

The Revision of U. N. Charter: Its Legal Procedure and Implementation

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The question of the revision of the Charter(1) constituted one of the most difficult problems confronting the states participating in the Conference of San Francisco in 1945. It was widely felt that provision must be made for amending the Charter in the light of experience and of the expanding needs of the organized international society, and that there should be no possibility of such amendments being frustrated by the dissent of one Great Power. Unfortunately the latter view did not prevail. The result was Chapter XVIII of the Charter, containing Articles 108 and 109. Basic principle and ordinary procedure are stipulated in Article 108 which reads:

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.

The procedure here provided differs in a number of important respects from that of the Covenant of the League of Nations. The unanimity rule(2) of the Covenant is abandoned in respect to the adoption of amendments, and provision is made for adoption by vote of two-thirds of the members of the General Assembly, which may not necessarily include the votes of the members of the Security Council. It is to be noted that the vote is "two-thirds of the members" of the General Assembly as compared with "two-thirds majority of the members present and voting" required on "important questions" by the terms of Article 18. The difference was probably intentional, and had as its purpose assurance that the proposed amendment would have sufficient support to make likely its ratification by two thirds of the Members.(3)

Amendments will take effect only when ratified by two thirds of the Members of the United Nations, including all the permanent members of the Security Council, while the provision of the Covenant for ratification was by a majority of the Assembly and all the permanent members of the Council.(4) The Charter provision is also a change from the Dumbarton Oaks Proposals. The Proposals stipulated that amendments, adopted by a two-thirds majority vote of the General Assembly, should enter into force when ratified by the states with permanent seats on the Security Council and by a majority of the other Members of the United Nations. The change was adopted by the San Francisco Conference as being more democratic and reducing somewhat the privileged position of the permanent

members. However, the difficulty that entailed was almost the same. Certain states claimed that they had agreed to the "veto" formula of Article 27 in the belief that the privileged position of the permanent members of the Security Council would be of short duration. They claimed that Article 108 perpetuated this position of inequality and they stated that because of this they must contemplate the possibility of withdrawal.(5)

On the other hand, declared a U. S. official publication, "even with the great power veto, the amending process set forth in the Charter is a comparatively liberal one. Many multilateral treaties cannot be amended without the consent of all the signatories. The North Atlantic Treaty is a good case in point."(6)

The General Conference of Revision

A unique feature of the Charter is the provision for its revision by a General Conference of the members of the United Nations. This is stipulated in Article 109 which reads:

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.

This provision was inserted in order to meet the belief of some of the delegates to the San Francisco Conference that the difficulty of establishing an international organization under the circumstances then existing made it desirable to reexamine it as a whole at a later date in the light of experience that might be gained in its operation.(7)

When originally proposed in the Conference of San Francisco, this article provided that a General Conference to review the Charter might be called whenever three-quarters of the General Assembly and any seven members of the Security Council so voted. It also provided that any amendment recommended by such a Conference by a two-thirds vote would take effect when ratified by two-thirds of the Members of the Organization, including the five permanent members of the Security Council. This is essentially the language of paragraphs 1 and 2 of Article 109, as they were accepted by the Conference.

But many delegations wished to go even further. Specifically they argued that the

convening of the General Conference should be made easier and a date for the General Conference should be indicated. Some insisted that a fixed date be set, preferably five to seven years after the establishment of the new organization. Others, following the lead of Brazil and Canada, suggested that the General Conference might be made mandatory at some undesignated time within a five-to-ten-year period. The first proposition was agreed to. The language of Article 109 was liberalized so as to make possible the calling of such a Conference by two-thirds, instead of the original three-fourths, vote of the General Assembly. The second proposition, however, met with considerable opposition. Who could say in advance when it would be wise to hold such a Conference? Suppose the date selected should by chance fall during a period of world crisis, thus making such an enterprise inadvisable? Would it not be more logical to await events and permit the Members of the Organization to determine whether such a Conference might serve a useful purpose? These conflicting issues were straddled in the compromise incorporated in paragraph 3 of Article 109. While the final compromise is based upon a time limit of a kind, it does not guarantee that a General Conference will be convened on any fixed date. The only guaranty involved is that the question of calling the Conference will be placed on the agenda of the General Assembly after ten years have elapsed, and the decision to call it can be made by a majority vote instead of the two-thirds vote required on other occasions.

According to Hans Kelsen the revision through such a General Conference--an "extraordinary procedure," is inadequate in at least four respects. First, there is hardly any essential difference between this and the ordinary procedure of Article 108. The General Conference is composed in the same way as the General Assembly; each Member is represented and has one vote. The only difference: that the number of representatives in the General Assembly is limited to five whereas there is no such restriction with respect to the representation of the Members in the General Conference, is of no importance. The text of the amendment which is the object of the ratification is to be adopted by the General Conference in the same way as by the General Assembly, namely, by a two-thirds vote of the members of the respective bodies. The alterations recommended by the General Conference come into force under the same conditions as the amendments adopted by the General Assembly, namely, by ratification on the part of two-thirds of the Members of the United Nations including all the permanent members of the Security Council. There is no reason to believe that a two-thirds majority of the Members can be reached more easily in the General Conference than in the General Assembly. Second, it is difficult to understand why the proposal to call the General Conference should be placed on the agenda of a certain session of the General Assembly, but not on the agenda of a session of the Security Council. The decision of the latter is as essential for the convocation of the General Conference as that of the former. The Security Council may or may not place the proposal on its agenda. It is not bound to do so even when the General Assembly has adopted a decision that the General Conference shall be called. Hence the value of the provision that the proposal shall be placed on the agenda of a session of the General

Assembly is doubtful. Third, the condition on which the proposal to call a General Conference shall be placed on the agenda of a session of the General Assembly is not adequately formulated: "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." If the problem of revising the Charter has been discussed in the Security Council and the General Assembly in conformity with Article 108, with the result that an amendment has come into force "before the tenth annual session of the General Assembly following the coming into force of the present Charter," there is no reason for compulsorily placing the proposal to call a General Conference on the agenda of the General Assembly. Fourth, it is difficult to understand why under paragraph 1 of Article 109 the General Assembly and the Security Council are authorized only to decide when and where a General Conference shall be held, but not by whom its first meeting shall be summoned and who shall preside over it. Neither is the General Conference authorized to adopt its own rules of procedure. (8)

It is also argued that it might prove simpler to secure action through the General Assembly since that is an established organ of the United Nations and meets at least once every year. It is regularly available. No special effort, no positive vote, is required to bring it into being as is the case with the General Conference. On the other hand, there are practical difficulties involved in attempting to divert the attention of the General Assembly to such a controversial matter as the revision of the Charter. Confronted each fall with overflowing agenda, most delegates have been inclined to postpone any serious discussion of Charter amendments pending the convening of the first General Conference under Article 109. The atmosphere in a General Conference should be much more conducive to a balanced appraisal of the various arguments relating to Charter revision. Delegations will be briefed on the issues involved and will have instructions from their governments.

It is of course quite clear that the provision for such a Conference is not a guarantee that the Charter can thus be amended. In fact, there was particularly strong opposition to the ratification procedure, a block to any possible amendments, at the San Francisco Conference on the part of the delegates of certain of the smaller states.(9) These delegates proposed that it be left to the General Conference to decide the methods of ratification of the amendments it might adopt. The representatives of the Big Five, however, took the position that their governments could not enter upon the great responsibilities and obligations of membership which they were prepared to accept if forced to take the risk that these responsibilities might be increased without their consent.(10)

Withdrawal in Protest against Revision

The rule of the Covenant is abandoned, that amendments did not bind members which dissented from them but that in such cases the particular state should automatically cease to be a member of the League of Nations.(11) Under the terms of the Charter no explicit

provision is made for dissent, with consequent cessation of membership. And, in the Charter the right of veto upon amendments is reserved to the permanent members of the Security Council instead of the entire membership of the Council as in the case of the Covenant.(12) In other words, the provision that "amendments to the present Charter shall come into force for all Members of the United Nations" actually means that all Members, except the five permanent members of the Security Council, endorse a blank check obligating themselves to accept in advance certain international commitments which their representatives have voted against and which the constitutional authorities of the state have refused to ratify.

Can a Member then withdraw in protest against revision? The Charter contains no provision for the withdrawal of members; but in compensation for the omission of such a provision an "interpretative statement" was adopted by the San Francisco Conference, which was incorporated in the Report of Committee I/2. It reads:

The Committee adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. The Committee deems that the highest duty of the nations which will become Members is to continue their cooperation within the Organization for the preservation of international peace and security. If, however, a Member because of exceptional circumstances feels constrained to withdraw and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its cooperation in the Organization.

This general principle is given specific application in relation to the revision of the Charter by the further statement: "Nor would it be the purpose of the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect."(13)

No reference is made in Articles 108 and 109 to any time period within which amendment proposed by the General Assembly or alteration recommended by the General Conference must be ratified. This might give rise to some interesting consequences. States may consider it a legitimate reason for withdrawal from the United Nations if an amendment or alteration approved fails to secure the requisite number of ratifications to go into effect. Yet without any specific dateline, one may ask when a state is justified in assuming that an amendment or alteration has failed to secure the necessary number of ratifications. The conclusion seems to be that while an avenue of withdrawal is thus left open to dissatisfied states, the right would not be exercised except in very rare instances. Such a step would be a serious one and any state, about to lose the benefits that accrue to it from the U. N. membership, probably would hesitate a long time before taking it.

The Special Committee of the General Assembly

Proposals for revising the United Nations Charter are almost as old as the Charter itself. Movements to amend the Charter reached a fever pitch during the Korean conflict. The eighth session of the General Assembly adopted a resolution on November 27, 1953, requesting the Secretary-General to prepare and circulate among the Member states during 1954 or shortly thereafter: (a) a systematic compilation of the documents of the United Nations Conference on International Organization not yet published, (b) a complete index of the documents of the conference, and (c) a repertory of the practice of United Nations organs appropriately indexed. Most of the documentation requested by the General Assembly was prepared by the Secretariat and circulated to the Member states before and during the tenth session of the General Assembly.(14) The United States was particularly interested in the matter, and had earlier established a special subcommittee on the United Nations Charter under the Foreign Relations Committee of the Senate. The subcommittee collected basic documents relating to the review of the Charter, initiated a series of staff studies, and held several public hearings.(15) And John F. Dulles, Secretary of State, on August 13, 1953, announced that the United States was in favor of the General Conference.(16) But in 1955, when the item of Charter review was to be automatically placed on the agenda of the tenth session of the Assembly, a spirit of caution prevailed, and the reluctance to hold a General Conference became quite apparent. Even in the United States there was growing support for a point of view expressed by Ernest Gross, former Assistant Secretary of State and Deputy Representative at the United Nations, in the February 1954 issue of *Foreign Affairs*, that a Charter review conference would almost certainly be of one of three types: it might be a "punctuation" conference, in which case it "would not seem worth the effort or expense"; it might be a "showdown" conference, which "would precipitate a break-up of the organization"; or it might be a "propaganda" conference, "a sort of peace conference in the cold war."(17)

Secretary-General Hammarskjöld in his annual report of that year suggested as a possible way out of the dilemma that there might be "valid arguments for a decision at the coming Assembly session in favor of holding a Charter review conference, while leaving until later the question of when it should be convened." This was exactly what the Assembly did. A draft resolution submitted jointly by Canada, Ecuador, Iraq, Thailand, the United Kingdom, the United States and Uruguay provided that the General Assembly would decide in principle to hold a General Conference to review the Charter and would appoint a committee which, after consultation with the Secretary-General, would report to the Assembly at its twelfth session on the question of fixing an appropriate time and place for the Conference, as well as its organization and procedure. Two amendments were submitted: the first by Syria, the second jointly by Egypt and India. The first amendment would limit the terms of reference of the proposed committee to examination of the question whether the convening of a General Conference was desirable. The second amendment proposed enlargement of the membership of that committee. A majority of the

Assembly favored the adoption of the joint draft resolution and opposed the Syrian amendment. Most representatives urged caution in the matter of possible review of the Charter and stressed the danger of drastic or premature changes. Many held that the time was not appropriate for the holding of a successful Conference of revision. Other representatives, though not objecting to the principle of a review of the Charter, thought that the decision to hold a General Conference should be postponed. Consequently, they supported the Syrian amendment.

Finally, some representatives opposed the joint draft resolution and any review of the Charter. In their opinion, a review of the Charter designated to change its fundamental provisions would hinder the strengthening of trust in the relations between states; if serious defects had developed in the operation of the United Nations, this was the result not of imperfections of the Charter, but of the fact that some of the most important of its provisions had been violated. Shortly before the draft resolution was put to the vote, its sponsors declared that they accepted the Indian-Egyptian proposal to enlarge the committee so that it would be composed of all the Members of the United Nations. The Syrian amendment was rejected, and the joint draft resolution was adopted on November 21, 1955 by a vote of 43 to 3, with 9 abstentions.(18) After the vote, the representatives of the U.S.S.R. and Poland stated that their delegations would not be able to take part in the work of the committee or in any action aimed at reviewing the Charter. But, on December 16, 1955, the Security Council adopted by 9 votes to 1, with 1 abstention, a resolution in which it expressed its concurrence in the General Assembly's decision.

In autumn of 1957 the Committee's report to the Assembly consisted of merely a proposal that it would remain in being and make recommendations to the fourteenth session in 1959. This was adopted with dissent.(19) The fourteenth session, again, deferred action for an additional two-year period. The special committee, in a report to the Assembly, said that a majority of the members believed that while a review of the Charter would be useful in view of the political, economic and social changes that had occupied in the world situation since 1945, the present time was not propitious. Other members objected to convening a General Conference and considered it inappropriate to keep the committee in being. On November 20, 1959 the Assembly, by a vote of 72 to none, with 9 abstentions, decided to keep the committee going and asked it to report to the Assembly not later than at its sixteenth session in 1961.(20)

The sixteenth session of the General Assembly on December 15, 1961, adopted without objection drafted resolution submitted by the committee, in which it was stated that it recognized "the need for such a review as soon as international circumstances permit," and it decided "to keep in being the Committee on arrangements for a Conference for the purpose of reviewing the Charter and to request the Committee to report, with recommendations, to the General Assembly not later than at its seventeenth session."(21)

The committee recommended early in September 1962 that the Assembly invite it to meet not later than July 1963 to consider the time and place for such a Conference. The committee would then report to the eighteenth session of the Assembly in September 1963.

The committee agreed to submit to the Assembly a factual report on its work.(22) On October 23, 1962, the seventeenth session of the General Assembly adopted without objection the draft resolution contained in the report of the committee, repeating the same language that it "decides to keep in being the Committee on arrangements for a conference for the purpose of reviewing the Charter, and invites the Committee to meet not later than July 1963 and to report with recommendations to the General Assembly at its eighteenth session."(23) Thus a conference of this kind is anticipated, but it may remain in a state of indefinite suspension.

Evidently the main difficulty lies in the strong opposition on the part of U.S.S.R.(24) In as early as the San Francisco Conference Russian delegate declared in Committee I/2 that "his delegation was opposed to facilitating the convocation of such a Conference for which there might be no need in the future." He explained the attitude of his delegation by "the desire expressed by many delegations to have such a Conference to destroy the veto power." He believed that such a Conference would also be used to threaten the unanimity of major powers.(25) Also in the eighth session of the General Assembly, in answer to Mr. Dulles' favoring a Conference of revision, Andrei Vyshinsky said: "The fact that the United States is not interested in relaxing international tension is indicated in the part of Mr. Dulles' speech which was devoted to the revision of the Charter..... Those who want to revise the Charter would like to turn the United Nations Organization not into an effective instrument for the defence of peace.....but into an instrument of an aggressive policy which, in itself, constitutes a threat to the peace."(26) Considering the attitude of U.S.S.R. and that any revisions would require approval by two-thirds of the Member states of the United Nations, including all the permanent members (U.S.S.R. and others) of the Security Council, it is almost certain that such a Conference could be a fruitless attempt.

Failure to hold such a Conference might disappoint UN supporters in many quarters, but possibly an even greater disappointment would be a conference that got nowhere. The time must be appropriate. As international tensions have been much relaxed recently, there seems to be a greater hope for a successful conference. Pending the possible revision of the Charter through legal procedure, much can be done in another way through what may be called the process of de facto revision. In fact, many changes have already been brought about in this manner. Indeed, as Clyde Eagleton pointed out, "many of the things which have been suggested for consideration by a Conference could.....be done by general acceptance, if that could be obtained."(27)

Notes

1. Theoretically there are two sets of procedures concerning the revision of the Charter. The first one is that of revising the Charter itself (Chapter XVIII of the Charter, containing Articles 108 and 109), and the second one is that of revising the Statute of the International Court of Justice (Chapter V of the Statute), the Statute being an

integral part of the Charter. In principle, the amendments to the Statute of the International Court of Justice "shall be affected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter." For this reason the present article deals with only the first set of procedures. For further reading on the subject, see R. Boeg, "Review of the Charter of the United Nations," *Transactions of the Grotius Society*, 1955, p.p. 5 ff.; G. Clark and L. B. Sohn, *World Peace through World Law*, 1960 ("The Proposed Revised Charter of the United Nations"); E. Castrén, "Révision de la Charte des Nations Unies," *Revue hellénique de droit international*, 1954, p.p. 20 ff.; C. Eagleton, C. H. Dillon, and C. Leiden, *The United Nations: Review and Revision*, Marshall College, Huntington, West Virginia, 1954; C. Eagleton, "Preparation for Review of the Charter of the United Nations," *American Journal of International Law*, vol. 49 (1955), p.p. 229 ff.; S. Engel, "The Changing Charter," *Year Book of World Affairs*, 1953, p.p. 71 ff.; O. Farran, "Proposals for United Nations Charter Revision," *International Organization*, 1955, p.p. 213 ff.; E. Giraud, "De l'intérêt des études relatives à une révision de la Charte des Nations Unies," *Revue générale de droit international public*, 1955, p.p. 246 ff.; E. A. Gross, "Revising the Charter: Is It Possible? Is It Wise?" *Foreign Affairs*, 1954, p.p. 203 ff. (See below, note 17); M. Lachs, "Le problème de la révision de la Charte des Nations Unies," *Revue générale de droit international public*, 1957, p. p. 51 ff.; H. J. Morgenthau, "The United Nations and the Revision of the Charter," *Review of Politics*, 1954, p.p. 3 ff.; T. Perassi and R. Ago, "Osservazioni sul problema della revisione delle Statuto delle Nazioni Unite," *La Comunità Internazionale*, 1953, p.p. 572 ff.; R. Pinder, *UN Reform: Proposals for Charter Amendments*, 1953; J. B. Potter, "The United Nations Charter," *American Journal of International Law*, vol. 48 (1954), p.p. 275 ff.; J. Robinson, "The General Review Conference," *International Organization*, 1954, p.p. 318 ff.; H.-J. Schlochauer, "Quelques aspects de la révision de la Charte des Nations Unies," *Revue générale de droit international public*, 1961, p.p. 20 ff.; G. Schwarzenberger, *Power Politics*, 1951, p.p. 485-491; E. Schwelb, "Charter Review and Charter Amendment," *International and Comparative Law Quarterly*, 1953, p.p. 303 ff., and 1960, p.p. 237 ff.; J. B. Scott, "Revision of the United Nations Charter," *Michigan Law Review*, 1954, p.p. 39 ff.; I. Seidl-Hohenveldern, "La réforme de la Charte des Nations Unies," *Annuaire de l' Association des Auditeurs et anciens Auditeurs de l' Académie de Droit international*, 1958, p.p. 177 ff.; Ch. De Visscher, "La Conférence de révision de la Charte des Nations Unies," *Die Friedens-Warte*, 1955-56, p.p. 37 ff.; R. Yakemtchouk, "Vers la révision de la Charte des l'O.N.U." *Revue politique et parlementaire*, 1953, p.p. 146 ff. For government publications and official attitude, see *Report of the Senate Committee on Foreign Relations on Revision of the United Nations Charter*, 81st Congress of the United Nations, 2nd Session, Senate Report No. 2051, September 1, 1950; *Review of the United Nations Charter: A Collection of Documents*, Subcommittee on the United Nations Charter, 83rd Congress of the United States, 2nd Session, Document No. 87, January 7, 1954; *Review of the United*

Nations Charter: Compilation of Staff Studies Prepared for Use of Subcommittee on United Nations Charter of Committee on Foreign Relations, 83rd Congress of the United States, 2nd Session, Document 164, 1955; the statement by Secretary of State J.F. Dulles, "The United Nations Charter Review," *The Department of State Bulletin*, February 1, 1954; Francis O. Wilcox and Carl M. Marcy, *Proposals for Changes in the United Nations* (The Brookings Institution, 1956). For collective studies by academic associations, see International Law Association, Review of the United Nations Charter Committee, Report of the 46th Conference 1954 (1955), p.p. 95 ff. and 139 ff.; Report of the 47th Conference 1956 (1956), p.p. 107 ff. and p.p. 64 ff.; Report of the 48th Conference 1958 (1959), p.p. 550 ff.; "Probleme der Anderung der Charta des Vereinten Nationen," *Europa-Archiv*, 1955, p.p. 7263 ff., the result of an extensive study sponsored by Carnegie Endowment for International Peace; American Academy of Political and Social Science, "Issues of Charter Revision," *Annals*, vol. 296 (1954); American Society of International Law, "Problems Involved in the Review of the United Nations Charter," *Proceedings*, 1954.

2. Article 5, paragraph 1 of the Covenant: "Except where otherwise expressly provided in this Covenant or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."
3. L. M. Goodrich and E. Hambro, *Charter of the United Nations: Commentary and Documents*, 1949, p. 537. However, the records of the San Francisco Conference contains no indication of the reasons for this difference.
4. Article 26, paragraph 1 of the Covenant: "Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly."
5. Goodrich and Hambro, *op. cit.*, p. 538.
6. U. S. Senate, *Review of the United Nations Charter, Compilation of Staff Studies*, etc., (Doc. No. 164), 1955, p. 40.
7. The Report of the Rapporteur of Committee I/2 on Chapter XI (Dumbarton Oaks Proposals) (UNCIO, Doc. 1154, I/2/73 (2) p.4) contains the following statement: "The members of the Committee favoring a specific time limit for the calling of the conference felt that if the Organization were to endure, it should be scrutinized after a number of years and modified, if necessary, in the light of its experience and the situation then prevailing. It was emphasized that provisions for a special conference did not mean that the Organization established now would be temporary but, on the contrary, that in order to be an effective and lasting mechanism it should be inspected and revised in those parts which had not proved efficient."
8. Hans Kelsen, *The Law of the United Nations*, 1950, pp. 817-822.
9. The original idea was to establish another voting procedure in the General Conference than that provided in Article 103 for the General Assembly, and another ratification

procedure than that provided in the same Article. The delegate of Australia declared in Committee I/2 (UNCIO, Doc. 1022, I/2/69) "that the voting procedure at the Special Conference and for the ratification of amendments proposed by the Conference should be left to the good sense and wisdom of the members of the Conference. He stated his belief that this matter was more important than that of the veto on conciliation or on enforcement by the Security Council. If the veto is applied to the process of ratification, he contended, it will be necessary to examine the possibilities of the right of withdrawal from the Organization." The Report of the Rapporteur of Committee I/2 on Chapter XI (Dumbarton Oaks Proposals) (UNCIO, Doc. 1154, I/2/73 (2), p. 8) contains the following statement: "The discussions of the Sub-committee and the Committee on the method of ratification of amendments proposed by the special conference centered on the contention of those delegates who opposed the sponsoring governments that this matter should be left to the Conference itself to decide. It was argued by the delegates that the provision in the Charter for voting procedure in the Security Council would render ratification of the Charter by the parliaments of their countries difficult and even questionable, but that ratification would be facilitated if assurance were given that a special conference to revise the Charter could itself decide on the method of ratification of such amendments as it might suggest."

10. UNCIO, *Report of the Rapporteur of Committee I/2 on Chapter XI (Amendments)*, Doc. 1154, I/2/73 (2), p. 8 (*Documents*, VII, p.468).
11. Article 26, paragraph 2 of the Covenant: "No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League."
12. Article 26, paragraph 1 of the Covenant. See above, note 4.
13. Coodrich and Hambro, *op. cit.*, p. 143. For discussion leading up to adoption by the Conference of this statement, see UNCIO, *Summary Report of Twenty-Eighth Meeting of Committee I/2*, June 17, 1945, Doc. 1086, I/2/77 (*Documents*, VII, p.p. 262-7).
14. The resolution and the debates in the General Assembly are included in U.S. Senate: *Review of the United Nations Charter: Collection of Documents* (Doc. No. 87), 1954, p.p. 806-816.
15. The subcommittee was established on July 28, 1953. Twelve staff studies were published in 1954 and 1955. They dealt with the following subjects: (1) The Problem of the Veto in the United Nations Security Council; (2) How the United Nations Charter Has Developed; (3) The Problem of Membership in the United Nations; (4) Representation and Voting in the United Nations General Assembly; (5) Pacific Settlement of Disputes in the United Nations; (6) Budgetary and Financial Problems of the United Nations; (7) Enforcement Action Under the United Nations; (8) The International Court of Justice; (9) The United Nations and Dependent Territories; (10) The United Nations and the Specialized Agencies; (11) Human Rights, Domestic Jurisdiction, and the United Nations Charter; and (12) The Status and Role of the Secretariat of the United Nations.

16. In response to inquiry from Senator Alexander Wiley, Secretary Dulles wrote that the Department of State "will favor the calling of the review conference when the question is put to the 1955 session of the United Nations General Assembly." (U. S. Senate, *Review of the United Nations Charter: Collection of Documents*, Doc. No. 87, 1954, preface).
17. Ernest A. Gross, "Revising the Charter: Is It Possible? Is It Wise?" *Foreign Affairs*, January 1954, 203-216. In addition, questions such as disarmament ("a major cold war issue"), domestic jurisdiction ("a major issue within the free world, embittering vast sections of it in connection with the 'colonial' issue and evoking controversy at each session of the General Assembly"), and membership ("involving differences in basic attitudes within the free world regarding the universal or selective character of the organization") were, in Mr. Gross' opinion, "real issues," whereas "questions of structure and procedure such as those involving the veto or changes in voting methods [might] be regarded either as false issues, or as real issues which are often given false weight in the balance of judgment about the United Nations."
18. General Assembly Resolution 992 (X). For the developemtn of events, see *Everyman's United Nations* (1945-1955), p.p. 13-74.
19. General Assembly Resolution 1136(XIV), October 14, 1957.
20. General Assembly Resolution 1381 (XIV); *United Nations Review*, December 1959, p.1.
21. General Assembly Resolution 1670 (XVI); *United Nations Review*, January 1962, p. 54.
22. *United Nations Review*, October 1962, p. 1.
23. General Assembly Resolution 1756 (XVII); *United Nations Review*, November 1962, p. 65.
24. A statement from a staff study of U. S. Senate is quoted here to show the other difficulties: "While the Soviet Union may be counted upon to do more than its share of objecting, it would be erroneous to assume that the Russians and their satellites are the only obstacles in the way of Charter revision. The small states, for example, would bitterly resent any proposal to change the system of voting in the General Assembly in such a way as radically to alter their position of equality with the great powers. Likewise, Great Britain, France, and other countries with colonial possessions, no doubt would oppose amendments conferring upon the U. N. greater authority with respect to non-self-governing territories. And certainly our government, among others, would vigorously object to any Charter change which would empower the U. N. to use our troops for enforcement action without our consent." (U.S. Senate, *Review of the United Nations Charter: Compilation of Staff Studies*, etc., Doc. No. 164, 1955, p. 55).
25. UNCIO, Doc. 991, I/2/71.
26. U. S. Senate, *Review of the United Nations Charter: A Collection of Documents*, Doc. No. 87, 1954, p. 780.
27. Clyde Eagleton, "Proposal and Prospects for Review of the Charter of the United Nations," in *The United Nations: Review and Revision*, 1954, p. 40. It is stated in a

staff study of U.S. Senate that "the Charter has been subjected to what one might call informal amendments in a variety of ways: (1) Through the nonimplementation or nonapplication of certain provisions of the Charter; (2) through the interpretation of the Charter by various organs and members of the United Nations; (3) through the conclusion of supplementary treaties or agreements, such as the Headquarters Agreement of 1947, and the North Atlantic Pact; and (4) through the creation of special organs and agencies. These informal amendments substantially affect the provisions of the Charter although they leave its text intact. In some cases they create gaping holes in the document as it was drafted at San Francisco. In other cases they merely fill in the interstices. In still other cases they chart fundamentally new paths of progress for U.N." (U.S. Senate, *Review of the United Nations Charter: Compilation of Staff Studies*, etc., Doc. No. 164, 1955, p. 44).

聯合國修憲程序及實施

杜 衡 之

關於聯合國修憲問題，本文只討論其「法定」的程序及此一程序之實施。廣義地說，此項程序應包括憲章本身所訂定之程序，及國際法院規約所訂定之修正程序，因這一規約是憲章的「構成部分」。本文之範圍則僅限於憲章本身之程序。

依照聯合國憲章之規定，此項程序有兩種；一為在大會經會員國三分之二之表決，及經聯合國會員國三分之二，包括安全理事會全體常任理事國之批准，而成立修正案（憲章第一〇八條）；一為經大會會員國三分之二之表決，及安全理事會任何七理事國之表決，舉行「全體會議」，又經全體會議三分之二之表決，及經上述同樣方式之批准，而成立更改案（憲章第一〇九條第一項及第二項）。如此項全體會議在第十屆大會前尚未舉行，則召集此項全體會議之提案，即自動列入該屆大會之議事日程，並且經大會過半數及安全理事會任何七理事國之表決，此項會議應即舉行（憲章第一〇九條第三項）。

聯合國憲章規定修正案一經批准成立，即「對於聯合國所有會員國發生效力」，此與國際聯盟盟約所規定「聯盟任何會員國可以自由不認盟約之修正案，但因此即不復為聯盟會員國」不同。但是根據舊金山會議的一項聲明，聯合國會員國如不贊成經依法成立之修憲案，或其所贊成而經表決通過之修憲案未能獲得批准時，都可以脫離聯合國。

修憲程序的一個特色自然是關於「全體會議」之規定。這一規定使聯合國成立若干年後，將開會之提案自動列入大會議程，顯然是為便利憲章之修正的。但是在舊金山會議，阻於大國之堅持，使此一建制仍受各種之限制。如克爾生所指出，大會及全體大會對修憲之案，都須經會員國三分之二之表決，其批准方式也相同，所以實際上幾無分別。

修憲之聲，在聯合國從未中斷。但由蘇俄之一再表示反對，以及任何修憲案須經安理會常任理事國之一致批准，所以當一九五五年第十屆大會的議程上自動列入召開全體修憲會議一案時，各國的態度反而審慎了。在該屆大會，只通過成立一個包括全體會員國的特別委員會，負責研究開會之適當日期及地點，而向第十二屆大會提出建議。結果該委員會亦只建議一九五七年的第十二屆大會允許該委員會繼續存在，及繼續研究召開全體修憲會議之日期與地點，而於二年後向第十四屆大會提出建議。一九五九年的第十四屆大會又照樣推到第十六屆大會。再由第十六屆大會推到第十七屆大會，由第十七屆大會推到將於今年秋間舉行的第十八屆大會。不論這個修憲會議怎樣展延，對於修憲程序之實施，著者的結論並不悲觀。第一，此項會議之展延固使許多擁護聯合國的人士感到失望，但開會而無結果，必然更叫人失望。第二，最近國際局勢之緩和，我們仍可希望有順利開會的一天。第三，在「法定」程序不能實施之目前，憲章仍有「事實的修正」之一途。