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Reconstituting the Constitution

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16.3.4 The United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change was implemented in New Zealand law a decade after signing, and 5 years after the Convention's Kyoto Protocol was signed. The Climate Change Response Act 2002 incorporated the whole of the Convention and the Kyoto Protocol in respective schedules. The Act was designed to put in place a framework to allow New Zealand to meet its international obligations under the Kyoto Protocol. It includes powers for the Minister of Finance to manage the country's holdings of units, and to trade units on the international market. It establishes a registry to record holdings and transfers of units, and establishes a national inventory agency to record information relating to greenhouse-gas emissions in accordance with international requirements.

In its consideration of the draft legislation, the FADT Committee noted that, while some provisions fell within existing common law or within the prerogative powers of the Crown, others could not be met through existing domestic law. These included providing for the necessary information collection powers that would be critical to ensuring compliance with the Kyoto Protocol. There was a need for a "clear basis" for the Crown's powers to issue, trade and retire units, and also the right of the New Zealand public to access registry information required as part of the international obligations.

The Climate Change Response Act 2002 recognised the further need to fulfil the obligations of accountability and transparency of process. In this regard, it provides for a clear delineation of the powers of the different Ministers and administrative agents. It safeguards the interests of parties trading with the Crown by providing a clear legal basis for the registry and ability of the Minister of Finance to trade.[14]

The 2002 Act was repealed and replaced by the Climate Change Response (Moderated Emissions Trading) Act 2009. While the provisions of the later legislation were weaker than its predecessor, the legislative change carried no constitutional significance.

16.3.5 The Bretton Woods Agreements

The 1944 Bretton Woods agreements, establishing the International Monetary Fund (IMF) and the World Bank,[15] were not implemented in New Zealand law for nearly two decades. The International Finance Agreements Act 1961 simply enables the government to be a member of the IMF and the World Bank, and the Bank's associated organisation, the International Finance Corporation. The bill that gave rise to the Act does not seem to have been considered by a select committee.

[14] Foreign Affairs, Defence and Trade Committee (2002), pp. 1–2.

[15] Formally known as the International Bank for Reconstruction and Development.

16.3.6 The World Trade Organization Agreement

Implementing the WTO Agreement in New Zealand law involved even greater complexity than usual. The WTO, established in 1994, is the belated realisation of aspirations from the failed International Trade Organization (ITO) of 1948. Independent of, though related to, the ITO, the General Agreement on Tariffs and Trade (GATT) was agreed upon in 1947. GATT consists of two of the three parts originally intended to comprise the trading regime for the post-war international community (the ITO being the third). GATT was adopted in 1947 and brought into force through the Protocol of Provisional Application (which is a separate instrument to GATT itself). GATT never established an international organisation although its secretariat in Geneva effectively functioned as one without legal personality.

In New Zealand, the General Agreement on Tariffs and Trade Act 1948 authorised the New Zealand government to sign GATT on the understanding that signature signalled ratification. The Agreement was attached to the Act as a schedule. There appears to have been no select committee report, and the Bill was passed within a few days of its introduction.

On establishing the WTO in 1994, the international community chose simply to augment the existing GATT arrangement with agreements in other related areas, as well as according the new Organisation legal personality. Thus the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services (GATS) were agreed upon.

For its own part, New Zealand repealed the General Agreement on Tariffs and Trade Act, adopted new legislation,[16] and amended nine existing Acts.[17]

16.3.7 The Human Rights Covenants

The United Nations General Assembly adopted the two human rights covenants in 1966, but New Zealand did not ratify them until 1978. Full implementation of the International Covenant on Civil and Political Rights was not completed until the adoption of the New Zealand Bill of Rights Act in 1990, whose stated purpose is to "affirm, protect, and promote human rights in New Zealand, and affirm New Zealand's commitment to the Covenant."

The International Covenant on Economic, Social and Cultural Rights has never been implemented in New Zealand. Compliance with a party's obligations is monitored by the relevant United Nations committee of experts, to which

[16] The Geographical Indications Act 1994.

[17] The Patents Amendment Act, the Trade Marks Amendment Act, the Fair Trading Amendment Act, the Animal Remedies Amendment Act, the Pesticides Amendment Act, the Medicines Amendment Act, the Customs Amendment Act, the Temporary Safeguard Authorities Amendment Act, and the Dumping and Countervailing Duties Amendment Act.

New Zealand has submitted three periodic reports. New Zealand maintains that several pieces of legislation directly incorporate the concept of promoting economic, social and cultural well-being as an explicit part of the statutory framework. The Education Act 1989 speaks of the "development of cultural and intellectual life" and "sustainable economic and social development of the nation". The Resource Management Act 1991 states as its purpose the promotion of the sustainable management of resources "which enables people and communities to provide for …. social, economic and cultural well-being". The Energy Efficiency and Conservation Act 2000 includes, as one of its sustainability principles, a directive to take into account the "social, economic and cultural well-being" of people and communities. And the Local Government Act 2002 cites, as the purpose of local government, promotion of "the social, economic, environmental and cultural well-being of communities, in the present and for the future". Despite this, reference to the International Covenant on Economic, Social and Cultural Rights in New Zealand case law is infrequent.

16.3.8 The International Criminal Court Statute

The Rome Statute of 1998, establishing the International Criminal Court (ICC) and identifying four individual crimes of greatest concern to the international community, is a milestone in the strengthening of international law.

The three crimes *in bello* recognised by the ICC (genocide, war crimes, crimes against humanity) are already justiciable, the Statute having entered into force in 2002. The fourth crime recognised in the Statute as falling within the court's jurisdiction (aggression as a leadership crime) is not yet justiciable. Two conditions must be met, viz, an agreed legal definition and agreement on the respective jurisdictional competence of the United Nations Security Council and the ICC prosecutor.

The Rome Statute was implemented in New Zealand law two years after signature. The International Crimes and International Criminal Court Act 2000 translated New Zealand's obligations under the Statute into domestic law. The stated purpose of the Act is to "make further provision in New Zealand law for the punishment of certain international crimes", and to enable New Zealand to cooperate with the ICC in the performance of its functions.

The FADT Committee considered the draft legislation in 2000. The government's National Interest Analysis was a thorough one, specifying the reasons for New Zealand to become a party.[18] Because of the principle of complementarity

[18] "The Statute represents a historic step forward for the protection of human rights and enforcement of international law, and has enormous potential as an instrument of international justice. As a small country, dependent on the rule of law, New Zealand's interests lie in supporting the establishment of a permanent International Criminal Court to sit alongside the International Court of Justice." (New Zealand Ministry of Foreign Affairs and Trade website: National Interest Analysis for the International Criminal Court, para. 10.)

requiring domestic courts to proceed in the first instance, the government was obliged to create specific criminal offences for genocide and crimes against humanity.

In general, select committees are usually allowed six months to consider a bill. In this instance, however, the government explained that, in mid-2000, the United Nations Secretary-General had called on member states to sign or ratify 25 "core treaties", of which the Rome Statute was one, by the time of the General Assembly's Millennium Summit in early September. The Parliament obligingly short-circuited the normal democratic process, casting into fine relief the power relationship between the legislature and the executive in this country. In total, only a few working days were devoted to bringing into New Zealand law this major treaty. Having delayed unduly, the government and Parliament acted with undue haste, to the detriment of the constitutional process.

16.4 Implications of the Major Treaties for National Sovereignty

Sovereignty has two dimensions – internal and external. Internally, it attends to the legitimacy of governance vis-à-vis the citizenry. Externally, it involves the freedom of action of the state in relation to others.

The major treaties of the twentieth century have had far-reaching impact on the external sovereignty of states. Each "global treaty" – in security, finance and economic development, human rights, arms control, climate change and criminal justice – carries the essence of "shared sovereignty" whose full potentiality has, however, yet to be realised.

The trends in the theory of sovereignty described in this paper act in parallel as separate, and to some extent disparate, issues arise in international politics and each nation-state makes individual decisions accordingly. It is difficult to discern one overall trend in the theory of sovereignty today. In some areas the sharing of national sovereignty is underway; in others, national sovereignty is increasingly asserted. Can a set of abstract criteria be developed for assessing an overall trend?

Five criteria may be identified for assessing whether nation-states are ceding sovereignty to the international community. These are:

- Peremptory Norms: Acceptance of the existence of, and respect for, *jus cogens* (peremptory norms) in international customary law;
- Contractual Permanency: Acknowledgement that some treaties may no longer allow for withdrawal, either through their own entrenchment provisions or through United Nations Security Council determination;
- Obligation Avoidance: Scope for violating a treaty's provisions with impunity;
- Global Powers: Acknowledgement of legitimate binding legislative and enforcement power of the United Nations Security Council;
- World Constitutionalism: Acknowledgement of a superior status of the United Nations Charter – as a prototype world constitution.

16.4.1 Peremptory Norms

The theory of *jus cogens* ("compelling law") holds that, at the most fundamental level of human conscience, a state's obligation in certain areas holds firm, from which no derogation may ever be permitted in any circumstance. Nation-states are unable to renounce such an international obligation, which is intrinsically also a national obligation, towards all (*erga omnes*) – to "absent oneself" from the comity of nations.[19] Such norms have never been formally agreed upon, but there is general consensus that they address genocide,[20] piracy, slavery, torture, and wars of aggression.[21]

In general, peremptory norms are identified in customary international law, but they are on occasion enshrined in treaty law, and in these instances state policy becomes relevant. They cannot, however, be derogated from by means of treaty – any treaty that conflicts with a peremptory norm is void.[22] The relatively new notion of peremptory norms clearly circumscribes the breadth of national sovereignty.

16.4.2 Contractual Permanency

Perhaps the most accurate measure of national sovereignty is the capacity of a nation-state to withdraw from the contractual treaty commitments it has entered through a treaty.

Unlike the League of Nations Covenant, there is no provision for withdrawal from the United Nations Charter, notwithstanding provisions empowering the United Nations General Assembly to suspend or expel member states.[23] Nor is there any withdrawal provision in the two human rights covenants.

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[19] "The concept of constitutional order in world affairs is more vulnerable than in national affairs. The obligation to comply is often resisted, particularly by power-holding elites, by invoking considerations of 'vital national interest'. Within a 'collateral system' like that of international law and diplomacy, it is unrealistic to suppose that the most powerful sovereign states can be prevented from 'contracting out' of an established decision-making process, if it is honestly believed that compliance imperils the security and welfare of their people." (MacDonald and Johnston 2005.)

[20] See *Armed Activities on the Territory of the Congo (DCR v Rwanda)* 2006 ICJ Rep 6 para. 64; *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v Serbia and Montenegro*) 2007 ICJ Rep at para. 161.

[21] See *Nicaragua Case: Nicaragua v United States* (Merits) (1986) I.C.J. Reports 14 at para. 190.

[22] Vienna Convention on the Law of Treaties, Article 53. They are, in fact, likely to be regarded as norms of *jus cogens* by reason of custom rather than by treaty, even if they have been enshrined within a treaty.

[23] Articles 5 and 6 respectively, of the United Nations Charter. In 1965 Indonesia indicated it had withdrawn from the United Nations. The United Nations Secretary-General, however, interpreted this to be a cessation of "full cooperation", and Indonesia returned later the same year.

The other major treaties, however, do contain withdrawal clauses.[24] The three weapons of mass destruction treaties have identical withdrawal provisions: each Party shall, in exercising its national sovereignty, have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

Notwithstanding this clearly articulated positivist right, a trend has emerged in the past two decades that suggests that the sovereign power to withdraw from certain treaties may no longer be unfettered (see box). In this respect, it may be necessary to distinguish between the question of whether a state can withdraw from a treaty and the effect of a Security Council resolution that requires a state to remain part of a legal regime. These may be seen as separate issues that raise different legal questions.

The issue of treaty withdrawal has never arisen with respect to biological or chemical weapons, but it has with nuclear weapons. Following the United Nations collective security action against Iraq, the Security Council "decided" in April 1991 under its binding Chapter VII authority that Iraq shall unconditionally agree not to acquire or develop nuclear weapons, thereby effectively removing Iraq's right in customary international law to withdraw from the NPT.

Emboldened by such a first step, the Council, meeting in January 1992 for the first time at summit level, agreed that the proliferation of all weapons of mass destruction "constitutes a threat to international peace and security." The members of the Council committed themselves to working to prevent the spread of technology related to the research for, or production of, such weapons and to taking appropriate action to that end.[25] With this declaration, the Council put the international community on notice that it could, and would, invoke Chapter VII powers to prevent the acquisition of nuclear, chemical or biological weapons by any State, irrespective of any claimed customary right to withdraw from the relevant treaty.

In 1993 the Council effectively moved in that direction. When the Democratic People's Republic of Korea announced its intention to withdraw from the NPT on the grounds that "aggressive military exercises" in its vicinity jeopardised its supreme national interests, the Council relied on a judgement

(continued)

[24] Nuclear Non-Proliferation Treaty (NPT) Article X; Biological Weapons Convention Article XIII; Chemical Weapons Convention Article XVI; United Nations Convention on the Law of the Sea Article 317; United Nations Framework Convention on Climate Change Article 25, International Criminal Court Article 123.

[25] UN Security Council Document S/23500, http://www.iaea.or.at/worldatom/Documents/Legal/summit.shtml.

of the three NPT depositary powers (United States, United Kingdom, Russia) which questioned the validity of such a claim.[26] Subsequent bilateral negotiations for an "Agreed Framework" deferred the matter for another decade, until 2003 when DPRK announced that it had withdrawn from the Treaty. On this occasion no judgement was entered by the depositary governments. But in October 2006 the United Nations Security Council deplored the DPRK withdrawal and its claimed nuclear test. Acting under its binding chapter VII powers, the Council demanded that DPRK return to the NPT, and applied economic sanctions.[27]

Western powers appear to be purposefully moving in the direction of legitimising in customary international law the power of the United Nations Security Council to prevent acquisition of nuclear weapons by non-nuclear weapons states. In preparation for the 2010 NPT Review Conference, the European Union submitted a discussion paper, seeking to strike a balance between national sovereign rights (of withdrawal) and "sovereign" global powers (of preventing withdrawal).[28]

16.4.3 Obligation Avoidance

It is clear that the weakness of the international community to enforce the provisions of international law encourages avoidance by nation-states of obligations deriving from treaties they have signed and ratified. The major powers, in particular the permanent five members of the United Nations Security Council which has primary responsibility for international peace and security, have often

[26] United Nations Security Council resolution, S/RES/825, 11 May 1993.

[27] United Nations Security Council resolution, S/RES/1718, 14 October 2006.

[28] While each State Party has a sovereign right to withdraw from the Non-Proliferation Treaty a withdrawal could, in a given case, constitute a threat to international peace and security. The legal requirements as set out in Article X and the consequences of a withdrawal should therefore be clarified. . . . In the event that a State party makes known its intention to withdraw from the Treaty under the provisions of Article X, para. 1, depository States should immediately begin a consultation process of interested parties to explore ways and means to address the issues raised by the notification of intent, taking into account the situation of the notifying party vis-à-vis its safeguards undertakings as regularly assessed by the International Atomic Energy Agency (IAEA). Such notification would also prompt the depositories of the Treaty to consider the issue and its implications as a matter of urgency. Reiterating the key role of the Security Council as the final arbiter in maintaining international peace and security, a notification of withdrawal under Article X should warrant immediate consideration and appropriate action by the Security Council. Any withdrawal notification under Article X, para. 1, should prompt the Security Council to consider this issue and its implications as a matter of urgency, including examination of the cause for the withdrawal, which, according to the requirements of Article X, has to be "extraordinary events related to the subject matter of the Treaty". (NPT/CONF.2010/PC.1/WP.25, 10 May 2007.)

violated the United Nations Charter which it is their duty to uphold. They do this under the claim that vital national security interests leave no other option. National sovereignty over-rides the common interest.

16.4.4 Global Powers

Since the Cold War, the United Nations Security Council has been acting with increasing assertiveness. It has broadened its own powers by means of declaring a matter to be a "threat to international peace and security" which it would never have declared in previous decades. The Council has been described as having "entered its legislative phase", beginning with SCR 1373 in September 2001 and continuing with SCR 1540 of April 2004.[29] This trend is clearly continuing.

16.4.5 World Constitutionalism

Perceptions of the status of the United Nations Charter fall naturally into two schools of thought. One view dismisses the Charter as "just another treaty" and the United Nations Organisation as a vehicle for the conduct of foreign policy by all 193 member states of varying size and power, forever subordinate to their national constitutional processes.[30] Even within this approach, however, the Charter's supremacy clause makes it clear that its provisions are superior to other treaty law.[31]

An alternative theory regards the Charter as an instrumental vehicle for the evolving political unity of humankind.[32] These two approaches co-exist in subliminal tension, with an associated political drama played out particularly in the form of United States ambivalence towards the United Nations.

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[29] See Talmon (2005). During deliberation over SCR 1540, the Council President described the process as "the first major step towards having the Security Council legislate for the rest of the UN membership". See also Happold (2003), p. 596.

[30] "We should be unashamed, unabashed, uncompromising American constitutional hegemonists. International law is not superior to, and does not trump, the Constitution. The rest of the world may not like that approach, but abandoning it is the first step to abandoning the US." (Bolton 2000.)

[31] United Nations Charter, Article 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

[32] "The Charter of the United Nations was brought into existence in the form of an international treaty. In the course of the last 50 years, however, the 'constitutional predisposition' of the Charter has been confirmed and strengthened in such a way that today the instrument must be referred to as the constitution of the international community" (Fassbender 1998).

The United Nations Charter clearly envisaged some derogation, or "sharing", of national sovereignty by member states in the "common interest".[33] The contribution by nation-states to global collective security at the start of the United Nations in the mid-1940s reflected a readiness to accept a far-reaching derogation of national sovereignty through Article 43 agreements contributing armed forces to United Nations action.[34] That thought has become enduringly remote, notwithstanding some modest effort at rapid deployment and associated attempts at peacekeeping reform.[35]

In the two-century transition period identified earlier, the tension between national sovereignty and a higher level of political and legal authority is acute. States naturally cling to the sovereign rights they possess under positivist international law, laid down over three centuries. Their citizens remain suspicious of a remote authority higher than that over which they maintain electoral control. Yet they acknowledge, increasingly, the need for global cooperation, and even legitimate global policy-making and enforcement power, in circumscribed areas.

The missing factor in linking national sovereignty and legitimate global power has been identified as an underlying political consensus on common values and the common interest.[36] The international community first identified

[33] The fourth purpose of the United Nations is to be 'a centre for harmonizing the actions of nations in the attainment of these common ends', namely the preceding three purposes – maintenance of international peace and security; the development of friendly relations and other measures to strengthen 'universal peace'; and international cooperation in solving international problems. UN Charter, Article 1.4.

[34] "[T]he San Francisco team firmly believed that the UN Charter they had drafted was genuinely revolutionary. The great innovations of the Charter found in Chapters 6 and 7 envisaged enforcement action on a vast scale. In particular, Article 43 called on member nations to make military forces available to the Security Council. The US estimate of the forces it would supply under Article 43, which was by far the largest, included 20 divisions – over 300,000 troops – a very large naval force, 1,250 bombers, and 2,250 fighters. Without a concert of the great powers, however – and they did not agree on anything – it soon became clear that all our grand schemes would not work." (Urquhart).

[35] See Report on the Prevention of Armed Conflict, UN Doc. A/55/985 – S/2001/574 (known as the Brahimi Report) and subsequent updates. A Danish initiative, the Standby High-Readiness Brigade (SHIRBRIG) was designed in the mid-1990s as a "rapidly deployable capability for peacekeeping operations mandated by the UN Security Council". Following a few deployments, it ceased operation in June 2009. The United Nations Stand-by Force Arrangement is a more modest but more global undertaking whereby United Nations member states specify to the Secretariat the military assets they are prepared to contribute.

[36] ". . . the United Nations is not a new idea. It is here because of centuries of past struggle. It is the logical and natural development from lines of thought and aspiration going far back into all corners of the earth since a few men first began to think about the decency and dignity of other men. Now the lines between national and international policy have begun to blur. What is in the national interest, when truly seen, merges naturally into the international interest." (Hammarskjöld 1960a.) See, for an exploration of this, Graham 1999, which identifies the "legitimate national interest" as the link to a global strategic objective on major issues of our time (foreword by UN Secretary-General, Kofi Annan).

formally a set of common global values in 2000,[37] and updated them in 2005.[38] Seven "global values" were identified, viz, freedom, equality, solidarity, tolerance, respect for human rights, respect for the environment, and shared responsibility.

States are nonetheless slow to embrace such global abstractions. The nearest thing to a "political philosophy of world organisation" is to be found in the accumulated writings of successive United Nations secretaries-general. In this respect Hammarskjöldian thought of the mid-twentieth century stands apart.[39] Hammarskjöld developed a coherent philosophy of global constitutionalism, resting on four central tenets. A teleological interpretation of the United Nations Charter allowed for its "organic adaptation" as a means for the growth and maturation of the international community of states.[40] A perception of the United Nations Organisation as a "dynamic instrument" encouraged the alignment of the national interests of member states towards attainment of the "common ends".[41] Building on these theories, Hammarskjöld spoke of the "creative evolution" of the international community of states towards a future polity of some kind.[42] And all of

[37] United Nations Millennium Declaration, A.RES/55.2, September 2000.

[38] World Summit Outcome Document, A/RES/60.1, September 2005.

[39] "To this very day there is clear deficit regarding …. a political philosophy of international relations and world organization. Political theory is still very much concerned with the state as the centre-piece of social order. In the example of Hammarskjöld can provide some orientation since both his actions and thoughts as Secretary-General can be seen as a quest for a political philosophy of world organization" (Frölich 2008).

[40] "The experiment carried on through and within the United Nations has found in the Charter a framework of sufficient flexibility to permit growth beyond what seems to have been anticipated in San Francisco. Even without formal revisions, the institutional system embodied in the Organization has undergone innovations explained by organic adaptation to needs and experiences" (Hammarskjöld 1960b). The teleological character of the Charter is now well-accepted, primarily through the "implied powers" doctrine: "Of special significance in the interpretation of the Charter are the object and purpose of the 'constitution for the universal society'. Both of these terms, which are laid down in Article 31(1) VCLT, have to be distinguished, notwithstanding the tendencies to use them synonymously. Whereas the object follows from the provisions of the powers, rights and responsibility with which the purpose of the treaty is to be achieved, the latter as such must be derived from the treaty provisions as a whole. This already shows that an interpretation on the basis of the purpose must remain within the framework of the treaty provisions. Teleological interpretation has always been recognised in international rulings and has been applied to the Charter as well. …. For the interpretation of statutes of international organizations and especially of the UN Charter, the determination of implied powers is an important aspect of teleological interpretation" (Grewe 1995, p. 42).

[41] http://www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=38 (last accessed 4 April 2011).

[42] "The UN is an organic creation of the political situation facing our generation. At the same time, however, the international community has, so to say, to come to political self-consciousness in the Organization and, therefore, can use it in a meaningful way in order to influence the very circumstances of which the Organization is a creation" (Hammarskjöld 1960a).

this, he thought, reflected a process best described as the "conscious self-realisation of humanity".[43]

Within that philosophical context, Hammarskjöld spoke of the United Nations Charter pointing towards the ideal of a "true constitutional framework for world-wide international cooperation",[44] and even as the Charter containing the seeds of an international constitution.[45] The world was, however, at an embryonic stage in that process.[46] Contemporary legal philosophers have extended that concept to the notion of the "self-constituting of international society."[47]

The Charter, in fact, contains its own internal provisions for teleological transformation. There is general concern that these provisions have not been sufficiently implemented for the United Nations to remain effective as the central and primary organisation of the system. A tension exists between the most fundamental principle that underpins the United Nations Charter – the sovereign equality of states – and the vision of a future global order resting on the notion of "we the peoples of the United Nations" in whose name the document opens. There is no doubt that some constitutional character to the Charter was originally envisaged at the earliest stages

[43] Frölich (2001), p. 17 ff.

[44] ". . .the United Nations is an experimental operation on one of the lines along which men at present push forward in the direction of higher forms of an international society. It is obvious that we cannot regard the line of approach represented by the United Nations as intrinsically more valuable than other lines, in spite of the fact that, through its universality, it lies closer to, or points more directly towards, the ideal of a true constitutional framework for world-wide international co-operation. . . . the United Nations is an effort just as necessary as other experiments, and nothing short of the pursuit of this specific experiment with all our ability, all our energy and all our dedication, can be defended. In fact, the effort seems already to have been carried so far that we have conquered essential new ground for our work for the future. This would remain true in all circumstances and even if political complications were one day to force us in a wholly new direction" (Hammarskjöld 1960b).

[45] "When a new social organism is created, we give it a constitution. Inside the framework of that constitution the first vital urges begin to stir, but as its life develops towards fullness the constitution is adjusted, so to say, from within, to new and changing needs which even the wisest legislator and statesman could only partly foresee" (Dag Hammarskjöld's address to the University of California, June 1955, quoted in Frölich 2008, p. 215).

[46] "In fact, international constitutional law is still in an embryonic stage; we are still in the transition between institutional systems of international coexistence and constitutional systems of international co-operation. It is natural that, at such a stage of transition, theory is still vague . . .." (Hammarskjöld 1960b).

[47] "The great intellectual challenge of the 21st century can be stated with relative clarity. The globalising of social phenomena is taking place in a philosophical vacuum, with social forms and processes crudely separated from their philosophical foundations, and left to develop, if at all, in a waste-land of rational and ethical nihilism.

Is the self-consciousness of the self-constituting of a true international society to be dominated by accident and force, because the human species is unable to reconstitute itself by reflection and choice? What is to be the philosophy of revolutionary social transformation at the global level?" (Allott 2005, pp. 131–132).