

**REVIEW AND REVISION OF
THE UNITED NATIONS CHARTER**

CHARTER REVISION - THE REALISTIC VIEW

Tuesday afternoon, June 28, 1955

PROF. LOUIS B. SOHN (Harvard Law School): Ten years ago the leading statesmen of the world signed the Charter of the United Nations, promising "to save succeeding generations from the scourge of war, which twice in one lifetime has brought untold sorrow to mankind." To that end they agreed to unite the strength of all peace-loving nations to maintain international peace and security and "to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." During the campaign for the ratification of the Charter, the peoples of the world were assured that at long last an answer had been found to the great question - how can we prevent war? Mankind's chance for peace would finally come, if only we ratified the Charter.

Even before the Charter came into force, however, an atomic bomb was dropped on Hiroshima and a new age dawned upon us. Was the Charter strong enough to cope with the requirements of the new age, or was it, like most instruments ending the wars of the past, only sufficient to provide an answer to problems of the kind which led to the war which had just ended? One of the chief draftsmen of the Charter, Secretary of State Dulles, has expressed the view that "had the delegates at San Francisco known we were entering the age of atomic warfare, they would have seen to it that the Charter dealt more positively with the problems thus raised."

I do not propose to speculate what they would have done if they had known of the new danger just around the corner. But it seems quite proper to discuss what we should be doing about it right now. The easiest way out is, of course, to accept the counsel of despair and to say: "It is too late and nothing can be done; let us like ostriches bury our heads in the sand." But such a defeatist attitude is certainly not realistic. Mankind has always accepted the challenge of new vistas, and out of each new experience a new and better life for all has come. The present threat to the survival of our civilization constitutes

just such an opportunity for bringing about a better world, in which people will no longer live in fear of total annihilation.

But a world free from fear will not arrive by itself, it has to be planned for, it has to be prepared for. Some of us have tried to do it; others, while not willing to take part in this endeavor themselves, have at least encouraged us in our labors; but there is also a group which finds it necessary to criticize our efforts as unrealistic and politically unwise. Before I go any further, I would like to dispose of some of the arguments of these pessimists who oppose our efforts to strengthen the United Nations through Charter amendment.

They say, for instance, that if we do not watch out the United Nations will be destroyed, or that we will lose our present Charter, while the new one will never come into force. They seem to forget quite conveniently that until the amended Charter comes into force the powers of the United Nations under the old Charter will continue without any diminution. Several attempts were made to amend the Covenant of the League of Nations, but the League of Nations continued to function despite the non-ratification of those amendments.

The next argument of our opponents is that the Charter might be more weakened than strengthened during the process of revision. The answer to this is simple: If the Government of the United States should feel that any amendments are undesirable, it can prevent their coming into force by refusing to ratify them.

Another argument is that no amendments are possible because the Soviet Union will reject them. Of course, it is impossible to predict what the Soviet Union will do in any particular instance. But we certainly know that the Soviet Union can change her attitude on any given question quite easily, and very often does. We all remember the Soviet boycott of the allegedly illegal Trusteeship Council and the sudden appearance of the Soviet delegate in that Council, without any explanation whatever. Similarly, during the Korean crisis the Soviet Union on a very flimsy pretext rejoined the Security Council despite its allegedly unconstitutional composition. Only last year the Soviet Union became a member of the ILO and of UNESCO after many years of violent opposition. I venture to predict that if we can come up with a proposal which is as fair and equitable as we can make it, and if a vast majority of the nations of the world accepts it as the fulfilment of the hopes of all of us, the Soviet Union will find it impossible to reject it. Furthermore, this argument about the danger of Soviet obstruction is not only

of doubtful validity as far as its merits are concerned, but also amounts to supporting the current Soviet opposition to Charter revision. It seems to suggest that we should join the Soviet Union in an unholy alliance against the small powers which want amendments. Many valuable proposals were lost at San Francisco because of our working hand-in-hand with the Soviet Union. We have regretted it ever since, and that tragic performance certainly does not warrant a revival.

In a similar vein, it has been suggested that if we support Charter amendment we might offend the Soviet Union and thus enlarge the gulf between us. A review of the main events of the last ten years will easily refute this argument. Whenever we have had the courage to do something we felt strongly about regardless of possible Soviet objections we have ordinarily succeeded in obtaining the desired result; witness the Truman plan for aid to Greece and Turkey, the Marshall Plan, NATO, West Germany and Austria. Here also, if we have enough courage, the Soviet Union might have to take the pill and might even discover that it likes the taste of this particular medicine.

While I do not think that it is really necessary to worry about the comfort of our opponents, I am more inclined to worry about possible difficulties with our friends. We cannot sell them short just to obtain our own bargain; we must defend their interests as much as our own. This does not mean, however, that they should not make any sacrifices for the common good and that all the concessions should be made by us only. It seems to me that the time has arrived for all the nations of the Atlantic Community to have not only a military alliance but also a more complete pooling of their political and economic assets. If one of them should be obliged to make a sacrifice at the bargaining table in order to obtain an agreement desired by all, other members of the Atlantic Community must be prepared to compensate the losing nation in some other field of great importance to it. For instance, a loss of a colony by a nation might be compensated by really substantial economic aid and a considerable lowering of tariffs for goods produced by that nation, or a lowering of immigration barriers to its citizens. We must avoid unilateral sacrifices, we must share the burdens more equally.

We are also told that it is dangerous to raise extravagant hopes in the public mind, and that if the Review Conference does not succeed in obtaining substantial amendments in the Charter the United Nations will lose its popular support. It seems to me that extravagant hopes were really raised in 1945

and that despite many disappointments the general public remained more devoted to the United Nations than the very statesmen who sold it to the public under false pretenses. It is really amazing how popular the United Nations still is and how strongly the belief is held that the future of the world lies in the hands of a stronger United Nations, well-equipped to do the job for which it was created. As long as we strive in that direction, we will have the public on our side. Only if we should abandon the common ideal, if we should refuse to make a real effort to fulfill our promises, might the public desert us. It is more likely, however, that the public even in those circumstances will remain faithful to the United Nations, and that it will vent its wrath on the timid statesmen, and on us, for having betrayed our principal mission.

The next question is, I suppose, the question of timing. We are told that the general political climate is not ripe for a reasonable approach to United Nations problems, that other problems must be solved first, and that we must first achieve a preponderance of power, or, alternatively, that we must wait until the Communist world and the West are perfectly balanced. We cannot wait, however, for the ideal moment, the ideal climate. No one can know at any given point in history whether this is the last chance for peace, or whether better chances loom in the not too distant future. Only after the event can historians allege that an opportunity to prevent a war was missed at a particular point; most of them disagree on the exact moment of opportunity, and even more on the event which would have led to the correct turn at the crossroads leading to peace and war. I submit that we might not find a better time for doing the right thing than in the next few years. Several basic disputes between us and the Communist powers have either already reached a solution or are on the way to an early settlement. While there are likely to be many ups and downs, the general trend is positive rather than negative. We can negotiate from strength at this moment, and it is doubtful whether a few years hence this will be still true. It might not be possible for us to keep our armaments on as high a level as today if Russians continue to be sweetly reasonable. Russian truculence and their ability to commit the worst possible blunder at the worst possible time were the main building blocks of Western unity. Many of our alliances would melt quickly if the sun of Russian friendliness should continue to shine. Looking at the grimmer side of the picture, we have to take into account the fact that in ten, if not five, years the Soviet bloc not only will

reach relative parity in nuclear weapons needed to destroy the foundations of the opponent's power, but also will have a sufficient number of long-range airplanes and guided missiles to deliver a crippling blow without any difficulty whatsoever. Do we have to wait for that dreadful moment, hoping that then a miracle of some sort will occur to rescue us from the predicament brought about by our own stupidity? Or shall we start doing something about it now, when there is still time, when we have leaders trusted by all, when we can still negotiate from strength? It seems to me that there is only one answer to this question, and that there is hope that our government will give that answer when the time comes.

The final argument is that it is not in the interest of the United States to have a stronger United Nations, that we must retain our freedom of action, and that in case of a crisis we can count only on our strength and we cannot surrender it to the United Nations. It is true that at this moment the future of the world depends on the strength of the United States, but it is equally true that we are not omnipotent. We are used to solving our own problems in our own way, and as long as these problems were purely internal ones the American nation was able to achieve one miracle after another. But our international experiences have been more frustrating. We gave up the job entirely in 1920, we were unwilling to help the League effectively against the fascist aggressors in the 1930's, and we were forced into the war in 1941 only through a direct attack. We hoped that after a short emergency period following the war our international task would be finished and we would be able to focus our attention on domestic problems. It did not happen, and we found it necessary to take over the leadership of the West with all the concomitant responsibilities and frustrations. We do not really enjoy it; we are surprised at the complications of the task, the ingratitude of those for whose benefit we are slaving, and at the unreasonableness of the Soviet Union; we are deeply hurt by the accusations that we are not doing our job well, that we are not listening to the advice of other, more experienced nations, and that the mess we are in is largely due to our own unreasonable attitude.

We have discovered that the outside world is more difficult to govern than our domestic front, that the problems of the world cannot be solved by our unilateral decisions, that we are not strong enough to do everything single-handedly. We can no longer go it alone; we know that if we tried to isolate ourselves from the rest of the world, we would open the rest of the world

to Communist expansion, and that in the end we would have to surrender to the combined might of the other continents.

We realize woefully that we no longer have complete freedom of action; not only do we find it necessary to depend on the co-operation of our friends, but also our most desired ambition—to live in peace—is constantly at the mercy of other countries. It is true that we do not like the idea of limiting our power of doing what we please when we please. But we like even less the freedom of the Russians and the Communist Chinese to do what they please when they please. Ideally, we would like a situation in which we could limit the freedom of the Russians without limiting our own; we have to accept the fact, however, that international relations can be conducted successfully only on a basis of reciprocity. If we want to limit the ability of the Soviet Union to start a war against us we must agree also to limitations on our ability to wage war. The more we want to restrict the Russians, the more we have to restrict ourselves. And there is no better way to restrict the Russians than a stronger United Nations, able to impose the necessary restrictions equally on all of us. It seems to me, therefore, that the best interests of the United States will be served most adequately by a United Nations strong enough to check the Russian ambition to dominate the world. The only thing we will have to give up is something we do not want in the first place, namely, our own chance to impose our rule on other nations of the world.

Assuming that we want a United Nations strong enough to prevent future wars and thus fulfilling the promise of the original Charter, we have to define in more concrete terms what we mean by a stronger United Nations. Those who have studied the matter agree that there are three interconnected problems which must be solved not separately but simultaneously, namely, collective security, disarmament, and pacific settlement of disputes. Without collective security, disarmament is not possible, as nobody can renounce his armaments unless he can count on adequate protection by the community against possible violators of the law. Conversely, collective security is not possible without disarmament, as we can put at the disposal of the community only limited forces which cannot be expected to provide sufficient protection against the gigantic might of the big powers. Only if states are disarmed can we have an international police force strong enough to cope with aggression anywhere in the world. Finally, we cannot deprive the nations of the means of solving their disputes by force without providing

at the same time adequate methods for the pacific settlement of all disputes which threaten friendly relations between states.

This idea is, of course, not new. In the 1920's a group of Americans led by James T. Shotwell and David Hunter Miller suggested to the League of Nations this combined approach, and it led to one of the most ambitious attempts to solve this problem, the Geneva Protocol of 1924. It depended, however, on a future solution of the disarmament question, and the effort was never completed. The history of the world might have been different if the Protocol had come into force.

We are faced with a similar problem, and the basic element of a solution is that we cannot tinker with one problem only, but must be ready to tackle all three simultaneously. While theoretically this could be done apart from any Charter Review Conference and while many solutions could be put into effect without Charter amendment, the Review Conference presents an opportunity to deal with the matter in an orderly fashion. And once an agreement is reached among all the nations of the world on the needed measures there should not be any more difficulty in embodying them in the Charter itself rather than in a series of separate instruments.

All the past discussions on disarmament show quite clearly that mere reduction of armaments does not present a solution, and that disputes about quotas and the comparative value of various armaments cannot be solved in any generally satisfactory manner. If large national forces are retained, the international peace force will also have to be dangerously strong, and it may be expected that after a short truce period the armaments race will start again. In my work with Mr. Grenville Clark we have come to the conclusion that only complete disarmament of all national military and para-military forces will solve this problem. Of course, disarmament of this type cannot be accomplished at one fell swoop. We propose a ten-year period during which a ten percent reduction in all national forces and armaments, conventional and atomic, would be made each year under careful international supervision. Simultaneously, adequate international controls would come into effect over the production and utilization of nuclear materials. With the growth of peaceful uses of these materials, it does not seem possible to advocate any longer United Nations ownership of all the facilities which produce and utilize them. Instead, we propose United Nations custody of all materials not actually in use, and participation by United Nations personnel in the management and operation of all the facilities which

produce or utilize dangerous amounts of nuclear materials. While principal controls would be limited to declared facilities, sufficient power must be given to United Nations Inspectors to inspect any places in which illegal activities might be conducted. Guarantees must be provided, of course, against abuses and in certain cases a warrant from an international court would be required.

Over the same ten-year period during which disarmament would be gradually effected, an international peace force would be built up, by ten percent each year, until it would reach its authorized strength of some 500,000 persons. Such force would act only on orders of the General Assembly or of the Security Council, and would be subject to various controls designed to ensure its independent, international character, and to prevent its domination by any nation or group of nations.

The revised Charter must also provide more effective methods for dealing with international disputes. For instance, the General Assembly and the Security Council may be authorized to make a preliminary investigation of each dispute, and if they should determine that the dispute is of so serious a character as to endanger international peace they may further be empowered to direct the parties to submit their case to the International Court of Justice, and the Court would have compulsory jurisdiction over any dispute thus submitted. If the Assembly or the Council should decide that a particular dispute cannot be settled by a decision of the legal questions involved in it, it may send the dispute instead to an international equity tribunal authorized to take into consideration other factors besides the legal ones. Such a tribunal may be given at the outset only the power to make recommendations, except where the parties have previously accepted its jurisdiction as compulsory, but after a period of time its jurisdiction may be made obligatory by a special vote of the General Assembly.

If all these changes are made in the powers of the organs of the United Nations, changes will also be necessary in their structure and voting procedure. There are many proposals for weighting the votes in the General Assembly, for having the members of the General Assembly responsible to their peoples rather than to their governments, for making the Security Council in turn responsible to the General Assembly and functioning as the Assembly's executive organ, and for improving the financial situation of the United Nations. There are also various proposals for enlarging the powers of the United Nations in other fields, e.g., with respect to economically underdeveloped

areas and the non-self-governing territories. Enough has been said, however, to indicate the vast scope of the proposed changes. How can all this be done?

I submit that the American people are willing to accept many of these changes without strong opposition, and that the rest will be accepted if the matter is properly explained to them. If our President should reach the decision that the enlightened interest of the United States requires a stronger United Nations, built on the principles which I have outlined, he will be pleasantly surprised at the vast support he will receive for such a plan. It is doubtful whether any considerable minority of the Senate will dare to oppose a plan supported strongly and unequivocally by the President and the people of the United States. In the past such opposition has always melted whenever the pressure was strong enough. The votes for the original Charter of the United Nations, for the acceptance of the jurisdiction of the International Court of Justice and for the North Atlantic Treaty, all dealing with new obligations never accepted before, have all been practically unanimous.

If we can prepare an agreement solving honestly the basic problems of today in a spirit of generosity and understanding, other nations will accept our leadership with gratitude and for the first time in modern days we shall achieve on the international scene a success comparable to those successes which we accept as a matter of fact whenever we tackle our domestic problems. Time is getting short for such a successful venture, but the opportunity still beckons. Our client, humanity, is waiting impatiently for our helping hand. When a future historian writes up the history of our days I hope he will be able to note that we have accepted the challenge and have thus ensured the survival of the human race. Let us not invoke the failures of the past as an excuse for lethargy. In the last ten years we have learned how to split the atom; I am sure before the next ten years are over we will also learn how to keep the world together.

TENTATIVE TOPICS FOR BRIEF DISCUSSION

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1. What factors should be considered by the Government of the United States in reaching the decision whether or not to support a Charter Review Conference?

2. If a Conference is held, should the chief emphasis be on disarmament or on other questions? For instance, Ambassador Lodge would like the Conference to deal principally with veto on membership. Is such a limited approach more desirable?

3. If the Government of the United States should follow the suggestions of Chancellor Adenauer and present a bold new program of disarmament, can this topic be considered apart from other subjects, or are there any questions so closely connected with the question of disarmament as to require simultaneous consideration?

4. Should any changes be made (a) in the structure of the United Nations, (b) in the voting procedures of the Security Council, and (c) in the voting procedures of the General Assembly?

5. Should international lawyers concern themselves with all these questions, or should they concentrate their efforts on problems of special interest to lawyers, such as pacific settlement of disputes and codification of international law? Can we expect more rapid progress in these fields apart from any developments in areas of greater political significance?

6. Should the United States be prepared to defend the status quo in the economic and colonial fields or should it try to seize the initiative by proposing to strengthen the powers of the United Nations in these fields?