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Neglected aspects of the United Nations Charter

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In 1995, Erskine Childers (1929-1996) and I composed a project proposal raising questions about the legal rules governing four specific issues covered by the UN Charter. These issues were:

- financing the UN,
- the economic mandates of the General Assembly,
- international economic and social cooperation, and
- the sovereign equality of member states and their (inviolability of) voting rights.

The project emphasized the authority of the existing (but neglected) legal provisions relating to social, economic and other aspects of the United Nations Charter.

We proposed that a team of highly qualified jurists from all continents undertake an in-depth study of the provisions of the Charter, taking into account where necessary applicable definitions adopted in 1945 by the United Nations Conference on International Organization (UNCIO). We suggested that the outcome of these interpretative findings could be used by legal experts and the UN diplomatic community, but also by the wider international community (e.g. NGO's and media).

Over the years some of the questions we raised have been addressed in the ever growing literature on UN affairs. Still, it would be desirable that an expert team should take stock of past and present research on the proposed issues needing examination and fill gaps that might be identified.

An important underlying question to answer would be: at what point does the subsequent practices of member states go too far so it can safely be assumed that the behaviour of member states is no longer covered by the letter and spirit of the Charter of the United Nations? The envisaged legal analysis would identify the limits of modification of international treaties (in particular the UN-Charter) by subsequent practice of its member states.

The availability of such an authoritative publication with a comprehensive range of interpretations would significantly assist Charter revision work as well as current and future reforms towards a more democratic United Nations. It would equally assist member states in the formulation of Charter- respecting policies in a wide range of areas, affecting large proportions of humankind.

The Proposed Issues Needing Examination

Questions relating to financing the UN (Articles 17 – 19)

Can a member state refuse to pay its contribution for explicitly stated reasons of opposition to policies duly adopted by the General Assembly?

Can a member state assert a privileged interest in the policy and/or administration of the UN on grounds that it is one of the members that "pays most"?

Can a member or group of members demand that their nationals occupy specific posts in the UN-Secretariat in view of their contributions, or any other claimed special attribute? (Articles 100 and 101: i.e.: no instructions from any government to UN-staff)
Article 18.2 states that one of the "important questions" on which the General Assembly decides "shall be made by a two-thirds majority of the members present and voting ... shall include ... budgetary questions." Is the current (since 1986) insistence on budget approval by consensus consistent with the Charter?
Economic mandates of the General Assembly

The founding 1945 UN Conference on International Organization (UNCIO) adopted a definition of the word "economic"; it was to be interpreted to include international trade, finance, communications and transport, economic reconstruction and, under "economic problems", international access to raw materials and capital goods. The UN-Charter subsequently attributes economic mandates to the United Nations Organization (Preamble, Articles 1.3) and specifically to the General Assembly and the Economic and Social Council (Article 10, Article 13, Articles 55-72).

The Bretton Woods Institutions (including the International Monetary Fund and World Bank) are specialized agencies under the umbrella of the UN (as are the International Labour Organization, Food and Agriculture Organization, World Health Organization, etc.), but since 1984 the reciprocity provisions of the relationship of the Bretton Woods Institutions and the United Nations have often been breached, e.g. by dis-inviting the Secretary-General to the Bretton Woods meetings. Key member states from the global north take the position that international macro-economic policy cannot be determined in the General Assembly (or ECOSOC), on grounds that the Bretton Woods specialized agencies are so mandated.

It has become commonplace to speak of "complementarities" between the UN and the Bretton Woods Institutions, as if the latter are at least co-equal with the UN instead of being UN specialized agencies and an integral part of the UN- system.

Questions:

In view of subsequent practice by member states, what is the legal status of the UNCIO definition of "economic"?

Can a minority of member states deny the extensive provisions in the UN Charter for General Assembly (and ECOSOC) leadership in economic and social matters?

Can a UN specialized agency unilaterally suspend a provision of its relationship agreement with the UN?

Given the leadership/coordinator function over specialized agencies plainly mandated to the UN in the Charter, is it consonant with international law to speak of the UN and any such agency being in "complementarity"?

International Economic and Social Co-operation (Chapter IX of the United Nations Charter)

Although various volumes of commentary on the Charter have addressed the Articles 55-60, Chapter IX on Economic and Social Co-operation, at a time of considerable world economic stress and the evolution of the 2030 Agenda for Sustainable Development, an overall review of its status in international law would be very useful.

Questions:

How have member states interpreted their legal obligations in the language of Article 55 that the United Nations shall promote higher standards of living, conditions of economic and social progress and development and universal respect for human rights?

Given the "pledge" of all members-states in Article 56 "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55, can member states be held accountable for claimed insufficiency of "useful effects" from the provisions in Chapter IX?

Sovereign equality and voting rights

The principle of sovereign equality of states laid down in the Charter (Preamble and Article 2.1) is repeatedly ignored in the statements, and behaviour of various member states.

The San Francisco UN Conference on International Organization (UNCIO) in 1945 debated and adopted an explicit definition of "sovereign equality" stating:

- that states are juridically equal;
- that each state enjoys the right inherent in full sovereignty;

- that the personality of the state is respected, as well as its territorial integrity and political independence;
- that the state should, under international order, comply faithfully with its international duties and obligations.

Questions:

Can this adopted UNCIO definition clarify the intentions, and thus be useful in the interpretation of the UN Charter?

Can a member state refuse to participate in the work of the UN on the grounds that its procedures follow the one-nation one-vote Charter principle?

Inviolability of votes

A small number of powerful member states have used direct economic intimidation of weak member states to secure either their votes in favour of decisions or the silencing of member states.

It can be argued that this behaviour goes far beyond the traditional diplomatic practices of states "bargaining" over their votes on different resolutions for reciprocally advantageous ends. Some of the behaviour has taken the form of bribery, intimidation, retaliation or coercion.

The Charter does provide for coercive measures to be taken under some circumstances (e.g. by the Security Council following a determination of a threat to the peace). However, in 1993 the Secretary- General noted that "there is no clear consensus in international law as to when coercive measures are improper."

Questions:

Do these practices constitute violations of Article 2.1 (sovereign equality), Article 2.2 (the "good faith" requirement), Article 18.1 (General Assembly voting), Article 27.1 (each member in the Security Council has one vote), and the UNCIO definition of sovereign equality? Are such practices violations of international law?

If they are, does the membership have any recourse against any member state in violation, and how might such recourse be taken?

Conclusion

The founders of the United Nations clearly intended the Organization to have a balance of mandates between tackling the socio-economic causes of conflict, and responding to the consequences of neglect of such causes in threats to and breaches of international peace, security and human rights. In no small part because of lack of

knowledge of the provisions of the Charter, the United Nations Organization has been substantially prevented from advancing the Charter's economic and social goals.

There are further problems in inadequate understanding of provisions in the Charter regarding the responsibilities of member states in the financial underpinnings of the United Nations.

Also, there are grave issues concerning the inviolability of the independence of votes and expressions of policy of member states.

The correct interpretation and understanding of international law cannot provide the only source of restoring UN mandates and improving the behaviour of member states. But authoritative analysis of the applicable provisions of the UN Charter vital to world peace, economic progress and stability will surely add great value. Also, wider public knowledge of the provisions of the Charter will strengthen, democratize and revive the United Nations System and make it more effective in serving "We the Peoples" – just as it was meant to do by the organization's founders.

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