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FROM LEAGUE OF NATIONS TO UNITED NATIONS

by LELAND M. GOODRICH*

I.

On April 18, 1946, the League Assembly adjourned after taking the necessary steps to terminate the existence of the League of Nations and transfer its properties and assets to the United Nations. On August 1, this transfer took place at a simple ceremony in Geneva. Thus, an important and, at one time, promising experiment in international cooperation came formally to an end. Outside of Geneva, no important notice was taken of this fact. Within the counsels of the United Nations, there was an apparent readiness to write the old League off as a failure, and to regard the new organization as something unique, representing a fresh approach to the world problems of peace and security. Quite clearly there was a hesitancy in many quarters to call attention to the essential continuity of the old League and the new United Nations for fear of arousing latent hostilities or creating doubts which might seriously jeopardize the birth and early success of the new organization.

This silence regarding the League could well be understood at a time when the establishment of a general world organization to take the place of the discredited League was in doubt, when it was uncertain whether the United States Senate would agree to American participation, and when the future course of the Soviet Union was in the balance. Though careful consideration had been given within the Department of State to League experience in the formulation of American proposals, it was quite understandable that officers of the Department, in the addresses which they delivered and reports which they made on the Dumbarton Oaks Proposals, should have for the most part omitted all references to the League except where it seemed possible to point to the great improvements that had been incorporated in the new Proposals. Nor was it surprising, in view of the past relation of the United States to the League and the known antipathy of the Soviet Union to that organization, that Secretary of State Stettinius in his address to the United Nations Conference in San Francisco on April 26, 1945, failed once to refer to the League of Nations,

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or the part of an American President in the establishment of it.¹ In fact, from the addresses and debates at the San Francisco Conference, the personnel assembled for the Conference Secretariat, and the organization and procedure of the Conference, it would have been quite possible for an outside observer to draw the conclusion that this was a pioneer effort in world organization.² Since the United Nations came into being as a functioning organization there has been a similar disinclination on the part of those participating in its work to call attention to its true relation to the League of Nations.

While the circumstances which make it necessary for those officially connected with the United Nations to be so circumspect in their references to the League of Nations can be appreciated, the student of international organization is free, in fact is duty bound, to take a more independent and objective view of the relations of the two organizations. If his studies lead him to the conclusion that the United Nations is in large measure the result of a continuous evolutionary development extending well into the past, instead of being the product of new ideas conceived under pressure of the recent war, that should not be the occasion for despair, as we know from the past that those social institutions which have been most successful in achieving their purposes are those which are the product of gradual evolutionary development, those which in general conform to established habits of thought but which nevertheless have the inner capacity for adaptation to new conditions and new needs.

While progress largely depends upon the discovery and application of new ideas and techniques, it has always been considered the test of practical statesmanship to be able to build on the past, adapting what has been proven to be useful in past experience to the needs and requirements of the changing world. Thus the framers of the American Constitution, while they created much that was new, did not hesitate to draw heavily upon the institutions and principles which were a part of their common background of experience in America and in England. At the time of the establishment of the League of Nations, the view was commonly held, certainly with more justification than today in relation to the United Nations, that something really unique was being created. However, we have come to recognize that even the League system was primarily a systematization of pre-war ideas and practices, with some innovations added in the light of war experience. Sir Alfred Zimmern has expressed this fact very well in these words:

. . . The League of Nations was never intended to be, nor is it, a revolutionary organization. On the contrary, it accepts the world

¹ United Nations Conference on International Organization, Document 15, P/3, April 27, 1945.

² For an authoritative description of the

Conference, see Grayson Kirk and Lawrence H. Chamberlain, "The Organization of the San Francisco Conference," in *Political Science Quarterly*, LX (1945), p. 321.

of states as it finds it and merely seeks to provide a more satisfactory means for carrying on some of the business which these states transact between one another. It is not even revolutionary in the more limited sense of revolutionizing the methods for carrying on interstate business. It does not supersede the older methods. It merely supplements them.³

We have come to recognize the various strands of experience—the European Concert of Powers, the practice of arbitration in the settlement of disputes, international administrative cooperation, to mention only a few—which entered into the fabric of the League. Should we be surprised to find that what was true of the League of Nations is even more true of the United Nations?

Those who have thus far attempted a comparison of the United Nations with the League of Nations have, generally speaking, been concerned with pointing out the differences.⁴ Furthermore, comparison has been made of the textual provisions of the Covenant and the provisions of the Charter, not taking into account actual practice under the Covenant. Such a basis of comparison naturally leads to an exaggerated idea of the extent of the gap which separates the two systems. If in similar fashion the Constitution of the United States as it existed on paper at the time it became effective in 1789 were compared with the Constitution as it is applied today, the conclusion undoubtedly would be that a revolution had occurred in the intervening period. Obviously, any useful comparison of the League and the United Nations must be based on the League system as it developed under the Covenant. If that is done, it becomes clear that the gap separating the League of Nations and the United Nations is not large, that many provisions of the United Nations system have been taken directly from the Covenant, though usually with changes of names and rearrangements of words, that other provisions are little more than codifications, so to speak, of League practice as it developed under the Covenant, and that still other provisions represent the logical development of ideas which were in process of evolution when the League was actively functioning. Of course there are many exceptions, some of them important. But the point upon which attention needs to be focused for the serious student of international affairs is that the United Nations does not represent a break with the past, but rather the continued application of old ideas and methods with some changes deemed necessary in the light of past experience. If people would only recognize this simple truth, they might be more intelligent in their evaluation of past efforts and more tolerant in their appraisal of present efforts.

³ Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 4.

⁴ See, for example, Clyde Eagleton, "Covenant of the League of Nations and Charter of

the United Nations: Points of Difference," in Department of State, *Bulletin*, XIII, p. 263.

II.

Space does not permit a detailed analysis with a view to establishing the exact extent to which the United Nations is a continuation of the League system. All that is attempted here is to consider the more important features of the United Nations system, particularly those with respect to which claims to uniqueness have been made, with a view to determining to what extent in general this continuity can be said to exist.

Relation to the Peace Settlement

One point that has been made in favor of the United Nations as a special claim to uniqueness is that its Charter is an independent instrument, unconnected with the treaties which are in process of being made for settling the political and economic issues of World War II.⁵ In contrast, it is argued that the League, by virtue of the fact that its Covenant was made at the Paris Peace Conference, and incorporated in each of the peace treaties, was from the beginning so involved in the issues of the peace settlement that it was never able to overcome the initial handicap of being a League to enforce the peace treaties. It is true, of course, that under the Covenant and under other provisions of the peace treaties, the League had placed upon it certain responsibilities in connection with the carrying out of the peace settlement.⁶ This connection was not, in the early years of the League, regarded as an unmixed evil. One distinguished observer, while recognizing that a principal function of the League was "to execute the peace treaties," concluded on the basis of the first years of experience that this connection on balance served a useful world purpose.⁷ It might be suggested that the criticism that later came to be made of the League on the ground of its relation to the peace treaties was primarily an attack upon the treaties themselves and would have been directed against any international organization which proved incapable of revising them. Without further arguing this point, however, the question can be raised as to how different will be the relation of the United Nations to the peace settlement following World War II?

While the Charter is a separate instrument and was made at a conference called specially for the purpose, the United Nations will inevitably become intimately and directly associated with the peace treaties once they are made. For one thing the original Members of the United Nations were those states that were at war with one or more of the Axis powers at the time of the San Francisco Conference. Furthermore, the interpre-

⁵ See, for example, Clyde Eagleton, "Covenant of the League of Nations and Charter of the United Nations: Points of Difference," in Department of State, *Bulletin*, XIII, p. 264.

⁶ See, for example, the provision of the Treaty of Versailles relating to the administration of the Saar Basin and the protection

of Danzig. *Treaty of Peace with Germany*, Part III, section IV, Annex, chapter II, and section XI.

⁷ W. E. Rappard, *International Relations Viewed from Geneva*, New Haven, 1925, p. 14-16.

tation to date of the provisions of Article 4 of the Charter makes it clear that the conduct of a non-member state during the war is an important factor in determining whether that state shall be admitted to membership. While Article 107 dissociates the United Nations as a peace organization from action taken in relation to enemy states, once the peace treaties have been made they will become part of the existing economic and political order on the basis of which the United Nations will seek to maintain peace and security. It is difficult to see how an international organization for maintaining peace and security, such as the United Nations is, can do so on any other basis. Furthermore, in connection with the making of the peace treaties, we already see the United Nations being called upon to exercise important functions of administration or guarantee similar to those which the League was asked to perform. Thus the United Nations guarantee of the special regime for Trieste parallels very closely the League guarantee of Danzig in its basic conception, and the proposed role of the United Nations in connection with "territories detached from enemy states in connection with the Second World War"⁸ is almost identical to that of the League in relation to "colonies and territories which as a consequence of the late war [World War I] have ceased to be under the sovereignty of the States which formerly governed them."⁹

In this same connection we should consider the respective powers and responsibilities of the two organizations in regard to the revision of the two peace settlements. One serious criticism made of the League of Nations was its ineffectiveness as an instrumentality for the revision of those provisions of the peace treaties which had come to be recognized as unfair and unjust. Under the Covenant of the League the Assembly was empowered to advise the revision of treaties which had become "inapplicable" and the consideration of international conditions whose continuation might affect the peace of the world.¹⁰ This provision remained a dead letter from the beginning, due to the Assembly's lack of power of decision and means of enforcement.¹¹ How much more effective is the United Nations likely to be in this respect? According to Article 14 of the Charter the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which is likely to impair friendly relations among nations. While there is no specific mention made of the revision of treaties, the General Assembly is clearly authorized under this Article to discuss any situation having its origin in unsatisfactory treaty provisions and to make recommendations thereon.¹² There is, however,

⁸ *Charter of the United Nations*, Article 77.

⁹ *Covenant of the League of Nations*, Article 12, paragraph 1.

¹⁰ *Ibid.*, Article 19.

¹¹ Frederick S. Dunn, *Peaceful Change*,

New York, 1937, p. 106-11.

¹² See discussion in Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: Commentary and Documents*, Boston 1946, p. 104-06.

no obligation on the part of Members to accept any recommendation that may be made. Thus the power conferred under this Article does not go substantially beyond that of the Assembly under Article 19 of the Covenant and there is the same chance, if not likelihood, that the United Nations will be ineffective as an instrument for treaty revision. Furthermore, while the Security Council is given broad powers to take necessary action to maintain peace and security, the powers which the Council has to bind Members are limited to those falling within the general category of enforcement action and do not extend to the power to impose upon parties to a dispute or states interested in a particular situation any particular terms of settlement or adjustment. That was made clear in the discussions at San Francisco.¹³

Basic Character of Two Organizations

The statement has been made that the United Nations is "potentially and actually much stronger" than the League of Nations.¹⁴ That statement might lend itself to some misunderstanding, particularly in view of the fact that it is only one of many statements that have been made suggesting that the United Nations inherently is a more powerful organization and therefore more likely to achieve its purpose by virtue of the specific provisions of its Charter than was the League of Nations.

We can start, I think, with the fundamental proposition that the United Nations, as was the League of Nations, is primarily a cooperative enterprise and falls generally within the category of leagues and confederations instead of within that of federal unions. Except in one situation, neither the United Nations nor its principal political organs have the authority to take decisions binding on Members without their express consent. Without this power, it is impossible to regard the organs of the United Nations as constituting a government in the sense of the federal government of the United States. The essential character of the United Nations is specifically affirmed in the first of the principles laid down in Article 2 of the Charter where it is stated that "the organization is based on the principle of the sovereign equality of all its members." This principle was not expressly stated in the Covenant of the League of Nations, but was, nevertheless, implicit in its provisions.

Since both the United Nations and the League of Nations are based primarily upon the principle of voluntary cooperation, the point that needs special consideration is whether, more or less as an exception to the general principle, the Charter contains provisions which give to the organs of the United Nations greater authority than was vested in the corre-

¹³ See Goodrich and Hambro, *op. cit.*, p. 152-53, 155-59. *Handbook on the New World Organization*, New York, 1946, p. 16.

¹⁴ Louis Dolivet, *The United Nations: A*

sponding organs of the League. In this connection a great deal of emphasis has been placed upon the provisions of the Charter regulating voting in the General Assembly and the Security Council. It is, of course, true that under Article 18 of the Charter decisions of the General Assembly can be taken by a two-thirds majority of the members present and voting, instead of by unanimous vote of those present, as was the requirement for the League Assembly. It must be borne in mind, however, that on questions of policy the General Assembly can only recommend, and that consequently any decision taken is a decision to make a recommendation. Also, it is quite unfair to compare these provisions without taking into account the practice of the League Assembly under the Covenant. In several important respects the rule of the Covenant was interpreted so as to bring actual League practice fairly close to the provisions of the Charter.¹⁵ For one thing, it was provided in the rules of the Assembly that a state which abstained from voting was not to be counted as present, with the result that abstention was a means by which certain of the consequences of the unanimity rule could be avoided. More important, however, was the rule which was established in the first session of the League Assembly, that a resolution expressing a wish, technically known as a "voeu," might be adopted by a majority vote. This had the effect of making possible a whole range of Assembly decisions by majority vote which did not differ in any important respect from decisions which may be taken by the General Assembly by majority or two-thirds votes.¹⁶ Furthermore, it should be noted that the League Assembly early came to the conclusion that the decision to recommend an amendment to the Covenant under Article 26 might be taken by a majority vote,¹⁷ with the result that the power of the Assembly to initiate amendments actually could be exercised more easily than under the Charter of the United Nations. Thus it would seem erroneous to view the provisions of the Charter with respect to the power of the General Assembly to make decisions as representing any fundamentally different approach from or any great advance over the comparable provisions of the Covenant of the League of Nations as interpreted in practice.

When we turn our attention to the Security Council we find admittedly that an important change has been made. Under the League Covenant the Council was governed by the unanimity rule except in procedural matters, and this proved a serious handicap, particularly when the Council was acting under Article 11 of the Covenant. It was possible for a member of the Council, accused of threatening or disturbing the peace, to prevent any effective action under this Article by the interposition

¹⁵ See Margaret E. Burton, *The Assembly of the League of Nations*, Chicago, 1941, p. 175-205.

¹⁶ See C. A. Riches, *Majority Rule in Inter-*

national Organization, Baltimore, 1940, p. 24.

¹⁷ League of Nations, *Records of the Second Assembly*, Plenary Meetings, p. 733-35. See also, Burton, *op. cit.*, p. 187.

of its veto, as happened in the case of Japanese aggression in Manchuria in 1931 and the threat of Italian aggression in Ethiopia in 1935. Under the Charter it is possible for a decision to be taken binding Members of the United Nations without their express consent. Furthermore, this decision may require specific acts upon the part of the Members of the United Nations and is not to be regarded as a simple recommendation as was the case with decisions taken by the League Council under Articles 10 and 16.

Nevertheless, there are important points to be kept in mind before we conclude that a revolutionary step has been taken. In the first place, a decision by the Security Council can only have the effect of a recommendation when the Security Council is engaged in the performance of its functions under Chapter VI, *i.e.* when it is seeking to achieve the pacific settlement or adjustment of a dispute or situation. Furthermore, while the decision of the Security Council with respect to enforcement action under Chapter VII is binding upon Members of the United Nations, including those not represented on the Security Council, such decisions cannot be taken without the concurrence of all the permanent members of the Security Council. Consequently, in a situation comparable to that of Japanese aggression against China in Manchuria in 1931 and the threat of Italian aggression against Ethiopia in 1935, where the League Council admittedly failed on account of the unanimity principle, the Security Council would be prevented from taking any decision. Under the Charter the Security Council has power, which the League Council did not have, to take action against the small powers, but the experience of the past would seem to show that it is not the smaller powers, acting alone, who are most likely to disturb the peace. When dealing with threats by smaller powers acting alone the League Council was reasonably effective; it failed only when small powers had the backing of great powers. In spite of important changes in the technical provisions of the Charter, one is forced to the conclusion that so far as the actual possession of power is concerned, the United Nations has not advanced much beyond the League of Nations and that in comparable situations much the same result is to be anticipated. In the last analysis under either system success or failure is dependent upon the ability of the more powerful members to cooperate effectively for common ends.

Finally, the provisions of the Charter with regard to amendments and withdrawal follow in all essential respects the provisions of the Covenant and the practices developed thereunder. Under both Charter and Covenant no amendment recommended by the Assembly can become effective until ratified by the great powers. The Covenant was a little more restrictive than the Charter in one respect, requiring ratification by all members of the League whose representatives composed the Council,

plus a majority of all other members, thereby giving any Council member a "veto." On the other hand, the Charter, while limiting the "veto" to permanent members, requires approval by two-thirds of the Members of the United Nations. In practice, the charter provisions are not likely to have substantially different results.

Likewise, with respect to withdrawal, the League and the United Nations systems do not differ in any important respect. The Covenant of the League expressly permitted withdrawal under certain conditions which were not, however, enforced in practice.¹⁸ The Charter says nothing about withdrawal but it is understood on the basis of a declaration adopted at San Francisco that the right of withdrawal can be exercised.¹⁹ No doubt influenced by the League practice and conforming to it, it was decided that no legal conditions should be attached to the exercise of this right and that no attempt should be made to force a state to remain a Member, although it was made clear that a moral obligation to continue as a Member exists and that the right of withdrawal should only be exercised for very good reasons.

Basic Obligations of Members

Enumerated in Article 2 of the Charter are certain basic obligations of Members of the United Nations. These include the obligation to settle disputes by peaceful means in such a manner that international peace and security are not endangered, the obligation to refrain from the threat or the use of force against the territorial integrity or political independence of any state, and the obligation to give assistance to the United Nations in any action taken under the terms of the Charter. Similar commitments phrased in somewhat different language and with somewhat different meanings were to be found in various Articles of the Covenant.²⁰ From the point of view of form the Charter does represent a somewhat different approach in that these basic commitments are grouped together as Principles binding upon all Members. The phraseology of the Charter in certain respects undoubtedly represents improvement. For instance, the provision of Article 2, paragraph 4, by which Members are to refrain "from the threat or use of force against the territorial integrity or political independence of any state" represents an advance over the corresponding provisions of the Covenant which made it possible for members to take refuge in the technicality that an undeclared war in the material sense was no war and that therefore such use of armed force did not constitute a "resort to war." On the other hand, in one important respect, the basic

¹⁸ Article 1, paragraph 2.

¹⁹ For text, see UNCIO, *Verbatim Minutes of the Ninth Plenary Session*, June 25, 1945, Document 1210, P/20, p. 5-6; for text and comment, see Goodrich and Hambro, *op. cit.*,

p. 86-89.

²⁰ Articles 10; 12, paragraph 1; 13, paragraphs 1 and 4; 15, paragraphs 1 and 6; 16, paragraphs 1 and 3; and 17.

obligations of the Members of the United Nations may prove to be less satisfactory since, in the matter of enforcement action, the obligation of the Members of the United Nations is to accept and carry out decisions of the Security Council and to give assistance to the United Nations in any action taken under the Charter, while under Article 16 of the Covenant, the obligation of members extended to the taking of specific measures against any state resorting to war in violation of its obligations under the Covenant. While this obligation was weakened by resolutions adopted by the Assembly in 1921, it nevertheless proved capable of providing the legal basis for important action against Italy in 1935.

III.

The element of continuity in the progression from League of Nations to United Nations is perhaps most obvious when we examine the structure of the two organizations. The General Assembly is the League Assembly, from the point of view of the basic principles of its composition, powers and procedures. We have already seen from an examination of voting procedures that the practical difference between the League provisions and their actual application and the Charter provisions has been greatly exaggerated. The powers of the General Assembly, as compared with those of the League Assembly, have been somewhat restricted, it is true. The General Assembly's powers of discussion under Article 10 of the Charter and succeeding articles are fully as broad and comprehensive as the League Assembly's powers under Article 3, paragraph 3 of the Covenant. Only in respect to the making of recommendations has the power of the General Assembly been limited, and this, it can be argued, is in line with the practice which developed under the Covenant according to which the Council, and not the Assembly, ordinarily dealt with disputes and situations which endangered peace and good understanding.²¹ The significant difference is that under the Charter a party to a dispute cannot by its act alone transfer the dispute from the Council to the Assembly, as was possible under Article 15, paragraph 9, of the Covenant.

The Security Council, from the point of view of composition, is the old League Council. One important change, however, has been introduced into the Charter. The League Council had general responsibilities and functions, whereas the Security Council is a highly specialized organ. Instead of having one council with broad powers as did the League, the United Nations has three, among which the various functions and powers of the League Council are divided. To a certain extent this new set-up was anticipated in League practice. At the time when the League's prestige as a peace and security organization was low, the Assembly created a special committee known as the Bruce Committee to inquire

²¹ See Burton, *op. cit.*, p. 284-374.

and report on the possibilities of giving the economic and social work of the League greater autonomy. This Committee recommended the establishment of a new organ to be known as the Central Committee for Economic and Social Questions to which would be entrusted the direction and supervision of the work of the League committees in this field.²² This proposed Committee, while it never was set up, was in effect the forerunner of the present Economic and Social Council.

So far as the Trusteeship Council is concerned, there is a somewhat similar background of development. While the Council was responsible under the Covenant for the supervision of the administration of mandates, in actual practice the Council came to rely very heavily on the Mandates Commission which, under the Charter, has come to be elevated to the rank of a principal organ, responsible not to the Council but to the General Assembly. This very responsibility of the Trusteeship Council to the General Assembly was to some extent anticipated in the practice of the League. Over the protest of some members, the League Assembly early asserted and exercised the right to discuss and express its opinion on mandates questions. While the Council was technically responsible for the enforcement of the provisions of the Covenant, there can be little doubt but what the Assembly exercised a real influence both on Council action and upon the mandatory powers.²³

The Secretariat of the United Nations is clearly a continuation of the League Secretariat, not only in name, but also largely in substance. While the Charter provisions would permit its organization on somewhat different lines, with separate staffs for the principal organs of the United Nations, it seems clear that the conception of a unified Secretariat has prevailed.²⁴ "The role of the Secretary-General as the administrator of the United Nations derives from that of his counterpart in the League of Nations,"²⁵ but has clearly assumed greater importance and scope under the provisions of the Charter. Due to political circumstances and the personality of the first holder of the office, the Secretary-General of the League never came to exercise a strong guiding hand in the direction of the League's work. The Charter of the United Nations, however, both expressly and by implication, gives the Secretary-General greater power and seems to expect more constructive leadership from him. More particularly, the role which the Secretary-General will be called upon to play in connection with the coordination of the work of the specialized agencies will require the exercise of initiative and strong leadership.²⁶

²² *League of Nations, Monthly Summary*, August 1939, Special Supplement.

²³ See Quincy Wright, *Mandates under the League of Nations*, Chicago, 1930, p. 133-35.

²⁴ See Report of the Preparatory Commission of the United Nations, PC/20, 23 December

1945, p. 84-94; Walter H. C. Laves and Donald Stone, "The United Nations Secretariat," *Foreign Policy Reports*, October 15, 1946.

²⁵ Laves and Stone, *op. cit.*, p. 183.

²⁶ *Ibid.*, p. 186 et seq.

With respect to the Court, it is clearly recognized that, while it was decided to set up a new Court under a new name, it will be essentially the same as the Permanent Court of International Justice.²⁷ The fact that this Court is regarded as one of the principal organs of the United Nations does not in substance distinguish it from the Permanent Court. For purposes of expediency it seemed advisable to maintain the fiction that the Permanent Court of International Justice was independent of the League system, but a careful examination of the actual organization and work of the Court will leave no doubt that the Court functioned as fully within the framework of the League as will the International Court of Justice within the framework of the United Nations.

IV.

Like the League of Nations, the United Nations is a "general international organization" in the sense that its functions and actions cover the whole range of matters of international concern. Both the Preamble and the statement of Purposes contained in Article I of the Charter make this clear. In fact this generality of purpose and function is more explicitly stated in the Charter than it was in the Covenant, though in the practice of the League it came to be fully recognized. The Charter of the United Nations, in its general arrangement and substantive provisions, divides the major activities of the Organization into three categories: (1) the maintenance of international peace and security, by the pacific settlement of disputes and the taking of enforcement measures; (2) the promotion of international economic and social cooperation; and (3) the protection of the interests of the peoples of non-self-governing territories.

The Pacific Settlement of Disputes

The Charter system for the pacific settlement of disputes,²⁸ while differing from that of the League in many details of substance and phraseology, follows it in accepting two basic principles: (1) that parties to a dispute are in the first instance to seek a peaceful settlement by means of their own choice; and (2) that the political organs of the international organization are to intervene only when the dispute has become a threat to the peace, and then only in a mediatory or conciliatory capacity.

The obligation which Members of the United Nations accept under Article 2, paragraph 3 is to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Under Article 34, paragraph 1, the parties to any

²⁷ UNCIO, Report of the Rapporteur of Committee IV/1, Document 913, IV/1/74 (1). See also Manley O. Hudson, "The Twenty-Fourth Year of the World Court," in *American Journal of International Law*,

LX (1946), p. 1-52.

²⁸ For detailed analysis, see Leland M. Goodrich, "Pacific Settlement of Disputes," in *American Political Science Review*, XXXIX (1945), p. 956-970.

dispute "the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution" by peaceful means of their own choice. Furthermore, by the terms of Article 36 of the Statute of the Court, Members may by declaration accept under certain conditions the compulsory jurisdiction of the Court. Declarations made by Members of the United Nations accepting the compulsory jurisdiction of the Permanent Court of International Justice and still in force are declared to be acceptances under this Article.

The legal obligations which Members of the United Nations have thus assumed are substantially the same as the obligations of League members under the Covenant and supplementary agreements. The Covenant itself did not place upon members of the League the obligation to settle all their disputes by peaceful means. However, forty-six states accepted the compulsory jurisdiction of the Permanent Court by making declarations under Article 36 of the Statute.²⁹ By Article 2 of the General Pact for the Renunciation of War of 1928 (Kellogg-Briand Pact), the signatories agreed that "the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be . . . shall never be sought except by pacific means."

The powers of the United Nations organs for the pacific settlement of disputes are substantially the same as those of the principal organs of the League. Under the Charter, as under the Covenant, the functions of political organs in this connection are limited to discussion, inquiry, mediation and conciliation. It is clear from the words of the Charter and from the discussions at San Francisco, that the Security Council has no power of final decision in connection with its functions of pacific settlement.³⁰ The Charter does, however, seek to differentiate between the functions and powers of the General Assembly and the Security Council in a way that the Covenant did not do. More specifically it makes the Security Council primarily responsible for the maintenance of peace and security, does not permit a party to a dispute to have the matter transferred at its request to the General Assembly, and limits the power of the General Assembly in principle to that of discussion. This constitutes an important departure from the textual provisions of the League Covenant which gave the Council and Assembly the same general competence and expressly allowed a party, acting under Article 15, paragraph 9, to have a dispute transferred at its request to the Assembly. It is significant, however, that out of some 66 disputes that came before the League, only three were actually brought before the Assembly under this provision. It would thus appear, and this is the conclusion of a careful student of the Assem-

²⁹ See Manley O. Hudson, "The Twenty-Fourth Year of the World Court," *op. cit.*, p. 33.

³⁰ See UNCIO, Report of the Rapporteur of Committee III/2, Document 1027 III/2/31(1), p. 4.

bly,³¹ that actual practice under the Covenant resulted in a differentiation of function. This the Charter seeks to make obligatory.

In certain other respects the Charter system departs from the League pattern, but the importance of these differences can be greatly exaggerated. The elimination of the requirement of unanimity in voting theoretically increases the power of the Security Council, as compared with the League Council, in dealing with disputes and situations, but considering that the Security Council can only recommend, and that in League practice, agreement of the great powers was likely to result in the necessary agreement among all members of the Council, the practical importance of this difference is not likely to be great. Furthermore, under the Charter provision is made for the consideration by the Security Council and General Assembly of situations as well as disputes, but this does not mean any increase in the powers of the United Nations organs, particularly the Security Council, as compared with those of the corresponding organs of the League. In fact, it can be argued that the provisions of the Charter suffer somewhat in flexibility and capacity for growth, as compared with the corresponding provisions of the Covenant, because of the greater detail and consequent rigidity of certain of its terms. A comparison of experience under the Charter to date in the peaceful settlement or adjustment of disputes and situations with that of the League gives little basis for a confident conclusion that the Charter system is inherently better than, or for that matter, significantly different from, that which operated under the terms of the Covenant.³²

Enforcement Action

It is in respect to enforcement action that the provisions of the Charter seem to offer the most marked contrast to the provisions of the Covenant,³³ but here again when we compare the Charter provisions with the way in which the Covenant provisions were actually applied the differences do not appear so great. The League system, as originally conceived, was based on the principle that once a member had resorted to war in violation of its obligations under the Covenant, other members were immediately obligated to apply economic and financial sanctions of wide scope against the offending state. The Council was empowered to recommend

³¹ See Margaret E. Burton, *The Assembly of the League of Nations*, p. 284 et seq.

³² On the operation of the League system, see William E. Rappard, *The Quest for Peace*, Cambridge, 1940, p. 134-207; Burton, *op. cit.*, p. 284-374; and T. P. Conwell-Evans, *The League Council in Action*, London, 1929. On the work of the Security Council to date, see Clyde Eagleton, "The Jurisdiction of the Security Council over Disputes," in *American*

Journal of International Law, XI (July, 1946), p. 513-33; and United Nations, *Report of the Security Council to the General Assembly*, A/93, October 3, 1946.

³³ For analysis of the United Nations system for the enforcement of peace and security, see Grayson Kirk, "The Enforcement of Security," in *Yale Law Journal*, LV (August 1946), p. 1081-1196.

military measures which members of the League were technically not required to carry out. As a matter of fact, in the one case where the provisions of Article 16 were given anything like a real test, the application of sanctions against Italy in 1936, acting under the influence of the resolutions adopted by the Assembly in 1921,³⁴ the members of the League established a mechanism for the coordination of their individual acts, and proceeded to apply selected economic and financial measures. No recommendation was made by the Council for the application of military measures.³⁵

The Charter makes the Security Council responsible for deciding what enforcement measures are to be used to maintain the peace. Obligations arise for Members of the United Nations only when such decisions have been taken. This is a further development of the principle recognized in the 1921 Assembly resolutions and in the application of sanctions against Italy, that a central coordinating agency is needed to insure the taking of necessary measures with the maximum of effectiveness and the minimum of inconvenience and danger to the participating members. However, the provisions of the Charter go much further than did the Covenant in providing for obligatory military measures and advance commitments to place specific forces at the disposal of the Security Council. Even though certain members of the League, notably France, were insistent upon the need of specific military commitments, little was done in League practice to meet this need. The Geneva Protocol of 1924 was one notable attempt to meet this demand, by methods which in certain respects anticipated the Charter, but it never came into force. The framers of the Charter, no doubt recognizing this as a defect in the League system, sought to remedy the deficiency by providing in some detail for military agreements between members of the United Nations and the Security Council, and for a military staff committee to assist the Security Council in drawing up advanced plans and in applying military measures.

It can, however, be queried whether the Charter system will be more effective than the League system, in view of the requirement of unanimity of the permanent members of the Security Council. If we imagine its application in situations such as the Italian-Ethiopian and Sino-Japanese affairs, it is difficult to see how the United Nations would achieve any better results than did the League. Like the League, but for somewhat different technical reasons, the United Nations, in so far as its enforcement activities are concerned, is an organization for the enforcement of peace among the smaller states. If the permanent members of the Security Council are in agreement, it will be possible to take effective action under

³⁴ League of Nations, *Records of the Second Assembly*, Plenary Meetings, p. 803.

³⁵ For summary of this experience, see

International Sanctions (A Report by a Group of Members of the Royal Institute of International Affairs), London, 1938, p. 204-213.

the Charter. It is not likely that such agreement will be reached to take measures against one of these great powers or against a protégé of such a great power. Consequently the sphere of effective enforcement action by the United Nations is restricted in advance, even more perhaps than was that of the League. Within the area of possible operation, the actual effectiveness of the United Nations system will depend upon political conditions which, if they had existed, would have also assured the success of the League of Nations.³⁶

Administration of Non-Self-Governing Territories

Here we encounter new names and phraseology in the United Nations Charter, but the substance is very much the substance of the League mandates system. There are, of course, important differences. For one thing, Chapter XI, "Declaration Regarding Non-Self-Governing Territories," is definitely an addition. The idea, however, is not new, as it has been accepted by various colonial administrations in recent years, and has found expression both in official statements and in authoritative writings on the subject.³⁷ However, it is new to have embodied in an international instrument a definite statement of principles binding upon all states engaged in the administration of non-self-governing territories and to place upon such states the additional obligation to make reports to an international authority.

So far as the trusteeship system, strictly speaking, is concerned, it follows in general the lines of the mandates system.³⁸ The three categories of A, B, and C mandates do not appear, but due to the freedom allowed in the drafting of trusteeship agreements, there can be the same, if not greater, variety of provisions. Like the League mandates system, the institution of the trusteeship system is not made obligatory for any particular territories; it is simply declared applicable to certain territories to the extent that they are placed under it by agreement. Following the practice under the mandates system, the trusteeship agreements, according to the Charter, are to be made by the states "directly concerned." They must in addition have the approval of the General Assembly or the Security Council, depending upon whether or not they apply to strategic areas, but neither organ has any authority to draft and put into effect a trusteeship agreement for any territory without the specific approval at least of the state in actual possession of it.

The machinery for supervision and the lines of responsibility have been changed in that for trusteeship areas other than strategic areas the ad-

³⁶ See Kirk, *op. cit.*; p. 1082.

³⁷ See, for example, Baron Lugard, *The Dual Mandate in British Tropical Africa*, 2nd ed., London, 1923.

³⁸ For detailed analysis of the United

Nations trusteeship system, see Ralph J. Bunche, "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations," in *Organizing the United Nations*, Department of State Publication 2573.

ministrative authorities are responsible to the General Assembly and its agent, the Trusteeship Council. As has been pointed out above, however, this change as compared with the League mandates system, was to some extent anticipated in League practice by the right which the Assembly asserted and exercised to discuss and make recommendations with respect to the administration of mandated territories. There is, however, in the Charter one important power vested in the United Nations organs, though in somewhat qualified form, which the Council and Mandates Commission of the League did not have and the lack of which was regarded as a serious weakness of the League system. I refer to the provision for periodical visits to the trusteeship territories which should make it possible for the Organization to get information on the spot and thereby check upon and supplement the reports of the administrative authorities.

International Economic and Social Cooperation

Perhaps the most important advance of the Charter over the Covenant of the League is to be found in its provisions defining the objectives, policies, machinery and procedure of international economic and social cooperation. In this respect, the Charter offers a wide contrast to the Covenant, which had only three articles dealing specifically with the subject. In fact, the Preamble of the Covenant, containing the statement of purposes of the League, made no specific mention of cooperation in economic and social matters, though the very general phrase "in order to promote international order and cooperation" was relied upon to justify numerous activities for which no express authority was to be found.

It is, nevertheless, true that the League in practice was a quite different matter.³⁹ It has been generally observed that the most permanently worthwhile activities of the League of Nations were in the field of international economic and social cooperation. There was in the course of the League's existence a tremendous proliferation of organization and an impressive record of substantial achievement in making available necessary information, in promoting administrative and legislative action by member states, and in dealing directly with international economic and social evils by administrative action. We have seen how in 1939 the recognition of the scope and importance of this work led to the proposal that a Central Committee for Economic and Social Questions should be set up to coordinate League activities in this field.

Apart from the provision for a separate economic and social council there is one important organizational difference between the League and United Nations systems, a difference which may prove to be of great

³⁹ See, for example, Denys P. Myers, *Handbook of the League of Nations*, Boston, 1935, for evidence of the relative importance on a

quantitative basis, at least, of the League's economic and social activities during the first fifteen years of the League's existence.

importance, depending upon how the provisions of the Charter are applied in practice. Whereas the League technical organizations dealing with health, economic and financial cooperation were developed within the framework of the League and operated under the general direction and control of the principal League organs, the approach of the United Nations has been a different one. This time we have proceeded on the assumption that special needs as they arise should be met by the creation of appropriate autonomous organizations and that subsequently, these organizations should be brought into relationship with each other and with the United Nations by agreements negotiated by the organs empowered to act in such matters. The result is that instead of having a number of technical organizations functioning within the general international organization and subject to the general direction and supervision of its principal organs, as under the League system, we now have a number of specialized inter-governmental agencies, each operating within a defined area and more or less independently of the others.

Such a system clearly has possibilities as to the range and type of action that may be taken which were denied to the League system operating more completely under the influence of political considerations. On the other hand, there are obviously certain advantages in having some effective coordination of the operation of these various agencies as there will be many points at which their interests and activities will overlap.⁴⁰ Under the Charter the proposal is to take care of these common concerns by the special agreements referred to above. It is too early to be certain as to what the practical consequences of this approach will prove to be.

V.

To the student of international organization, it should be a cause neither of surprise nor of concern to find that the United Nations is for all practical purposes a continuation of the League of Nations. Rather it would be disturbing if the architects of world organization had completely or largely thrown aside the designs and materials of the past. One cannot build soundly on the basis of pure theory. Man being what he is, and the dominant forces and attitudes of international relations being what they are, it is idle to expect, and foolhardy to construct the perfect system of world government in our day. Profiting from the lessons of past experience, we can at most hope to make some progress toward the attainment of a goal which may for a long time remain beyond our reach. The United Nations is not world government and it was not intended to be such. Rather it represents a much more conservative and cautious approach

⁴⁰ See Herman Finer, *The United Nations Economic and Social Council*, Boston, 1945, 121 p.; also *Report of the Preparatory Commission of the United Nations*, PC/20, December 23, 1945, p. 40-48.

to the problem of world order. As such, it inevitably falls into the stream of institutional development represented by the League of Nations and its predecessors. Different names may be used for similar things, and different combinations of words may be devised to express similar ideas. There may be changes of emphasis, and in fact important substantive changes, deemed desirable in the light of past experience or thought necessary in order to meet changed conditions. But there is no real break in the stream of organizational development.

The student of international organization must recognize the United Nations for what it quite properly is, a revised League, no doubt improved in some respects, possibly weaker in others, but nonetheless a League, a voluntary association of nations, carrying on largely in the League tradition and by the League methods. Important changes have occurred in the world distribution of power, in the world's economic and political structure, in the world's ideological atmosphere. These changes create new problems and modify the chances of success or failure in meeting them, but the mechanics remain much the same. Anyone desiring to understand the machinery, how it operates, the conditions of its success, must look to the experience of the past, and particularly to the rich and varied experience of that first attempt at a general international organization, the League of Nations.