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NEED TO CONSIDER SUGGESTIONS REGARDING THE REVIEW OF
 THE CHARTER OF THE UNITED NATIONS

Report of the Secretary-General

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I. INTRODUCTION

1. On 14 December 1972, the General Assembly adopted resolution 2968 (XXVII) entitled "Need to consider suggestions regarding the review of the Charter of the United Nations". Paragraphs 1 and 2 of the resolution read as follows:

"The General Assembly

...

"1. Requests the Secretary-General to invite Member States that have not already done so to communicate to him, before 1 July 1974, their views on the desirability of a review of the Charter of the United Nations and their actual suggestions in this respect;

"2. Further requests the Secretary-General to submit to the General Assembly at its twenty-ninth session a report setting out the views and suggestions of Member States which have been communicated to him in accordance with paragraph 1 above;"

2. Pursuant to paragraph 1, the Secretary-General, by a circular note dated 9 February 1973, invited those Member States which had not replied to a similar request contained in General Assembly resolution 2697 (XXV) of 11 December 1970 1/ to submit to him, before 1 July 1974, their views on the desirability of a review of the Charter of the United Nations and their actual suggestions in this respect. Later, by note dated 27 September 1973, the Secretary-General transmitted a copy of the circular note referred to above to those States which had become Members of the United Nations after 9 February 1973.

3. As at 30 September 1974, communications in response to the notes referred to above had been received from the Governments of six Member States - the Bahamas, China, the German Democratic Republic, Germany (Federal Republic of), Kenya and Nicaragua. Those communications are reproduced in section II.A of the present report. In addition, the Government of the Philippines which had replied to the request contained in resolution 2697 (XXV) submitted further comments on the matter; the communication received from that Government is reproduced in section II.B of the present report.

4. Any other replies which might be received will be published in an addendum to the report.

1/ The replies received further to General Assembly resolution 2697 (XXV) are contained in document A/8746 and Corr.1 and Add.1-3.

II. REPLIES OF GOVERNMENTS

A. Replies of Governments which had not responded to the request in General Assembly resolution 2697 (XXV) of 11 December 1970

BAHAMAS

/Original: English/

/19 August 1974/

The Government of the Commonwealth of the Bahamas is of the opinion that the future success of the United Nations would depend primarily upon the will of Member States to interpret and administer the provisions of the Charter impartially and fairly without fear or favour and not upon any change in or review of the Charter.

Although many Member States wish to see a change in the procedure and composition of the Security Council, the Bahamas is to be convinced that any such changes will effectively strengthen and not further weaken the Council as an instrument of peace and security.

The Bahamas is satisfied that the use of the veto is sometimes open to criticism but at the same time it is aware that those countries who are most capable of shouldering the role of peace-keeping would wish to be in a position to influence the decision-making process.

CHINA

/Original: Chinese/

/27 June 1974/

The Charter of the United Nations was drawn up near the end of the Second World War. It was a product of the historical conditions prevailing at that time. In the nearly three decades since the Charter came into force, tremendous changes have taken place in the world situation and in the United Nations itself. The emergence and growth of the third world in particular, are an important event in present international relations. The third world countries now constitute the majority in the United Nations and are playing an increasingly important role in international affairs. Regrettably, however, owing to the control and obstruction by the super Powers, the United Nations has failed to reflect fully the just demands and positions of the numerous third world countries and is still weak and impotent in the solution of many important international problems. Many third world countries demand a change in the present state of affairs of the United Nations and the necessary revision of the Charter. The Chinese Government firmly supports such justified desire on their part.

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We hold that if the United Nations is to become an organization worthy of its name, it must adapt itself to the trend of the times, fully reflect the desire of the numerous small and medium-sized countries and truly give effect to the principle of equality among all countries, big or small. In his speeches at the twenty-seventh and twenty-eighth sessions of the United Nations General Assembly, the Chairman of the Chinese delegation already stated China's position of principle on the question of the review of the United Nations Charter. Here we wish to reaffirm that the Chinese Government is ready to join other countries in a serious exploration on the question of the review of the Charter and to contribute its share to the realization of the above lofty goal.

GERMAN DEMOCRATIC REPUBLIC

Original: English

9 September 1974

The Government of the German Democratic Republic has always subscribed to the purposes and principles of the United Nations as formulated in its Charter. In its policies it strictly abides by these fundamental objectives and binding norms of all United Nations activities and promotes, to the best of its ability full respect for and realization of these principles.

The Government of the German Democratic Republic proceeds from the fact that the purposes and principles of the United Nations reflect in terms binding in international law the experiences and conclusions which the peace-loving peoples have drawn from their fight against fascist aggression, and their will to unite all forces to maintain international peace and security.

In the view of the Government of the German Democratic Republic, the Charter of the United Nations is the most important, universally-binding document of international law with regard to the post-war development of international relations. The principles contained in the Charter are political and legal tenets, universal respect and implementation of which are prerequisite to the safeguarding of durable peace, the strengthening of international security and the development of peaceful co-operation among peoples and States on the basis of equal rights. These principles and their observance made possible the positive changes that have taken place in international relations since the Charter was adopted.

The overwhelming majority of African and Asian peoples has shaken off colonial rule and achieved national independence. International efforts for the liquidation of the remaining strongholds of colonialism have entered a decisive phase. The Charter of the United Nations was and continues to be the international legal foundation of these historic achievements. The peoples' vested right to equality and self-determination which it contains and which was concretized at the conferences of non-aligned countries from Bandung to Algiers has to be enforced in international economic relations, too. For this reason, the Government of the German Democratic Republic consistently stands up for the sovereign right of all States to freely dispose of their natural wealth and resources.

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In recent years the substance of the principles of the Charter has also been incorporated in a great number of bilateral and multilateral intergovernmental treaties and declarations designed to strengthen international security and develop relations of peaceful coexistence. Cases in point are the recently concluded important agreements between the Union of Soviet Socialist Republics and the United States of America, the treaties between socialist and capitalist States in Europe and many international declarations and arrangements among non-aligned countries. Also the efforts of the European Conference on Security and Co-operation to agree on binding principles to govern the shaping of relations among European States are based on the fundamental principles of the Charter. This is convincing proof that over the nearly 30 years since the Charter was adopted its fundamental principles have not lost anything of their significance in establishing, developing and securing peaceful relations and fruitful co-operation among States.

The new international conditions offer growing possibilities of applying these principles still more effectively with a view to strengthening international security, liquidating all forms of colonialism and ensuring equal co-operation among States.

This confirms the Government of the German Democratic Republic in its view that the Charter is still generally accepted as a basis for attaining the aims and objectives of the United Nations and that there is, therefore, no need to amend it. The Government of the German Democratic Republic is convinced that amendments would counteract the multiple efforts to fully apply the Charter in international relations.

The purposes and principles of the United Nations laid down in the Charter provide the basis for the activities of the United Nations and its organs. The rules about the powers, organizational set-up and procedures of the Organization are derived from the purposes and principles of the Charter and ensure the proper functioning of the United Nations in the interests of its main purpose. The United Nations as the universal organization to secure peace and the peaceful living together of States can only become effective if the principles of the Charter and rules about the Organization's functioning are seen and applied as an integral whole. Since the rules about the functioning of the United Nations are derived from such basic norms as the sovereign equality of States, non-interference in internal affairs and respect for the peoples' right to self-determination, the German Democratic Republic considers them to be also in conformity with the interests of those States which joined the United Nations only after its founding, enabling them to participate actively and on equal terms in the activities of the Organization.

The Security Council, on which primary responsibility is conferred for the maintenance of international peace and security, has a particular position in the system of the United Nations organs. In line with this important function are the powers assigned to it, its structure and procedures, including the process of decision-making. This enables the United Nations to operate effectively to

eliminate international sources of conflict and to maintain world peace. This includes due regard for the legitimate interests of States notwithstanding their different social and political systems, their varying levels of economic, scientific-technical and social development, and their respective geographical locations. To safeguard international security and enforce peaceful coexistence it is indispensable that States having different social systems co-operate in international relations.

The principle of unanimity of the permanent members of the Security Council, which is a reflection of the particular responsibility of the great Powers for the maintenance of international peace and security, has proved its worth in the settlement of conflicts in past and recent times. The fundamental importance of the principle of unanimity for averting imperialist aggressions, for the maintenance of the equality and sovereignty of States and for the defence of the rights of those peoples who fought or are fighting for their liberation from colonialism, for their right to self-determination, for their national independence, and against racist and fascist tyranny has time and again been proved by the actions of the USSR as a permanent member of the Security Council.

The Government of the German Democratic Republic does not at all overlook that there are still many ways for the United Nations to discharge its functions and responsibilities. In this context, it is essential that all Member States of the United Nations always act, both inside and outside the Organization, in conformity with its purposes and principles and in accordance with the Charter.

Whenever its Member States and organs were guided by their obligations under the Charter, the United Nations did make effective contributions that were in line with its objectives and functions and had favourable repercussions on the international situation. This is borne out by recent resolutions of the United Nations to achieve a greater measure of universality and the resolutions of the Security Council to rebuke the Israeli aggression and eliminate the conflict in the Middle East.

The Government of the German Democratic Republic therefore considers that the international effectiveness and the authority of the United Nations can only be enhanced to the extent that the purposes and principles of its Charter are ever more fully applied in inter-state relations. A revision of the Charter, the Government of the German Democratic Republic feels, would crucially impair the stability, the functioning and political effectiveness of the Organization in terms of its purposes and principles. It would be bound to question the Charter's integrated system of provisions regarding the functions, powers and procedures of the Organization and its organs which, together with the basic principles of the Charter, form an integral whole, and would prejudice the activity of the United Nations.

On account of all these considerations the Government of the German Democratic Republic fully agrees with General Assembly resolution 2734 (XXV), of 16 December 1970, which reaffirms "the universal and unconditional validity of the

purposes and principles of the Charter of the United Nations" and states that "in order to fulfil the purposes and principles of the United Nations, Member States must strictly abide by all provisions of the Charter".

GERMANY, FEDERAL REPUBLIC OF

/Original: English/

/28 June 1974/

The Charter of the United Nations is the basic document by which the community of nations organized itself. Its purposes and principles reflect the ideas and aspirations cherished by all peace-loving peoples and countries.

They have remained valid in the years since the establishment of the United Nations and must in the future also constitute the basis for the peaceful coexistence of nations. The Federal Republic of Germany has, throughout its existence, pledged its support for the purposes and principles of the Charter, a pledge reaffirmed by its entry into the United Nations.

Care must be taken to ensure that any efforts to adapt the United Nations to changed circumstances do not call in question the foundations of the Organization and its principal institutions which have proved their worth. To strengthen the authority and effectiveness of the Organization, such attempts should be directed firstly at ensuring that all possibilities for the realization, in changed circumstances, of the purposes of the Organization and the strengthening of its role are fully exploited.

Secondly, the Federal Government considers that limited changes to specific provisions of the Charter should be contemplated, including proposals to formally abrogate provisions which have become obsolete and are no longer relevant. In this connexion, a number of countries have put forward concrete proposals, which should be carefully examined.

A decision as to whether certain changes in the Charter have become necessary in view of new developments requires thorough preparation. The necessary broad consensus can only emerge in the course of a constructive discussion which may, for some of the changes proposed, last a considerable time. The Federal Government believes that the continuation of the exchange of views would be useful and is prepared to take an active part in it.

KENYA

/Original; English/

/31 July 1973/

I. Introduction

Kenya realizes that the growth of the United Nations since its inception calls for concerted action, in several respects, on the part of the Secretary-General and the organs within the United Nations to harmonize activities; develop rationally; avoid duplication; persuade Member States to change attitudes on the United Nations and its activities, etc. For these activities, Kenya realizes that action can, and is being taken by the Secretary-General and United Nations organs, and that no amendment of the Charter is required. Examples of such initiatives are the establishment of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly and Economic and Social Council resolution 1768 (LIV) of 18 May 1973. 2/

There are, however, areas where amendment of the Charter is unavoidable if efficiency, modernization, effectiveness and initiatives are to be accommodated within the constitutional limits of the Charter of the United Nations.

II. Objectives for the need to review the Charter

Kenya fully respects the provisions of the Charter of the United Nations and gives unstinting support to the principles and purposes thereof. But at the same time, Kenya has been, and continues to be, in favour of considering the review of the United Nations Charter. For this reason, Kenya sponsored, during the twenty-seventh session of the General Assembly, along with a number of other countries from various regions, a draft resolution calling for the review of the Charter. 3/ In taking this position, Kenya has been motivated by her conviction that in order to strengthen the United Nations system, more than mere co-ordination may be necessary. Thus the Charter, born out of war days, ought to be updated in the light of the United Nations experience of the past three decades - its expanded international community, expanded activities in the economic, social and environmental fields, to mention but a few examples - and in the light of developments in science and technology with their consequential effects on the United Nations.

2/ Entitled "Rationalization of the work of the Economic and Social Council".

3/ A/C.6/L.870/Rev.1.

A recent example of an amendment to the Charter which reflects the goals set out above (strengthening the United Nations, reflecting expanded membership and increased activities) is resolution 2847 (XXVI) of 20 December 1971, which has sought to expand the membership of the Economic and Social Council from 27 to 54. Kenya, which played a significant role in the adoption of the said resolution, and which has ratified the amendment to Article 61, looks forward to early incorporation of the amendment into the Charter. 4/

III. Obsolete and hitherto unimplemented provisions of the Charter

Some provisions within the Charter have either served their purpose or have been overtaken by events, and ought to be eliminated. It is the view of Kenya that such provisions as Article 107, which refers to enemy States need not be perpetuated in the Charter any more. It is of no practical consequence today what side, during the war, a country was on, in particular now that practically all those countries which were involved in the war are Members of the United Nations. Chapter XVII on "Transitional security arrangements" needs review.

With concern, Kenya notes that some important provisions of the Charter, owing to political differences among certain key Members of the United Nations, are yet to be implemented; for example, Articles 43 and 47. While the mere fact that they have been unimplemented for nearly 30 years need not be construed as categorically indicating they are unworkable, and therefore calling for their review, those Members which are directly responsible need to be reminded that they may venture action anew.

IV. Decisions of the Security Council

The Security Council has major powers and functions under the Charter, among the most important ones, the primary responsibility for the maintenance of international peace and security, (Article 24). While it is conceded by some, and disputed by others, that primary does not mean exclusive, it is obviously important that the role of the Security Council and the General Assembly in the field of the maintenance of international peace and security needs spelling out. This might be done by an additional chapter or provision on peace-keeping operations. Already the United Nations has some experience, albeit experience of mixed feelings, in the field of peace-keeping operations.

The Council has other roles under the Charter. Such include: recommendation of admission of new Members (Article 4, paragraph 2); of measures under Articles 5 and 6, etc.; also to be mentioned is the role of the five permanent members, for example, under Article 108 on the coming into force of amendments to

4/ The amendment came into force on 24 September 1973.

the Charter. It is clear beyond dispute that the use of veto by a permanent member or its non-action, such as failing to ratify an amendment to the Charter, could frustrate an overwhelming majority of the United Nations membership. Such holding at bay the wishes of the entire United Nations by such action or omission may amount to, and indeed has frequently amounted to, an abuse of the spirit of the Charter of the United Nations. In order to minimize such incidents of manifest abuse, Kenya is of the view that the Charter could be amended in Article 27 to require decisions of the Council to be subject to a majority of the Council, including half of the permanent members. If such a formula were accepted, Article 108 could be modified to require two thirds of the Members of the United Nations, including a majority of the permanent members of the Council. Such amendments, while not wholly satisfactory or democratic, could go a long way to democratize the decisions of the main political organ of the United Nations.

V. Structure of organs

1. The Secretariat

Some have argued that Chapter XV of the Charter ought to be amended to give the Secretary-General more powers than the Charter presently accords him. Kenya is not persuaded, however, that the ills of the Organization result from the limited powers of the Secretary-General.

2. The Security Council

Recent past has witnessed justified criticism of the use of the veto by the privileged five. Doubts have been voiced as to whether the use of veto, as exemplified in the recent past, accords with the original intentions of the authors of the Charter in 1945. To many countries of the third world, it has become increasingly apparent that the veto has been used to thwart, rather than facilitate, the work of the United Nations. The use of veto on Southern Rhodesian questions in particular, and African questions in general, are cases in point. In this connexion, reference is made to the statement made by the representative of Kenya at the 1716th meeting of the Security Council on the question of the report of the Committee on sanctions against Southern Rhodesia. 5/

Rightly, therefore, some have called for the abolition of the privilege, or at the very least, the curbing of its scope of operation. Likewise, as is well known, and as is apparent in the records of the debate on the item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" in the Legal Committee during the twenty-seventh session of the General Assembly, veto has been stringently defended.

5/ S/PV.1716, pp. 2-17.

The foregoing aside, the developing countries of the third world, have, with justification, felt that the privilege of veto is ill, or unequitably distributed, being the double preserve of mainly the developed countries, and except for China, all from Europe and North America. It is thus apparent that Africa and Latin America do not have a final word on a matter before the Council. This may be the time to consider seriously ways and means of curbing veto power, and/or the feasibility of extending this exclusive club by a few from the unrepresented or under-represented areas.

3. The Trusteeship Council

Kenya feels that, with the era of colonialism coming to an end, Chapter XVII of the Charter could be reevaluated with a view to assigning the work of the Council to another United Nations Committee or subsuming it in another Council.

VI. Additional chapters or provisions

Mention of an additional chapter or provisions on peace-keeping operations has been made above. The possibility of adding something on economic and monetary affairs, outer space, environment and such like subjects could also be considered.

VII. Conclusions

In advancing the foregoing, Kenya realizes that the political attitude of States at any given moment is a major hindrance to the proper functioning of the United Nations in line with the wishes of the majority of States. Kenya also realizes that any changes affecting the Charter would be subject to the ratification procedures under Article 108, and, therefore, at the mercy of any one of the permanent members of the Council. None the less, an attempt at updating so vital a document as the Charter of the United Nations should not be shelved for fear of non-realization resulting from one or other permanent member.

NICARAGUA

/Original: Spanish/
/5 March 1973/

Aware of the importance which Member States attach to a review of the Charter of the United Nations with a view to its application to the member countries, the Government of Nicaragua, desirous of participating in a joint effort to increase the effectiveness and dynamic application of the principles of the United Nations, wishes to express its support for the proposed review of the Charter.

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B. Replies of Governments which had already responded to
the request in General Assembly resolution 2697 (XXV)
of 11 December 1970

PHILIPPINES

/Original: English/
/18 September 1974/

The Government of the Republic of the Philippines is firmly of the opinion that modernization of the United Nations Charter is long overdue. This undertaking has been repeatedly postponed for reasons which may have seemed compelling to some Member States at the time. Now, however, the reasons for action are far more compelling than those for further delay. The founders of the United Nations fully realized the importance of providing for changes indicated by experience. In fact, they provided not only for a process of amendment, in Article 108, but also provided in Article 109, paragraph 1, that a General Conference of Members for the purpose of reviewing the Charter may be held at any time that it is the expressed wish of two thirds of the Members and any nine Members of the Security Council.

It should be made clear here that the Government of the Republic of the Philippines is not advocating the convening of a General Conference of Members under Article 109, paragraph 1, recognizing that the Charter of the Organization as a whole has amply withstood the test of time; but rather is suggesting that the individual and specific suggestions of States both on Charter changes and on other steps in United Nations reform be considered by a special committee established for that purpose. Any changes which might gain general support could be acted on as required in a particular case. If the changes did not require Charter amendment they could be approved simply by action of the General Assembly. If changes require Charter amendment and in particular cases gain general approval they would be acted upon on an item by item basis under Article 108 of the Charter as has already been done several times.

In the twenty-fourth session of the General Assembly, the Government of the Republic of the Philippines was among those delegations which actively sought inclusion of the item entitled "Need to consider suggestions regarding the review of the Charter of the United Nations" on the agenda of the twenty-fifth anniversary session in the firm conviction that after a quarter-century, such a review was no longer deferrable.

The Philippine Government was therefore gratified at the strong vote (82 to 12, with 11 abstentions) in the twenty-fifth session in favour of taking the first steps toward such a review, on General Assembly resolution 2697 (XXV) calling for communication by Member States of their views and suggestions on the review of the Charter of the United Nations, and for further discussion of the item at the twenty-seventh session of the Assembly.

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This Government has made it clear on many occasions that, in its view, the principles embodied in the Charter are fundamental and unchanging, and have amply demonstrated their validity and worth through the test of time and experience. It is also widely recognized that many problems in connexion with the United Nations derive from simple failure of Member States to use the provisions of the Charter available to them, and from failure to observe Charter obligations.

Nevertheless, while the Charter has proven remarkably adaptable considering the unprecedented changes that have occurred in 25 years, its inadequacies have also been sharply illuminated by long experience. In addition, of the present membership, now nearly universal, only 51 Members were present at the founding. It is not only proper that the views of the full membership be sought on the structure and functioning of the United Nations, but it is a positive duty of the founders.

No organization can remain static and unchanging. The United Nations is no exception and it must not be allowed to become obsolescent. While many adaptations are possible and necessary, there are certain structural modifications indicated for updating the world Organization and innovations needed to prepare it for the immediate future.

The Government of the Republic of the Philippines is strongly of the opinion that the following revisions to the United Nations Charter, as a minimum, should be considered.

1. References to enemy States of the Second World War should be removed. It is unfortunate that these stigmas should have been allowed to remain in the Charter for more than 25 years. This correction may be accomplished in the following way:

Article 53, paragraph 1, delete the following:

"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".

Article 53, paragraph 2, delete the entire paragraph, now reading:

"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."

Thus the amended Article 53 will read in its entirety:

"The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no

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enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council."

Article 107 of the Charter, reading:

"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."

should be dropped in its entirety.

2. Peaceful settlement of disputes. The provisions for dealing with peaceful settlement of disputes should be improved. The present wording is too general and imprecise, and its obligations too permissive. The simple listing in the Charter of recommended means does not suggest much emphasis by the world Organization on peaceful settlement of disputes. Experience now indicates that this lack of emphasis in the Charter has been, unfortunately, reflected in the actions of the United Nations. Disputes have often been immobilized, at least temporarily, by the United Nations, but rarely settled. It is imperative for maintenance of international peace and security that this weakness be remedied.

Article 33 should therefore be redrawn, in the first instance to provide a specific procedure for moving sequentially from two-party negotiations to higher levels of third-party involvement in intractable disputes. Further, parties to a dispute should agree in advance to accept arbitration or judicial settlement where negotiation, inquiry, mediation or conciliation may prove insufficient.

While it is true, under Article 29, that the Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions, there is in fact no permanent standing machinery provided to function in pacific settlement of political disputes, nor has the Security Council created any. The argument that it is preferable to create ad hoc bodies loses force when it is recognized that this method has been rarely employed. It is desirable, therefore, that the wording of Article 37 include provisions for a standing conciliation and arbitration commission. Such a commission should be formed of a small group of persons universally respected, such as past presidents of the General Assembly. Because of the nature of its work the Commission should be master of its own procedures and methods, and its work should normally be confidential.

A new paragraph 3 might be added to Article 33 and read approximately as follows, paragraphs 1 and 2 remaining the same as at present:

3. Should a dispute persist, the parties shall submit the dispute to conciliation and, if necessary, in due course to arbitration, when so requested by the Security Council, by such body or bodies as may be established by the Security Council for the purpose. The parties shall refer legal aspects

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of the dispute to the International Court of Justice when so requested by the Security Council.

Articles 34 through 36, and 38 will remain unchanged. Article 37 will be revised, however, to provide for creation of a conciliation and arbitration commission. Article 37 might then read as follows:

1. The Security Council, acting under the provisions of Article 29, shall establish and maintain a Conciliation and Arbitration Commission, consisting of 5 (7, 9, 11) persons held in high esteem by the international community. Due regard shall be paid to equitable geographic distribution. The Commission shall report as appropriate, or whenever requested, to the Security Council.
2. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in Article 33, paragraph 1, they shall refer it to the Security Council.
3. 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 33, paragraph 3, or 36 or to recommend such terms of settlement as it may consider appropriate. Less mandatory forms of these proposals could be advanced.

However, it is the view of the Government of the Philippines that no less effective machinery for pacific settlement of disputes can be tolerated given the extremely high level of danger which accompanies unresolved disputes in the modern world. The reforms indicated here will assist greatly in assuring that the United Nations can perform its primary function of "maintenance of international peace and security".

3. Peace-keeping. The second major aspect of the United Nations Charter which has in practice proven inadequate for maintenance of international peace and security concerns provisions and processes for peace-keeping. The provisions and procedures for enforcement action, envisaged in Chapter VII of the Charter are fully and adequately delineated. Unfortunately, however, these have rarely if ever been implemented. Instead, a second type of response to hostilities has been developed and employed by the United Nations on a number of occasions. This type of action, best called "interposition" as compared with "enforcement", has evolved through practice and finds no definition within the Charter.

Thus, while the Charter has spelled out the processes for undertaking punitive action against aggressors, the true international policeman role in which conflict is arrested and violence prevented without prejudice to the matter at issue was not truly foreseen. The process of interposition by the United Nations should and can result in the referral of disputes to the conference table, and their settlement by peaceful means instead of combat. No principle should be held in higher regard. No achievement in the maintenance of international peace and security could be greater.

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The process of peace-keeping by observation and interposition should be spelled out in general terms and given a place of high honour in the United Nations Charter. The principles or guidelines for peace-keeping operations now being developed within the Special Committee on Peace-keeping Operations will elaborate the details and should be annexed to the Charter when they are completed. It is earnestly to be hoped that the Committee will be able to expedite its work.

A new paragraph under Article 40 is required to spell out the generally agreed principles of observation and peace-keeping by interposition. A draft section should include the following points:

In particular, the Security Council, in order to prevent an aggravation of the situation, may, whenever it deems necessary, establish United Nations Peace Observation Teams and a United Nations Interposition Force (UNIForce) to arrest or prevent violence, and permit settlement of disputes by the peaceful means delineated in Chapter VI.

The establishment, deployment and maintenance of such teams and forces shall be in accordance with agreed guidelines to be elaborated and annexed hereto. Such guidelines shall embody the following principles:

A. All Member States, taking into consideration their ability and resources, shall designate especially-trained and instant-ready observer personnel and armed contingents or equivalent support and assistance for the United Nations Peace Observation Teams and Interposition Forces.

B. Such Peace Observation Team and UNIForce personnel shall receive special training for their tasks. The Security Council may at any time decide to authorize direct United Nations recruitment and training of such personnel.

C. All States shall accept United Nations Peace Observation Teams at any trouble spot and on both sides of contested areas or borders when required by the Security Council, the General Assembly or the Secretary-General, or when requested by one of the parties to the dispute.

D. The Security Council shall authorize and deploy United Nations Interposition Forces at any time and in any way necessary to prevent or to end violence between forces of opposing States or across recognized international borders, or in any circumstance posing an overriding threat to international peace and security. Removal or recall of UNIForce contingents shall require a decision of the Security Council.

E. All States shall accept the presence of UNIForces in the performance of their responsibility for prevention or suppression of any international hostilities to which said States or their nationals are party or in any threatened or actual armed conflict posing an overriding danger to international peace and security.

F. United Nations Observation Teams and UNIForce contingents shall be financed through the regular budget of the United Nations. A special Peace-keeping Fund shall be established to assure rapid response to threats to the peace.

4. Membership of the Security Council. In 1965, the United Nations took cognizance of the fact that membership of the Security Council was no longer in consonance with the activities and membership of the world Organization. Amendments 6/ made to the Charter at that time increased the number of non-permanent members of the Security Council from 6 to 10. No increases were entertained at that time, however, in the number of permanent members. The Charter emphasizes in Article 23, paragraph 1, that in election of the non-permanent members of the Security Council "due regard shall be especially 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 geographic distribution". (Emphasis added.) In practice, however, strict rotation among Members in a particular geographic region has been the rule.

For these two reasons, a number of States of great importance remain unable to make their full contribution to the primary purposes of the Charter. Since the relative contributions of Members to maintenance of international peace and security cannot remain unchanged over time, means must be found to take such changes more fully into account. One obvious necessity is the application of the Charter criteria, quoted above, or the establishment of additional informal criteria to be applied (within geographical groupings) for the more frequent election as non-permanent members of the Security Council Members contributing most substantially to the purposes of the Charter. However, this may well prove insufficient.

A further and more adequate step would be the reform of the membership provisions. If, in the case of election of non-permanent members, "due regard is to be given in the first instance to the contribution of Members" to the purposes of the Charter, must not this principle apply with even greater emphasis in the case of the permanent members? In the course of 25 years certain States have achieved the capacity to make contributions to the purposes of the Charter equal to those of the original permanent members. The United Nations will ignore this development at its peril. The structure and functioning of the world Organization must accord accurately to the world reality, and must at appropriate and occasional times accept those adjustments which maintain its consonance with that reality. Several approaches commend themselves:

A. The straight creation of additional permanent seats without, however, extending the unanimity requirement.

6/ By General Assembly resolution 1991 A (XVIII) of 17 December 1963; amendments came into force on 31 August 1965.

B. The creation of a new class of semi-permanent seats, either by conversion of half the existing non-permanent seats, or by addition of new seats in this category. A semi-permanent seat would be created for each major world region, to be held alternatively by the major non-permanent members in the region. The advantage to the second approach, to increasing membership, would be to provide additional opportunity for participation, and to create the new category without disturbing the presently existing categories. Six new seats would be added, for a total membership of 21.

The advantage of the first approach, that of converting half of the existing non-permanent seats to the new category of semi-permanent seats would be that the Security Council would remain the present size, close to the optimum expediently to make and carry out decisions, while still reflecting much more adequately the views of the total membership.

On balance, the Government of the Philippines feels that maintaining the Security Council at its present size to facilitate rapid decision-taking is the overriding consideration. Therefore, the following amendment to the Charter is commended, Article 23 to read as follows:

The Security Council shall consist of 15 Members of the United Nations. 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. Five seats shall be designated as semi-permanent, one being allocated to each major world region, and occupied alternately (or in rotation) by the major States of the region. The States of each region (alternatively the General Assembly) shall determine periodically but not at greater intervals than 10 years and in accordance with their own procedures, the semi-permanent members of the Security Council. Due regard shall be paid to the contribution of the Members of the United Nations to the maintenance of international peace and security, and to the other purposes of the Organization.

The General Assembly shall elect five other Members of the United Nations to be non-permanent members of the Security Council, taking into account the above criteria and also equitable geographic distribution.

Paragraphs 2 and 3 of Article 23 will remain unchanged. The approach delineated would provide adequate functional improvement with minimum changes in the present structure and procedures.

5. The principle of unanimity. One of the most difficult matters with which to deal in the matter of reform of the United Nations concerns the requirement (of Article 27, paragraph 3) that decisions of the Security Council on substantive matters need the affirmative votes of all the permanent members. It is widely recognized that at many times and on many occasions this requirement has frustrated the effectiveness of the United Nations in implementing its decisions, or in carrying out its responsibilities. At the same time, it is also uncontestable that primary responsibility for the maintenance of international

peace and security rests ultimately with the permanent members and requires their co-operation. These apparently conflicting circumstances are a source of dismay and disappointment to Member States and the peoples of the world. Therefore, no matter how difficult it may be, it is essential that the unanimity requirements, or the "veto" be reviewed.

In practice, one unrecorded and very important amendment to this requirement has already been made. The abstention of a permanent member is no longer regarded as a "veto". Decisions are taken with the abstention of a permanent member or members, provided none of them casts a negative vote. Bringing the Charter into line with practice, then, requires the language be changed to provide that decisions on substantive matters shall be taken on an affirmative vote of nine members when no negative votes are cast by permanent members.

Is there anything further that can be done at this time? The intent of the Charter is clearly indicated in the requirement in Article 27, paragraph 3, that parties to a dispute in the meaning of Chapter VI and Article 52 shall not vote. Clearly, the intention is to maintain a unified response to major world problems, but also to assure that justice will not be thwarted but can be carried out.

In consonance with the same spirit, 25 years' experience indicates the desirability of retaining the unanimity requirement among permanent members voting in those instances requiring enforcement action within the meaning of Articles 42 to 54 of Chapter VII, involving the United Nations in war as a participant in putting down aggression. Unanimity would not be desirable or required in matters not involving enforcement action, including the peace-keeping by interposition, as suggested above, in which the United Nations is not a participant in punitive war, but stands as an international policeman to arrest conflict.

Thus, the vital interests of the permanent members would be protected, and a very high degree of agreement would be required to send the United Nations to war on behalf of one party to a conflict. Such a recommendation, in the view of this Government, accords closely with the present realities, while enabling the United Nations to achieve greater effectiveness in taking and carrying out decisions.

Such a change could consist of two stages: in the first instance of a voluntary undertaking by the members of the Security Council for a limited period of, for instance, 10 years, and a second stage in which the change would be incorporated into the wording of the Charter if the undertaking proved successful.

Wording encompassing these recommended changes in two stages, might read as follows:

Article 27 (2): Decisions of the Security Council on all other (substantive) matters shall be made by an affirmative vote of nine members, including the

concurring votes of the permanent members present and voting, and provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to the dispute shall abstain from voting.

Article 27 (3): Decisions of the Security Council relating to enforcement action involving the use of armed force by the United Nations, in accordance with Articles 42 to 51 and 53 of the Charter, shall require an affirmative vote of nine members of the Security Council, including the concurring votes of the permanent members present and voting.

6. The International Court of Justice. The Government of the Philippines welcomed the decision of the General Assembly at its twenty-fifth session to review the role of the International Court of Justice. ^{7/} This action was a consequence of the universally noted general decline of the Court. We may be hopeful that its current increase in activity will assist in strengthening the Court into fulfilling its role as the principal judicial organ of the United Nations as was intended. In any case, inasmuch as the Statute is an integral part of the Charter, it is appropriate here to consider what changes might effectively relate the Court in a more immediate and dynamic manner to the functioning of the United Nations and to the maintenance of international peace and security.

There are many actions with regard to the Court which may be taken directly by States, and which if implemented would greatly enhance the Court's effectiveness. In general, these will not be touched upon here, except to note in passing that no single act would be of greater assistance than for the States to exercise the option to declare that they recognize as compulsory the jurisdiction of the Court in all legal disputes to which they are parties without reservations, in accordance with Article 36, paragraph 2, of the Statute of the Court.

In addition, the following amendments, among others, might be considered at any general review of the Charter and the Statute.

A. Referral of disputes. Disputes containing adjudicable legal elements and having proved intractable under the voluntary aspects of the revised Article 33 (as suggested above) on peaceful settlement of disputes will, in accordance with that article, be referred automatically to the International Court of Justice for judicial settlement.

The Statute of the Court should be amended to make this responsibility explicit: Thus, Article 36, paragraph 1, of the Statute would read:

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters especially provided for in the Charter of the United Nations, in treaties and conventions in force. In particular, the jurisdiction of the

^{7/} Resolution 2723 (XXV)..

Court includes any dispute submitted to the Court by one or more parties pursuant to a request of the United Nations under provisions concerning peaceful settlement of disputes considered to be a threat to international peace and security.

B. Advisory opinions. At the present time provisions for use of the Court for advisory opinions are too restrictively drawn with the result that little use has been made of the Court in this respect. The recent action of the Security Council in exercising this option with regard to Namibia is to be welcomed. The Charter presently authorizes the General Assembly or the Security Council, and any United Nations organ or specialized agency so authorized by the General Assembly, to request advisory opinions. It is suggested that in addition, regional organizations, individual States and the Secretary-General be so authorized. Wording for the affected articles would read as follows:

Article 96, paragraph 1, of the Charter: The General Assembly, the Security Council, or the Secretary-General may request the International Court of Justice to give an advisory opinion on any legal question.

Article 65, paragraph 1, of the Statute: The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request, and also at the request of regional organizations and individual States.

C. Empowering the United Nations to bring cases before the Court: The United Nations, in the effective discharge of its duties, should itself be enabled to bring a case before the Court. At the present time it can only seek an advisory opinion. The affected articles could be worded as follows:

Article 94 of the Charter: Add a new paragraph 3:

The United Nations and any Member may at any time agree to submit to the International Court of Justice legal aspects of disputes between them concerning the interpretation or application of the Charter.

Article 34, paragraph 1, of the Statute: States and the United Nations may be parties in cases before the Court.

These amendments if adopted would add substantially to the effectiveness and prominence of the International Court of Justice in upholding the observance and implementation of international legal justice.

7. Strengthening the Economic and Social Council. The Economic and Social Council, under its present mandate as delineated in the Charter, lacks effective authority in the areas with which it is concerned. The result has been the emergence of a makeshift system of institutions attempting to deal with questions which should have been the Council's responsibility. Overlapping of undefined mandates, confrontation between United Nations organs and Secretariat units and lack of a clear policy orientation and firm co-ordination and direction have been the results.

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Substantial reform of the Economic and Social Council, together with the establishment of a new mandate for the Council with adequate authority is urgently needed. The Members of the United Nations should decide as soon as possible whether they wish to reform the Council and grant it effective authority in the areas with which it deals, or to create some new agency to perform the task. If it is decided to provide the Council with the means to become "master in its own house", the actual Charter amendments required may be small, other aspects of the change requiring much more effort and planning. For instance, the following change in Article 63, paragraph 2, would establish the Council as the effective co-ordinator of economic and social development within the United Nations family:

It shall co-ordinate the activities of the specialized agencies and make the decisions subject to General Assembly approval on over-all policies, direction, allotment of tasks, scope, content and size of programmes and interrelationship of agencies.

8. A human rights council. At the present time, human rights matters are dealt with in a sub-commission or ad hoc committee or by a Special Rapporteur, then in the Commission on Human Rights, then in the Economic and Social Council, and then in the Third Committee and finally in the plenary of the General Assembly. Reduction of this incredible repetition of effort is one major reason, but only one, why the Commission on Human Rights ought to be elevated to a full council, on the level with the Economic and Social Council and the nearly inactive Trusteeship Council. Other reasons include the following: Human rights matters have come to constitute more and more of the activity of the United Nations. At the same time, much of this activity is duplicative and unco-ordinated. Special committees are proliferated by different United Nations organs on the same subject area. A human rights council is needed to centralize these efforts and minimize the duplication and overlapping.

Finally, the Economic and Social Council in its new role as outlined above would be relieved of its human rights responsibilities and freed to concentrate on economic and social development problems.

The new human rights council would be responsible directly to the General Assembly. Such a council might be composed in a manner similar to the Economic and Social Council, and for the time being its functions might be those of the present Human Rights Commission. Pending the coming into force of the Human Rights Covenants, the council might be also given, on a provisional basis, the powers granted to the Commission on Human Rights under these instruments.

Similarly, it might be granted the powers of various bodies under existing human rights instruments. A provision similar to Article 37 of the Statute of the Court might provide an adequate jurisdictional clause for the new council. It might read, for instance:

"Whenever a treaty or convention in force, or a decision of an international organization, provides for reference of a matter relating to human rights to a special committee or commission, the matter shall be

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referred to the Human Rights Council, unless the parties to the treaty or convention or the international organization concerned decide that the special committee or commission should be continued."

At this point in history, after 25 years of activity, the United Nations is neither the organization of 1945, nor is it yet the organization needed to meet the challenges of the remainder of this century. Clearly our world Organization is in a transitional stage, between the world of unlimited unilateral national policies, and the world in which problems of planetary scope will be effectively dealt with through concerted co-operative and skilled planetary management. Meeting the problems of human survival - peace, disarmament, population, poverty, economic underdevelopment, violation of human rights, and control of environmental pollution - will require a much more concerted and integrated approach to global problem-solving than was foreseen by the founders of the United Nations. If the United Nations is to grow into the primary agency for implementing the will of the peoples of the world in problem areas too large and too complex to be met by random actions of individual nations, no matter how well-intentioned, then the revitalizing and upgrading of the world Organization must urgently be undertaken by its Members.

The item before the General Assembly at its twenty-ninth session in 1974 provides an excellent opportunity to begin the long-delayed strengthening and improvement of the world Organization. It goes without saying that many of the most important changes which might be listed under the general heading of United Nations reform will not require changes in the Charter. However, the several very important aspects of United Nations improvement delineated herein clearly indicate the need for some judicious Charter changes - not changes made for the sake of change, but in order to facilitate the fuller response of the United Nations to the many new problems it confronts and the new tasks placed upon it by its Members.
