THE UNITED NATIONS AND THE ROLE OF LAW

Legal controversy within the United Nations has resulted from the confrontation of the Organization's purposes with the specific rules set forth in the Charter for their implementation. Two sections of the Charter stand out as having produced yet unresolved legal tangles: One is the provision relating to the maintenance of international peace and security through effective collective action; the other is the group of provisions relating to self-determination and human rights. The Cold War and the attempts of the Great Powers to use the UN to attain or defend their policy objectives have shaped the attitude of Members toward the law and the role of law in the more clearly political activities of the UN. Consequently, politico-legal controversy has arisen with respect to the allocation of competences and powers between the General Assembly and the Security Council, the manner of operation of these two bodies, and the distribution of responsibility for "enforcement action" between the UN and regional organizations.

In addition, controversy has developed between Members anxious to implement speedily the purposes relating to human rights and racial equality or nondiscrimination and Members resisting such policies as impinging on domestic jurisdiction. The clash between the commitment of the Organization to the promotion of human rights and the sweeping reservation in Article 2, paragraph 7, has also shaped in large measure the attitude of Members with respect to the role of law in this area of UN activities. For these differences in interpretation did not remain restricted to issues relating directly to human rights, as in the South African questions, but came soon to embrace other issues as well, such as self-determination and control over natural resources—in fact, all aspects of colonialism including economic development.

These problems, however, except for a few general remarks in the following section, must remain outside the scope of the present analysis, which is concerned with the
deliberate efforts of the United Nations to contribute to the development and codification of international law. The world Organization has attempted to fulfill this task directly through resolutions, declarations, and draft conventions and indirectly through the International Law Commission. This is a vast and challenging area which this study will try to describe briefly.

THE CHARTER AND LIVING LAW

With respect to the general problem of the role of law in the United Nations, some theoretical observations may be made. It has been argued that the United Nations is essentially a political and dynamic institution and therefore cannot be held to a strict observance of the law. To this writer such a view is not persuasive. There is no contradiction between the essentially political character of the United Nations as an international institution and its obligation to respect applicable rules. As the International Court of Justice said in the first membership case:

The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution.1

The Charter is not exclusively or even predominantly concerned with purposes; as well as setting forth the objectives of the United Nations, it formulates principles and even detailed rules with respect to the manner in which the Organization’s goals can be achieved. Certainly, the UN can best attain its aims by respecting the law, by acting so as to give effect to its purposes and principles and yet not breach its Charter in any way.2

The United Nations is indeed a political and dynamic institution, but it does not follow, as sometimes suggested, that it operates in a politico-legal vacuum. Politically it operates within the system of sovereign states competing and cooperating; legally it operates within the framework of the Charter. Rules of interpretation are abundant, and a skillful interpreter can easily “prove” the compatibility of almost any resolution with the applicable rules.3 It should not be forgotten, however, that the often quoted San Francisco statement on interpretation which declares that each organ of the UN “will interpret such parts of the Charter as are applicable to its particular functions” also says:

It is to be understood, of course, that if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpreta-

1 Admission of a State to the United Nations (Charter, Article 4), Advisory Opinion of May 28, 1948: I.C.J. Reports 1948, p. 64.
2 See the joint dissenting opinion of Judges J. Basdevant, B. Winiarski, Sir Arnold D. McNair, and John E. Read in ibid., pp. 85, 92.