

CHAPTER FOURTEEN: INTERNATIONAL POLITICAL INSTITUTIONS

Pages 319-346

A. The United Nations

Introduction. Sometimes multilateral treaties call into being--"constitute"--an international organization. These "constitutive" treaties are like constitutions: they provide for on-going mechanisms for governance. Constitutive treaties used to be called "treaty regimes," a term that is still used when a treaty sets up a narrowly focused organization that deals with problems of interpretation and implementation of the treaty. The enormous United Nations Law of the Sea Convention of 1982 is a treaty regime in this sense; it sets up several important ongoing "authorities" that issue reports and regulations and settle disputes between parties to the treaty.

The biggest constitutive treaty of all time is the Charter of the United Nations. Nearly all of the nations of the world are members of the United Nations, having signed and ratified its Charter and agreed to its governing procedures. Unlike most other multilateral conventions, there is no procedure for making a "reservation" to the United Nations Charter. Rather, a state that wishes to become party to the UN Charter must be formally admitted to membership by a decision of the United Nations General Assembly upon the recommendation of the United Nations Security Council (UN Charter, Article 4). Thus, if a state wishes to condition its membership in the UN upon a "reservation" to its Charter, the UN can simply reject that state's membership application. All present members of the United Nations are members without reservation.

We do not have the time in the present course to delve deeply into the law of the UN Charter. Courses in International Organization do that job well enough. But we can, through a series of questions, take a brisk walk through the Charter:

QUESTION 1. The purposes of the United Nations are spelled out in the Preamble to the Charter and in Articles 1 and 2. In other parts of the present course we have considered the question of which is the paramount goal of international law--peace, justice, or human rights? If the only text we had was the Preamble and Articles 1 and 2 of the UN Charter, how should we answer this question?

Charter of the United Nations Preamble

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I Article I

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or

humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

QUESTION 2. Early in its history, the Supreme Court of the United States decided that the federal government could set up its own banking system. Although there was nothing in the Constitution giving Congress such a power, the Supreme Court inferred that such a power existed from the "necessary and proper clause"--that a bank was necessary to effectuate the enumerated purposes of Congress.

Early in its history, the International Court of Justice was called upon to give an advisory opinion whether the United Nations itself could sue a state in that Court. The Charter contained nothing on this point. In the excerpts of the Court's opinion which follow, note the Court's use of the enumerated Purposes and Principles of the Charter (that you have just read). Do you agree or disagree with Judge Hackworth's dissent?

Reparation for Injuries Suffered in the Service of the United Nations

International Court of Justice
Advisory Opinion of April 11, 1949
1949 I.C.J. 174

On December 3rd, 1948, the General Assembly of the United Nations adopted the following Resolution:

Whereas the series of tragic events which have lately befallen agents of the United Nations engaged in the performance of their duties raises, with greater urgency than ever, the question of the arrangements to be made by the United Nations with a view to ensuring to its agents the fullest measure of protection in the future and ensuring that reparation be made for the injuries suffered. . .¹

In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?

Competence to bring an international claim is, for those possessing it, the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims. Among these methods may be mentioned protest, request for an enquiry, negotiation, and request for submission to an arbitral tribunal or to the Court in so far as this may be authorized by the Statute.

This capacity certainly belongs to the State; a State can bring an international claim against another State. Such a claim takes the form of a claim between two political entities, equal in law, similar in form, and both the

direct subjects of international law. It is dealt with by means of negotiation, and cannot, in the present state of the law as to international jurisdiction, be submitted to a tribunal, except with the consent of the States concerned.

When the Organization brings a claim against one of its Members, this claim will be presented in the same manner, and regulated by the same procedure. It may, when necessary, be supported by the political means at the disposal of the Organization. In these ways the Organization would find a method for securing the observance of its rights by the Member against which it has a claim.

But, in the international sphere, has the Organization such a nature as involves the capacity to bring an international claim? In order to answer this question, the Court must first enquire whether the Charter has given the Organization such a position that it possesses, in regard to its Members, rights which it is entitled to ask them to respect. In other words, does the Organization possess international personality?

To answer this question, which is not settled by the actual terms of the Charter, we must consider what characteristics it was intended thereby to give to the Organization. The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable.

The Charter has not been content to make the Organization created by it merely a center "for harmonizing the actions of nations in the attainment of these common ends" (Article I, para. 4). It has equipped that center with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5), and to accept and carry out the decisions of the Security Council; by authorizing the General Assembly to make recommendations to the Members; by giving the Organization legal capacity and privileges and immunities in the territory of each of its Members; and by providing for the conclusion of agreements between the Organization and its Members. Practice--in particular the conclusion of conventions to which the Organization is a party--has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. It must be added that the Organization is a political body, charged with political tasks of an important character, and covering a wide field namely, the maintenance of international peace and security, the development of friendly relations among nations, and the achievement of international co-operation in the solution of problems of an economic, social, cultural or humanitarian character (Article 1); and in dealing with its Members it employs political means.

In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is 'a super-State', whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims. The next question is whether the sum of the international rights of the Organization comprises the right to bring the kind of international claim described in the Request for this Opinion. That is a claim against a State to obtain reparation in respect of the damage caused by the injury of an agent of the Organization in the course of the performance of his duties. Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice. The functions of the Organization are of such a character that they could not be effectively discharged if they involved the concurrent action, on the international plane, of fifty-eight or more Foreign Offices, and the Court concludes that the Members have endowed the Organization with capacity to bring international claims when necessitated by the discharge of its functions.

What is the position as regards the claims mentioned in the request for an opinion? [The] Question is divided into two parts, which must be considered in turn.

[The first part] is concerned solely with the reparation of damage caused to the Organization when one of its agents suffers injury at the same time. It cannot be doubted that the Organization has the capacity to bring an international claim against one of its Members which has caused injury to it by a breach of its international obligations towards it. The damage specified in the question means exclusively damage caused to the interests of the Organization itself, to its administrative machine, to its property and assets, and to the interests of which it is the guardian. It is clear that the Organization has the capacity to bring a claim for this damage. As the claim is based on the breach of an international obligation on the part of the Member held responsible by the Organization, the Member cannot contend that this obligation is governed by municipal law, and the Organization is justified in giving its claim the character of an international claim.

When the Organization has sustained damage resulting from a breach by a Member of its international obligations, it is impossible to see how it can obtain reparation unless it possesses capacity to bring an international claim. It cannot be supposed that in such an event all the Members of the Organization, save the defendant State, must combine to bring a claim against the defendant for the damage suffered by the Organization.

The Court is not called upon to determine the precise extent of the reparation which the Organization would be entitled to recover. It may, however, be said that the measure of the reparation should depend upon the amount of the damage which the Organization has suffered as the result of the wrongful act or omission of the defendant State and should be calculated in accordance with the rules of international law. Amongst other things, this damage would include the reimbursement of any reasonable compensation which the Organization had to pay to its agent or to persons entitled through him. Again, the death or disablement of one of its agents engaged upon a distant mission might involve very considerable expenditure in replacing him. These are mere illustrations, and the Court cannot pretend to forecast all the kinds of damage which the Organization itself might sustain.

The second part of the question . . . is whether, in the course of bringing an international claim of this kind, the Organization can recover the reparation due in respect of the damage caused to the victim.

The traditional rule that diplomatic protection is exercised by the national State does not involve the giving of a negative answer here. In the first place, this rule applies to claims brought by a State. But here we have the different and new case of a claim that would be brought by the Organization. In the second place, even in inter-State relations, there are important exceptions to the rule, for there are cases in which protection may be exercised by a State on behalf of persons not having its nationality.

The Court is here faced with a new situation. The questions to which it gives rise can only be solved by realizing that the situation is dominated by the provisions of the Charter considered in the light of the principles of international law.

The question lies within the limits already established; that is to say it presupposes that the injury for which the reparation is demanded arises from a breach of an obligation designed to help an agent of the Organization in the performance of his duties. It is not a case in which the wrongful act or omission would merely constitute a breach of the general obligations of a State concerning the position of aliens; claims made under this head would be within the competence of the national State and not, as a general rule, within that of the Organization.

The Charter does not expressly confer upon the Organization the capacity to include, in its claim for reparation, damage caused to the victim or to persons entitled through him. The Court must therefore begin by enquiring whether the provisions of the Charter concerning the functions of the Organization, and the part played by its agents in the performance of those functions, imply for the Organization power to afford its agents the limited protection that would consist in the bringing of a claim on their behalf for reparation for damage suffered in such circumstances. Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.

Having regard to its purposes and functions already referred to, the Organization may find it necessary, and has in fact found it necessary, to entrust its agents with important missions to be performed in disturbed parts of the world. Many missions, from their very nature, involve the agents in unusual dangers to which ordinary persons are not exposed. For the same reason, the injuries suffered by its agents in these circumstances will sometimes have occurred in such a manner that their national State would not be justified in bringing a claim for reparation on the ground of diplomatic protection, or, at any rate, would not feel disposed to do so. Both to ensure the efficient and independent performance of these missions and to afford effective support to its agents, the Organization must provide them with adequate protection.

For this purpose, the Members of the Organization have entered into certain undertakings, some of which are

in the Charter and others in complementary agreements. The content of these undertakings need not be described here; but the Court must stress the importance of the duty to render to the Organization 'every assistance' which is accepted by the Members in Article 2, paragraph 5, of the Charter. It must be noted that the effective working of the Organization--the accomplishment of its task, and the independence and effectiveness of the work of its agents--require that these undertakings should be strictly observed. For that purpose, it is necessary that, when an infringement occurs, the Organization should be able to call upon the responsible State to remedy its default, and, in particular, to obtain from the State reparation for the damage that the default may have caused to its agent. In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that--whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent--he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.

Upon examination of the character of the functions entrusted to the Organization and of the nature of the missions of its agents, it becomes clear that the capacity of the Organization to exercise a measure of functional protection of its agents arises by necessary intendment out of the Charter.

The obligations entered into by States to enable the agents of the Organization to perform their duties are undertaken not in the interest of the agents, but in that of the Organization. When it claims redress for a breach of these obligations, the Organization is invoking its own right, the right that the obligations due to it should be respected. On this ground, it asks for reparation of the injury suffered, for it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. In claiming reparation based on the injury suffered by its agent, the Organization does not represent the agent, but is asserting its own right, the right to secure respect for undertakings entered into towards the Organization.

Having regard to the foregoing considerations, and to the undeniable right of the Organization to demand that its Members shall fulfil the obligations entered into by them in the interest of the good working of the Organization, the Court is of the opinion that, in the case of a breach of these obligations, the Organization has the capacity to claim adequate reparation, and that in assessing this reparation it is authorized to include the damage suffered by the victim or by persons entitled through him.

DISSENTING OPINION BY
JUDGE HACKWORTH.

I concur, but for different reasons, in the conclusion of the Court that the United Nations Organization has capacity to bring an international claim against the responsible government, with a view to obtaining reparation due in respect of damage caused by that government to the Organization. But I regret that I am unable to concur in that part of the Opinion having to do with the capacity of the Organization to sponsor an international claim in behalf of one of its agents.

Certainly there is no specific provision in the Charter, nor is there provision in any other agreement of which I am aware, conferring upon the Organization authority to assume the role of a State, and to represent its agents in the espousal of diplomatic claims on their behalf. I am equally convinced that there is no implied power to be drawn upon for this purpose. The majority opinion [finds] that such power is conferred by necessary implication. This appears to be based on the assumption that, to ensure the efficient and independent performance of missions entrusted to agents of the Organization, and to afford them moral support, the exercise of this power is necessary.

There can be no gainsaying the fact that the Organization is one of delegated and enumerated powers. It is to be presumed that such powers as the Member States desired to confer upon it are stated either in the Charter or in complementary agreements concluded by them. Powers not expressed cannot freely be implied. Implied powers flow from a grant of expressed powers, and are limited to those that are 'necessary' to the exercise of powers expressly granted. No necessity for the exercise of the power here in question has been shown to exist. There is no impelling reason, if any at all, why the Organization should become the sponsor of claims on behalf of its employees, even though limited to those arising while the employee is in line of duty. These employees are still nationals of their respective countries, and the customary methods of handling such claims are still available in full vigor.

But we are presented with an analogy between the relationship of a State to its nationals and the relationship

of the Organization to its employees; also an analogy between functions of a State in the protection of its nationals and functions of the Organization in the protection of its employees.

The results of this liberality of judicial construction transcend, by far, anything to be found in the Charter of the United Nations, as well as any known purpose entertained by the drafters of the Charter.

These supposed analogies, even assuming that they may have some semblance of reality, which I do not admit, cannot avail to give jurisdiction, where jurisdiction is otherwise lacking. Capacity of the Organization to act in the field here in question must rest upon a more solid foundation.

The Court advances the strange argument that if the employee had to rely on the protection of his own State, his independence might well be compromised, contrary to the intention of Article 100 of the Charter.

This would seem to be placing a rather low estimate upon the employee's sense of fidelity. But let us explore this a step further.

Article 100 provides that:

1. In the performance of their duties, the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 100 of the Charter, which, it should be remarked, relates only to the Secretary-General and the staff, cannot be drawn upon to claim for the Organization by indirection an authority which obviously cannot be claimed under any direct authorization. The most charitable, and indeed the most realistic construction to be given the article is that it is designed to place service with the United Nations on a high plane of loyalty and fidelity and to require Member States to respect this status and not to seek to influence the Secretary-General or members of the staff in the discharge of their duties.

This bond between the Organization and its employees, which is an entirely proper and natural one, does not have and cannot have the effect of expatriating the employee or of substituting allegiance to the Organization for allegiance to his State. Neither the State nor the employee can be said to have contemplated such a situation. There is nothing inconsistent between continued allegiance to the national State and complete fidelity to the Organization. The State may still protect its national under international law. One can even visualize a situation where that protection might be directed against acts by the Organization itself.

What reason, then, is there for thinking that the United Nations, rather than the national State, should interpose on behalf of the individual? It may well be that the weight of the Organization's authority would, in some cases, be more persuasive than that of the national State, but this is not a judicial reason, nor does it supply the legal capacity to act.

Aside from remedies afforded by local law under which private claimants may be allowed access to judicial or other tribunals for the adjustment of their claims against a government, the only remedy known to international law in such cases is through the government of the State of which the claimant is a national. "A citizen of one nation, wronged by the conduct of another nation, must seek redress through his own government. His government must assume the responsibility of presenting his claim, or it need not be considered." *United States v. Diekelman*, 92 U.S. 520.

Diplomatic protection is in its nature an international proceeding, constituting "an appeal by nation to nation for the performance of the obligations of the one to the other, growing out of their mutual rights and duties." Borchard, *Diplomatic Protection of Citizens Abroad* 354.

A claim by one State against another on account of an injury to a national of the claimant State is based on the theory that the State has been injured through injury to its national. Equally sound is the theory that for the allegiance owed by the national to his State the latter owes the national its protection. Nationality is a *sine qua non* to the espousal of a diplomatic claim on behalf of a private claimant. Aside from the special situation of protected persons under certain treaties and that of seamen and aliens serving in the armed forces, all of whom are assimilated to the status of nationals, it is well settled that the right to protect is confined to nationals of the protecting State. If the private claimant is not a national of the State whose assistance is sought, the government of that State cannot properly sponsor the claim, nor is the respondent government under any legal duty to entertain it.

International law on this subject is well settled, and any attempt to engraft upon it, save by international compact, a theory, based upon supposed analogy, that organizations, not States and hence having no nationals, may act as if they were States and had nationals, is, in my opinion, unwarranted. The Permanent Court of International Justice stated well the true situation when it said in the *Panevezys-Saldutiskis Railway Case*, February 28th, 1939:

In the opinion of the Court, the rule of international law on which the first Lithuanian objection is based is that in taking up the case of one of its nationals, by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right, the right to ensure in the person of its nationals respect for the rules of international law. This right is necessarily limited to intervention on behalf of its own nationals because, in the absence of a special agreement, it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection, and it is as a part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged. Where the injury was done to the national of some other State, no claim to which such injury may give rise falls within the scope of the diplomatic protection which a State is entitled to afford nor can it give rise to a claim which that State is entitled to espouse.

P.C.I.J., Series A./B., No. 76, p. 16.

It is generally admitted that the State of the employee's nationality has a right to sponsor a claim, such as is here in question, and the General Assembly obviously envisaged the possibility of complications in this respect, as is shown by its second question, wherein it inquires how, in the event of an affirmative reply on point I(b), action by the United Nations is 'to be reconciled with such rights as may be possessed by the State of which the victim is a national'.

The answer which I have suggested would probably give the Organization all that it needs from a practical point of view.

If the United Nations Organization desires to go further and to espouse claims on behalf of employees, the conventional method is open.² If the States should agree to allow the Organization to espouse claims on behalf of their nationals who are in the service of the Organization, no one could question its authority to do so. The respondent State would be relieved of the possibility of demands from two sources, the employee or his dependents would know to whom to look for assistance, and the whole procedure would be free from uncertainty and irregularity.

QUESTION 3. Who decides what states may join the United Nations? How can a member state be expelled? For what reasons? Does the expulsion procedure add "bite" to the purposes and principles of the Charter quoted above?

CHAPTER II

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

QUESTION 4. What are the organs of the United Nations? Is the World Court one of them? Who may participate in them?

CHAPTER III

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

QUESTION 5. What are the composition and formal powers of the General Assembly?

CHAPTER IV

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each member shall have not more than five representatives in the General Assembly.

Article 10

The General Assembly may 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, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
 - a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;
 - b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.
2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

QUESTION 6. What are the composition and formal powers of the Security Council? Who has a "veto" (Article 27)? When can the "veto" be exercised?

CHAPTER V

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations.³ The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being 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.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of

the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members;⁴ provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

QUESTION 7. You can expect that the United Nations would favor the peaceful settlement of disputes among nations. Suppose that two states have a dispute and it drags on for many years without being peacefully settled, and it looks as if it is going to drag on for many more years without being peacefully settled. Can the Security Council force them to resolve their dispute?

CHAPTER VI

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the

maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

QUESTION 8. Up until the end of the Cold War, with the sole and partial exception of the Korean War, the permanent member "veto" rendered Security Council enforcement action, under the following Articles, impotent. But with the end of the Cold War, the Security Council sprung to life--some say it was "reborn." The following Articles were invoked for "Operation Desert Storm"--the United Nations' successful repulsion of Iraq's aggression against Kuwait. Read the following articles to get a mental picture of the formal procedure the Charter lays out for the Security Council to follow in the case of a breach of the peace. After that, we will look at some of the actual resolutions the Security Council passed to deal with the Persian Gulf War, and consider whether the Security Council properly followed the Charter provisions.

CHAPTER VII

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea,

or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.⁵

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed

attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

QUESTION 9. The Security Council, at the strong urging of the United States, enacted key resolutions to repel Iraq's invasion of Kuwait. They form the basis for the next set of questions.

Resolution 660 (1990)

The Security Council,

Alarmed by the invasion of Kuwait on 2 August 1990 by the military forces of Iraq,

Determining that there exists a breach of international peace and security as regards to Iraqi invasion of Kuwait,

Acting under Articles 39 and 40 of the Charter of the United Nations,

1. Condemns the Iraqi invasion of Kuwait;
2. Demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;
3. Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;
4. Decides to meet again as necessary to consider further steps to ensure compliance with the present resolution.⁶

Resolution 661 (1990)

The Security Council,

Reaffirming its resolution 660 (1990) of 2 August 1990,

Deeply concerned that that resolution has not been implemented and that the invasion by Iraq of Kuwait continues with further loss of human life and material destruction,

Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait, Noting that the legitimate Government of Kuwait has expressed its readiness to comply with resolution 660 (1990),

Mindful of its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Affirming the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter,

Acting under Chapter VII of the Charter of the United Nations,

1. Determines that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;
2. Decides, as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;
3. Decides that all States shall prevent:
 - (a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;
 - (b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;
 - (c) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;
4. Decides that all States shall not make available to the Government of Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to the Government or to any such undertaking any

such funds or resources and from remitting any other funds to person or bodies within Iraq or Kuwait, except for payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs;

5. Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or license granted before the date of the present resolution. . .⁷

Resolution 662 (1990)

The Security Council,

1. Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void;

2. Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation;

3. Further demands that Iraq rescind its actions purporting to annex Kuwait. . .⁸

Resolution 678 (1990)

The Security Council,

Recalling, and reaffirming its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990 and 677 (1990) of 28 November 1990,

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,

Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance and preservation of international peace and security,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter,

1. Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;

2. Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

3. Requests all States to provide appropriate support for the actions undertaken in pursuance of paragraph 2 of the present resolution. . .⁹

QUESTION 10. Burns Weston has written a controversial critique of the UN action in the Persian Gulf.¹⁰ You have now read the relevant provisions of the Charter (Chapter VII), and the relevant resolutions of the Security Council. Do you agree or disagree with each of the following assertions by Weston? Why?

A. "The Security Council, though clearly mindful of its duty to suppress acts of aggression and other breaches of the peace, paid insufficient heed to the most overriding of UN Charter purposes and principles: the pacific settlement of international disputes."

B. "Resolution 678 was adopted because the majority of the Security Council had determined that the economic sanctions already imposed against Iraq would be inadequate or had proven to be inadequate to achieve the removal of Iraq from Kuwait. Yet Article 42, which authorizes the Security Council to take military action when economic sanctions 'would be inadequate or have proved to be inadequate,' was not, it appears, the legal basis for the resolution. Why? Because of the article's dependent relationship with Article 43, pursuant to which the UN membership consents to provide the Security Council, 'on its call and in accordance with a special agreement or agreements,' with armed forces,¹¹ assistance, and facilities to effectuate Article 42."¹²

C. "The Security Council created an entirely new precedent, seemingly on the basis of some assumed penumbra of powers available to the Council under chapter VII--an 'Article 42 1/2' authorization, as some UN watchers have called it. When human life (especially innocent human life) and other fundamental values are being put greatly and severely at risk, as surely they were when Resolution 678 was adopted, it seems not inappropriate to insist upon unambiguously articulated war-making authority as a de minimis requirement of 'right process.' That the Security Council did not choose such a course bespeaks, in my view, either extreme laxity or, more likely, a Council majority motivated more by the special political and geostrategic interests of the principal drafters of Resolution 678 (the United Kingdom and the United States) than it was by a world constitutive instrument created, as the Preamble

to the UN Charter says, 'to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained.'

D. "By authorizing the use of 'all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions,' Resolution 678 did appear to have restricted the use of force and other necessary means to the liberation of Kuwait. However, the further authorization 'to restore international peace and security in the area,' in combination with ambiguous language in the cognate resolutions, left obvious room for interpretive and operational maneuver. The unrestricted character of Resolution 678 does not stop here. In addition to leaving the precise source of its authority unstated, the resolution neglected to restrict the destructive weaponry and other means of warfare that might have been relied upon, and did not require any meaningful accounting to, or guidance from, the Security Council, the Military Staff Committee, or any other UN institution that might have been appropriate. In addition, it set no time limits on the use of 'all necessary means.' In other words, in Resolution 678, the Security Council gave the UN members carte blanche vis-a-vis Iraq after January 15, including the waging of war on whatever terms and in whatever ways they might choose. This license was, of course, precisely what Washington's confrontational politics demanded, making it politically congenial to forgo exclusive reliance on the economic sanctions and to disregard other nonviolent options that could have furthered them. But it was a perverse license, one would think, considering that the United Nations was established preeminently, as proclaimed in the Preamble to its Charter, 'to save succeeding generations from the scourge of war.' As was keenly observed by the Ambassador of Yemen, whose acuity should not be discounted simply because of his country's pro-Iraqi tendencies, the resolution was 'so broad and vague' that it would allow nations to use the UN flag to make war independently, 'a classic case,' he said, 'of authority without accountability.'"

E. "The consequences of the Security Council's abdication of responsibility, as it properly may be called, are there for all to see: the United Nations virtually disappeared from the diplomatic scene and Secretary-General Perez de Cuellar was relegated to the role of file clerk and messenger boy, essentially to operate within the Bush administration's guidelines. Indeed, he was given no more than an hour's notice of Washington's decision to go to war, and was informed thereafter of the war's progress only after action occurred. Once the hostilities began, presidential press conferences and military news briefings did not bother to maintain even the pretense of a United Nations presence or involvement. Except in the most peripheral ways, the very words 'United Nations' were scarcely heard after January 16, or at least not until after the temporary cease-fire and the discovery of 'near-apocalyptic' devastation to Iraq's civilian infrastructure at the hands of the U.S.-led coalition. Surely this is not what the UN founders and Charter drafters had in mind. Surely they must have thought, in a crisis of the magnitude and complexity of this one, that the Security Council would meet around the clock and that the Secretary-General would work feverishly to produce a peaceful, diplomatic solution--even, and perhaps especially, after the guns of January went off."

F. "The United Nations itself, and not just the promise of UN collective security as long understood, was made to stand on its head. This paradoxical circumstance was substantially a consequence, of course, of the antiquated, anachronistic composition of the Security Council itself. The failure so far to ensure more equitable Third World representation among the Council's permanent members (in the name, say, of Brazil, Egypt, India, Indonesia, or Nigeria), plus the absence among the permanent members of economically powerful Germany and Japan, raises fundamental questions about the determination and orchestration, not to mention the moral premise, of UN peace and security operations."¹³

G. "To a joint session of Congress about five weeks into the Persian Gulf crisis, President Bush declared:

Today [a] new world is struggling to be born. A world quite different from the one we have known. A world where the rule of law supplants the rule of the jungle. America and the world must support the rule of law.

Repeatedly during the crisis, the President returned to this invocation of international law, partly to condemn Iraq, partly to rally worldwide resistance against Baghdad's crimes. It is not easy to argue against such rhetoric when it is invoked at the highest levels, least of all when it is wrapped in consensus-building political and military successes directed at manifest villainy. It is, in fact, refreshing to see international law paid at least verbal respect after several decades of conspicuous disregard, even contempt. One wants to join the chorus. But a process of war-peace decision that, in the face of grave risk, is marked by indeterminate legal authority, highly questionable pressure diplomacy, a virtually unrestricted license to kill and destroy, and an essentially unilateralist rejection of nonviolent options necessarily provokes great skepticism--particularly when, in the Persian Gulf war's messy aftermath, we contemplate the devastating direct and indirect impact that the process ultimately had upon Iraq and Kuwait, their people, and the surrounding Middle East region."

QUESTION 11. Is the UN receptive to regional intergovernmental organizations? Or is it somewhat

fearful of their potential power?

CHAPTER VIII

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

QUESTION 12. What does the UN Charter say about human rights? Does it require member states to observe fundamental human rights?

CHAPTER IX

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any

new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

QUESTION 13. The Economic and Social Council of the UN has been called its least powerful organ. It has also been called its most pervasively effective organ. What are its composition and formal powers?

CHAPTER X

Article 61

1. The Economic and Social Council shall consist of fifty-four Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, eighteen members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election after the increase in the membership of the Economic and Social Council from twenty-seven to fifty-four members, in addition to the members elected in place of the nine members whose term of office expires at the end of that year, twenty-seven additional members shall be elected. Of these twenty-seven additional members, the term of office of nine members so elected shall expire at the end of one year, and of nine other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and 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.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and

voting.

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

QUESTION 14. The Covenant of the League of Nations dealt with the numerous non-self-governing territories of the first half of the twentieth century. Under League auspices, many important independent states were established, especially in the Middle East. But by 1945 there was still a great deal of colonialism in the world, primarily in Africa and in the Pacific region. Like the League before it, the United Nations moved decisively--and even more quickly than the League--to dismantle nearly all the remaining colonial dependencies and to bring about the self-determination and independence of a great many new nations. The Articles of the Charter you are about to read, although still part of the Charter, have now largely passed into history. Bringing about an end to colonialism was an enormous accomplishment of the United Nations. Can you get a sense of how this was done by reading through the procedures set up by the Charter?

CHAPTER XI

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapter XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial

matters.

CHAPTER XII

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals and also equal treatment for the latter in the administration of justice without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:
 - a. territories now held under mandate;
 - b. territories which may be detached from enemy states as a result of the Second World War, and
 - c. territories voluntarily placed under the system by states responsible for their administration.
2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationships among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.
2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

QUESTION 15. Please refer back to Question 7. Did you answer that question by saying that the UN cannot compel parties to settle their disputes? Then, when you considered Questions 8 through 10, did you come to the conclusion that the UN can only compel states to do something if the Security Council determines that there is a threat to the peace, breach of the peace, or act of aggression? The question now is: Is there anything else that "triggers" enforcement action by the UN in addition to threats to the peace, breaches of the peace, or acts of aggression? In answering this question, note carefully Article 94 (2), and consider it in

the context of all of the articles on the World Court--Articles 92 through 96:

CHAPTER XIV

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

QUESTION 16. Suppose two or more member states of the United Nations enter into a treaty the

provisions of which conflict with the parties' obligations under the UN Charter? Which prevails--the Charter or the treaty? (Read the following articles and also look back at Articles 25 and 48.)

CHAPTER XVI

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

QUESTION 17. The framers of the Charter may have had a utopian vision: a "standing army" of the United Nations, stronger than any national army, in readiness to support by force any decision of the Security Council under Chapter VII of the Charter. This idea perhaps came closer to the notion of "world government" than anything else in the Charter. Yet the permanent members of the Security Council have never concluded special agreements under Article 43 to provide a standing army for the UN. Recalling your consideration of Question 10, above, and in light of the following articles, do you believe that the world is better off, or worse off, as a result of the UN's failure so far to create its own standing army?

CHAPTER XVII

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

QUESTION 18. Is it difficult or easy to amend the Charter?

CHAPTER XVIII

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter

may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

B. A Specialized Agency: United Nations Relief and Works Agency for Palestine Refugees

Introduction. There are hundreds of specialized intergovernmental agencies set up by the United Nations, and thousands of other such agencies set up by multilateral regional treaties. We might generally expect that any agency set up by the United Nations would adhere faithfully to the United Nations Charter, General Assembly resolutions, and multilateral treaties initiated by the United Nations. It is hard to imagine that an agency wholly dependent upon the United Nations, and subject to its continuous command and control, could possibly violate any applicable norms. However, if we find an agency that does violate these norms, such an agency should be singled out for study.

Christine M. Cervenak has recently published a study of such an agency.¹⁴ The following summary is based on her work:

1. *Origin.* After World War Two, Great Britain continued to administer its League of Nations mandate for Palestine. In 1947 the UN General Assembly adopted a resolution recommending the partition of Palestine into two states, one Jewish and one Arab. The Palestinians rejected the UN partition plan. Great Britain announced that it would withdraw all its forces from Palestine by May 14, 1948. On that date, the Jewish community declared its independence as the new state of Israel. Neighboring Arab states moved military forces into the area, and war broke out. Israeli forces were successful and occupied the greater part of Palestine. Approximately 600,000 to 800,000 Palestinian Arabs fled the Israeli-occupied areas, moving mostly into the West Bank and Jordan, but also into Syria, Lebanon, and Egypt-controlled Gaza. A number of speeches were made at the United Nations blaming its partition plan for precipitating the displacement of these Palestinians. The General Assembly in December 1948 passed a resolution that the refugees had the legal option to return to their homes if their homes had not been destroyed, or to receive compensation. Israel resisted this initiative; no peace treaty was signed; the refugees remained displaced; and a year later, in December 1949, the General Assembly created a subsidiary organ entitled United Nations Relief and Works Agency for Palestine Refugees in the Near East. UNWRA began by coordinating emergency relief services to the refugees, and increased the scope of its operations and services over the years. Its mandate has been periodically renewed by the General Assembly. UNWRA continues to confer a vast array of benefits—health,

education, relief and welfare services, and human rights protection--to eligible Palestinian refugees at the time this Coursebook goes to press.

2. *Gender Discrimination.* UNWRA's determination of who is an eligible Palestinian refugee is the key to all the benefits that UNWRA provides. All original Palestinian refugees, of course, qualify. Over the years, many refugees have married persons who are not Palestinian refugees. If the husband is a Palestinian refugee, then his non-Palestinian refugee wife and the children of the marriage all qualify as recipients of UNWRA's benefits. But under UNWRA's rules, strictly enforced, if the wife is a Palestinian refugee and the husband is not, upon marriage she loses her refugee status and the children of the marriage are not counted as Palestinian refugees. There are now as many as 100,000 women who have lost their refugee status who would not have lost their status had they been men.

3. *The Legal Norms:*

A. *The UN Charter:*

ARTICLE 1. The Purposes of the United Nations are. . .

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

ARTICLE 55. [T]he United Nations shall promote. . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

B. *The Universal Declaration of Human Rights (General Assembly Resolution):*

ARTICLE 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

C. *The Convention on the Elimination of All Forms of Discrimination Against Women (adopted by the General Assembly in 1979; over 100 states are parties):*

ARTICLE 1. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

ARTICLE 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

4. *Why is UNWRA Discriminating Against Women?* UNWRA may have decided to respect the patriarchal family structure of Arab culture rather than respect the Charter's rules and the other legal norms above cited. But as Christine Cervenak demonstrates, "UNWRA's absolute gender discrimination is more extensive than even that of the personal status and nationality laws in effect in the areas of UNWRA operations."¹⁵ Her survey of personal status law in Jordan, Syria, and Lebanon, shows that Shari'a law is more flexible than UNWRA's rules. The result is that UNWRA imposes a retrogressive discrimination against women even as they are making progress in Arab countries to modify the patriarchal laws. Perhaps even more important, within the Palestine refugee camps--the very object of UNWRA's mandate--the Palestine women's movement has made significant gains toward equality. It is ironic that

their most rigid opponent is an agency of the United Nations.

NOTES AND QUESTIONS
FOR CLASSROOM DISCUSSION

1. In light of all the good things that most UN agencies do, and in light of all the good things that UNWRA has done for the Palestinian refugees as a whole, should a fuss be made about one thing that one agency has done wrong?

2. Is the problem not so much the actual harm that UNWRA has imposed upon some Palestinian women and their children--substantial though it may be--but rather the implication we have to draw from the fact that an actual agency of the UN can violate the UN Charter as well as the basic UN norms against discrimination? UNWRA has been violating these foundational norms since 1949 and the General Assembly has continued to renew its mandate in the face of repeated protests over UNWRA's gender discrimination. If one agency of the UN can do this, may we not conclude that any agency, at any time, might violate the Charter? Some such agency in the future could be a critically important one, for example a peacekeeping agency employing military force somewhere in the world. Doesn't the UNWRA example serve to undermine our confidence in the United Nations as a whole?

3. But is it UNWRA that is violating the Charter, or is it the General Assembly which created, controls and is responsible for UNWRA? The General Assembly is itself controlled by a majority of the members of the United Nations. Is this majority entitled to violate the Charter like a parliamentary majority in a country that has no written constitution? Or to put it differently, if a majority of the nations of the world wish to do something in the General Assembly that violates the Charter that set up the General Assembly, should they not be allowed to do it? Isn't this "democracy" in action? If it is, what are its consequences for world order?

FOOTNOTES Chapter 14

1 [Count Bernadotte, a national of Sweden and a United Nations mediator in the Middle East, was killed in Palestine while performing his UN duties.]

2 [What Judge Hackworth means here by "conventional method" is that the Charter should be amended to specifically allow the United Nations to espouse claims on behalf of its employees.]

3 [Editor's Note: This article is the current version, pursuant to a 1965 amendment that raised the number of Members from eleven to fifteen.]

4 By 1950 the Soviet Union was feeling embattled in the United Nations, and started boycotting the meetings of the Security Council. At the request of the United States, the Council considered whether to take measures in support of the claim of the United States that North Korea had unlawfully invaded South Korea. Soviet attorneys assured the Soviet government that there could not be a "concurring vote" of the Soviets if the Soviet Union's representative did not attend a meeting of the Security Council.

Does this legal position seem right to you? Is it supported by the language of Article 27(3)? If a permanent member of the Security Council asked you for advice, would you say that if they boycotted the meeting of the Security Council then the Council couldn't possibly take any action because it did not have their concurring vote?

Or would you have been more cautious in your recommendation?

The problem when you boycott a meeting is that the other people at the meeting can construe, in your absence, the meaning of the governing provisions.

Here's what happened:

While the Soviet representative was boycotting the Security Council meeting, the other members met and construed the phrase "concurring votes" to mean "concurring votes of those permanent members present at the meeting." Then they decided that since the Soviet representative was not present at the meeting, his absence simply would not count. Then they took a vote. All the members present voted to authorize the United Nations to repel the North Korean invasion by military means. All members present "concurred" in this vote.

When the Soviet Union discovered what had happened, they were outraged. But they could do nothing about it. Clearly they had been the victims of poor legal advice--legal advice that read the Charter too literally.

Never again did the Soviet government fail to show up at a meeting of the Security Council!

For a continuation of this story, see the next footnote.

5 After the Security Council acted in the Korean situation, in the absence of the representative of the Soviet

Union, in all further meetings the Soviet representative showed up. He vetoed every further proposal for Security Council action, including the raising of a U.N. army under Article 43. The result was that the "action" in the United Nations shifted to the General Assembly, which passed a "Uniting for Peace Resolution" recommending to member states the defense of South Korea. But the General Assembly, as you have seen--unlike the Security Council--lacks power under the Charter to compel member states to contribute their share of military forces. The result was that there were voluntary contributions to the UN Peacekeeping Force in Korea. As it turned out, nearly all the troops were from the United States. They wore U.S. uniforms, but carried a pin designating them as U.N. forces. Their commanders were entirely American, and took orders directly from the President of the United States.

6 Adopted by a vote of 14-0, Yemen abstaining.

7 Adopted by a vote of 13-0, Cuba and Yemen abstaining.

8 Adopted by a vote of 15-0.

9 Adopted by a vote of 12-2-1, Cuba and Yemen opposed, and China abstaining.

10 Burns H. Weston, *Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AJIL 516 (1991).

11 The "UN standing army," envisaged by Article 43, so far has not come into being.

12 [Footnote by Burns Weston:] Article 42's dependent relationship with Article 43 is explicitly acknowledged in Article 106 of the UN Charter, delineating post-World War II transitional security arrangements "[p]ending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42."

13 [ADDITIONAL QUESTION: Is Burns Weston saying that adding more Third World representation to the Security Council will raise its moral level? Might it not be just as possible that adding more members to the Security Council would reduce its moral stance to the lowest common denominator, expressed in the cliché "politics as usual"? Or is there something inherently moral in securing wider state representation in international decision-making?]

14 Christine M. Cervenak, *Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status*, 16 HUMAN RTS. Q. 300 (1994).

15 *Id.* at 351.