratic ethos of *egalitarianism*, *parliamentarianism*, and *majoritarianism*.

Equality of Members. The Assembly’s *egalitarian* nature should be obvious to even the casual UN visitor: The Assembly is the only one of the six principal UN organs in which **all member states are equally represented**, with a maximum of ten delegates and one vote for each member (see Table 2-1). Efforts by some of the great powers to push for a change to a weighted voting system have never been taken seriously by the small and middle powers. The traditional equality of all states, large and small, under international law and as participants in international conferences provides the legitimacy for retaining equal voting. The political defensiveness of the new states, some of which formed their Assembly delegations at the same time that they established their first governments, safeguards the principle. This equality permeates the work of the Assembly, including that carried on by its seven main committees, on each of which all members are represented. The seven main committees of the Assembly are the First (Political and Security); Special Political (originally an ad hoc committee, this committee has remained numberless although it is now a permanent committee); Second (Economic and Financial); Third (Social, Humanitarian, and Cultural); Fourth (Trusteeship); Fifth (Administrative and Budgetary); and Sixth (Legal). Consideration of agenda items usually begins in one of the main committees, which meet and carry on business as committees of the whole. Most matters receive their most thorough airing and consideration at this stage, since the press of time permits the Assembly in plenary session to explore extensively only the most politically explosive issues. Increasingly, as in legislative bodies like the U.S. Con-

TABLE 2-1

Membership of Principal UN Organs in 1992

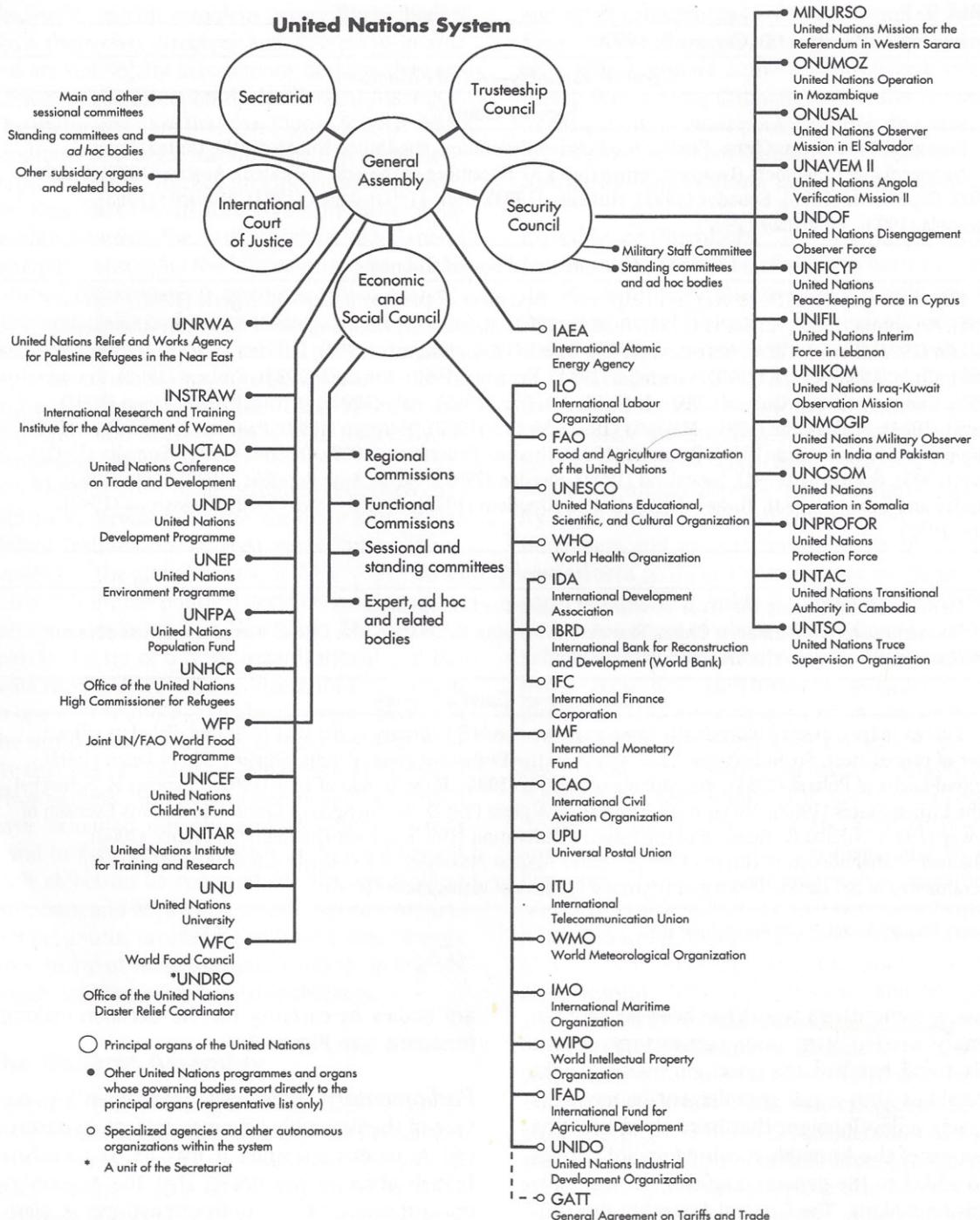
<i>General Assembly—All UN Members</i>
<i>Security Council</i>
Permanent members: China, France, the Russian Federation, the United Kingdom, the United States
Nonpermanent members (two-year term expires 31 December of the year indicated): Austria (1992), Belgium (1992), Cape Verde (1993), Ecuador (1992), Hungary (1993), India (1993), Japan (1993), Morocco (1993), Venezuela (1993), Zimbabwe (1992)
<i>Economic and Social Council</i>
Fifty-four members (three-year term expires 31 December of the year indicated): Algeria (1992), Angola, (1994), Argentina (1993), Australia (1994), Austria (1993), Bahrain (1992), Bangladesh (1994), Belarus (1994), Belgium (1994), Benin (1994), Botswana (1993), Brazil (1994), Bulgaria (1992), Burkina Faso (1992), Canada (1992), Chile (1993), China (1992), Colombia (1994), Ecuador (1992), Ethiopia (1994), Finland (1992), France (1993), Germany (1993), Guinea (1993), India (1994), Iran (1992), Italy (1994), Jamaica (1992), Japan (1993), Kuwait (1994), Madagascar (1994), Malaysia (1993), Mexico (1992), Morocco (1993), Pakistan (1992), Peru (1993), Philippines (1994), Poland (1994), Romania (1992), Russian Federation (1992), Rwanda (1992), Somalia (1993), Spain (1993), Suriname (1994), Swaziland (1994), Sweden (1992), Syrian Arab Republic (1993), Togo (1993), Trinidad and Tobago (1993), Turkey (1993), United Kingdom (1992), United States (1992), Yugoslavia (1993), Zaire (1992).
<i>Trusteeship Council</i>
Member administering the Trust Territory of Palau: the United States
Nonadministering members: China, France, the Russian Federation, the United Kingdom. China does not participate in the work of the Trusteeship Council.
<i>International Court of Justice</i>
Fifteen judges, elected individually (nine-year term ends 5 February of the year indicated, listed in official order of precedence): Sir Robert Yewdall Jennings of the United Kingdom (2000), Shigeru Oda of Japan (1994), Manfred Lachs of Poland (1994), Bola Ajibola of Nigeria (1994), Roberto Ago of Italy (1997), Stephen M. Schwebel of the United States (1997), Mohammed Bedjaoui of Algeria (1997), Ni Zhengyu of China (1994), Jens Evensen of Norway (1997), Nikolai K. Tarassov of the Russian Federation (1997), Gilbert Guillaume of France (2000), Mohamed Shahabuddeen of Guyana (1997), Andrés Aguilar Mawdsley of Venezuela (2000), Christopher G. Weeramantry of Sri Lanka (2000) and Raymond Ranjeva of Madagascar (2000).

Source: Adapted from *UN Chronicle*, June 1992

gress, a committee's report has been accepted in plenary session with only perfunctory debate. This trend has had the effect of creating eight assemblies with a full complement of members in each, a development that has helped keep the business of the Assembly moving forward but has also added to the general confusion of Assembly decision making. The General Assembly also utilizes various procedural committees and subsidi-

ary bodies in carrying out its decision-making functions (see Figure 2-1).

Parliamentary Role. The parliamentary nature of the Assembly becomes evident in observing its modus operandi. It may be, as an astute British observer has noted, that the Assembly's operations are "a far cry from anything at Westminster." The British system's focus on a legisla-

**FIGURE 2-1**

The UN System

tive program, its emphasis on responsibility, its party-whip discipline, and its organized majority and opposition are missing or hardly discernible in the Assembly Hall. Yet the agenda is adopted, debate proceeds, votes are taken, and decisions are made. Our British observer described the process in this picturesque language: "Like a herd of grazing cattle, that moves as it chews, head down, the Assembly gets through its day (or more often its morning) without any particular drive, yet not without a certain vaguely diffused sense of purpose."³

In a search for analogies, the Assembly's parliamentary qualities may be found to resemble the continental European parliaments, with their multiparty coalitions, ideological rivalries, and shifting centers of power, more closely than the orderly, compact British model. Or a watchful observer might note some similarities between the Assembly's operations and those of the U.S. Congress. Both are more often than not caught up in clashes of parochial interests and must attempt to harmonize regional, class, creed, and racial conflicts. Both must grapple with procedural rules that often complicate rather than expedite the process of decision making. The U.S. federal system produces an attachment to states' rights in somewhat the same manner that the sovereign states of the world with their attachments to national interests produce a loose, untidy, somewhat anarchic General Assembly. Yet a parliament's main role is concerned with freedom of debate, in which issues can be discussed, decisions made, budgets approved, taxes levied, and administrative operations supervised. The General Assembly resembles all national parliaments in these functions. Although it does not possess a direct lawmaking authority, its competence to discuss and debate extends to *any* problem of the world or of the organization itself that a majority of members regard as proper for Assembly consideration. The only exceptions to this broad power are the domestic jurisdiction clause (Article 2) and the limitation on the Assembly concerning matters under consideration by the Security Council (Article 12).

Majority Rule. The Assembly's *majoritarian* approach to decision making is an improvement over that of the Assembly of the League, which required unanimity for most actions. Article 18 of the Charter provides that decisions on "important questions" be made by a two-thirds majority of members present and voting. All other questions require only a simple majority. "Important questions" include those mentioned in Article 18 (peace and security recommendations; elections to the three UN councils; admission, suspension, and expulsion of members; trusteeship and budgetary questions and those that the Assembly decides by a majority vote are to be considered "important").

Consensus, not overpowering majority votes, is the objective of Assembly politics. Consensus demands compromise, and compromises in the Assembly are sought through negotiations, pressures, demands, debates, promises, and other techniques of parliamentary diplomacy that, in art and form, closely resemble the "politics" that keeps the wheels turning in a national legislative body. Groups of delegates meet, plan strategy, and negotiate with other groups before decisions are made. On economic and related issues, when the issue comes to a vote, decision making is dominated by the Group of 77 (G-77), which consists of over 130 Third World countries that caucus to determine a common approach to issues that arise before the General Assembly. In recent years, however, the Assembly has decided more issues by consensus than by voting.*

Formal Organization. Regular sessions of the General Assembly are held each year, beginning usually on the third Tuesday in September. At the beginning of each session, the Assembly establishes a target date for adjournment, usually mid-December. A three-week period of "general debate" opens each Assembly session, with most delegations taking the opportunity to express their views on the full range of issues on the

*Decision making in the General Assembly will be discussed in greater detail in Chapter 3.

global agenda. At the historic Forty-fifth General Assembly session in 1990, for example, major state-of-the-world political speeches focused on the problems and opportunities of each major region in the world, on the explosive situation in the Middle East—especially the Persian Gulf—and the growing economic gap between developed and developing countries. Heads of state or government often participate. Special sessions may be convoked after the Assembly adjourns if requested by the Security Council or if a majority of Assembly members agree. Recent special sessions include: Critical Economic Situation in Africa (1986), Namibia (1986), Disarmament (1988), South African Apartheid (1989), Narcotic Drugs (1990), and International Economic Cooperation (1990). It has become unusual for the Assembly to confine itself to its regular autumn session since pressing issues often arise during the year. When the need for Assembly action beyond the regular December adjournment date is anticipated in advance, the Assembly will recess its session and reconvene later as needed.

The first job facing a new Assembly each year is to elect a President and seventeen Vice Presidents who serve for one year. It has become traditional to select as President a leading international statesman from an important small- or middle-power state, usually from the Third World. The vice presidencies are allocated to the five great powers and to geographic areas of the world to ensure their representative character and a fair apportionment of prestige. In 1963, when the number of Vice Presidents was increased from thirteen to seventeen, a formula was adopted to provide for the election of seven Vice Presidents from Asia and Africa, one from Eastern Europe, three from Latin America, two from Western Europe and "other states" (Canada, Australia, and New Zealand), and one from each of the five permanent members of the Security Council. These figures total eighteen because the region from which the President is elected receives one less than the formula specifies. The President, the Vice Presidents, and the chairmen of the seven standing committees constitute the

General Committee, which functions as a steering committee for each session.

Although his formal powers are limited, the President may accomplish much through his personal influence and political adeptness. Qualities desirable to abet the role of presiding officer of the Assembly include a "refusal to be bored, a memory for faces, a capacity to slough off private and national partialities, a sense of humor coupled with a concern for the dignity of his office, a ready grasp of procedural technicalities, a proper sense of pace, and a quick feeling for the sense of the meeting."⁴ Seated beside the President at all Assembly sessions is the Executive Assistant to the Secretary-General, who, as Secretary of the General Assembly, functions as parliamentarian and adviser to the President. Although the President's formal powers to control or influence the direction of debate and action are weak and tend to resemble those of the President of the U.S. Senate or the Speaker in the House of Commons, the disarray of the Assembly demands a strong yet tactful guidance. The international reputations of the Presidents have helped each of them to weather many verbal storms and to develop the office into a respectable source of Assembly power and influence.

Assembly Functions. Against a backdrop of politics and diplomacy, the General Assembly carries out its various roles and diverse activities, some assigned by the Charter and others assumed by the Assembly.

One frequently indulged activity is exhortation by means of resolutions aimed at member states, nonmembers, great powers, the Security Council, other major organs, and even the General Assembly itself. Sometimes referred to as "manifestos against sin," these resolutions permit the Assembly to carry out what its supporters regard as the role of guardian of Charter principles and the conscience of mankind and what its detractors write off as sheer hypocrisy. Through such resolutions the Assembly has, *inter alia*, called on the permanent members of the Security Council to use the veto with restraint, the great

powers to cease their war propaganda, all states to accept the maxim of peaceful coexistence, and disputants to settle their controversies peacefully.

The Assembly's quasi-legislative function, carried on through the adoption of resolutions, declarations, and conventions, goes beyond exhortation in seeking to develop and codify international law. In this role the Assembly most closely approximates the lawmaking activities of a national legislature. Assembly resolutions governing internal matters, such as procedural rules, control of funds and property, and staff regulations, have the force of law. Resolutions directed toward state conduct outside the organization are not binding of themselves, but the rules thus enunciated may have legal force if they are regarded as statements of customary international law or authoritative interpretations of the UN Charter. The Assembly may also engage in law-making through the drafting of multilateral treaties. Conventions adopted by the Assembly, such as the Genocide Convention (outlawing acts aimed at the destruction of a national, ethnic, racial, or religious group) or the Law of the Sea Treaty, become operative as law among the consenting parties after they have been ratified by the required number of states. The Assembly's International Law Commission is regularly engaged in the codification of rules of international law to be presented to members in treaty form. The numerous Assembly-approved treaties now in force illustrate the quasi-legislative function. When members are motivated to act, the Assembly can truly function like a world parliament.

In its investigative role the Assembly complements its quasi-legislative functions. This role can be illustrated by frequent resolutions asking the Secretariat, or a special committee, to study a problem and report to the next General Assembly. As in a national legislature, facts are often helpful before the Assembly acts. In the settlement of disputes, investigation is an essential prelude to a determination of the issues involved and the working out of a just solution.

Although the Security Council has primary responsibility for international peace and secu-

rity, the Assembly also has a role. That role was more important in earlier decades when the Security Council was often deadlocked by the veto. Commonly the Assembly has pursued peaceful settlement through discussion and recommendation, tendering good offices, mediation, conciliation, commissions of inquiry, and appointment of individual mediators. Since 1950 the Uniting for Peace Resolution has specifically authorized the Assembly to make recommendations for economic or military sanctions when the Security Council is unable to deal with a breach of the peace or act of aggression. Assembly creation of the UN Emergency Force (UNEF) in the Middle East (1956), when the Security Council was unable to act, illustrates this backup role in a very threatening situation.

The Assembly's budgetary function resembles that of a national legislature's traditional "power of the purse." All UN programs and all activities of subsidiary UN bodies come under a measure of surveillance and control since all must be supported financially. Budget decisions have on occasion become the tail that has wagged the dog of substantive actions in the United Nations, as happened during the financial crisis of the 1960s, when lack of funds forced the discontinuance of the UN Congo operation. In the 1980s and 1990s, the huge backlog of unpaid dues owed by the United States, along with smaller amounts owed by many other members, have sometimes put serious constraints on UN activities.

Closely related to the Assembly's budgetary function is its supervisory role. It is to the Assembly that the Security Council, the Economic and Social Council, and the Trusteeship Council submit annual and special reports on their respective operations. Although the Security Council is not a subsidiary organ, the Charter empowers the Assembly to make recommendations to it and to call peace-threatening situations to its attention. The Economic and Social Council and the Trusteeship Council, although designated as "principal organs," are actually subsidiary and operate "under the authority of the General Assembly" (Articles 60 and 85). Decisions on economic, social, trus-

teeship, and related matters are made by the Assembly on recommendations from the two councils. The Secretariat is also primarily concerned with serving the Assembly and in turn is controlled by it. Decisions about the organization, work, personnel, and budget of the Secretariat are regularly made by the Assembly. Annual reports on selected activities and on the work of each organ and agency of the United Nations enable the Assembly to receive, to criticize, and, hence, to supervise the entire UN operation.

The Assembly exercises a twofold elective function. One phase involves the admission of new members into the United Nations; the other relates to the selection of the elective members of other organs. The election to membership takes place following a recommendation by the Security Council, a prerequisite affirmed by the International Court of Justice in an advisory opinion in 1950. Prospective members file an application with the Secretary-General, who transmits it to the Security Council. Before 1955 memberships were often delayed in the Security Council, sometimes for years, but once the Council has made its recommendations, Assembly action to admit has been swift. The Assembly's second elective function helps shape the outlook and decision-making capabilities of other major UN organs. Some elections are conducted jointly with the Security Council, as in selecting the judges of the International Court and appointing the Secretary-General. Others occur through Assembly action alone, as in the election of the ten nonpermanent members of the Security Council and all members of the Economic and Social Council. Annual elections to fill vacancies in various organs are preceded by extensive group consultation, which ordinarily, but not always, has prevented sharp wrangling in the Assembly over the more prestigious seats, especially those in the Security Council.

Finally, as previously noted, the Assembly exercises a constituent function in proposing formal amendments to the Charter which take effect when ratified by two-thirds of the member states, including all the permanent members of the Security Council. Amendments to enlarge the Secu-

rity Council and Economic and Social Council are the only ones that have been added to the Charter.

Assembly Decision Making. Changes in global political and economic systems have also meant significant changes in General Assembly decision making. In 1990, the forty-fifth year of Assembly operation, for example, President Guido de Marco of Malta described it as "The first Assembly session in the post-cold-war era." The forty-fifth, he noted, was "marked by a rising tide of consensus decisions . . . with fewer meetings, fewer debates, fewer votes." This evaluation was supported by Under Secretary-General Ronald Spiers: "Discussions have become more thoughtful and fact-oriented, less slogan-ridden, less rhetorical."⁵

Although the Assembly session that year was overshadowed in the global public eye by the Security Council's involvement in the Persian Gulf crisis, which was triggered by Iraq's invasion of Kuwait, decisions made in the fields of human rights protection and economic development may have an impact extending beyond this century on the lives of people all over the world. The ending of the cold war and the democratization of Eastern Europe were tempered by the realization that integrating these countries into the world economy will be painful for them and probably also for many Third World countries, especially the poorest. Nevertheless, it was the first Assembly session in UN history in which Eastern European nations did not vote as a bloc, and in which Germany was represented by one German state after forty-five years of division.

During this historic forty-fifth session, the Assembly proclaimed a Fourth United Nations Development Decade, starting January 1, 1991, and provided a six-part International Development Strategy to serve as an action blueprint during the decade. In another show of unity, a human rights instrument to protect millions of migrant workers worldwide was adopted unanimously by the Assembly and opened for signature. Work on a Climate Convention was also undertaken, with the objective of opening it for signature at the UN

Environment and Development Conference at Rio de Janeiro in 1992. The Assembly also decided to call two major global conferences, one on women's issues in 1992 and the other on human rights in 1993.

Still, it was the political issues relating to the Middle East, Cambodia, Afghanistan, Western Sahara, Central America, and South Africa that took up most of the time and energy of the Assembly. A call for an international peace conference on the Middle East under UN auspices was—as always in the past—passed overwhelmingly (144 in favor, 2 against) but with the key members, the United States and Israel, opposed. Each state and region involved with conflict received an appeal from the world body to refrain from violent actions and to work toward a solution. Finally, it was agreed that the 1990s will be the Third Disarmament Decade, with, for the first time, real promise of affirmative action. Resolutions adopted by the Assembly in support of disarmament included calls for ending nuclear tests, preventing an arms race in outer space, conventional disarmament, prohibiting attacks on nuclear facilities, and control over radioactive wastes. As is true of every Assembly, many decisions were made but future cooperative action will be essential to give them substance.

Proposals to Streamline the Assembly Procedures. Despite the greater harmony of recent sessions, Assembly delegations still agree as they have for years that the Assembly must somehow find the means for streamlining its procedures in order to expedite the work of the organization. The growth in membership has added a degree of urgency as the Assembly often becomes mired in procedural quicksand of its own making. Little agreement, however, has existed on the means of achieving the desired efficiency. Suggestions and recommendations over the years have included the following:

1. Reduce the time wasted during each session. Better scheduling of speakers and the relegation of those not prepared to speak at their

appointed time to the bottom of the list have been suggested. Joint statements by a number of delegations with the same viewpoint and written statements instead of oral statements have been encouraged.

2. Expedite the “general debate” with which each Assembly session opens. Often speeches made by heads of government and foreign ministers during general debate are repeated by heads of delegations later in regular debate.
3. Speed up committee work, and organize it better. Committees should start their work early in each session and should coordinate their activities through the steering committee. The creation of more subcommittees might help free the main committees from the detailed work of drafting resolutions.
4. Accelerate the debate and voting processes in the Assembly and its main committees.

Many proposals to speed the deliberative process have been considered, such as placing time limits on general debate. Ultimately, the orderliness and dispatch with which a body like the Assembly conducts its procedural work depend on the proficiency of the officers and committee chairmen and on the willingness of heads of delegations to exercise self-restraint in the interest of moving along.

The Security Council

In both the planning and writing of the UN Charter, the primacy of the Security Council was generally accepted. Nothing seemed more certain to the framers than the logic of its role: The primary responsibility of the United Nations is to keep the peace; keeping the peace is mainly a function of the great powers; ergo, the Security Council is the logical focus for this responsibility. For more than forty years, however, the Security Council did not fully measure up to the framers' hopes. Then, beginning in the late 1980s, a new spirit of great power cooperation permitted unified action to deal with crises in Afghanistan, Iran and Iraq, Cambodia, and other troubled areas. When Iraq

invaded Kuwait in 1990, the Council was able to act with unanimity in condemning Iraq's aggression against Kuwait and authorizing collective military action to expel the aggressor.*

Council Composition. The Security Council has fifteen members. Five countries—China, France, the United Kingdom, the Soviet Union, and the United States—are designated by the Charter as *permanent* members. With the demise of the Soviet Union, its permanent seat was filled by Russia. This sparked discussion of possibly adding other states, such as Japan, Germany, or India, as permanent members, but no serious attempt at Charter amendment followed. Ten (originally six) *nonpermanent* or *elected* members are chosen by the General Assembly for staggered two-year terms, five elected each year (see Table 2-1). On retirement from the Council, elected members are not immediately eligible for reelection. This provision was inserted because under the League the elective seats on the Council were controlled by the middle powers in most elections to the near exclusion of the small powers. Although all members of the United Nations other than the five permanent members are eligible for election, the Charter, as a result of pressures from the middle powers at San Francisco, stipulates that in the selection process due regard be "specially paid, in the first instance to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution" (Article 23). These two considerations obviously can be contradictory since states with strategic locations, economic resources, or manpower reserves are not evenly distributed about the globe.

During the early years of the United Nations, the Western powers held a majority on the Council. By virtue of a "gentlemen's agreement" in 1946, two elective Council seats were assigned to Latin America and one each to Western Europe, Eastern Europe, the Middle East, and the British

Commonwealth, an arrangement that normally assured the West a majority on the Council.

In the late 1950s, pressed by demands for Asian and African representation, the United States succeeded in shifting the seat allocated for Eastern Europe to Asia. This shift proved to be only a temporary tranquilizer, however, as African, Eastern European, and Asian states clamored for greater representation for their areas. An amendment to the Charter, proposed in 1963 and adopted in 1965 after sufficient ratifications, emerged out of these pressures for greater representation. It provided for enlarging the Council from eleven to fifteen by increasing the elective members from six to ten, and it changed the majority needed for a decision from seven to nine. By Assembly resolution, the ten nonpermanent seats are now allotted as follows: five seats to Asia and Africa, one to Eastern Europe, two to Latin America, and two to Western European and other states. The keen competition in Assembly elections and the demands for "area representation" demonstrate that a seat at the Council table is one of the most coveted honors and crucial power positions available to members of the United Nations.

Council Functions. The Security Council's two main functions under the Charter are to settle disputes peacefully (Chapter VI) and to meet threats to peace with the concerted action of the organization (Chapter VII). Whenever possible the Council has handled situations under Chapter VI of the Charter as simple disputes rather than considering collective action under Chapter VII, even when both sides to the dispute have been engaged in extensive military actions. The Korean War (1950–1953) and the Persian Gulf hostilities (1990–1991) were two exceptions to this general rule of trying to avoid a UN military action.

Techniques employed by the Council in the application of either Chapter VI or Chapter VII vary from case to case, depending in each situation on the political considerations involved, the degree of unity on the Council, the extent of the danger to peace, and the relationship of the dis-

*For further analysis of the Persian Gulf crisis see Chapter 5.

pute and the disputants to Council members, particularly the permanent members. Typical techniques used by the Council in dealing with peace and security matters include deliberation, investigation, recommendation, exhortation, mediation, conciliation, interposition of a peacekeeping presence, and in extreme cases economic or military sanctions. These are discussed at greater length in Chapters 5 and 6. In Article 26 of the Charter, the Council is assigned the additional security responsibility of developing plans "for the establishment of a system for the regulation of armaments" (see Chapter 7).

Other Council functions are elective or supervisory in nature and were designed by the framers to permit the great powers to maintain some control over organizational matters. These functions are shared with the General Assembly. They include the election of a Secretary-General, the admission of new members, the election of the judges of the International Court of Justice, the deprivation and restoration of members' rights and privileges, and the expulsion of a member. In addition, the Council has the responsibility for supervising strategic trust territories under the trusteeship system, which, by 1992, was limited to a measure of Council oversight of the Palau trusteeship, the last remaining fragment of the Pacific Islands Trust Territory administered by the United States.

Council Procedures. Each Council member, permanent and elective, appoints a representative and an alternate to the Council. Unlike other United Nations organs, the Security Council is in permanent session and meets whenever a need exists. Under its rules of procedure, intervals between meetings should not exceed fourteen days. The President of the Council may convene it at any time on his own initiative, when requested to do so by a member of the Council, or, under circumstances prescribed in the Charter, when requested to do so by the General Assembly or the Secretary-General.

Under the Security Council's rules of procedure, its presidency rotates each month among its

members. This provision, while safeguarding the Council from continuing domination or abuse by a presiding officer who is out of sympathy with its objectives, gives the organ a discontinuity that has not always been consistent with its high responsibilities. The brief two-year terms of the ten nonpermanent members add to the impromptu quality of the Council. Moreover, debates in the Council lack spontaneity and continuity because important statements must often be studied thoroughly before they are answered and because comments are often reserved until home governments can be contacted for instructions.

Although debates are carried on in the Security Council under rules of procedure established by the Council, the Charter provides that any UN member may be invited to participate in any discussion if its interests are affected by the question under debate. Also, any state, whether a UN member or not, must be invited to participate in the discussion if it is a party to a dispute being considered by the Council. In neither case does the invited state have a vote.

When debate on a measure has been completed, a vote is taken, with each member of the Council having one vote. Decisions are of two types: *procedural* and *substantive*. The Charter provides that all decisions on procedural questions be made by an affirmative vote of any nine members; thus permanent and elected members have equal voting power on procedural questions. On all other, or substantive, matters, the Charter specifies that decisions shall be made "by an affirmative vote of nine members including the concurring votes of the permanent members," except that when a member of the Council is a party to a dispute, it must abstain from voting. Although the words of the Charter clearly denote that substantive decisions require a "yes" vote of all five permanent members, in a practice based on numerous precedents, a permanent member's abstention from voting is not regarded as constituting a veto of the pending measure. To kill or "veto" a matter of substance that is supported by at least nine members of the Council, a permanent member must cast a negative vote.

The Charter does not specify how the Security Council, in the event of disagreement, decides whether a question is procedural or nonprocedural. At San Francisco the great powers agreed that the issue would be treated as a nonprocedural question and therefore subject to the veto. This meant that a permanent member could gain the right to veto any matter simply by voting against the preliminary motion to declare it procedural. In practice, this so-called double veto has not been attempted often enough to be a serious problem.

The Economic and Social Council

Although afforded the status of principal organ by the Charter, the Economic and Social Council (ECOSOC) functions under the authority of the General Assembly. In many respects its activities resemble those of the main Assembly committees, and it has occasionally been accused of duplicating or competing with the work of the Second (Economic and Financial) and Third (Social) committees of the Assembly.

Originally established with eighteen members, ECOSOC was enlarged to twenty-seven in 1965 and to fifty-four in 1973. Both enlargements were implemented through Charter amendments that were the product of growing demands by the Third World bloc for a greater voice in determining economic and social policy. Members are elected by a two-thirds vote in the Assembly for staggered three-year terms. Although all UN members are equally eligible for election, in practice members representing First World countries of industrial importance have been consistently elected over the years. This practice contributed to the expansion of the Council in 1965 and again in 1973 to meet the demands of the developing countries for a more influential role in economic and social policy making. A president is elected each year from one of the small or middle powers represented on the Council. Sessions are held twice annually, the first in New York in the spring, the second in Geneva in the summer. Decisions

are made by a simple majority of those present and voting.

ECOSOC Functions. ECOSOC's mandate is very broad, and it has the power only to recommend. In all things it must defer to the General Assembly, which means that ECOSOC can scarcely be the final word on anything of importance. It can hold meetings, do research, produce studies and reports, draft multilateral conventions for submission to the Assembly, and make recommendations. It is authorized to coordinate the activities of the UN specialized agencies but is given no power to make this mandate effective. Despite a persisting gap between aspirations and reality, ECOSOC has carried on some useful if usually unspectacular work.

Recent ECOSOC agendas have included such diverse topics as housing, narcotic drug control, water resources, desertification, world population, trade, UNICEF, industrial development, literacy, refugees, the environment, science and technology, the status of women, the needs of children, and the problems of the disabled. Always on the agenda are two subjects of perennial concern and overriding importance: human rights and economic development. In these and other areas, ECOSOC has from time to time generated proposals that have affected state practice.

In the development of programs, studies usually come first. Through studies and reports of statistical and other kinds of data on economic and social conditions in the world. In performing this function ECOSOC operates as a research agency and clearinghouse, attempting to coordinate the work of numerous committees, commissions, study groups, and private or nongovernmental organizations. The information thus gathered is vital to coming to grips with world problems, and no other agency in history has had such a broad research mandate.

Often studies and preliminary recommendations originate in ECOSOC's functional commissions or regional economic commissions. The functional commissions established by ECOSOC

are Human Rights (with its subcommission on the Prevention of Discrimination and Protection of Minorities), Narcotic Drugs, Population, Statistical, Status of Women, and a Social Commission. Regional economic (or economic and social) commissions have been set up for Africa (ECA), Asia and the Pacific (ESCAP), Western Asia (ESCWA), Europe (ECE), and Latin America and the Caribbean (ECLAC).

Decision-Making Role. Based on its deliberations and extensive studies, ECOSOC makes appraisals of its findings and, by Charter directive, may make recommendations "with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the Specialized Agencies concerned" (Article 62). Sometimes ECOSOC resolutions embody a statement of general principles and require only a favorable vote in the General Assembly for implementation, such as the proclamation of the Universal Declaration of Human Rights of 1948. They may also take the form of conventions requiring affirmative action by the Assembly and subsequent ratification by a stipulated number of member states.

Drafting conventions provides a quasi-legislative role for ECOSOC because the Council is often involved in the early phases of consensus building for many UN-sponsored treaties. This resembles the national lawmaking function in that the resulting convention binds consenting states, often limits governments in their relationship to their own citizens, and makes an addition to international law. While ECOSOC cannot make law, it plays a role in helping members of the United Nations develop law. This is a much more difficult process than the mere proclaiming of principles, and some nations that voted for the Universal Declaration of Human Rights in 1948 have failed to ratify the international covenants that would make these rights enforceable.

One such covenant, the Convention on the Political Rights of Women, serves as an example of what can be accomplished in the form of international legislation when states find ground for agreement. Consensus, in that case, was not eas-

ily developed. Women's groups from many countries, banding together as an international pressure group, demanded and obtained from ECOSOC a Commission on the Status of Women. They followed this up by promoting the idea of feminine political equality in the Commission, ECOSOC, General Assembly, and national ratification stages. The Convention guarantees women the right to vote and to hold public office equally with men in all adhering states.

Coordination Responsibilities. ECOSOC is supposed to exercise a coordination function relating to the specialized agencies of the United Nations and several autonomous organizations. The Charter charges the Economic and Social Council with bringing the specialized agencies into a relationship with the United Nations through agreements negotiated by ECOSOC and approved by the General Assembly. The specialized agencies range in nature from the highly technical and functionally specific (such as the International Civil Aviation Organization and the International Telecommunication Union) to those that are involved in highly controversial political matters (such as UNESCO and the International Monetary Fund). Each of the specialized agencies began its existence as an intergovernmental organization with its own treaty or constitution. At the initiative of the agency, negotiations are conducted between it and ECOSOC, with the resulting agreement subject to approval by the General Assembly. Sixteen agencies have gone this route (see Table 2-1) and thus are classified as "specialized agencies" of the United Nations. In addition to the specialized agencies, two other intergovernmental agencies function in a somewhat similar capacity as largely autonomous agencies within the UN system. These are the International Atomic Energy Agency (IAEA) and the General Agreement on Tariffs and Trade (GATT).

Integrating the activities of eighteen diverse intergovernmental agencies that are largely autonomous in their powers, have their own organizational machinery, adopt their own budgets,

select their own secretariats, and, in some cases, antedate the UN organization is no simple task. The permissive authorization given to ECOSOC in the Charter has, as a result, not proved adequate to the challenge of securing effective "coordination," although various agreements have been concluded.

The growing assertion of power by the Assembly and its main committees in the 1980s and 1990s has produced a closer working relationship between them and the specialized agencies than between the agencies and ECOSOC, but this relationship tends to involve general oversight rather than coordination. More effective coordination on a voluntary consultative basis is effected through the Administrative Committee on Coordination, a committee of high officials from the UN Secretariat and the secretariats of the specialized agencies, functioning as an international administrative cabinet. Much of the important work of the UN family is carried on by the sixteen specialized agencies, and by other UN-related bodies that report to ECOSOC or directly to the General Assembly. Most of them will be discussed in their proper context in later chapters.

The Trusteeship Council

Although the Charter designates the Trusteeship Council a principal organ of the United Nations, it is, like ECOSOC, subordinate to the General Assembly. Its function, to supervise nonstrategic trust territories for the Assembly and strategic trusts for the Security Council, involves only recommendation powers.

Membership on the Trusteeship Council is accorded by the Charter to three types of members: (1) states that administer trust territories, (2) permanent members of the Security Council that do not administer trust territories, and (3) enough additional elected members to strike an equilibrium between administering and nonadministering states. No elective member now remains on the council, and the equilibrium has become impossible to maintain because only one

country, the United States, still administers a UN trusteeship. The Trusteeship Council thus consists of the five great powers (see Table 2-1).

Trusteeship Functions. In carrying out its responsibilities since 1946, the Trusteeship Council has exercised power in performing a variety of functions. Two of these functions have been similar to those of ECOSOC: The council has deliberated on matters within its jurisdiction through studies and debates, and it has made recommendations for action based on its evaluations. Its recommendations, however, have related to problems of specific trust territories or their administration and, unlike those of ECOSOC, have not usually taken the form of proclamations or treaties.

The council's supervisory role has involved overseeing the governance of trust territories by administering states. An elaborate questionnaire drawn up by the council has served as a basic supervisory tool. The council has also received petitions, sometimes several hundred in a year, from individuals and groups in the trust territories seeking redress of real or imagined grievances. Reports and petitions have been supplemented by periodic on-the-spot investigations by visiting missions of the Trusteeship Council, composed of two persons chosen by administering powers and two by nonadministering states. The missions have evaluated economic and social conditions, examined progress toward self-government, sought answers to specific questions raised by the council and the General Assembly, and consulted a wide cross section of the population, including labor leaders, tribal chiefs, local administrative officials, and private individuals.

The information thus gathered has been subjected to rigorous scrutiny in the council, forcing each trust-holding state to defend its actions or lack of them. Out of these confrontations has emerged the Council's annual report to the Assembly, permitting, this time by the Assembly, another inquiry, another debate, and another evaluation of how well administering states have

been living up to their mandated responsibilities. Little wonder that most trust states impatiently pushed their trust territories toward independence and self-government!

The Trusteeship Council is one of those rare human institutions threatened with extinction by their successes. Of the eleven trusteeship agreements concluded by the United Nations, only that of the U.S. strategic trust over the Trust Territory of Palau remains, and that trust is likely to be terminated in the near future. The work of the Trusteeship Council will be further examined in Chapter 8.

The International Court of Justice

Although the International Court of Justice functions largely outside the UN framework as a semi-independent entity headquartered at The Hague in the Netherlands, the Charter recognizes it as one of the six principal organs of the United Nations. The ICJ, or World Court, is the successor to the Permanent Court of International Justice (PCIJ), which functioned as the world's chief judicial organ from 1922 to 1946. The Charter, in Article 92, recognizes this successor status in noting that the annexed Statute for the ICJ "is based upon the Statute of the Permanent Court of International Justice."

Although some of the organization and powers of the ICJ are set forth in the Charter (Articles 92 to 96), most are contained in the ICJ Statute, a multilateral treaty that serves as its basic constitution. All members of the United Nations are automatically parties to the ICJ Statute, but a state that is not a member of the United Nations can join the Court on conditions laid down by the General Assembly following recommendation by the Security Council. Switzerland, for example, has refused to join the United Nations because of its centuries-old position of neutrality, but it has for many years been a member of the ICJ.

The fifteen judges that make up the International Court of Justice are elected by the Secu-

rity Council and the General Assembly, voting separately, with five judges elected every three years for nine-year terms. Each judge is eligible for reelection. Article 9 of the Statute of the ICJ provides that judges should be selected on the basis of their individual qualifications and together should represent the main forms of civilization and the principal legal systems of the world. No two judges may be of the same nationality. Although the judges strive for objectivity, their voting behavior on the Court can often be predicted with some degree of accuracy, based on the nature of the cases and the issues involved, their records as national judges, their publications in the field of international law, their ideological persuasions, and other factors that may be calculated to affect their judicial decision making.

The Court's competence to hear and decide cases extends to all controversies submitted to it by contending parties. If there is no judge on the Court of the nationality of one or several of the parties to a case, the party or parties so deprived may under Court rules appoint a judge to participate in that case with full voting rights. While such action is unknown in national courts, the World Court provisions reflect the sovereign independence of the parties in such cases. Some states have accepted the compulsory jurisdiction of the Court in advance under the Optional Clause of the Statute (Article 36), but because of a myriad of reservations and amendments, the general rule is that only those states that are willing to have their controversies adjudicated by the Court will be parties to cases before it. Cases are decided by a majority vote, with a quorum of nine needed for voting, unless by agreement the case is submitted to a smaller panel of judges. Decisions and awards cannot be appealed. In case of a tie, the President of the Court is entitled to a "casting" (tie-breaking) vote. The Court's jurisdiction also extends to the rendering of advisory opinions on legal questions submitted to it by the principal organs of the United Nations and the UN specialized agencies.

To reach a decision, the Court interprets and applies treaties, international customs, the general principles of law, and decisions of international tribunals. Decisions of national courts and the teachings of respected international jurists can be used as subsidiary means for determining rules of international law. If the parties agree, the Court can render a decision *ex aequo et bono* (based on the Court's conception of justice and fairness rather than law).

The International Court of Justice is a symbol of the widespread yearning to replace the use of force with the rule of law. Within its scope of operation it has performed well, but its reach is necessarily limited by the willingness of all affected parties to place a dispute before it. For this reason it has had little part in resolving the major issues of peace and war and resource distribution that persistently plague the international system. The modest successes and inherent limitations of the Court in dispute settlement will be explored in depth in Chapter 7.

The Secretariat

The UN Secretariat under Article 7 of the Charter is included as one of the six "principal organs of the United Nations." The Secretariat consists of officials and civil servants who perform administrative, budgetary, secretarial, linguistic, staff, and housekeeping functions for the other principal organs and carry out the programs of the organization. Members of the Secretariat are recruited individually and do not serve as representatives of their governments, as do those who serve as delegates to the General Assembly and the three councils. They are full-time employees of the United Nations who bring diverse skills to the organization. They are supposed to serve the entire membership of the United Nations in a politically neutral manner, although reality sometimes falls short of the ideal.

Heading the Secretariat is a Secretary-General who in Article 97 is designated "the chief

administrative officer of the Organization." Appointment of the Secretary-General for a five-year term of office is the culmination of a political process that includes recommendation by the Security Council, with the veto power applicable, and appointment by a two-thirds vote of the General Assembly.

The responsibilities of the Secretary-General and his staff include preparing the agenda for major organs, providing essential services and sometimes expert advice at meetings, drawing up the biennial budget of the organization, expending funds, supervising day-to-day operations, taking the initiative in suggesting new programs, offering political leadership when requested to do so by a major organ, serving as a diplomatic agent to iron out difficulties among member delegations, and serving as the ceremonial head of the United Nations in formal affairs. The Secretary-General is the only person in the United Nations who can speak for or represent the entire organization. The Secretariat's role in the administration and politics of the United Nations will be further elaborated in Chapter 4.

FINANCING THE UNITED NATIONS

The effectiveness of a multilateral organization such as the United Nations and the dedication of its members can often be evaluated by an analysis of its budget. The short history of international organizations reveals that many states have been penurious to an extreme and often grudging in providing financial support. This propensity of members to invest only relatively meager resources in the work of international organizations may reflect the limited character of their commitment, the poverty of their societies, or their disagreement with some of the activities carried on by these organizations. Demands by statesmen for substantial benefits from such organizations are often balanced by inclinations to contribute little more than lip service to their operations.

Assessment Problems

When the United Nations began its work in 1946, the need to find an equitable but adequate financing formula was given high priority. The task of preparing a scale of budgetary assessments was assigned to a special Committee on Contributions under guidelines laid down by the General Assembly. The committee has since continued to provide periodic review and recommend necessary revision of the assessment scale. Members of the committee are supposed to be experienced in financial matters and drawn from states providing a broad geographic representation. In determining assessments, the committee was originally charged by the General Assembly to utilize the criterion of ability to pay as reflected by each state's total national income, per capita income, economic dislocation caused by the war, and foreign exchange earnings. These factors, with the exception of dislocation caused by war, remain the main criteria for determining assessments today, although "floor" and "ceiling" limitations have been added. The United States pays the largest assessment of the regular budget. Many of the small, poor states of the Third World are assessed the minimum payment of 0.01 percent. Assessments are paid as "contributions," but they are considered binding once the General Assembly has adopted the organization's annual budget. Unlike the technical programs of the League of Nations, whose financing was included within the League's general budget, each of the specialized agencies of the United Nations has its own budget and financial system, with Assembly oversight confined to consultation and recommendations. The UN budget system also differs from that of the League in that budgetary questions are decided in the Assembly by a two-thirds majority rather than by the unanimity rule that often came close to paralyzing League operations.

In 1946 the first scale of assessments reflected the dominant economic position of the United States in a world suffering from the after-

math of war. The U.S. assessment amounted to almost 40 percent, with the remaining 60 percent paid by the other fifty member states. Objections were raised by U.S. leaders who argued that the United States did not have that great a capacity to pay and did not wish to weaken the organization by a heavy dependence on a single source of revenue. United States opposition took the form of a demand that a ceiling be established prohibiting contributions of more than one-third of the budget by any one state, a position that was gradually accepted over a ten-year period, with the admission of new members and the economic revival of old members easing the transition. In years past, the contributions of the United States to the UN system have sometimes approached 50 percent despite its regular budget assessment portion of 25 percent, reflecting sizable U.S. support through voluntary contributions to special UN programs. These heavy U.S. contributions are less impressive if measured strictly in terms of ability to pay, since a number of members contribute a greater percentage of their gross national product (GNP) than does the United States. Moreover, in recent years U.S. voluntary contributions to UN programs have declined to about 25 percent.

The poorer states of the world prefer that budget assessments be based strictly on each state's national income and ability to pay. The use of national per capita income as a factor in the assessment scale has encountered objections from states with high national incomes and small populations. In deference to this protest, the Assembly established a rule that no state should be assessed more per capita than the largest contributor. Canada is the only state that has had its assessment reduced under this rule.

In previous years much of the debate over budgetary questions involved cold war animus and North-South frictions as well as controversies over money.⁶ The Soviet Union's share of the regular budget was 6.34 percent in 1946, but after a vigorous campaign pushed by the United States, the Soviet share was increased to 12.95

percent, a figure that included the separate assessments for the Byelorussian and Ukrainian republics. More recently the cold war has ceased to be a factor but in the early 1990s, following the breakup of the Soviet Union, the near collapse of the Russian economy made its assessment (9.41 percent in 1992, reduced to 6.71 for 1993) difficult to honor, especially since it had to be paid in "hard" or "convertible" currency.

Budget Procedures and Politics

Overall UN operations are divided into four major budget categories: (1) the regular budget, (2) the specialized agencies, (3) voluntary programs related mainly to economic development, and (4) peacekeeping operations.

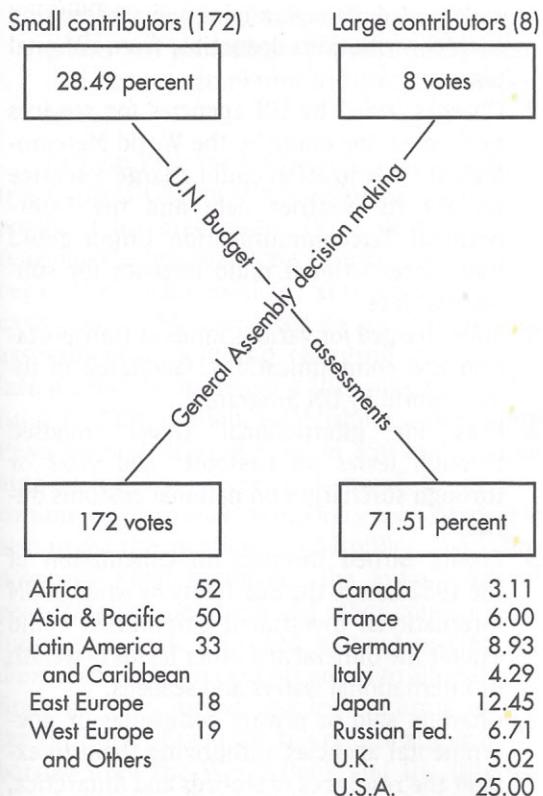
The regular budget pays the day-to-day costs of the organization, including buildings and equipment, conferences, travel, salaries and retirement pay, and other administrative costs arising from the operations of the major UN organs. Each specialized agency has its own budget, which is presented to the General Assembly for formal approval, but is in fact arrived at independently. Economic aid and technical assistance through the UN Development Program (UNDP) is one of the larger voluntary programs, currently running more than \$1 billion annually. Some programs, such as the expenses of the Office of the UN High Commissioner for Refugees (UNHCR), operate largely on voluntary contributions but are partly supported by the regular budget.

The United Nations uses a two-year program budget that requires the administrative staff to plan organizational goals, to establish the programs needed to achieve the goals, and to provide budgetary support for the programs. The budget process is carried on by members of the Secretariat under the direction of the Secretary-General. The Secretary-General proposes; the majority of member states dispose. This means that nations of the Third World, which pay the

least, have the voting power to determine how much should be spent, and for what. The eight richest countries pay more than 70 percent of the total budget but can be outvoted by the huge Third World majority, which pays only a small portion of the remaining 30 percent (see Figure 2-2). No effective budget ceiling has ever been established; new programs and inflation adjustments for old programs have been approved regularly over the years and added to the total cost of UN operations.

In 1982 the United States, Britain, and the Soviet Union tried to halt budgetary escalation by jointly demanding that the Secretary-General set a ceiling on the 1982-83 budget and accept stringent limits on future budgets. Although the Secretary-General agreed to try budgetary restraint, he also faced pressures from Third World members to expand various programs. Neither side was happy when the budget for 1984-85 was fixed at \$1,606 million, an increase of \$133 million, or 9 percent, over the previous biennium. Since then the pressures from both sides have persisted and the budget has continued to grow, although not much in excess of the rate of inflation. For the 1992-1993 biennium the amount appropriated was \$2,389 million.

Quite apart from budget ceiling controversies, UN budgetary planning has been complicated by failure of numerous states to pay their assessed contributions. In past years some twenty-five member governments have at various times withheld portions of their assessments for political reasons. A number refused to pay their share for peacekeeping operations because they opposed the use of UN peacekeeping forces in particular situations. For years the Soviet Union and France were major holdouts on peacekeeping funds. Although their political objections have since been resolved, Russia now faces economic rather than political barriers to payment. The United States also has withheld payments for political reasons, refusing to pay for UN programs involving support of Palestinians and regular budget costs associated with the UN treaty on the

**FIGURE 2-2**

Relationship of Assessments to Voting Strength in the General Assembly, January 1993

Law of the Sea. In 1991 seven countries engaged in such political withholding, a practice clearly contrary to the UN Charter. In addition, many countries—including the United States—pay late in the year rather than at the beginning.

Theoretically, continued nonpayment of compulsory assessments could lead to loss of voting rights in the General Assembly. Article 19 of the Charter provides that a member shall lose its vote when its budgetary arrearage equals or exceeds its total assessment for the preceding two years. That sanction lost most of its teeth in 1964 and 1965, however, when the United States tried—and failed—to persuade the Assembly to impose the penalty on the Soviet Union for failure

to pay peacekeeping assessments. The Assembly went through the entire 1964 session without taking a formal vote, rather than confront the issue. The United States finally threw in the towel, reserving to itself the right to reject compulsory assessments in the future if compelling reasons should arise. As a result Article 19 has never been used to deprive any state of a vote.

Since the mid-1980s the United States has been the greatest offender in withholding assessed contributions, stemming from funding cuts mandated by Congress. In 1985 the Congress adopted the Kassebaum Amendment, which required the United States to reduce its regular budget payments from 25 percent to 20 percent, beginning with the 1987 UN fiscal year. Under the amendment, this cut was to be continued until the United Nations adopted a system of reforms on budgetary matters by which the major financial contributors would no longer be subjected to budgetary decisions arrived at arbitrarily by the Third World majority. Additional reductions in the U.S. contribution were made necessary by subsequent congressional action.

In December 1986 the Assembly agreed to accept expenditure limits set by its Committee for Program and Coordination, a small budget screening body that makes decisions by consensus. This reform gave the United States (and every other member of the committee) great leverage in determining the size of the UN biennial budget. Although this appeared to meet the Kassebaum requirement, Congress still refused to appropriate the full amounts owed to the United Nations and some other UN agencies. By December 1989, despite administration pleas for Congress to appropriate the necessary funds, the United States was \$365 million behind in payments to the UN regular budget (of a total of \$461 million owed by all members).

A revival of UN credibility—largely a product of peacekeeping successes—induced Congress in 1990 to enact new funding legislation, and President Bush promised that all back debts to the organization would be paid by 1995. By the end of

1992 the U.S. regular budget obligation for past years had been reduced to zero, although \$240 million was still owed for 1992 and an arrearage for various peacekeeping operations exceeded \$80 million. The problem of meeting UN financial obligations has been made more difficult for the United States by the huge federal budget deficit and many competing claims for support of domestic and international programs. In addition, a global recession during the early 1990s made payment of UN dues more difficult for most nations.

Future Financing Problems

The financing of UN operations remains a problem, given the continuing prospect of nonpayment, late payment, and selective withholding. One answer, at least in theory, is to find sources of income for the United Nations independent of its members. Although many such sources would require Charter amendment or basic changes in the UN structure, the principle of revenue production independent of members' contributions is not without precedent. Each year the organization nets several million dollars from its headquarters' businesses involving stamp sales, a gift shop, investment income, and guided tours. Although this amounts to only a small percentage of the annual regular budget, other proposals to secure independent sources of revenue could be regarded as extensions of this principle.

Suggestions for new sources run the gamut from those that would provide minor amounts of supplemental income to those that might in themselves finance most or all UN activities. As might be expected, sources that offer the greatest potential for substantial income are also the least feasible politically. Many members, of course, do not regard financial independence for the United Nations as a virtue because it would reduce their control over the organization and its activities. Potential sources for UN income might include the following:

1. Private contributions in the form of individual gifts, inheritances, and foundation grants

encouraged through a joint policy of making such contributions deductible from national taxes.

2. Charges levied by UN agencies for services performed; for example, the World Meteorological Organization could charge a service fee for its weather data and the International Telecommunication Union could issue international radio licenses for substantial fees.
3. Tolls charged for various kinds of transportation and communications, facilitated in today's world by UN programs.
4. Fees for international travel imposed through levies on passports and visas or through surcharges on national customs duties.
5. Profits earned through implementation of the 1982 Law of the Sea Treaty by which a UN international investment corporation could exploit the mineral and other forms of wealth in international waters and seabeds.
6. Charters sold to private companies or governmental agencies authorizing them to exploit the resources of seabeds and Antarctica, with royalty rights reserved by the United Nations.
7. Fishing, whaling, and sealing rights in international waters, assigned to countries or private companies upon the payment of "conservation" fees to the United Nations.
8. Rights to the use of outer space, or the operation of outer space programs by the United Nations, aimed at producing revenues through communications satellites, meteorological systems, and the future development of resources on the moon and the planets.
9. Taxes levied on member states, collectible by their governments, and based on ability to pay judged by national income.
10. Taxes levied directly on individuals through the cooperation of member states, based on income and with a mild graduation of rates.
11. Issuance of an international trading currency, backed by national reserves, that could

serve the dual function of financing UN programs and providing a supplementary international monetary unit to encourage greater trade.

In June 1992 the UN Secretary-General Boutros Boutros-Ghali publicly endorsed several proposals of his predecessor Pérez de Cuéllar for relieving the organization's financial ills. A number of them addressed the serious short-term cash flow problem created by late payment of assessments, including charging interest on late payments, increasing the working capital fund to \$250 million, establishing a temporary Peacekeeping Reserve Fund of \$50 million, and authorizing the Secretary-General to borrow commercially to meet temporary cash needs. He also urged the creation of a \$1 billion Peace Endowment Fund to finance the initial costs of peacekeeping operations and other conflict resolution measures. He noted, without specific endorsement, other recent proposals to alleviate UN financial woes, including a levy on arms sales, a tax on international air travel, UN authority to borrow from the World Bank and the International Monetary Fund, and a general tax exemption for private contributions to the United Nations.⁷

The United Nations has managed to stay in business despite the persisting problem of delinquent contributions and shortage of cash to meet current expenditures. Nevertheless, the task of UN officials would be less harrowing, and the organization would be better equipped to meet peacekeeping needs and other emergencies as they arise, if financing could be made more secure.

NOTES

1. The concept of regionalism is sometimes applied to limited-membership organizations such as the Organization for Economic Cooperation and Development (OECD). Although the OECD is primarily Europe-based, it has members from other geographic regions including Japan, the United States, and Canada.

2. In electing members of the various organs of the United Nations, including the Secretary-General, regional factors are generally considered relevant in reaching electoral decisions.
3. H. G. Nicholas, *The United Nations as a Political Institution*, 5th ed. (London: Oxford University Press, 1975), p. 104.
4. *Ibid.*, p. 92.
5. *UN Chronicle* 18, No. 1 (March 1991), p. 5.
6. For a discussion of the political aspects of UN budget making in its early decades, see Ruth B. Russell, *The General Assembly: Patterns/Problems/Prospects* (New York: Carnegie Endowment for International Peace, 1970).
7. Boutros Boutros-Ghali, *An Agenda for Peace* (New York: United Nations DPI, 1992), pp. 41–43.

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