

BASIC DOCUMENTS IN INTERNATIONAL LAW

EDITED BY
IAN BROWNLIE

SECOND EDITION



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IAN BROWNLIE

*Professor of International Law
University of London, and
Associé de l'Institut de
Droit International*

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PREFACE TO THE SECOND EDITION

THE model of the first edition has been adhered to. Considerations of space and handiness have been uppermost and consequently I have been unable to adopt various suggestions of reviewers and others for inclusions, which were attractive taken individually. New items are the Vienna Convention on the Law of Treaties, the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States, and the Declaration of Principles Governing the Sea-bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction. In seeking 'compensatory' exclusions I decided to excise the Statute of the International Law Commission. At least the Commission will not remain unheralded in my rather arbitrary selection since it contains much evidence of the productive work of the Commission.

This new edition has also given me the opportunity to bring the introductory notes up to date throughout the book and to make the text of the Charter of the Organization of African Unity conform to that printed in the *United Nations Treaty Series*.

IAN BROWNLIE

*Wadham College
Oxford*

POSTSCRIPT

ON the occasion of a reprint early in 1978 a number of minor corrections were made and some statements brought up to date.

I.B.

London School of Economics

PREFACE TO THE FIRST EDITION

THE literature of international law is replete with 'cases and materials' books which give emphasis to cases rather than to modern treaties and other important contemporary sources. Moreover, the typical casebook is intended to be a self-sufficient course book and is of considerable bulk. There is a need for a very short collection of basic texts which would provide a modest aid, complementary to existing course books, for the student of international law and also be an amenity for any lawyer using international law materials. It should also have some value for the student of international relations. The collection now offered was made on empirical grounds and attempts to combine essential instruments, like the United Nations Charter, with examples of important classes of instrument, as in the case of the constitution of an international organization. Prominence is given necessarily to law-making elements significant in recent international relations, namely, multilateral conventions and resolutions on legal questions of the General Assembly of the United Nations. Considerations of economy in presentation have determined the size of the collection: utility, rather than completeness according to some formal model, has been the main object. The introductory notes provide an up-to-date guide to the general matters raised by the documents printed and the information is based on materials available to the author in May 1967.

IAN BROWNLIE

*Wadham College
Oxford*

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PART ONE

INTERNATIONAL ORGANIZATIONS

I. CHARTER OF THE UNITED NATIONS

THE Charter of the United Nations was established as a consequence of the United Nations Conference on International Organization held at San Francisco and was brought into force on 24 October 1945. Membership of the United Nations has reached a total of 147 States. The Charter has been the subject of a good deal of interpretation in the two decades or more of its existence. One source of interpretation is the Statement of the Four Sponsoring Powers on Voting Procedure in the Security Council (*infra*). This statement, dated 7 June 1945, was made in response to a questionnaire submitted by subcommittee III/1/B of the San Francisco Conference and provides the basis for the so-called 'double veto'. On the problems concerning the Four-Power Statement see Kelsen, *The Law of the United Nations*, 1951, pp. 249-58; Stone, *Legal Controls of International Conflict*, 1954, pp. 224-7; Gross, 67 *Harvard Law Review* (1953-4), pp. 251-80; and Jiménez de Aréchaga, *Voting and the Handling of Disputes in the Security Council*, 1950. On the Uniting-for-Peace Resolution of 1950 and its relation to the text and structure of the Charter see Kelsen, *op. cit.*, pp. 959-90; Stone, *op. cit.*, pp. 266-81; and Andrassy, 50 *American Journal of International Law* (1956), pp. 563-82. The status of United Nations operations in Egypt, 1956 onwards, and in the Congo, 1960-3, has given rise to controversy over interpretation of the Charter: see Bowett, *United Nations Forces*, 1964; Schachter, 55 *American Journal of International Law* (1961), pp. 1-28; Halderman, *ibid.*, vol. 56 (1962), pp. 971-96; and the *Expenses* case, I.C.J. Reports, 1962, p. 151. On the latter see in particular Simmonds, 13 *International and Comparative Law Quarterly* (1964), pp. 854-98; Gross, 17 *International Organization* (1963), pp. 1-35; and Jennings, 11 *International and Comparative Law Quarterly* (1962), pp. 1169-83. On the outcomes of the 'Expenses crisis' see especially the U.S. Statement printed in 60 *American Journal of International Law* (1966), p. 104 and 4 *International Legal Materials* (1965), p. 1000. Judicial interpretation of the Charter by the International Court of Justice has occurred in the following cases: *Reparation* case, I.C.J. Reports, 1949, p. 174; *Admission of a State to the United Nations*, *ibid.*, 1947-8, p. 57; *Competence of the General Assembly for the Admission of a State to the United Nations*, *ibid.*, 1950, p. 4; *International Status of South-West Africa*, *ibid.*, p. 128; *Voting Procedure* case, *ibid.*, 1955, p. 67; *Admissibility of Hearings of Petitioners*, *ibid.*, 1956, p. 23; *U.N. Administrative Tribunal* case, *ibid.*, 1954, p. 47; *Namibia*, *ibid.*, 1971, p. 16. For interpretative resolutions of the General Assembly see *infra*, pp. 141, 188. On the role of law in the Organization see Waldock, 106 *Recueil des cours de l'académie de droit international* (1962, II), pp. 20-38 and Gross, 19 *International Organization* (1965),

pp. 537-61. For the Charter of a regional arrangement within the scheme of the United Nations Charter see *infra*, p. 68, and for the constitution of a Specialized Agency see *infra*, p. 45. On the United Nations, in addition to the works cited already, see *Everyman's United Nations*; Goodrich, Hambro, and Simons, *Charter of the United Nations*, 3rd ed. rev., 1969; Sohn, *United Nations Law*, 1967; Bowett, *International Institutions*, 1970; Goodrich, *The United Nations*, 1960; Gutteridge, *The United Nations in a Changing World*, 1969; and Bind-schedler, 108 *Recueil des cours de l'académie de droit international* (1963, I), pp. 305-423. On the Charter provisions concerning the use of force by states see Bowett, *Self-defence in International Law*, 1958; Kelsen, *Collective Security in International Law*, 1957; and Brownlie, *International Law and the Use of Force by States*, 1963. For chronicles of work in the United Nations see the *Year-book of the United Nations* and the *U.N. Monthly Chronicle*. On the nature of the Charter as a treaty see McNair, *Law of Treaties*, 1961, pp. 25, 81, 216-18, 221.

TEXT¹

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

¹ Amendments in force 31 August 1965 are italicized. The amendments were adopted by General Assembly Resol. 1991 (XVIII): see 59 *A.J.* (1965), p. 985; and Arts. 23, 27, and 61. In 1971 the membership of the Economic and Social Council was increased from 27 to 54.

Accordingly, our respective Governments, through representatives assembled in the City of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I. PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II. MEMBERSHIP

Article 3

The original Members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. 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.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III. ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV. THE GENERAL ASSEMBLY

*Composition**Article 9*

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

*Functions and Powers**Article 10*

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question, on which action is necessary, shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General

Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

- (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
- (b) promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

*Voting**Article 18*

1. Each Member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

*Procedure**Article 20*

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V. THE SECURITY COUNCIL

*Composition**Article 23*

1. The Security Council shall consist of *fifteen* Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect *ten* other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.¹

2. The non-permanent members of the Security Council shall be elected for a term of two years. *In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year.*

3. Each member of the Security Council shall have one representative.

¹ General Assembly Resol. 1991 (XVIII), A, para. 3, requires election according to the following pattern: (a) five from African and Asian states; (b) one from Eastern European states; (c) two from Latin-American states; (d) two from Western European and other states.

*Functions and Powers**Article 24*

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

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

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

*Voting**Article 27*

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of *nine* members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of *nine* members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.