

WORLD LAW

UNITED NATIONS TERRITORIAL ADMINISTRATION AND THE DEVELOPMENT OF THE CHARTER*

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THE RECENT West Irian (West New Guinea) case furnished the first occasion on which the United Nations actually took over the administration of a territory other than its own headquarters properties. However, there are earlier precedents in connection with Trieste and Palestine in which the organization decided to undertake functions of this character without, in the end, actually doing so. The present study undertakes, on the basis of these cases, to consider not only the substantive Charter law pertaining to this type of United Nations activity, but also and perhaps more importantly, the bearing of these cases on the development of the Charter as an effective instrument for the maintenance of peace and security. The latter issue naturally arises because of the apparent absence of any Charter provision specifically authorizing territorial administration by the United Nations.

The earliest case originated with the Permanent Statute of the Free Territory of Trieste, which was annexed to the 1947 Italian Peace Treaty¹ and which provided in article 2:

The integrity and independence of the Free Territory shall be assured by the Security Council of the United Nations Organization. This responsibility implies that the Council shall:

(a) ensure the observance of the present Statute and in particular the protection of the basic human rights of the inhabitants.

(b) ensure the maintenance of public order and security in the Free Territory.

There were other clauses which provided that the governor would be appointed and subject to suspension by the Council,² and that

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¹ Annex VI, Treaty of Peace with Italy, Feb. 10, 1947, 61 Stat. 1245, 1430, 49 U.N.T.S. 3, 187; 42 AM. J. INT'L L. SUPP. 47, 97 (1948).

² Annex VI, Treaty of Peace with Italy, Feb. 10, 1947, art. 11, 61 Stat. 1245, 1432, 49 U.N.T.S. 189.

he would have the status of the Council's representative.³ The governor was given a power of veto over acts of the popular assembly; however if, following a veto, the popular assembly insisted upon passing a piece of legislation and the governor refused to agree, the final decision would rest with the Security Council.⁴

When the Council took up the request that it assume these powers, several members queried its authority under the Charter to do so. It was generally recognized, in the ensuing debate,⁵ that there was no specific provision in the Charter enabling the Council to assume such responsibilities. However a consensus emerged holding that the necessary authority could be found in article 24, the relevant parts of which are as follows:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

In reaching its decision⁶ on this basis, the Council recognized that the authority for the desired action was not to be found in any of the chapters of the Charter enumerated in paragraph 2 of this article. On this point, a memorandum presented by the Secretariat⁷ declared that it was understood at San Francisco that the Security Council would not be restricted to the specific powers set forth in these chapters.⁸

³ Annex VI, Treaty of Peace with Italy, Feb. 10, 1947, art. 17, 61 Stat. 1245, 1433, 49 U.N.T.S. 3, 190.

⁴ Annex VI, Treaty of Peace with Italy, Feb. 10, 1947, art. 19, 61 Stat. 1245, 1434, 49 U.N.T.S. 3, 191.

⁵ U.N. SECURITY COUNCIL OFF. REC. 2d year, 89th, 91st meetings (1947).

⁶ *Id.*, 91st meeting 60-61. The powers were never actually assumed because of inability to reach agreement in the Security Council on the details of the administration.

⁷ *Id.* at 44-45.

⁸ The reference is to the 14th meeting of Committee III/1 (Doc. No. 597, III/1/30, 11 U.N. CONF. INT'L ORG. DOCS. 393 (1945)) which, according to the Secretariat memorandum, revealed the intent of the framers that when the maintenance of peace and security is in issue, the Council should not be regarded as limited by specific Charter provisions, other than the fundamental principles and purposes found in chapter I. See GOODRICH & HAMBRO, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 205 (2d ed. rev. 1949); Schachter, *The Development of International Law*

Although the members of the Council generally found article 24 broad enough to embrace the power desired to be assumed in the case of Trieste, the debate in the Council evidenced a lively awareness that the action under consideration would constitute a development of the Charter through assertion of a power not specified therein. The importance of public opinion in this connection was also recognized by the French representative when he said that:

[W]orld opinion would certainly not understand it, if the Security Council were to give the impression of evading a responsibility so closely related to the maintenance of international peace and security, as it is precisely the main task and responsibility of the Security Council.⁹

The United Kingdom representative said that while it was right to suggest the absence of Charter authority, the Council should think carefully before creating a precedent which would debar it, in the future, from accepting any responsibilities not specifically enumerated in the Charter. He thought that, in the future, "very difficult questions may often arise, in which it really will be necessary to turn to the Council for assistance." He suggested that article 24 was broad enough to justify the Council in assuming the responsibilities for Trieste specified in the Italian Peace Treaty.¹⁰

The United States representative stressed that, in drafting this treaty, the only possible solution for the Trieste problem was internationalization. It was necessary that such an international regime be guaranteed, and it was far more in the spirit of the times that the United Nations should do this than it should be done by the principal powers which had engaged in the war or by an individual state. He went on:

Through the Legal Opinions of the United Nations Secretariat, 25 BRIT. YB. INT'L L. 91, 97-98 (1948). Kelsen, with whom the present writer agrees, maintains that the discussion in question does not justify this conclusion: "This discussion at the San Francisco Conference shows that some delegates were of the opinion that the Security Council was not restricted to the specific powers set forth in Chapters VI, VII and VIII (Chapter XII was not yet inserted into the text of the Charter). But it does not show a generally accepted opinion that the powers conferred upon the Council by article 24 are limited only by being 'subject to the purposes and principles of the United Nations,' as the Secretary-General maintained in his statement." KELSEN, *THE LAW OF THE UNITED NATIONS* 284 n.6, 285 (1950).

Further evidence in support of this view is believed to be found in the record of the 25th meeting of the Coordination Committee of the Conference. 17 U.N. CONF. INT'L ORG. DOCS. 169, 171-72 (WD 422, CO/186) (1945).

⁹ U.N. SECURITY COUNCIL OFF. REC. 2d year, 89th meeting 16 (1947).

¹⁰ *Id.* at 9-10.

The Security Council should not, in my view, be afraid of leaping to take such a responsibility. It is in the fulfillment of such a responsibility that the United Nations justifies its existence.¹¹

The Colombian representative said that his country was favorable to enlarging the powers of the Security Council and of the Assembly. He considered it desirable to establish the precedent that the Council should be able to act on the basis of the spirit of the Charter, rather than on a definite provision.¹²

In the light of subsequent developments it no longer seems possible to regard article 24 as furnishing the necessary Charter authority for the administration of territory by the United Nations.

As a first reason for this view, it is to be observed that for the fulfillment of the broad responsibility conferred upon the Security Council by this article, the Charter elsewhere specifies that the Council is to have certain more specific powers, notably those pertaining to "collective measures," "provisional measures," and the "peaceful settlement" function. The function assumed in the Trieste case appears to be essentially different from a collective or provisional measure, and while it might be said to have had the broad purpose of "peaceful settlement" of a dispute between Italy and Yugoslavia, it is also essentially different from the "peaceful settlement" function of the Security Council, which is defined in chapter VI of the Charter. While the Council undoubtedly has the authority to assist in the settlement of disputes by the performance of such related functions as investigations and the appointment of subsidiary organs, its basic power vis-à-vis the parties to disputes and situations is the power of recommendation. The assumption of governmental responsibility, as in the Trieste case, appears to have an essentially different constitutional character.

The motivation for assuming such a function may also be essentially different from that of maintaining peace and security. This is illustrated by the Jerusalem case, which will be discussed more fully below. The United Nations decision to assume responsibility for Jerusalem as an international city was motivated in part, no doubt, by considerations relating to the maintenance of peace and security, but also, certainly, in part to assure the protection of, and free access to, holy places of three religions.

¹¹ *Id.* at 11.

¹² *Id.* at 18.

The final reason for considering that article 24 is not the true basis of Charter authority for such measures is found in the fact that, even if it were otherwise applicable, it applies only to the Security Council, whereas, since the Trieste case, it has always been the General Assembly which has decided to assume the ultimate responsibility for the United Nations in such matters.

In the absence of any reasonably specific authority for such action in the Charter, and of any apparent intent on the part of the framers to include such authority, it is believed to be the best solution of the resulting problem to regard the Council action in the Trieste case as the first step in a potential process of Charter modification. We are not here, of course, referring to formal Charter amendment, but rather to Charter modification through practice and acquiescence of the members. If this were to be regarded as the true character of the Trieste case, it would not be the only instance of the kind in the history of the organization. The best known case in which such a modification was actually carried out pertains to a Security Council voting rule. Article 27 (3) stipulates that decisions on non-procedural matters shall require "an affirmative vote of seven members including the concurring votes of the permanent members." Through practice generally acquiesced in, however, it has become well established that the abstention of a permanent member will not defeat a decision of this kind.¹³

From the point of view of constitutional development, the basic elements of the Council's action in the Trieste case may be said to have consisted in an awareness of the need for the type of activity in question, and the disposition to take steps to establish the neces-

¹³ Professor Gross traced this development up to mid-1950, at which time he could say that the modified rule had not become effective with respect to the Security Council's use of force. Gross, *Voting in the Security Council: Abstention From Voting and Absence From Meetings*, 60 *YALE L.J.* 209, 227-28 (1951). Subsequently, however, the Council adopted the resolution of February 21, 1961, urging the U.N. Force in the Congo to use force "if necessary" and "in the last resort" to prevent civil war in the Congo, and this was universally regarded as a valid decision, notwithstanding the abstention of the Soviet and French representatives. In a recent statement, Professor Gross recognizes the modified rule as now being effective in all cases: "In the absence of effective procedure for authoritative interpretation, differences are bound to arise and remain unresolved unless a general consensus emerges as it did, for instance, in connection with the abstention of permanent members of the Security Council contrary to the letter of article 27, paragraph 2." Gross, *Expenses of the United Nations for Peace-Keeping Operations: The Advisory Opinion of the International Court of Justice*, 17 *INT. ORG.* 1, 10 (1963).

sary Charter basis, notwithstanding the lack of a specific authorization in the Charter as written. In this sense it may be said that the Council took the essential first step in a process of Charter development. In view of this basically satisfactory handling of a constitutional question of this kind, it is all the more surprising that when similar situations arose, raising corresponding questions as to the powers of the General Assembly, no similar elucidation of Charter issues took place.

The problem arose in several forms, in the same year as the Trieste debate, in connection with the Assembly's Plan of Partition with Economic Union of Palestine. There the Assembly undertook to provide a plan for the future government of Palestine, in view of the impending termination of the Palestine Mandate conferred upon the United Kingdom by the League of Nations. The Plan of Partition with Economic Union¹⁴ provided for the division of Palestine into an Arab and a Jewish state; Jerusalem was to be an international city.

To facilitate the transfer of government from the Mandatory Power to this new regime, the plan called for the establishment of a United Nations Palestine Commission, which was to take over the administration of Palestine as the Mandate came to an end. The Commission was then to establish provisional councils of government for the new Arab and Jewish states, which were to act under the Commission's direction until full responsibility should, in due course, be turned over to them.¹⁵

Arab delegations challenged the legal authority of the United Nations to assume such powers.¹⁶ Undertaking to answer this question, the Polish delegate, Pruszyński, chairman of the subcommittee which drafted the plan, pointed out that:

Since the United Kingdom had stated that it was prepared to transfer its powers only to an organ of the United Nations, the United Nations was obliged to establish such an organ.¹⁷

He went on to say:

¹⁴ Res. 181 (II), U.N. GEN. ASS. OFF. REC. 2d Sess., Resolutions 131, 132 (1947). This resolution recommended that the parties carry out the plan which was annexed to it. However the plan was rejected by the Arabs and never entered into force.

¹⁵ *Id.* at 133.

¹⁶ *Id.*, Ad Hoc Comm. on the Palestinian Question 150 (1947).

¹⁷ *Id.* at 160.

The Commission . . . was not to act as the government of Palestine but solely as the body through whose agency the administration of the country would be transferred to the provisional councils of government¹⁸

The United States representative argued along a similar line in the plenary session. He emphasized the Assembly's power to recommend and also pointed to its power under article 22 to set up subsidiary organs.¹⁹ He then went on to say:

In view of the nature of these administrative functions, I do not believe that we can seriously question this temporary and transitory assistance which would be extended to the non-self-governing peoples of territories which will become two States, in their efforts to establish themselves as free and independent members of the family of nations.²⁰

To say that an action cannot be questioned does not serve as an answer when the action is, in fact, questioned. There is here, nevertheless, an argument to the effect that if the parties to a dispute accept a recommendation of the Assembly, then the Assembly may take reasonable action to assist the parties in carrying out the recommendation. This would involve the extension of an existing authority by which, for example, if the Assembly should recommend a conciliation procedure to the parties to a dispute, and they accept, it would undoubtedly be in order for the Assembly to appoint a conciliation commission to assist them in carrying out the agreed procedure. Conciliation is undoubtedly within the "peaceful settlement" function possessed by the Assembly. However, undertaking the responsibility for governing a territory, as a means of assisting the parties to carry out an agreement, may be in a somewhat different category.

In any event, however, it is clear that, in order that this theory of interpretation should be applicable, the transition from one authority to another would have to be peaceful and swift. The United States representative in the Assembly's plenary meeting, when he advanced this argument, evidently thought that such would be the case. To the contrary, however, violence increased as the Arab population showed itself determined to prevent the implementation of the plan following its adoption by the Assembly.

The plan also provided a supervisory role for the Security Council with respect to the Commission:

¹⁸ *Ibid.*

¹⁹ *Id.*, Plenary 1326.

²⁰ *Id.* at 1327.

The Commission shall be guided in its activities by the recommendations of the General Assembly and by such instructions as the Council may consider necessary to issue.²¹

In endeavoring to explain the legal basis of the Security Council function under this provision, Mr. Pruszyński said that it was based on a paragraph in the draft resolution under debate "which provided that the General Assembly should request the Security Council to take the necessary measures for the implementation of the plan; it was also based on Article 10 of the Charter."²² Since, however, the question at issue concerned the powers of the Security Council under the Charter, it could hardly be considered to be satisfactorily answered either by reference to a General Assembly resolution²³ or to a Charter provision which is applicable only to the Assembly.

Another unsatisfactory mode of dealing with constitutional problems of this kind—that of ignoring them—is illustrated by the Assembly's treatment of Arab challenges to the validity of two other aspects of the Plan of Partition with Economic Union of Palestine. These were the plans for the internationalization of Jerusalem and for the appointment of the "neutral" members of the proposed Joint Economic Board.

The plan provided that Jerusalem should be established as a *corpus separatum* under a special international regime to be administered by the United Nations. The Trusteeship Council was designated to discharge the responsibilities of the United Nations in this respect.

The role of the United Nations with respect to the Joint Economic Board to be established pursuant to the plan consisted in the appointment of three members by the Economic and Social Council. These would hold the balance between an equal number of members representing, respectively, the new Arab and Jewish states and would, of course, have the deciding vote on issues as to which the two states were in disagreement. The Board was to implement the measures necessary to realize the objectives of the economic union, and it was to possess the necessary powers of organization and administration for this purpose. The objection was made at the time

²¹ *Id.*, Resolutions 135-36.

²² *Id.*, Ad Hoc Comm. on the Palestinian Question 161 (1947).

²³ See Schachter, *supra* note 8, at 100-01.

that "the net effect of this proposal is . . . to authorize the United Nations to take a direct part in the administration of the economic life of the country."²⁴ Despite Arab protests that the United Nations was without Charter authority to undertake the responsibilities envisioned for it with respect to Jerusalem and the Joint Economic Board,²⁵ the Assembly proceeded to adopt the Plan of Partition with Economic Union without attempting to answer the questions thus raised.

The West Irian (West New Guinea) case represents the latest instance in which the United Nations accepted full or partial responsibility for the governing of a territory. Here the United Nations went further than in the previous cases; it actually took over the administration of the territory in question. The arrangement was entered into by the Netherlands and Indonesian governments with the assistance of the Secretary-General, subject to the approval of the General Assembly, which was duly given. Article V of the agreement provides:

The United Nations Administrator, as chief executive officer of the UNTEA [United Nations Temporary Executive Authority], will have full authority under the direction of the Secretary-General to administer the territory for the period of the UNTEA administration in accordance with the terms of the present agreement.²⁶

In the Assembly debate on the agreement, the Secretary-General indicated his view of the nature of the Charter authority under which the United Nations was acting:

This novel settlement may well be a step in the gradual evolution of the United Nations as an increasingly effective instrument for carrying out policies agreed upon between member governments for the peaceful resolution of their differences, in line with the Charter.²⁷

This recalls an argument advanced in support of the validity under the Charter of the role contemplated for the United Nations Palestine Commission. The United Nations role in West Irian was quite similar to the intended role of the Palestine Commission; in both

²⁴ U.N. GEN. ASS. OFF. REC. 2d Sess., Ad Hoc Comm. on the Palestinian Question 279 (A/AC. 14/32 and Add. 1) (1947).

²⁵ *Ibid.* See also the remarks of Sir Mohammed Zafrullah Khan, *id.*, Plenary 1370-73.

²⁶ 9 U.N. REV. No. 9, at 39, 40 (Sept. 1962). On May 1, 1963 the administration of the territory was transferred by the UNTEA to Indonesia. Under the agreement, however, the U.N. retains a role in connection with an act of self-determination by the people of West Irian to be carried out before the end of 1969.

²⁷ *Id.*, No. 10, at 8 (Oct. 1962).

cases the function was to effectuate a transition of governmental power from one authority to another. In the earlier case the theory advanced by Mr. Pruszyński,²⁸ and implied in the statement of the United States representative in the plenary session,²⁹ was that the United Nations was not to assume a governmental function, but was merely to act as the agency by which the powers of government would be transferred. It is submitted that this theory involves a fiction, since it seems indisputable that the United Nations Palestine Commission would have had to assume some degree of governmental authority.

Does the above-quoted statement of the Secretary-General in the West Irian case mean to advance the same fiction that the United Nations would not be assuming powers of government in that territory? This is hardly to be assumed, considering the fact that the elaborate process provided in the treaty was designed for the purpose of enabling the United Nations to assume administrative authority over the territory, and that the Secretary-General himself negotiated the agreement and was to be responsible for the United Nations administration of the territory.

Does the Secretary-General's statement then mean that, since the United Nations action was "in line with the Charter," the Charter provides the authority by which the organization can take over governmental responsibility for a territory? This would seem to be the most logical meaning to attach to it. However, the presentation of it is here too vague to be productive in terms of the evolution of a workable constitutional system, which includes the necessary development of public opinion.

The approach followed in the Trieste case was sounder, it is submitted, because it was therein made perfectly clear that the Charter was being developed by recognizing in the United Nations the precise and basically important function of taking over governmental responsibility for a territory. As indicated above, the theory there was that an international regime for the territory in question had become necessary; that the United Nations was, by all odds, the most appropriate agency for assuming the supervision of such a regime; and that this role could be justified under the authority of article 24, which recognizes the Security Council as having primary

²⁸ See text accompanying note 18 *supra*.

²⁹ See text accompanying note 20 *supra*.

responsibility for the maintenance of peace and security. It may have been felt that this theory was difficult to apply in the various aspects of the Palestine and West Irian cases since article 24 refers to the Security Council and in these cases the responsibility was to be exercised by other United Nations organs. However, for the following reasons, this difficulty would not seem insurmountable:

1. When the Security Council acts, it acts for the United Nations as a whole. Furthermore, as is specified in article 24 itself, the Council's responsibility for the maintenance of peace and security is "primary" only and not exclusive. The Assembly acted upon this theory in 1950 when, in adopting the "Uniting for Peace" resolution,³⁰ it asserted a residual power to act in cases where the Council is paralyzed by the veto.

2. As indicated above in discussing the Trieste case, the assumption of responsibility for the government of a territory by the United Nations really involves the modification of the Charter by recognizing in the organization a power not therein spelled out and not contemplated by the framers. If, in some cases, it appears as reasonable and appropriate that the Security Council should exercise this power, then it would seem equally proper for the Assembly to exercise it in situations in which it seems more appropriate for that body to act.³¹

If the authority of the United Nations to administer territory involves, in effect, a modification of the Charter, this is not to suggest that the Charter may be modified freely by a vote of the Security Council or Assembly in individual cases. It is clear, on the other hand, that it cannot remain fixed and unchanged forever. What must take place is a gradual evolution. So far as functions of the organization are concerned, such evolution should occur only along lines which appear to be basically important and necessary to the fulfillment of major United Nations purposes. The power to assume responsibility for the government of a territory is evidently such a

³⁰ Res. 377 (V), U.N. GEN. ASS. OFF. REC. 5th Sess., Supp. No. 20, at 10 (A/1775) (1950).

³¹ The Assembly decided that it should initiate the desired measures in the Palestine and West Irian cases. It also decided that the immediate responsibility for carrying out the measures should be delegated to, respectively, the United Nations Palestine Commission (for the transfer of authority from the Palestine Mandatory Authority to the projected new states), the Trusteeship Council (Jerusalem), the Economic and Social Council (Joint Economic Board) and the Secretary-General (West Irian).

function. The Council debate in the Trieste case could have been an important first step in carrying out a Charter development in this respect; however, this start can hardly be said to have been followed through in subsequent cases, so that when the United Nations finally assumed actual responsibility for a territory in the West Irian case, the Charter basis upon which it did so must remain uncertain.

The question may suggest itself, at this point, whether such considerations of long-range Charter development are of any importance, or whether it is not enough if the organization merely seeks to do justice in accordance with the wishes of the parties to a dispute, or of a majority of the Assembly or Security Council. This is a vital question with which this article, concerned only with a small category of cases, cannot deal fully.³² The present discussion is, however, predicated on the view that it is necessary to build up the Charter as the basis of a system capable of maintaining peace and security. The cases under discussion are believed to afford illustrations of the proposition that the handling of actual disputes and situations may afford opportunities for advancing this goal, but that these opportunities may not always be realized to the fullest extent. The importance of the handling of individual cases in a manner consistent with the development of fundamental law is essentially twofold. First, in terms of the goal itself, the essence of any effectively functioning constitutional system is that it must be seen as continuously endeavoring to achieve justice through the vindication of its own principles in an impartial and dispassionate manner. Secondly, speaking in terms of means to the end, it is necessary to restate the goal in terms of a necessity that the Charter should come to have its own existence as an independent international entity, with its own basis of support among the world's statesmen and leaders of public opinion. It must, in other words, become a living force instead of being merely a piece of paper. There is probably no better way of making progress toward this objective than through actual use of the organization in accordance with the Charter, making it clear, meanwhile, what are the applicable Charter principles in any given situation. While it is evident that such a course cannot be followed comprehensively under present world conditions, some

³² A recent, more broadly based study concludes, contrary to the view of this article, that the legal powers of the United Nations and other international organizations are not confined to such acts or rights as are specified in their constitutions. Seyersted, *United Nations Forces: Some Legal Problems*, 37 BRIT. YB. INT'L L. 351, 447-71 (1961).

progress along these lines would seem possible. Conversely, it is believed that the potential of the United Nations is set back to a corresponding extent whenever there is a rejection of law or the Charter, or any distortion or avoidance of applicable Charter principles.

However, actual situations are likely to be controlled by more "practical" considerations than these. Where violence seems imminent, for example, some may feel that a sacrifice of Charter principles is well worthwhile in the interests of achieving a peaceful solution. It is also true that states normally will not hesitate to sacrifice the interests of the United Nations in favor of what they consider to be their own immediate self-interests. It is unrealistic to expect a change in this attitude except through the slow process of building up the prestige and moral force of the United Nations. It may be constructive, however, to consider whether, in concrete cases, the divergence between "practical" and "long-range" considerations is always as great as might be thought.

Among the cases here under consideration, there was no dispute as to the assumption of governmental powers by the United Nations in either the Trieste or West Irian cases. Presumably a fuller elucidation of Charter issues would have been equally as possible in the latter case as it was in the former, without jeopardizing the settlement.

It is therefore, only with respect to the Palestine case, among the group under discussion, that the practical questions of conflicting short and long range interests come into issue. In that case, the constitutional issues under discussion seem to have been subordinated in an attempt to bring about a peaceful solution of the immediate problem. It seems valid to assume, however, that there was never a chance that the Arab states would have accepted the plan for the partition of Palestine. From this point of view, therefore, the practical prospects would not have been affected if more attention had been paid to the constitutional problems involved in the proposals pertaining to the Palestine Commission, Jerusalem, and the Joint Economic Board. However, regarding the precedential value of these proposals as to other cases that might arise, and considering the possibility that in some cases the parties might not be so intransigent as were the Arab states in this case, it may be observed that the Arab states which here raised the legal arguments and demanded that a

constitutional approach be followed were also the ones which rejected the proposed solution. Assuming that a mutually agreeable solution were within the realm of possibility, it is difficult to perceive how the chances of settlement could have been worsened by carrying out a full elucidation of the constitutional issues precipitated. It is conceivable but not inevitable that some elements of the plan might then have had to be abandoned as contrary to the Charter. In light of this possibility, however, it should be observed that the Palestine partition plan failed in its entirety for want of Arab agreement and with it the various parts that involved constitutional questions. The most important objective was clearly to gain acceptance by the Arab states of the Assembly's basic recommendation for the partition of Palestine. If this goal could have been advanced by giving, in response to the Arab wishes, full and conscientious consideration to the constitutional questions involved, some sacrifice in the details of the plan would have been justified from a purely practical point of view. Substitute provisions of a satisfactory nature presumably could have been worked out once agreement to the basic plan had been secured.

In conclusion, the opinion is ventured, based on the relatively few cases here considered, that if a serious effort were made to do so, full elucidation of constitutional issues could be effectuated to an extent greater than past practice would indicate. It is submitted, furthermore, that the potential of the Charter as an instrument for the maintenance of peace and security would be enhanced to the extent that such an effort were made.