

International Organisations

United Nations

UN Charter. Review of.

Following is an extract from a statement made by the Legal Adviser, Mr E Lauterpacht QC, in the Sixth Committee of the United Nations General Assembly on 12 November 1976, during a debate on the question of review of the UN Charter:⁷³

It may be helpful in assessing the views expressed in the Working Group to recall certain fundamental characteristics of the Charter. It is at least three things. First, it is the constitution of an international organization. Second, it confers upon this organization a wide range of functions, predominantly related, but not limited, to the maintenance of international peace and security. Third, the Charter contains major elements of a code of international conduct. The debate in the Working Group ranged over aspects of each of those three facets of the Charter.

Let us look, first, at the views expressed about constitutional changes in the UN. Some of the suggestions necessarily involve amendment of the Charter—in particular the proposals relating to the Security Council, its composition, and voting arrangements. Other suggestions are on the border line between formal amendment and implementation by General Assembly action. Thus, proposals for giving greater formal effect to General Assembly resolutions would require Charter amendment; while some very interesting suggestions for giving resolutions more bite by introducing a procedure of reporting on compliance can, at least in part, be implemented by General Assembly resolution. Proposals were also made for the creation of new organs—such as a Council for Science and Technology or organs specifically dealing with disarmament. The achievement of these ends does not necessarily require Charter amendment, as the establishment of such bodies as UNCTAD demonstrates.

When we come, in the second place, to the functions of the UN, we find that so far little has been proposed in this connection beyond an indication that some would favour the expansion of its functions generally. But this apparent restraint may be explained by the fact that when one comes to the third aspect of the Charter—its role as a code of conduct—one finds suggestions developed with much greater liberality. These may themselves be classified into suggestions for substantive developments in the law and ideas regarding the procedure by which such developments can be achieved.

Let me take first ideas relating to procedures. Views were expressed regarding the role of General Assembly resolutions, the sources of international law generally, the function of General Assembly decla-

73. Text supplied by the Department of Foreign Affairs, Canberra.

rations, the process of achieving in-depth discussions, and the use of ad hoc committees. The implementation of the various ideas related to those themes does not—except possibly for the role of General Assembly resolutions—require any specific Charter amendment.

Turning to proposals for the substantive development of the law, the same comments may be made. Suggestions were made regarding the substantive elements of a wide variety of matters: first, in the sphere of economic and social questions, ideas were put forward regarding the regulation of multinational corporations, the sea, space, food, the environment, population, sovereignty over natural resources, economic equity, collective economic security and generally the development of the new international economic order. Then in the political field, references were made to the restatement of the rights and duties of States, the need for disarmament, the prohibition of nuclear weapons, the elimination of colonialism and the maintenance of detente. In so far as these suggestions involve actually incorporating the terms of the proposed changes into the Charter, evidently they would require Charter amendment. But the fact remains that the objectives stated in relation to each of these items could as effectively be achieved by action outside the framework of formal Charter amendment.

Now, having passed in rapid review the main elements of the discussion within the Working Group, to what conclusions are we led? First, there can be no doubt that the identification of areas calling for improvement in all three aspects of the Charter—its constitutional, functional and law-stating aspects—is a healthy and beneficent exercise. Adequate, rational and proportional decisions for improvement can best be taken after a comprehensive assessment of current defects.

Second, it is evident—at any rate on the basis of the discussions until now—that the number of proposals which necessarily involve significant formal amendment of the Charter is relatively small. Many of the improvements which have been suggested can be achieved by decisions of UN organs, by alterations in procedure and by multi-lateral conventions concluded under UN auspices, possibly as a result of discussions in existing organs.

Third, the breadth of the topics introduced into the discussion suggests strongly that members should ask themselves the following questions: do they see the present Charter review exercise as covering the whole range of international problems associated with those provisions of the Charter which constitute a code of international conduct? Or do they see the Charter review exercise as performing a more limited role—that of examining UN structure and operations with a view to improving the discharge of the principal UN functions, especially in regard to the maintenance of international peace and security? For its part, my Delegation feels that the more limited of these two functions is the one which the Charter review process is

the more likely to discharge successfully. While we see some merit in discussion, we see even greater merit in discussion which is sufficiently realistic in its focus to be likely to lead to positive action. Our fourth conclusion is that it is premature at this time in relation to the work of the Charter Review Committee to attempt to identify those particular topics, if any, on which that Committee as such should concentrate. The Committee has as yet only partly discharged the task allotted to it; and it must be allowed and encouraged to continue and complete the overall survey upon which it has embarked. Only after the present stage of the Committee's work has been concluded will we be able to form some judgement of what the next step in the Charter review process should be. It is for this reason that we have been happy to be able to co-sponsor the draft resolution now before us authorizing the continuation of the work which is described in the Special Committee's Report.

But—and this is an important qualification which constitutes our fifth conclusion—the fact that the Special Committee is at work on its general review does not preclude the discussion within the Sixth Committee, or elsewhere in the United Nations, of specific topics which have been, or may be, touched upon in the course of the Special Committee's work. Given the comprehensive scope of the survey which the Committee is undertaking, the attribution to it of any exclusive rights in the individual subjects of its discussion would bring the work of other United Nations bodies to an end. We are sure that no pre-emption of this kind was intended when the Special Committee was established. We say this because there are initiatives, in differing states of activity, on two subjects to which in due course we hope this, the Sixth Committee, will turn. In particular, as I have already said in earlier debate this year, my Delegation is very interested in a review of the multilateral treaty-making process. This central and vital subject is one to which we hope to be able to revert in proper detail next year.

United Nations

Rhodesia. Security Council resolution. Compliance with. Rhodesian migration.

On 19 April 1977 in the House of Representatives the Minister for Immigration and Ethnic Affairs, Mr MacKellar, was asked if Australia accepted migrants from Rhodesia and what special criteria apply to their applications. Mr MacKellar replied as follows:⁷⁴

Rhodesians currently seeking to settle in Australia must be persons not excluded from consideration by reason of the United Nations Security Council Resolution of 29 May 1968.⁷⁵

This Resolution requires that all States members of the United Nations should prevent the entry into their territories, save on

74. HR Deb 1977, vol 104, 1000.

75. No 253.

exceptional humanitarian grounds, of any person travelling on a Southern Rhodesian passport or a purported passport issued by or on behalf of the illegal regime in Rhodesia. The Resolution further requires that all possible measures be taken to prevent entry of persons ordinarily resident in Southern Rhodesia who are believed to have furthered or encouraged the unlawful actions of the present regime or are likely to do so.

Subject to the above considerations, Rhodesians are eligible to enter Australia for settlement under the same conditions as are migrants from other countries.

United Nations

Sanctions. Rhodesia. Implementation of Imports by BHP Ltd.

On 4 May 1976 the Minister representing the Minister for Foreign Affairs, Senator Withers, was asked in the Senate to investigate whether certain imports by BHP Ltd, from a South African company, actually originated in Rhodesia and therefore constituted a breach of United Nations sanctions. The following answer was provided by the Minister for Foreign Affairs:⁷⁶

Relevant Australian customs requirements—which are designed to implement the mandatory United Nations Security Council resolutions concerning sanctions against Southern Rhodesia—require importers receiving goods through Mozambique (as was the case in this instance) to present certificates of origin at ports of entry. Examination of the relevant certificates of origin has revealed that the imported ferro-chrome alloy was declared to be of South African origin. The Australian Government remains committed to implementing the mandatory UN Security Council resolutions concerning sanctions against Southern Rhodesia.

76. S Deb 1976, vol 68, 1512.