The Future Relationship Between Small States and the United Nations

Report of the Subcommittee on Constitutional Structures, Committee on United Nations Affairs, ABA SECTION ON INTERNATIONAL AND COMPARATIVE LAW *

Introduction

i

The Secretary-General of the United Nations recently suggested that the competent organs of the Organization undertake a thorough and comprehensive study of the criteria for membership in the U.N. with a view to laying down limitations on full membership while also defining other forms of association which would benefit both the Organization and those states "which have been referred to as 'micro-states', entities which are especially small in area, population, and human and economic resources, and which are now emerging as independent states." [1] Ambassador Arthur J. Goldberg, United States Representative to the United Nations, in a letter to the President of the Security Council dated December 13, 1967, joined in the suggestion made by the Secretary-General and expressed the belief that examination of the considerations presented by the Secretary-General is most likely to be fruitful if it is made in terms of general principles and procedures.[2] Although no formal action has been taken by the United Nations, the matter is understood to be under consideration. The purpose of this report is to review the principal considerations involved in the suggestion made by the Secretary-General.

ii

The structure of the world community continues to be characterized chiefly by the existence of territorially organized units, states, equal in

* This is an abridged version of the report submitted to the Council of the Section on August 3, 1968.

[1] Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1966—15 June 1967, 22 U.N. G.A.O.R., Supp. No. 1A, paras 163-167 (U.N. Doc. A/6701/Add.1) (1967).

[2] Department of State Press Release USUN-236 (December 13, 1967), at p. 1.

sovereign attributes but markedly unequal in effective power, prestige and influence upon internationally significant events. It is appropriate to recall the words of J. B. Scott who, writing in 1907 about the Hague Peace Conferences, stated:

> While all states are legally equal, still in this practical world of ours we must not, or at least we cannot, ignore the historic fact that nations exercise an influence upon the world's affairs commensurate with their traditions, their industry, their commerce, and their present ability to safeguard their interests. It follows from this that though equal in theory, their influence is often unequal in practice.[3]

The difference between legal equality and practical inequality is reflected in the United Nations which, although it is "based on the principle of sovereign equality of all its Members," [4] is a deliberately imperfect democratic model. It is also reflected, more subtly, in the omission of any mention of universality of membership in the Charter. The drafters at San Francisco recognized that universality was an ideal towards which it was proper to aim.[5] However, in drafting the Charter they followed the League of Nations model [6] and deliberately included a set of specific, if ambiguous, criteria for membership.[7]

The initial membership of the Organization consisted of only fifty-one countries.[8] From 1946 to 1959 this number was increased by thirty-two, all but a few of which were already well established states and active participants in world affairs. However, the trend has since changed. All seventeen states admitted in 1960 had just recently attained independence, and the same is true of twenty-three of the twenty-four admitted since 1960.

The membership now numbers 124, nearly two and one-half times the number of original members, and the practice of admitting states

[3] *The Hague Peace Conference of 1899 and 1907* (1907), at 176, cited in Anand, *Sovereign equality of states in the U.N.* 7 INDIAN J. INT'L L. 185, 198 (1967).

[4] U.N. Charter, Article 2, para. 1.

[5] Doc. 1178, I/2/76(2), 7 U.N. C.I.O. Docs. 326 (1945).

[6] *See* Article 1 of the Covenant of the League.

[7] The attitudes toward universality at San Francisco are discussed in Green, *Membership in the United Nations*, 2 CURRENT LEGAL PROBS. 258 (1949), at 262 ff.; and Cohen, *The Concept of Statehood in United Nations Practice*, 109 U. PA. L. REV. 1127 (1961), at 1170 ff.

[8] These were the states which had participated in the United Nations Conference on International Organization, held in San Francisco from April 25 to June 26, 1945, or which had previously signed the Declaration by United Nations of January 1, 1942, and which had signed and ratified the U.N. Charter.

soon after they become independent and without strict scrutiny of their eligibility for membership in accordance with the Charter continues. Moreover, the process of decolonization has proceeded to the point where, with a few notable exceptions, the remaining candidates for self-government, independence and, ultimately, U.N. membership are extremely small in size, population and/or financial resources. The number of these "micro-states" or "mini-states" or "Lilliputian states," as they have variously been called, is estimated to be over sixty, if one limits the counting to units with a population of under 300,000, as has been suggested.[9] The magnitude of the potential problem becomes clearer, however, when one contemplates the vast number of island territories and other small entities which could conceivably seek independence, statehood and U.N. membership in the future.

Adding to the problem and making its resolution somewhat more difficult is the sensitivity of existing states to challenges to their territorial integrity such as are posed by secessionist, irredentist, and "liberation" movements of one kind or another. Membership in the U.N. may be sought as a stamp of legitimacy by any group claiming to represent an independent "state". This could throw into question the sacrosanctity of territorial boundaries and lead to fragmentation of existing states. Hence, the likelihood of a cautious attitude by many U.N. members, including the United States.

On the other hand, it is only fair to say that the fear of proliferation may be exaggerated. Membership in the U.N. is not logically the most pressing need and may not even be a priority objective for really small territories. Conceivably, the mini-state problem described by the Secretary-General could work itself out by the simple expedient of encouraging a lack of interest in membership by small states and potential states.

Accordingly, it seems appropriate to examine, first, why small states are attracted to U.N. membership and, second, whether all or most of these attractions could be provided in some other way acceptable to all concerned.

Attractions of U.N. Membership

Statehood characteristically is accompanied by an intensified awareness of national interests and a desire to influence events which have a bearing on those interests. The U.N., as the largest, the most

[9] *See* Blair, *The Ministate Dilemma*, Occasional Paper No. 6, Carnegie Endowment for International Peace (1967), at 3. Mrs. Blair's paper has been a source of considerable value to the *Subcommittee* in the preparation of this Report.

nearly universal, and the broadest based international institution is perhaps the obvious point of reference for obtaining such influence. As a diplomatic center, it offers unparalleled opportunities for contact with representatives of other countries and of international organizations. As a public forum, it affords the means for instant communication of one's message to a wide audience. As the leading international political institution, its recognition of a state confirms that state's legitimacy and standing in the world community.

All these factors have contributed to the rush to membership by newly independent states in the fifties and sixties. Whether they will have the same impact on mini-states in the seventies and beyond can only be guessed. Preliminary indications are that to the mini-states of the future the chief attractions of the U.N. may be its acceptability as a source of technical and economic assistance and as a countervailing force for small states whose security is threatened by former metropoles, neighboring states or other external antagonists.

Full membership is not without its cost. Small member states may find onerous the drain on their funds (minimum annual dues of members alone are currently around $50,000) and available trained manpower. There are also drawbacks to having to meet the demands of membership and record voting positions on an imposing number and variety of issues, especially for a small delegation and its home office which may not be equipped to do so effectively. One can expect these difficulties to increase and their burden upon future mini-states to be even heavier than it has been upon small member states to date.

For the U.N., weighing against the desirability of making the Organization more nearly universal in membership is the prospect of disproportionately increased demands upon the Organization's already strained physical and economic resources. Even now, it may be projected that U.N. Headquarters in New York, opened in 1950, will have to be substantially enlarged to accommodate the increasing size and workload of the Organization. Moreover, a stream of membership applications from mini-states could expose the status of full membership to the risk of debasement, a hazard already discernible to some.

From the standpoint of member states, a substantial increase in members would dilute voting strength and raise the possibility of vast shifts in the pattern of voting in the General Assembly, with the mini-states able by their sheer number, irrespective of the number of people they actually represent or their effective power measured by conventional criteria, to heavily influence the outcome to their own advantage.

To the United States, committed as it is to the Organization as an effective instrument for the maintenance of international peace and security, the prospect of a deluge of new members with mini-qualifications but full rights raises serious questions. Enthusiasm for the Organization would be difficult to sustain if the U.N. of the seventies becomes a mere caricature of the San Francisco model. The U.N., after all, is only a means toward the ends enumerated in the Charter, not an end in itself. There is no reason to suppose that the Organization could long or effectively operate in defiance of the idea that power and responsibility ought not to be too distantly separated.

Many feel that steps should be taken to head off continued escalation in the Organization's membership. This raises the question of how access to and participation in the U.N. can be assured for exceptionally small states to accommodate their legitimate interests without overburdening the Organization or weakening the status of full membership in it.

Assuring Access and Participation Without Damaging Organizational Effectiveness

As noted above, the Charter itself does not ensure membership to all who seek admission. Article 4 (1) of the Charter reads:

> Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

As the International Court of Justice (ICJ) had occasion to point out in its 1948 Advisory Opinion on *Conditions of Membership,* Article 4 (1) establishes only five specific requirements for membership: an applicant must (1) be a state; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out those obligations; and (5) be willing to do so. These criteria, the ICJ advised, "constitute an exhaustive enumeration" of the requirements for eligibility.[10] It follows that

[10] [1948] I.C.J. 57, at 65. In practice, however, other considerations have been voiced. *See* extensive citations in GOODRICH & HAMBRO, CHARTER OF THE UNITED NATIONS 6-9, 112-139 (1949); Liang, *Conditions of Admission of a State to Membership in the United Nations,* 43 AM. J. INT'L L. 288 (1949); Liang, *Recognition by the United Nations of the Representation of a Member State: Criteria and Procedure,* 45 AM. J. INT'L L. 689 (1951); Cohen, *supra* n. 7, at 1133; and McDougal & Goodman, *Chinese Participation in the United Nations: The Legal Imperatives of a Negotiated Solution,* 60 AM. J. INT'L L. 671 (1966), at 684-96.

without amendment of the Charter the members cannot impose additional criteria for membership. This may not rule out a members' agreement establishing fixed meanings for these enumerated terms. However, of the five, probably only two—the ones numbered (1) and (4) above, respectively—would be at all conducive to such an agreement. Even these are apt to prove difficult.

(1) *Statehood.* Traditionally, the essential characteristics of a state have been population, territory, self-government, and the capacity to enter into relations with other states.[11] For the purposes of international law, the last of these qualifications has been regarded as of particular importance and has served to distinguish states proper from lesser units which are not recognized by other states as full-fledged members of the international community.[12]

These traditional characteristics of statehood could prove difficult to translate into either Charter language or a members' agreement. For example, the range in populations of present members stretches from just over 90,000 to the hundreds of millions. A number of potential candidates for admission to the U.N. have populations in excess of 90,000 (e.g., Solomon Islands, Western Samoa, Cape Verde Islands, Channel Islands, Guadeloupe).[13] Nor does there appear to be a logical cut-off point below 90,000. Hence, a population qualification, by itself, is not apt to inspire enthusiasm. The same might be said of territory. Two existing U.N. members, the Maldives and Malta, consist of only 298 and 316 square kilometers, respectively. Many prospective applicants are larger.[14]

The traditional non-quantitative characteristics of statehood—self-government and the capacity to enter into relations with other states—may prove especially difficult to translate into Charter language or a members' agreement. The term "self-government," as widely used in diplomatic parlance, encompasses not only states but also a number of entities which are not states. The term "capacity to enter into relations with other states" suffers from being conclusory; i.e., whether an entity is deemed to have such capacity depends upon a logically prior determination that it, too, is a state.

(2) *Ability to meet Charter obligations.* It is worth noting that under Article 4 (1) of the Charter the Organization has competence to

[11] *See,* for example, STARKE, INTRODUCTION TO INTERNATIONAL LAW 88-89 (5th ed. 1963).

[12] *Id.*

[13] *See* Blair, *supra* n. 9, Table I.

[14] *Id.*

determine whether states which meet the other membership criteria also "are able and willing to carry out [the] obligations [contained in the Charter]." Willingness to carry out Charter obligations, being highly subjective, is difficult to measure; in the absence of a history of notorious behavior, a state's declaration of willingness may fairly well prove its intent. Ability to carry out Charter obligations, on the other hand, might be amenable to objective measurement.

Some of the Charter obligations could be carried out without difficulty by very small states: for example, the obligations to settle their international disputes by peaceful means [Article 2(3)]; to refrain from the threat or use of force against the territorial integrity or political independence of any state [Article 2(4)]; to give the United Nations every assistance in any action it takes in accordance with the Charter [Article 2(5)]; to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action [Article 2(5)]; to make available to the Security Council armed forces, assistance and facilities, including rights of passage, necessary for the maintenance of peace and security [Article 43(1)];[15] to cooperate on the economic and social level [Article 56]; and to comply with the decisions of the I.C.J. [Article 94].

However, a question could arise with respect to the ability of most mini-states to carry out certain economic obligations. Mini-states may be particularly unable to carry out economic sanctions, for example, especially if these are voted against states upon whom the mini-states are dependent, economically or administratively.[16] Similarly, the financial expenditures a U.N. member is called upon to make may pose severe challenges to the economic resources of many small states. These expenditures include not only the minimum annual dues which small states are obliged to pay, but also the expense of maintaining a diplomatic mission in New York throughout regular and special General Assembly sessions, participating in the work of U.N. bodies, and attending U.N. conferences.

In addition, the concept of full membership and the voting power that flows from it would seem to imply an obligation to be fully informed

[15] Presumably, the obligations relating to the maintenance of peace and security [i.e. Articles 2(5), 43, 45, 48 and 49] encompass the moderating notion of "to the best of one's ability."

[16] Blair, *supra*, n. 9, at 26. Again, however, this dependence or inability to carry out economic sanctions may be thought of as a matter of degree. Large states, on occasion, have also had difficulty carrying out economic sanctions voted by the U.N.

and to participate fully on the broad range of matters before the United Nations. In fact, even today this imposes an exacting burden on all but the largest delegations. Among smaller delegations it is necessary to concentrate the efforts of available skilled personnel on those matters of highest priority or of particular interest.[17] As the U.N. grows, the problem of selection becomes greater. Absenteeism is already an observable feature of General Assembly life and the expectation is that it will increase. That the strain on the limited number of trained personnel from mini-states will be a serious one can thus be projected from the experience of existing small member states. What is not so clear, however, is how to define the point at which limitations of size or resources impair the ability of a state to function effectively as a full member or, for that matter, whether such a point exists.

One approach to measuring a state's ability to meet Charter obligations is to consider economic indicia, such as per capita income, government revenue and exports, which fairly reflect national economic accomplishment.[18] However, the validity and reliability of statistics pertaining to small territories are doubtful, because of inadequacies in record-keeping, the difficulty of obtaining information and numerous other factors. Moreover, any statistical test which emphasizes bigness might unduly tend to encourage political realignments, federations and other amalgamations. Finally, a prominent study concludes that the imposition of even minimum economic requirements could prove embarrassing to some existing member states.[19]

This is not to say that such an approach is bound to be unsuccessful. Indeed, especially if it is combined with a method of fairly accounting for abilities which are not measurable in statistical terms, a members' agreement establishing specific standards of, "ability" for the purpose of Article 4(1) might be generally acceptable. In any event, examination of the "ability" question is something the Security Council's Committee on the Admission of New Members, for example, might usefully undertake.[20]

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[17] See *infra* n. 30 and accompanying text.

[18] The United Nations Committee on Contributions considers such factors in determining members' assessments. *See* Blair, *supra* n. 9, at 30.

[19] *Id.* at 27-31. However, this embarrassment might be overcome by permitting an applicant to show that it meets some combination of the criteria rather than all of them. Similarly, the statistical criteria might be fixed in terms of the statistics of members, rather than in absolute numbers.

[20] Although the Committee on the Admission of New Members has not met for some time, and when it did meet it considered specific applications, there would appear to be no bar to its meeting to discuss the problem generally. Es-

Benefits Available to Non-Members

The Charter affords certain benefits to non-members. By virtue of Article 32, non-member states must be invited to participate in Security Council discussions of disputes to which they are a party. The Council, under Rule 39 of its provisional rules of procedure, also extends invitations to "persons whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence."

Under Article 50 of the Charter, a non-member that "finds itself confronted with special economic problems" as a result of a U.N. security action may "consult the Security Council with regard to a solution of those problems."

Article 35(2) of the Charter permits a non-member to bring any dispute to which it is a party to the attention of the Security Council or the General Assembly, if it accepts in advance the obligations of the Charter regulating the pacific settlement of disputes. The rules of procedure of the General Assembly (Rule 13h) and the Security Council (Rules 6 and 7) both provide for non-member states to place items on the respective provisional agendas.

Like the Security Council, the General Assembly hears representatives of non-members states, usually in committee and subcommittee discussions of interest to them. Most, but by no means all, invitations to participate have been extended in response to a request from a non-member. The General Assembly's Committee on the Situation with Regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the so-called "Committee of 24," hears petitioners regarding affairs in non-self-governing territories, sometimes visiting the territories, other times inviting officials and unofficial representatives to United Nations Headquarters to meet delegates informally and to consult with Secretariat officials. On occasion, these representatives have participated more directly by being included in delegations of member states, usually with assignment to the Fourth Committee (Trust and Non-Self-Governing Territories). This access would not be open to representatives of independent territories, however.

Non-members may also become members or associated members of specialized agencies and thereby participate in the proceedings of

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tablishing "ability" criteria in the context of a general review of the problem is appealing, among other reasons, because it avoids the appearance of determining whether a particular country is able to meet the obligations of membership.

organizations such as the United Nations Industrial Development Organization or the United Nations Conference on Trade and Development, and be eligible for assistance from the United Nations Development Program.[21] Such membership also enables states to be invited to accede to multilateral treaties concluded under the aegis of the U.N. and to be invited to conferences convened by the U.N. In addition, non-member states may be invited to participate in the proceedings of the Economic and Social Council or the Trusteeship Council, as well as the regional economic commissions, and may become parties to the Statute of the International Court of Justice.

Observers. At present, the only available status between full membership and non-membership is that of "observer", an institution which rests purely on practice and which has not been set on any firm legal basis.

The Charter does not mention observers. Switzerland was the first nation to send a permanent observer to New York, eschewing full membership for fear of compromising its neutrality. The Federal Republic of Germany, the Republic of Korea, the Republic of Vietnam, Monaco and Vatican City are the only others with observers in New York at this time.[22] In the past, several countries caught in Cold War membership disputes had the status of observer and used such status to promote their membership applications—as a "bridge" to membership. Observership, to many, continues to connote the Cold War.

The procedure for sending an observer is relatively uncomplicated. A state notifies the Secretary-General that an observer (usually that country's ambassador to the United States) has been appointed. If the state is considered acceptable, the Secretary-General "acknowledges" the correspondence.

Acceptability has become a matter of meeting at least two unofficial criteria: (1) recognition by a majority of U.N. members; and (2) membership in a U.N. sub-organ or specialized agency. These are

[21] The membership of the Universal Postal Union (UPU), for example, includes such U.N. non-member states as the Republic of Korea, the Republic of Vietnam, Liechtenstein, Monaco, San Marino, and the Holy See. Monaco is also a member of UNESCO, the World Health Organization (WHO), the International Atomic Energy Agency, and the International Telecommunications Union. The Republic of Korea is a member of UNESCO, WHO, and the International Civil Aviation Organization, in addition to UPU. Western Samoa is a member of WHO and the U.N. Economic Commission for Asia and the Far East. The number of such examples runs high.

[22] Some of these also have established observer missions at the U.N. Office at Geneva.

based on the practice of Secretaries-General Trygve Lie and Dag Hammarskjold and stem from their view that acknowledgment by the Secretary-General might be thought to imply status and the Secretary-General should not accord status to an entity unless it is generally recognized. Membership in a specialized agency is considered evidence of general recognition. A third qualification might be said to flow from the ambiguity of the legal status of observers. Because they are not officially part of the U.N. system, they are not covered by the Headquarters Agreement between the U.N. and the United States nor the U.N. Convention on Privileges and Immunities. Consequently, physical access to U.N. Headquarters depends upon United States permission, particularly since the United States Government need not issue visas to personnel from non-member countries whose regimes are not recognized by the United States.[23] It is, however, considered extremely unlikely that any entity meeting the two initial criteria would experience difficulty on this count.

Observers get few formal rights. Passes to sessions, preference in seating, copies of documents, access to corridors and lounges, and invitations to some social functions come with the post.[24] It is difficult to measure the advantages in prestige, access to information and cross-currents of opinion, and other intangible benefits that accrue to states with permanent observers. As with so many human activities, the benefits usually bear a correlation to the efforts exerted.[25] It is noteworthy that the Secretary-General has suggested that observer status be made available to small states wishing such status.

Alternative Affiliations

Several alternative approaches to resolving the U.N.'s mini-state problem have been advanced. These may usefully be grouped into three categories: (1) extending and formalizing the status of permanent observers, (2) expanding the concept of membership, and (3) creating a special intermediate status between observers and full members.

Extending and formalizing observership. The Secretary-General, as noted above, has suggested that consideration be given to amending the Charter or in some other way formally outlining the status of observers. It might be useful to add to the present status limited rights

[23] Unless they fall within the categories of reasons mentioned in Section 11 of the Headquarters Agreement.

[24] *Id. See also* Blair, *supra* n. 9, at 41.

[25] The Federal Republic of Germany, for example, maintains an active office and in many respects is as influential and well-informed as many members.

to participate in committee and commission affairs, while withholding such rights as the right to vote and to hold office.

Observership status might also be made available to observer commissions which would represent mini-states. Professor Roger Fisher, of Harvard Law School, has suggested that the U.N. establish a new concept of an independent self-governing territory associated with the United Nations. As a practical matter, suggests Professor Fisher (who also serves as legal adviser to the provisional government of the island of Anguilla), all that micro-states may really need at the U.N. is some place, some office, where an official or a letter from a micro-state would be received. "It should not be difficult," he has written, "to provide the micro-state non-member with enough facilities to enable it to contribute to the extent of its abilities, to the work of the United Nations." [26]

Weighing against any extension of the status of observers is the historical association of observership with Cold War maneuvers and the lingering implication, perhaps in part because of the word "observer," that an observer is an outsider looking in, rather than a part of the Organization.

Expanding the concept of membership. There appear to be three distinguishable suggestions for expanding the existing concept of membership.

The first of these, joint or consolidated membership, is said to have the advantage of enabling mini-states, by sharing the work and the cost, to cover the full range of United Nations activities. Such an arrangement, it is argued, would avoid or at least minimize the expansion of members, and votes, that separate membership entails.

The Charter, as noted, limits membership to "states," but does not specify whether this refers only to states acting individually. Reportedly, four European mini-states once considered the possibility of a joint application to the United Nations, but the idea came to nothing.[27] However, neither U.N. practice [28] nor a reading of the Char-

[26] Fisher, *Participation of Micro-States in International Affairs,* paper presented at the Annual Meeting of The American Society of International Law, April 26, 1968 (preliminary draft), at 10.

[27] Blair, *supra* n. 9, at 59.

[28] *See* Blair, *id.*, points out that when Egypt and Syria became the United Arab Republic, and when Tanganyika and Zanzibar became Tanzania, a precedent of sorts was set for consolidated membership. In each of these two instances, however, the consolidation of the states was not directed to a single diplomatic function, such as membership in the U.N., but was rather the merger of two separate legal entities into a new legal entity with the old entities disappearing in the process.

ter [29] encourages the belief that joint or consolidated membership is contemplated in the present Charter. Notwithstanding the necessity of a Charter amendment, if indeed such would be necessary, the idea of permitting joint membership does accord with some recent thinking on the subject of membership in international organizations. The proposed Caribbean Development Bank Charter, it is understood, contains provision for joint membership by some of the very small islands in the region.

A second approach involving a broadening of the concept of membership is a variant of the observership commission idea discussed above, the principal difference being that the commission would have the status of a full member of the United Nations.

A third suggestion which would seem to involve expanding the present notion of membership is to permit membership limited in duration or area of participation. The premise behind this approach is that the interest of extremely small states in matters before the U.N. is apt to be concentrated on questions whose scope and resolution is relatively limited. On an informal basis, several small member states currently restrict their efforts to matters of particular concern to them.[30] However, to date there have been no known formulas put forth for establishing formally the concept of membership limited in duration or subject matter. In large measure, of course, membership in one or more specialized agencies answers this need.

Creating an intermediate status. It has been suggested that the U.N. consider creating an intermediate status—less than full membership yet different from observership. Various international organizations have done likewise.

[29] Altogether, the word "state" is used in its singular and plural forms thirty-one times in the Charter. *See* Cohen, *supra* n. 7, at 1129 (amendments to the Charter subsequent to the publication of the cited article have not involved the word "state"). It is instructive to note that only once does the use of the term seem to imply joint action, that instance being in Article 81 which provides that the administering authority under a trusteeship agreement "may be one or more states or the Organization itself." In general, however, the Charter does not encourage the belief that it contemplates joint or consolidated membership. *See especially* Articles 4(2), 32, 35(2), 50 and 93(2), in which the modifying words "a", "an", and "any" are used with reference to states members of the U.N.

[30] The recent activities of Malta, for example, afford a leading example of how effective this specialization may be. Ambassador Arvid Pardo of Malta has concentrated his efforts upon the problems of the exploration and exploitation of the seabed and ocean floor with the result that he has emerged as one of the leading figures in the U.N.'s consideration of the subject. Indeed, Ambassador Pardo's contribution gives one pause in that it indicates that the complete exclusion of very small states could deprive the U.N. of creative intellects which are always scarce and which can turn up in the smallest places.

The League of Nations, with specific reference to small independent states, considered three forms of intermediate association: independent representation without a vote, representation through a member of the League, and limited participation.[31] The League committee dealing with the subject apparently feared that full representation without a vote would prolong League debates, even on questions in which the direct interests of small states were not involved. The idea of representation through a member of the League [32] was rejected as a possible source of political disputes "and as potentially hurtful to the susceptibilities of sovereign states." [33] The committee preferred a form of associated membership by which very small states would

> enjoy all the privileges of ordinary members . . . limited exclusively to cases in which their own interests were involved. Their 'association' would be restricted to taking part in debates or in votes to the extent that a majority of the Assembly might decide that the national interests of these states were involved therein.[34]

However, the committee also felt that limited participation would give rise to "great difficulties . . . in defining the status of the state concerned and the definition of its own particular interests." [35] It thus decided to leave the matter unresolved for the time being.[36]

The U.N.'s own economic commissions for Asia and the Far East, Latin America, and Africa offer associate membership (without voting or office holding rights) to dependent territories sponsored by their administering powers. In one form or another, such an associated status is also available in many other international organizations. What this status usually accords, in practice, is the right to attend a broad range of meetings and to participate in discussions, plus those rights which are available to permanent observers. Customarily, the right to vote is either denied or circumscribed, as is the right to hold office.

There is thus ample precedent in international organizational

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[31] *See* the Report of the Special Committee on "The Position of Small States" to the Second Assembly of the League. League of Nations, Records of the Second Assembly, Plenary Meetings, pp. 685-88. The Special Committee was set up after soundings by San Marino and Monaco, as well as by Lichtenstein whose application for full membership had been rejected on the basis of her size. *See* Blair, *supra* n. 9, at 49-50.

[32] Switzerland had suggested that she might represent the interests of Liechtenstein. *See* Blair, *supra* n. 9, at 49.

[33] *See* sources cited at n. 31, *supra.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

practice for the U.N. to create some sort of associated status to meet the needs of small states. Such status would involve a limited but direct form of participation in the work of the Organization that did not carry with it either the full rights or the full obligations of membership. It might include all or some of the following rights: accrediting of representatives to the U.N.; full participation in the General Assembly and its suborgans, including the right to speak and make proposals, but without the rights to vote; [37] competence to propose items for inclusion in the General Assembly's agenda; right to receive on a regular basis U.N. documentation relevant to the state's participation; eligibility for U.N. technical assistance; and even, perhaps, the right to hold office in the General Assembly or its suborgans.

Associated states could be required to make some declaration of their willingness to abide by the principles of the Charter, to commit themselves, in other words, to the Charter's legal regime. They could also be obliged to make limited financial contributions to the U.N. that reflected the added costs to the Organization due to their participation.

To be sure, there might be some risks. The new status could be so attractive that the Organization would be flooded with applications for associated status, with the result being an undesirable strain upon the Organization's already limited resources. Moreover, permanent members of the Security Council presently have a veto power over Security Council decisions regarding new members. The attractiveness of an associated status which does not require Security Council approval of applicants would have to be considered in that light.[38] There is, further, a possible risk that associated status would make many of the benefits of membership too readily available without countervailing obligations, thus encouraging irresponsibility.

It would be necessary to determine whether such associated status should be created by action of the General Assembly (perhaps in concert with the Security Council) or by Charter amendment. Either approach seems feasible from the legal point of view. Considering the importance of the issues and the desirability of the most firm legal foundation for the new status, Charter amendment might be preferable. However, this may be unnecessarily cumbersome and time consuming. Whatever the route selected, there would be value in subjecting applicants for associated status to a procedure similar to that required

[37] *See* Blair, *supra*, n. 9, at 52.

[38] Selective participation in areas of the U.N.'s work of special interest to small states might, however, be a likely direction for them to take.

of applicants for full membership under Article 4(2).[39] The suspension and restoration rules of Article 5 and expulsion rules of Article 6 would also seem to be logically applicable to associated states.[40]

Conclusion

The alternatives discussed in this report represent steps in the direction of universality for the United Nations Organization. Their purpose is to enable mini-states to enjoy the benefits of the Organization without thereby overburdening it or lowering the prestige of membership in it. Our purpose here is not to advocate one or another of the possible alternatives. Rather, it is to bring attention to the problem and thereby encourage further consideration by the American legal community and general public.

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[39] Thus, for example, a regime not presently recognized by the United States (such as East Germany) could conceivably seek and obtain associated status. However, if associated status were to evolve as a special category for mini-states, unfriendly regimes of larger countries might be disciplined to seek such status. If they did, moreover, they would presumably still have to obtain the approval of the General Assembly.

[40] "Associated states", as such, are not contemplated in the U.N. Headquarters Agreement or the International Organizations Immunity Act, which would govern on questions of diplomatic privileges, exemptions and immunities. Under Section 15(1) of the Headquarters Agreement, for example, "every person designated by a Member [of the U.N] as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary" is entitled to diplomatic privileges and immunities. Presumably, the use of the upper case "M" in "Member" would not seem to encompass associated states. However, Section 11(5) of the Headquarters Agreement probably provides a sufficient legal basis for ensuring the transit to and from the headquarters district by representatives of associated states, who could be viewed as having been "invited on official business." Moreover, Section 20 of the Agreement anticipates the possibility of supplemental agreements between the Secretary-General of the U.N. and appropriate U.S. authorities; if thought necessary, this avenue of securing diplomatic privileges and immunities for representatives of associated states is also open. Suitable *ad hoc* arrangements might even be worked out without modification of or supplemental agreements to the existing body of applicable law. Thus, an associated state having diplomatic relations with the United States might simply have its Washington representative also serve it in New York.

† The views presented here reflect the personal views of the members of the *Subcommittee*, and do not necessarily correspond to the views of any agency of government.

Separate Views of Wallace J. Baker

The Doctrine of Universality should govern the admission of any states described as micro-states into full membership in the United Nations. Their admission as full members with voting privileges should not be limited by geographical size, number of population, economic resources or length of time within which they have achieved statehood.

The potential number of such states remains comparatively small.

The advantage of admitting them to full membership in the United Nations under the basic Doctrine of Universality outweighs every possible disadvantage that might be brought about by their admission. To relegate them to membership in various classes less than full membership rebuts the Doctrine of Universality and gives rise to a minority group of second and lower class states.

Placing such states in Associate Membership, or making them observers, weakens, not strengthens, the United Nations and subverts the natural impulses of such states to grow and develop and assume international responsibilities. Such a patronizing attitude of the larger nations, induced more by fear than by a regard for the welfare of such new states, lowers the international stature and dignity that the United Nations now possesses.