BEYOND 1995: NEGOTIATING A NEW UNITED NATIONS THROUGH ARTICLE 109

RICHARD J. PONZIO

In November 1992, 1,575 scientists from around the world, including 104 Nobel Prize winners, issued *The World Scientists' Warning to Humanity.* The declaration maintained that global trends were moving to threaten the viability of our planetary biosphere. If not soon addressed, deforestation, ozone depletion, desertification, ocean degradation, topsoil destruction, rapid species loss, and the underlying engine of global population growth would likely lead to "conflicts over scarce resources . . . mass migrations with incalculable consequences for developed and undeveloped nations alike . . . [and] spirals of . . . social, economic and environmental collapse. . . . No more than one or a few decades remain," the scientists concluded, "before the chance to avert the threats we now confront will be lost, and the prospects for humanity immeasurably diminished."

The problems facing the world community are increasingly international in scale. Drug trafficking, terrorism, AIDS, unregulated arms profiteering, the vast waste of human capital engendered by perpetual poverty, mass migration, population growth, the relentless degradation of the biosphere—the extensive reach of these issues threatens the security of people and the planet far more today than the great power conflicts the 1945 United Nations Charter was designed to prevent. Nevertheless, few national leaders appear ready to equip the United Nations with the tools commensurate to these new challenges.

Yale historian Paul Kennedy, in his 1993 book *Preparing for the Twenty-First Century,* echoes the scientists' warning. The great transnational forces of the twenty-first century fall into three broad categories for Kennedy: population explosion, environmental degradation, and uncontrolled technological innovation, with its effects on unskilled employment. Kennedy maintains that, if unabated, the combined impact of these trends will lead to a substantial decline in the quality of life of virtually every human being on the planet. Kennedy persuasively makes the case that the capacity of nation-states to

Richard J. Ponzio is a master's degree candidate at The Fletcher School of Law and Diplomacy. *He would like to thank Dr. Tad Daley of the RAND Corporation for his guidance on this article. This article was the winner of an essay contest sponsored by* The Fletcher Forum.

address transnational issues is steadily eroding. As we approach the new millennium, political institutions seem less capable of grappling with transnational economic, social, and environmental issues, which breeds insecurity among national populations.

Rethinking the International System

Commemorating the 50th anniversary of the signing and ratification of the U.N. Charter, governments, the United Nations, and international civil society organized hundreds of events in 1995 to address the past, present, and future of the world organization. Likewise, several studies exploring new directions for the world body were prepared as a prelude to the 50th anniversary ceremonies in San Francisco and New York. Among those, the reports of the Independent Working Group on the Future of the United Nations, the Commission on Global Governance, the South Centre, the U.S. Commission on Improving the Effectiveness of the United Nations, the U.N. Development Program's *Human Development Report 1994*, and *Renewing the United Nations System* by Erskine Childers and Brian Urquhart are most notable. Although the Childers and Urquhart report sought to avoid proposing additional machinery,[1] each of the studies recommended substantial U.N. restructuring through modifying the procedures of existing organs, programs, and agencies. Several studies suggested the need for charter amendment.

Both the Independent Working Group on the Future of the United Nations and the Commission on Global Governance argue, for example, that reform of the Security Council is central to reforming the U.N. system. In both reports, an enlargement of its membership and restrictions on the veto capabilities of the five permanent members of the Security Council are considered indispensable amendments if the Security Council's actions are to command legitimacy and respect among all member states. The Independent Working Group and the Commission on Global Governance share the view that Security Council membership should reflect the reality of economic and political changes over the past 50 years. Eminent leaders, including former German president Richard von Weizsäcker and Paul Kennedy for the Independent Working Group and Swedish prime minister Ingvar Carlsson and Sadako Ogata for the Commission on Global Governance, have encouraged groundbreaking proposals for Security Council reform. Before addressing the question of who deserves a seat on the Security Council, however, it is worth asking whether a future global political organization should have as its center a council of great powers.

The great power collective security structure of the charter drafted in San Francisco was designed primarily as a bulwark against the international threat of resurgent fascism. The framers inherited the idea of great power collective security from the Concert of Europe, established in 1815 to prevent the rise of another Napoleon Bonaparte-like expansionist military leader. In that tradition, the contemporary debate over the composition of the Security Council seems to take as self-evident that as long as the major world powers are fully represented on a great power council, the U.N. Charter of 1945 remains ap-

propriate. As the former Japanese diplomat and U.N. assistant secretary-general Tasuro Kunigi contends, to do no more to the U.N. Charter than to add Japan, Germany, and a few other major regional powers to the roster of permanent Security Council members would only reinforce the undemocratic nature of the charter and runs counter to the trend calling for greater input in international decision making by developing countries.

A replay of the 1930s is far from the gravest danger facing the human community today. A collective great power security council is not the only conceivable mechanism for global decision making, let alone the optimal one for today's emerging challenges. The complex yet promising environment resulting from the end of the Cold War has provided an opportunity to pursue fundamental reforms such as weighted voting in the General Assembly and the creation of a U.N. Parliamentary Assembly with consultative powers.

The framers of the U.N. Charter foresaw in 1945 that their rapidly changing world was going to continue to change and that the institution they designed to meet the challenges of their own age would need to change as well.

Several reports urged significant amendments to Chapter X (Articles 61-72) of the charter, including the *Human Development Report 1994*, the report of the Commission on Global Governance, and the report of the Independent Working Group on the Future of the United Nations. Premised on the belief that the United Nations should be empowered to deal with matters pertaining to the world economy, these reports call for the establishment of a manageably sized, yet representative U.N. Economic Security Council to be reorganized out of the ailing Economic and Social Council (ECOSOC). The Economic Security Council would provide a "long-term strategic policy framework in order to promote stable, balanced and sustainable development,"[2] as well as supervise the policy direction of all multilateral economic institutions, including the Bretton Woods system, the World Trade Organization, and U.N. development agencies.

Opting for a new Economic Security Council rather than a refurbished ECOSOC is an ambitious but logical proposal, considering the many hurdles involved in strengthening the 54-member, highly bureaucratic Economic and Social Council. According to Dr. Mahbub ul Haq, chief architect of the U.N. Development Program's *Human Development Report* series:

> Strengthening institutions of global economic governance requires tremendous political leadership and courage. Why waste the political capital on retooling an old jalopy when a new car can be

> designed to fit new needs? Those who believe that ECOSOC can be made effective but that it would be impossible to set up a new council are guilty of self-serving errors in reasoning. It normally is far more difficult to get policy-makers to focus on restructuring old forums than it is to convince them that new realities require new institutional responses.[3]

Along with other charter-amending proposals, such as a U.N. Environment Council reorganized out of the Trusteeship Council, an annual Forum of Civil Society, a U.N. Rapid Reaction Force, an integrated Human Development Agency, reliable and autonomous financing capabilities, a U.N. Disarmament Agency, and the creation of an International Criminal Court, imaginative solutions such as a U.N. Economic Security Council could transform the United Nations into a third generation international organization[4] capable of meeting the new imperatives of human security.

Fulfilling the Original Intent

The above-mentioned reports do not propose that all answers to the emerging global challenges of the next century will depend on a comprehensive set of amendments to the present U.N. Charter. As it currently stands, however, the U.N. Charter fails to address our most pressing international concerns. The words "population," "migration," "famine," "poverty," and "environment" do not even appear in the 1945 Charter. The San Francisco framers did not have these sorts of problems in mind. Rather, they were interested in developing structures of global management to address entirely different challenges in an earlier political context.

We cannot blame the San Francisco framers for such omissions; they could not have foreseen the possibility, for example, that billions of internal combustion engines burning carbon-based fuels would lead to the seemingly irreversible warming of the atmosphere. However, they did foresee in 1945 that their rapidly changing world was going to continue to change and that the institution they designed to meet the challenges of their own age would need to change as well.

In response to reactions to the Dumbarton Oaks Proposals and several impassioned debates in San Francisco during the late spring of 1945, the framers included several articles in the charter that provide for its modification. Article 108 permits amendments to the charter upon the approval of two-thirds of the member states including all five permanent Security Council members. Article 109 provides for "A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter" upon the approval of the same two-thirds including any nine members of the Security Council. Moreover, the San Francisco framers apparently hoped that such a general conference would take place relatively soon after ratification of the Charter. In Article 109(3) they lowered the threshold, so that if such a conference had not been called by the tenth General Assembly session, in

1955, it could then be convened upon the approval of only a majority of the General Assembly and of any seven members of the Security Council.

In 1954, U.S. Secretary of State John Foster Dulles began advancing support for a comprehensive charter review conference as described in Article 109. He believed that the charter was "already out-of-date" as it had been drafted in the "pre-atomic years."[5] Secretary Dulles further suggested that the United States had a moral obligation to support a conference. At the time, however, the Soviet Union had no interest in endangering its veto privilege, particularly when the General Assembly was still dominated by Western states. Because the Soviet Union could have used its veto to block any substantive changes to the charter, and because the relations between East and West had begun to improve by 1955, few U.S. foreign policymakers wanted to disturb the warming of the Cold War by calling for a review conference.

Consequently, a compromise was reached by the General Assembly in 1955 with respect to its mandate to review the charter as outlined in Article 109(3). The General Assembly expressed the view that it would be "desirable to review the Charter in light of the experience gained in its operation" but that such a review "should be conducted under auspicious international circumstances."[6] Thus the General Assembly passed a resolution that "a General Conference of the Members of the United Nations for the purpose of reviewing the present Charter . . . shall be held at an appropriate time."[7] A committee of the whole was then established to consider "in consultation with the Secretary-General the question of fixing a time and place for the conference, and its organization and procedure."[8] Soon thereafter, intensified East-West tensions prevented the Committee from seeking the implementation of Article 109.

The San Francisco framers envisaged charter revision through both Articles 108 and 109, and this flexibility within the charter has proven useful over time. During its first 50 years, the charter has been amended by Article 108 procedures on four occasions: in 1963 to enlarge the Security Council from 11 to 15 members, in 1965 to enable a review conference to be held at any time, and in 1971 and 1975 to enlarge ECOSOC from 18 to 27 and then to 54 members. It is time for that trend to continue, now with Article 109. In American constitutional law the "original intent" of the Constitution's framers is often cited as the final standard of judgment; those who revere the present U.N. Charter ought to take into consideration the intent of its framers—especially their apparent desire not to bind their heirs forever to structures appropriate for an earlier time.

Strengthening the International System through an Article 109 Review Conference

The creative insight and vision of several commissions, working groups, scholars, and policymakers in the past year present a great opportunity to begin a high-level, intergovernmental process designed to secure agreement on the nature and form of new structures of global governance better suited

to the twenty-first century. The process would include two years of preparatory meetings and culminate in a comprehensive United Nations Charter review conference similar to the Bretton Woods and San Francisco meetings in the mid-1940s. Unlike the recently established, low-profile General Assembly Working Group on Strengthening the U.N. System, the conference could generate ideas among diverse sectors of society concerning an improved system of global governance. Setting a deadline for such a conference may generate the political will to deliberate upon the best of those ideas. Ratifying and enacting the new system by the year 2000 could join in the excitement accompanying a new millennium.[9]

The current attitudes toward democratizing and improving the United Nations within the U.S. Congress and the governments of several other major U.N. contributors are not especially encouraging. The outcome of the 1996 U.S. presidential election will be critical to the prospects for reforming and strengthening the U.N. system. Opinion polls, however, such as those conducted by the Americans Talk Issues Foundation in 1994, have recently noted that 62 percent of registered voters in the United States would support U.S. participation in a world conference to review the U.N. Charter, with 24 percent neutral and only 10 percent opposed.[10] A review conference on the U.N. Charter would generate the great global dialogue many citizens and policymakers expected after the fall of the Berlin Wall and the end of the Cold War. The United States should take advantage of its superpower status to support U.N. reform now. It has shown such progressive vision and resolve in the past, as was the case at the United Nation's inception, when the United States was guided by both the ideals of the founding fathers and the visions of President Woodrow Wilson and President Franklin D. Roosevelt.

Many distinguished individuals have talked about comprehensively redesigning the U.N. Charter throughout its 50 year history. Robert Maynard Hutchins, former president of the University of Chicago and a leading educational reformer, thought that the U.N. Charter was obsolete by 1947, and as a result wanted to skip Article 109 altogether. He convened a distinguished group of scholars which called itself "The Committee to Frame a World Constitution." In 1969 C. Wilfred Jenks, the great British international legal scholar and longtime official of both the League of Nations and the United Nations, wrote a book called *The World Beyond the Charter*, which opened by stating that "an increasing number of responsible voices can be heard to say that just as the League of Nations was superceded by the United Nations, so must the United Nations be superseded by something more effective."

The power of a charter review conference to advance contemporary thinking about the future of the United Nations is especially strong considering that such a process is not subject to veto by the permanent members of the Security Council. Even if all five permanent Security Council members remain adamantly opposed to convening such a conference, they would still have to participate. Once the dialogue on charter revision commences, the magnitude and indiscriminate nature of global challenges facing an ill-equipped United Nations will become fully apparent. Increasingly, it will prove politically dif-

ficult for any world power to insist on preserving the charter's present structure.

While the opportunity to deliberate about the U.N. Charter is extraordinarily significant in a rapidly changing international environment, it is important that policymakers avoid the possibility of focusing solely on recomposition of the Security Council. Restructuring the Security Council only through the amendment processes of Article 108 would simply change the actors without rewriting the play, essentially leaving in place the global structures created a half century ago. Moreover, implementing Article 108 for this purpose would likely diffuse the momentum now building toward comprehensive charter revision.

A Challenge to Scholars, Practitioners, and Students of International Relations

The future global crises outlined by scientists need to be addressed soon. Following a troubled but inspiring beginning, the United Nations is now at a crossroads. Regrettably, the political establishment of several states still opposes radically reforming the United Nations to create an institution capable of coping with the economic, social, environmental, military, and political conditions that threaten the security of people and the planet. Despite this resistance, progressive participants within the international community must answer the call of Tanzania's former president Julius K. Nyerere, who proclaimed: "Those with a purposeful and creative vision of the U.N. must not allow themselves to be intimidated, divided or discouraged by the nature and scale of the challenge. This is not a time for despair but for determined efforts to rekindle the U.N.'s original aspirations."[11] States need to aspire toward closer cooperation in the next century in order to prepare for future conflicts and dangers.

It is not necessary that consensus is achieved today regarding the optimal structures of governance for the decades ahead. We simply need to agree that the U.N. system outlined by the 1945 Charter is inadequate to combat the challenges of the present and future. From that starting point, the case for reviewing the present charter can be made convincingly, nurturing both a broad political constituency and the necessary political will among policymakers.

Notes

1. Childers and Urquhart note that almost all of their recommendations could be implemented without amending either the charter or the constitutions of any of the specialized agencies. In some instances—for example, the U.N. Parliamentary Assembly proposal—they discuss how the logical sequel to creating the Assembly under Article 22 would be a charter amendment to give the reform full authority. Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (New York: Ford Foundation, 1994), 185.
2. The Commission on Global Governance, *A Call to Action: Summary of Our Global Neigh-*

borhood (Geneva: Commission on Global Governance, 1995), 13. Although similar in principle, the Independent Working Group on the Future of the United Nations calls for both a new Economic Council and a new Social Council, to be serviced by a common secretariat. Because of the intimately connected nature of the U.N.'s economic and social agendas, the Economic Council and the Social Council would coordinate policy and programs through a Global Alliance for Sustainable Development, comprised of state representatives of the highest level. The Independent Working Group on the Future of the United Nations, *The United Nations In Its Second Half-Century* (New York: Ford Foundation, 1995), 51.

3. Mahbub ul Haq, *Reflections on Human Development* (Oxford: Oxford University Press, 1995), 189.
4. I am referring in this remark to the League of Nations and the system outlined by the 1945 U.N. Charter as the first two generations.
5. Leland Goodrich, Edvard Hambro, and Anne Patricia Simons, *Charter of the United Nations: Commentary and Document* (New York: Columbia University Press, 1969), 646.
6. Ibid., 647.
7. Ibid.
8. Ibid.
9. In a similar proposal, the Commission on Global Governance calls for the General Assembly to convene a World Conference on Governance in 1998, with its decisions to be ratified and put into effect by 2000.
10. Americans Talk Issues Foundation, "#21, Global Uncertainties," May 1993.
11. The South Centre, *Reforming the United Nations: A View from the South* (Geneva, Switzerland: The South Centre, March 1995).