

1948

How Can International Legislation Best Be Improved

Charles A. Riedl

Follow this and additional works at: <https://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Charles A. Riedl, *How Can International Legislation Best Be Improved*, 31 Marq. L. Rev. 259 (1948).
Available at: <https://scholarship.law.marquette.edu/mulr/vol31/iss4/2>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

HOW CAN INTERNATIONAL LEGISLATION BEST BE IMPROVED

CHARLES A. RIEDL

International legislation is the process "whereby international law is consciously extended to keep pace with the expansion of international relations in consequence of improvements in transportation and communications."¹ If it is admitted with Aristotle that "what each thing is, when fully developed, we call its nature"² then one must make the further admission that man is by nature a political animal.³ Man in the state of his full development must be a member of a political state or a civil society. To understand the nature of civil society one must understand the nature of man. If man is conceived as a person—endowed with freedom, dignity, inherent rights and ultimate purposes—then civil society is affected by this fact to the extent that it too will be concerned with both rights and duties. Civil society exists to safeguard and promote the welfare of its members in the full development of their personalities. To know the end of civil society one must know the end of man. Civil society in the state of its full development must be a family of nations. International law is the recognition of the rights and duties of a family of nations and the voluntary agreement among themselves as to the procedure "by which those rights may be protected or violations of them redressed."⁴ International law does not proceed from any formal authorized law making power, but from the voluntary contractual agreement of a number of nations, who recognize no common superior. Its sanction results from a fundamental knowledge of the nature of man and civil society.

The principle of order under law lies at the very foundation of civil society and requires the subordination by man of a part of his personal freedom in the interest of the maintenance of civil society. Man's first and most direct contribution to the maintenance of civil society should be active participation therein, self restraint, willingness to accept and practice the rules of social conduct which are embodied in law and interpreted by the authorized agencies of government. Of equal importance should be his participation in the functioning of an

¹ Hudson, Hon. Manley O., "The International Law of the Future," American Bar Association Journal, XXX (October, 1944), 560, 591.

² Politics, I, 2, 1252.

³ Ibid., 1253 (a).

⁴ Fenwick, Charles G., International Law, 34.

alert and informed public opinion, which serves by collective disapproval, to enforce self restraint upon those individuals who, through anti-social conduct, imperil the safety and progress of civil society.⁵

Liberty is not the exercise of unbridled will. It implies the existence of an organized society maintaining public order without which liberty would be lost in the exercise of unrestrained abuses. To agree to adhere to the principles of right and justice among nations, secured through the maintenance of international order under law, is not a surrender of national freedom. Ordered liberty among nations is thereby substituted for international anarchy.

Customary international law is based upon "the common consent of nations extending over a period of time of sufficient duration to cause it to become crystallized into a rule of conduct".⁶ For the most part it has evolved as a system of jurisprudence out of the experience and necessities of situations that have arisen from time to time. The primary function of international law is to define and prescribe rules of international conduct, which represent the maximum practicable reconciliation between the sovereign rights of each nation and the sovereign rights of other nations for the greater benefit of all. The evolution of international order under law, which is indispensable to the maintenance of peaceful relations among nations, has not kept pace with the rapid march of human progress.

The processes of diplomatic negotiations between nations have been employed from time immemorial. Today international law derives its content in large measure from treaties and conventions without creating a continuing body of general legislative competence. Conventional international law not only embodies principles of customary international law but also provisions which the contracting parties agree should govern the relations between them. Provisions of conventions that are not international law when incorporated therein may develop into international law by acceptance by the nations.

International agreements assume various forms and are given various descriptive designations. Treaties in the constitutional sense are those international agreements of a political or quasi-political character which are submitted to the Senate of the United States for its advice and consent to the ratification thereof.⁷ In the field of treaty

⁵ "These two great moral forces—self restraint on the part of the individual and approval or condemnation by public opinion—constitute the real basis upon which the effectiveness of law rests in civil society." Hull, Hon. Cordell, Secretary of State, "The Spirit of International Law" (U. S. Government Printing Office, Washington, 1938), 3.

⁶ Hackworth, Green Haywood, "Digest of International Law," I, 1.

⁷ Constitution, Article II, Section 2; see Articles on proposed amendment of Article II, Section 2, paragraph 2, of Constitution that a majority of both the members of the Senate and the House are sufficient for the ratification of treaties; Morford, James R., "For the Constitutional Amendment," XXX

making, the President is the sole authority for entering into negotiations and for concluding agreements with foreign countries. At every point until an international agreement becomes effective the authority of the President is sole and exclusive with the one exception provided in the Constitution.

A multilateral treaty is one that has been signed and effected as between three or more governments and deals with matters of more or less common interest to all.⁸ The procedure for bringing a multilateral treaty into effect for the United States subsequent to signature is quite lengthy. If two-thirds of the senators present vote favorably thereon, the Senate thereby gives its advice and consent and the President may ratify the treaty. It is sometimes incorrectly stated that the Senate ratifies a treaty. It is true that failure of two-thirds of the Senators present to give such advice and consent has prevented the ratification of treaties in some instances.⁹ Nevertheless, the approval of a treaty by the required number of senators does not ratify a treaty and it is not mandatory on the President. The President makes his instrument of ratification or adherence or accession, whichever is required, and this instrument is deposited with the original treaty. The President then formally proclaims the multilateral treaty, setting forth word for word the treaty as signed, and concluding that the treaty is made public "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof".¹⁰

The Constitution of the United States provides that the Constitution and Acts of Congress and "all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land".¹¹ It further forbids the making of treaties by states.¹² The power of the President of the United States to make and negotiate treaties with other sovereign nations is limited neither in matter nor in form by any express provision of the Constitution.¹³ The United

American Bar Association Journal (November, 1944), 605; Borchard, Edwin M., "Against the Proposed Amendment," XXX American Bar Association Journal (November, 1944), 608.

⁸ Whittington, William V., "The Making of Treaties and International Agreements and the Work of the Treaty Division of the Department of State" (U.S. Government Printing Office, Washington, 1938), 5.

⁹ ". . . of the 820 treaties signed by the United States from 1789 to 1928, 24 were never submitted to the Senate and 9 were withdrawn by the President. Of the 787 submitted for approval, 47 were never acted on, 15 were rejected and 162 were amended. In other words, the Senate intervened in the making of 234 treaties." Borchard, Edwin M., "Against the Proposed Amendment as to the Ratification of Treaties," American Bar Association Journal, XXX (November, 1944), 608, 609.

¹⁰ Whittington, William V., *op. cit.*, 8-13.

¹¹ Constitution, Article VI.

¹² Constitution, Article I, Section 10.

¹³ Mitchell, William D., "The Constitution and the Treaty to Prevent War," American Bar Association Journal, XXXI (February, 1945), 59.

States Supreme Court has held that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution but that as a member of the family of nations "the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign."¹⁴ It has been well established that the courts cannot go behind any treaties except those which are opposed to independence and integrity of the nation, and therefore have held them valid and binding. This is especially true where a breach of treaty might lead to war.

Historically three methods of exercising the treaty-making power have been developed.¹⁵ Each process may be employed independently or by cooperation with each other, the choice usually being governed by political considerations rather than by constitutional limitations. "The National Government, by virtue of its control of our foreign relations is entitled to employ the resources of diplomatic negotiations and to effect such an international settlement as may be found to be appropriate, through treaty, agreement of arbitration or otherwise."¹⁶

The permanent Court of International Justice held that it did not see "in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty' though the treaty might place 'a restriction upon the exercise of the sovereign rights of a State in a sense that it requires them to be exercised in a certain way.'"¹⁷ In fact the power to make a treaty must be considered an attribute of sovereignty.

Representative governments are unsuited to the enforcement of security by covenant. They are almost incapable of speedy and certain action in keeping the peace, since they depend upon the disposition and interest of the heads of state and of the people at the time the occasion for force arises. A system of security relying upon agreements between nation states based on good will absolutely requires long-time collective action by the great powers. The history of the various League schemes to keep the peace—the Quadruple Alliance of a century ago, which later became the Quintuple Alliance, the Concert of Europe, the Hague Conferences, the League of Nations and the Kellogg Peace Pact

¹⁴ *United States v. Curtiss-Wright Export Corporation*, 299 U. S. 304, 318.

¹⁵ 1. Action by the President independently of the Congress or of the Senate.

2. Action by both houses of Congress, through a majority of the quorum of each house subject to executive approval.

3. Action by the President under the power to make treaties provided two-thirds of the senators concur. Dodd, Walter F., "International Relations and the Treaty Power," *American Bar Association Journal*, XXX (June, 1944), 360.

¹⁶ *Monaco v. Mississippi*, 292 U.S. 313, 331.

¹⁷ Quoted by Judge Hudson, *supra*, No. 1, 562.

proves the very opposite. "Preoccupied with their own problems, and prey to the inevitable efforts of ascendant powers to divide them and so reduce their collective power, nations associated by covenant alone tend to drift apart."¹⁸

The cornerstone of American foreign policy is the people's passionate desire for a lasting and stable peace, not the mere cessation of war. The United States has seldom deviated from the tradition that its foreign policy should be so conducted as to make this Nation a force in the world for peace, international morality, justice and fair dealing. The United States has striven for the upholding and the strengthening of rule by law—in standing for the sanctity of treaties, the obligations of international law and the restraint of might by principles of humanity and fundamental justice. Even though national jealousies and ambitions and racial animosities often are the cause of war, there has been a great forward movement all over the world and a growth of enlightened sentiment for the settlement of international controversies by means other than the arbitrament of war. The United States and France led the way in negotiating the Kellogg Peace Pact, a multilateral treaty for the renunciation of war by nations who recognize that disputes can best be settled by diplomatic means. This Pact further provided as a general principle that if one nation violated the treaty, it would be deprived of the benefits of the agreement and all other parties released from their obligations to the belligerent state. Even though this treaty marshalled the great moral forces of the world for its observance and all the signatory nations assumed a sacred obligation not to resort to war, except in self-defense, it did not prevent World War II. The carrying out of any treaty must rest upon the inviolate solemn pledges and the honor of nations. When solemn contractual obligations are brushed aside with a light heart and a contemptuous gesture and when respect for law and observance of the pledged word are flaunted as in two World Wars within one generation, multipartite treaties reveal their weaknesses and limitations for improving international legislation.

The declaration of principles on which the hopes for a better world based on the four freedoms—of thought, of speech, from want and from fear—was made jointly by President Roosevelt and Prime Minister Churchill on August 14, 1941. This Atlantic Charter is the basis for a joint declaration by the United Nations on January 1, 1942, of their cooperative war effort to assure complete victory over their

¹⁸ Williams, Wayne D., "What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order?" (Ross Essay) *American Bar Association Journal*, XXX (September, 1944), 489, 490.

common enemy in the defense of life, liberty, independence and religious freedom and in the preservation of human rights and justice.¹⁹

Conversations were held in Washington between August 21, and October 7, 1944, with representatives of Russia, Britain, China and the United States on the problems of establishing the machinery for an international organization for the maintenance of peace and security. The Dumbarton Oaks Proposals²⁰ were the ten key points on which they reached agreement.

The Yalta Conference, held February 4-12, 1945, by and between the heads of Russia, Britain and the United States, concerned itself in part with the problems of the machinery needed to assure international security, which had been discussed and left unanswered by the Dumbarton Oaks Conference. They declared that the establishment with their allies of a general international organization to maintain peace and security at the earliest possible date was essential both to prevent aggression and to remove the political, economic and social causes of war through the close and continuing collaboration of all peace-loving peoples. They agreed that a conference of the United Nations should be called at San Francisco on April 25, 1945, to prepare the Charter of such an organization.

On June 26, 1945, the Charter of the United Nations and the Statute of the International Court of Justice was signed by representatives of fifty nations, representing about eighty-five percent of the world's population and was to "be ratified by the signatory states in accordance with their respective constitutional processes".²¹ The Senate of the United States, two-thirds of the senators concurring therein, did advise and consent to the ratification of the Charter with annexed Statute on July 28, 1945, and the President of the United States ratified the same on August 8, 1945. The Charter provided that it would come into force upon the deposit of ratifications by China, France, Russia, Britain, the United States and a majority, or twenty-three, of the other signatory states.²² On October 31, 1945, the President of the United States proclaimed the Charter effective as of October 24, 1945.²³

The United Nations Participation Act of 1945²⁴ implemented the Charter in preventing or restraining future aggression by:

¹⁹ "Cooperative War Effort," Executive Agreement Series 236 (U. S. Government Printing Office, Washington, 1942).

²⁰ Dumbarton Oaks Proposals, American Bar Association Journal, XXXI (January, 1945), 4-8.

²¹ Charter of the United Nations, Article 110, paragraph 1.

²² *Ibid.*, paragraph 3.

²³ Charter of the United Nations and Statute of the International Court of Justice, Treaty Series 993, (U. S. Government Printing Office, Washington, 1946), 183-4.

²⁴ Public Law 264, 79th Congress, Chapter 583—1st Session, approved December 20, 1945.

1. Providing for the appointment by the President with the advice and consent of the Senate of United States representatives and alternates on the Security Council, the General Assembly, the Economic and Social Council, the Trusteeship Council and on any other commission to be formed by the United Nations with respect to atomic energy or on any other commission fixing their compensation and requiring them to act and vote in accordance with the instructions of the President, they to hold office at his pleasure.

2. Granting the President authority to negotiate a special agreement with the Security Council, subject to the approval of Congress by appropriate Act or joint resolution, in accordance with Article 43 of the Charter which will define the size, type and location of forces, facilities and assistance to be made available to the Security Council for maintaining international peace and security.

3. Granting the President authority to the extent necessary to apply measures the Security Council has decided to employ pursuant to Article 41 of the Charter, to give effect to its decisions notwithstanding the provisions of any other law.

4. Granting the President authority without further action by the Congress to make armed forces, facilities and assistance available to the Security Council on its call in order to take action under Article 42 of the Charter and pursuant to such special agreement as provided therein.

5. Periodically making the necessary appropriations to defray the expense of performing our treaty obligations and for the salaries and expenses of the United States representatives.

The Charter provided for the realistic recognition of and allowance for the utilization of regional arrangements and procedures.²⁵ The International Union of American Republics²⁶ was formed on April 14, 1890, in Washington, D. C., by the countries represented at the Inter-American Conference. The underlying principle was *mutual helpfulness* and *cooperation*. Unlike other international conferences in the past, this one was not to consider war, the results of war, measures in anticipation of war, nor to reestablish peace, but it was "to consolidate peace, to re-enforce and strengthen the principles governing friendly relations between the nations of the Western Hemisphere."²⁷ A positive program of international cooperation rather than the nega-

²⁵ Charter of the United Nations, Article 52.

²⁶ The Pan-American movement has been promoted by:

1. International Conferences of American States, large diplomatic conferences, and
2. The Pan-American Union, the permanent international organization of the 21 American Republics. Manger, William, "Pan Americanism and the Pan American Conferences" (Pan American Union, "Congress and Conference Series" No. 24), 26.

²⁷ Pan American Union, American Bar Association Journal, XXVI (September, 1940), 745.

tive activity of avoiding strife is its objective. The subsequent progressive evolution of inter-American relations crystallized the postulates of a dynamic international order. The conventional principles of American public international law have received substantial acceptance through approval by treaties, wherein they are incorporated.

Some principles which have been adopted at these large inter-American diplomatic conferences have never been effectuated on a permanent basis, because they have never been formally ratified by treaty. While such principles lack the dignity of international legislation they nevertheless are an expression of international cooperation. The Act of Chapultepec for "Reciprocal Assistance and American Solidarity"²⁸ expresses a mutual cooperation against aggression by acts of war and the organized infiltration of totalitarian forms of society.²⁹ It constitutes an appropriate and constructive basis for a regional arrangement to maintain international peace, justice and human rights in this hemisphere. Such regional agreements are important steps in the direction of a system of true international cooperation—of an order under law based upon the principles of equality, justice, fairness and mutual respect among nations. The Charter in a practical way integrates regional arrangements like that of the Pan-American Union, with the over-all authority of the United Nations and puts the United Nations in gear with the great inter-American system. The mutual advantages of the Pan-American Union for peace and security are not surrendered but they are built into the new foundations of the United Nations.

The primary purpose of the United Nations is not to win a new great world struggle after an aggression has made headway, but through collective security to stop the next war before it starts or suppress it swiftly through collective action at an early stage, if it starts in spite of organized precautions.³⁰ It promises justice as a substitute for force. It invokes the moral pressure of the organized conscience of the world, functioning through the United Nations, upon any nation which ignores this pacific routine and wages aggressive warfare. The

²⁸ Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, February 21—March 8, 1945, Mexico City, Mexico, (U. S. Government Printing Office, Washington, 1946), 72-5.

²⁹ While the American Republics were thereafter to conclude treaties incorporating therein the provisions of the Act of Chapultepec at the Rio de Janeiro conference in October, 1945, that conference was postponed without date. Reports of American Bar Association, Vol. 70 (1945), 360-1.

³⁰ The pacific routines to which resort must be made by large as well as small powers before there can be any resort to force, are: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, regional arrangements, other peaceful means chosen by the disputants themselves, appropriate procedures or methods of adjustment recommended by the Security Council. Remarks of Hon. Arthur H. Vandenberg in the Senate of the United States, June 29, 1945, relative to the Charter of the United Nations (U. S. Government Printing Office, Washington, 1945), 5.

right of individual and collective self-defense, inherent in every sovereign state in the event of summary attack, is preserved.

The Charter does not create a World State or super-state. It is not a Federation of Nations. At best it is a confederation of fifty sovereign states who agree to cooperate effectively in the mutual pursuit of peace and security. Each sovereign state retains exclusive jurisdiction over its internal affairs,³¹ except that if the peace of the world is thereby endangered, the Security Council may intervene to stabilize the situation and prevent a war.

Of the six principal organs of the Charter, consideration will be given here only to —

1. The General Assembly of all members of the United Nations with one vote for each member country³² irrespective of population or resources.

2. The Security Council of eleven members, the five permanent members being China, France, Russia, Britain and the United States. The General Assembly elects the six non-permanent members for a term of two years.

The Charter of the United Nations, as it now stands, confers only one explicit legislative power on the General Assembly namely to propose conventions with respect to the privileges and immunities of the Organization, of its officials and of the members.³³ A Convention on privileges and immunities was approved by the General Assembly meeting in London on February 13, 1946, which provides for the exercise by the Organization of the right, among others, "to make contracts and to acquire and to convey certain properties." Certain immunities would be extended to individuals connected with the Organization and the representatives of Members in connection with acts performed in their official capacities, and a status comparable to that of foreign diplomatic representatives would be given to high officials of the Organization.³⁴

The General Assembly dispensed with the cumbersome procedure for signature and ratification and substituted the simpler requirement of accession.³⁵ Accession signifies the full and entire acceptance of the terms of the convention, thereby precluding the possibility of any conditions or reservations.³⁶

³¹ Charter of the United Nations, Article 2, paragraph 7.

³² Charter of the United Nations, Article 18, paragraph 1.

³³ Charter of the United Nations, Article 105.

³⁴ "Report of the United States Delegation to the First Part of the First Session of the General Assembly of the United Nations, London, England, January 10-February 14, 1946," (U. S. Government Printing Office, Washington, 1946), 12.

³⁵ Sohn, Louis B., "The Development of International Law," *American Bar Association Journal*, XXXIII (April, 1947), 382.

³⁶ The Assembly of the League of Nations on September 23, 1927, set this precedent when it adopted a resolution that "if a state gives its accession, it should know that if it does not expressly mention that this accession is subject to

The General Assembly has no power to make laws, as the legislative branch of the government does. It is a deliberative body and represents each one of the signatory nations, and all other nations admitted to membership "by a decision of the General Assembly upon the recommendation of the Security Council."³⁷

The meeting and debates of the representatives of all the nations crystallize opinion and make moral judgments, which have far more authority and force than can be produced by any lesser group.³⁸ The Assembly is permitted to discuss the maintenance of peace and express its general views but is given no power of decision in that field. In fact, it is definitely forbidden any initiative on any matter on which the Council is acting. It has no direct part in enforcing decisions of the International Court of Justice. It serves both "as a constituent body to call into being the other organs and as a deliberate body to discuss matters of general policy and interest."³⁹ While far from being inconsequential, the total functions of the Assembly are distinctly secondary to those of the Security Council: the strong arm under the Charter.

The Security Council is designed as the primary agency for the enforcement of peace. It alone can intervene in the internal affairs of a nation. It alone can use force to require obedience to its decisions. The specific powers granted to the Security Council are to insure prompt and effective action for the maintenance of international peace and security. Although the *nominal* powers of the Council are tremendous, their exercise is, however, limited by the voting procedure. Decisions on all matters, except procedural, must be made by an affirmative vote of seven members, including the concurring vote of the five permanent members.⁴⁰ This formula had been developed and agreed upon by the "Big Three" at Yalta. If any effective action is to be taken the five permanent members must be united in peace as they had been in war. The fact that the Charter gave a right of veto to each of the permanent members imposes an obligation to seek agreement among themselves. The Council must not be used as a forum, where through propaganda and clever maneuvers, one nation can score a national gain at the expense of another. Since such tremendous powers are intrusted to the Security Council the veto serves as a safeguard against abuse in the use of that power.⁴¹

ratification, it shall be deemed to have undertaken a final obligation." Hackworth, *Green Haywood*, supra, Vol. V, 75.

³⁷ Charter of the United Nations, Article 4, paragraph 2.

³⁸ Ransom, Judge William L., "Report as to the United Nations," House of Delegates, 2nd Session, American Bar Association Journal, XXXII (August, 1946), 467.

³⁹ Report of the United States Delegation, supra, VI.

⁴⁰ Charter of the United Nations, Article 27, paragraph 3.

⁴¹ Miller, Frederick M., "The Charter and the Future," American Bar Association Journal, XXXII (January, 1946), 48-52.

The machinery is available⁴² to give limited legislative powers to the General Assembly to avoid the old vicious circle of alliances, spheres of influences, and suspicions that have produced two global wars. Unrestricted national sovereignty is the cause and the ultimate condition of war.

Although the war of guns has been stilled, a war of ideas and ideals is raging fiercely everywhere. Two worlds, two philosophies of life are engaged in mortal combat. Human society is warring against itself. A cleavage, more penetrating than atomic fission, reaches down into the very heart of humanity, threatening mankind with complete extinction. A battle rages for the empire of the human mind, for the control of the soul of man. The issues at stake are either enslavement under economic or political totalitarian autocracy or liberty, security and fullness of life under democracy.⁴³

Peace is not simply the absence of war. It is the presence of justice. Permanent peace must rest on a firmer foundation than benevolent power to be exercised by any nations which are then the most powerful. No police force, however powerful and however benevolent, could permanently maintain peace and order among individuals through sheer power. Justice presupposes order and the maintenance of rights. A peace which operates through justice makes democracy international.

It is self evident that government by law requires the existence of a legislature to *crystallize* the principles of international law that nations are to obey, a judiciary to *decide* disputes in a peaceful manner and an executive to *enforce* the laws and decisions of the judiciary. The present Charter provides a framework for a government for world affairs and the General Assembly should be considered the legislative branch. The chief defect of the Charter has been the absence of delegated legislative powers in international matters to the General Assembly. The legislative powers to be given the General Assembly should be strictly defined and limited, as they would constitute limitations upon the sovereignty of member nations, and failure to define

⁴² Charter of the United Nations, Article 108.

⁴³ Genuine democracy rests on the following basic realities:

1. Recognition of the dignity, liberty, intrinsic worth, sanctity and rights of every human person.
2. Recognition of the fundamental equality of all men, no matter what the race, nation, education, age, color, or sex.
3. Recognition of the personal, economic and political freedom of all people. All men under the guidance of moral law should enjoy the liberty of the sons of God.
4. Recognition of the social character of man, and of the family, as the basic social cell of all societies.
5. Recognition of the responsibility of all to cooperate freely and mutually for the common good of every class, social group, nation and people as well as for the universal human society to embrace the higher well-being and perfection of all men everywhere.

MacLean, Donald A., "Democracy: Real or Skin Deep?" Columbia, Vol. XXVI, Number 3 (October, 1946), 11.

and limit them strictly would be a fruitful source of future strife and conflict. The powers should be strictly limited to rights and interests that transcend national boundaries. No authority to intervene or act in any matter which is strictly within the domestic jurisdiction of any nation should be delegated.⁴⁴

On July 2, 1946, the House of Delegates of the American Bar Association declared that these specific powers necessary to regulate the international phases of world life should be conferred on the General Assembly:

1. "The regulation and control of atomic energy and the other major weapons of aggressive war,
2. The providing of inspection and police forces under the authority of the United Nations,
3. The formulation and promulgation of codes of international law on specified but limited subjects, and
4. The determination and declaration of specified rights and duties of Nations, as rules for the conduct of Nations and to prevent denials of rights under circumstances endangering international peace and security."⁴⁵

It would be impossible to make an analysis of the foregoing proposed delegation of powers within the limits of a study such as this. Similarly no judgement need be made either on a clarification and limitation of the Charter provision of the so-called "veto power" of the Security Council or on the introduction of the principle of weighted representation in the General Assembly as a condition precedent to the delegation of legislative powers to the General Assembly. The delegation of such powers would greatly improve international legislation.

Under the Charter at present the General Assembly and the other organs and agencies of the United Nations may only prepare and draft legislation, but not adopt it with immediate binding force upon nations or individuals. Although any amendment of the Charter, whereby the power to enact international legislation is given to the General Assembly, would come into force only after it had been ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations including all permanent members of the Security Council, once the amendment giving such legislative powers to the Assembly is adopted, international legislation would be improved since the General Assembly then could enact legislation with immediate binding force promptly and with certainty.

⁴⁴ Wilkin, Robert N., "World Order: Law and Justice or Power and Force?", *American Bar Association Journal*, XXXIII (January, 1947), 18-19.

⁴⁵ House of Delegates, 2nd Session, July 2, 1946, *American Bar Association Journal*, XXXII (August, 1946), 464-9. The Special Committee of the Organization of the Nations for Peace and Law made no further recommendation to the House of Delegates at the annual meeting on October 30, 1946, *American Bar Association Journal*, XXXII (December, 1946), 871-2. For an enumeration of additional powers see Parker, Hon. John J., "World Organization," *American Bar Association Journal*, XXIX (November, 1943), 617-20.

The United Nations represent a united effort and a coordination of interests based upon the sovereign equality of all its members. Many persons in the United States draw an analogy between the powers of the federal government under the Articles of Confederation and the powers of the government for world affairs under the Charter and use the slogan "One World—or None" to win acceptance of "world government now."⁴⁶ It is claimed that the General Assembly could become "a world constitutional convention" for a world government and that within the United Nations the democracies would then organize into a genuine world federal union of, by, and for the people. This multiplication of functions and organs is without necessity and therefore contrary to reason.

The crux of the entire problem of enforcing order through the United Nations is this: What kind of government for world affairs will there be? Will the world's need for a world authority be met by a government of force or a government of law? The creation of any manner of super-state, a single government for the whole world, is unnecessary and unwise.⁴⁷ The individual nations need not surrender the exercise of their sovereignty within their own domain. The government for world affairs must be strictly limited to rights and interests that transcend national boundaries.

The defects and limitations of the Charter are well known and do not bear repetition. The Secretary General of the United Nations in his first report to the General Assembly evaluated the strength of the United Nations when he said:

"The United Nations is no stronger than the collective will of the nations that support it. Of itself it can do nothing. It is a machinery through which the nations can cooperate. It can be used and developed in the light of its activities and experience to the untold benefit of humanity, or it can be discarded and broken."⁴⁸

It is obvious that the United Nations can be strengthened, only by delegations of power with respect to external sovereignty, so that acting in a legislative capacity the General Assembly of the United Nations can add to and improve the Law of Nations, which the sovereign states have so far developed in their relations one with another. In that way the United Nations can be made the embodiment of justice before an embodiment of power has a chance to assert itself.

⁴⁶ Smith, Reginald H., "The United Nations: Where are We Heading in American Policy and Opinion?", *American Bar Association Journal*, XXXII (December, 1946), 841-3. Holman, Frank, "World Government 'No Answer to America's Desire for Peace,'" *American Bar Association Journal*, XXXII (October, 1946), 642-3.

⁴⁷ House of Delegates, September 12, 1944, *American Bar Association Journal*, XXX (October, 1944), 545.

⁴⁸ "Full Text of Trygve Lie's Summary of Work of the United Nations," *American Bar Association Journal*, XXXII (September, 1946), 553-7.