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CONSTITUTIONAL REVISION IN THE SPECIALIZED
AGENCIES

BY LESTER H. PHILLIPS

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In Congress itself the subject has also received increasing attention.³⁶ In addition to this official activity, many private American groups, both legal and technical, are involved in conferences and study projects on various aspects of deep-sea development.

These studies and recommendations, which will be appearing in the next year or so, will much enlarge our understanding of the complex issues involved. The findings, one suspects, will demonstrate the inadequate basis of much of the earlier discussion. The need now, in law as well as in science, is for more exploration of problems presented by the deep sea. Options should be kept open and positions unfrozen. The lemmings' march into the ocean is not a binding precedent.

³⁶ Most notably, perhaps, in the resolution introduced in the Senate by Senator Pell of Rhode Island. This called for efforts to secure General Assembly action on a proposed "Declaration of Legal Principles Governing Activities of States in the Exploration and Exploitation of Ocean Space." The annexed declaration envisaged free access by all nations to all areas of ocean space (outside of territorial waters and continental shelf), the rejection of national claims to ocean space, and the creation of a U.N. authority to grant exploration and exploitation licenses to states and international organizations. For the purposes of the declaration the limit of the shelf was set at the 600-meter depth line. S. Res. 186, 90th Cong., 1st Sess. (Nov. 17, 1967). No action has been taken on this proposal. A revised version, setting forth a draft treaty instead of a declaration, was embodied in S. Res. 263, introduced by Senator Pell on March 5, 1968.

CONSTITUTIONAL REVISION IN THE SPECIALIZED AGENCIES

LESTER H. PHILLIPS

*University of Redlands **

I. CONSTITUTIONAL FLEXIBILITY

The significant rôle for the specialized agencies contemplated by the Charter of the United Nations¹ is reflected in the constitutions of those agencies. It is the purpose of this paper to analyze, on a comparative basis, one aspect of the constitutional law of intergovernmental agencies related to the United Nations, *viz.*, the flexibility of their constitutions. This study should reveal the degree of adequacy of this ingredient, so essential to the viability of these important international institutions.

The fact of the treaty basis of the specialized agencies might have presented great complications in any move to revise their constituent documents.² The traditional rule of unanimity, if applied to the amendment of these multilateral agreements, would impose a severe limitation upon the imperative of constitutional flexibility. Necessity and experience, however, have evolved formulas for amendment that replace the traditional rule with clauses specifying more liberal procedures for revision.³

Changing needs and circumstances call for appropriate adaptations in structure, functions, and procedures of intergovernmental agencies. Three desirable features in the procedure of constitutional modification have been suggested by Dr. C. Wilfred Jenks; these are: (1) the process should be sufficiently easy to avoid undue rigidity, yet not be subject to amendment by a snap vote; (2) no important amendment should come into force against the opposition of a large and powerful minority; and (3) no organization should get into the habit of amending its constitution lightly.⁴ A balance must be struck, Dr. Jenks suggests, between undue rigidity and excessive flexibility "most appropriate to the requirements of the individual case."

Given the characteristics of the modern state system, the probability is for rigidity to prevail, especially with respect to the more politically important organizations. The result, as observed by Mr. Evan Luard, is that "the procedures for formal constitutional amendments are sometimes

* The writer wishes to express his appreciation to the staff of the Legal Research Library, University of Michigan, for assistance provided in the course of this study.

¹ Charter, Arts. 57-59. Cf. C. Wilfred Jenks, "Some Constitutional Problems of International Organizations," 22 Brit. Yr. Bk. Int. Law 11 (1945).

² Egon Schwellb, "The Amending Procedure of Constitutions of International Organizations," 31 *ibid.* 50-51 (1954).

³ D. W. Bowett, *The Law of International Institutions* 329 (1963).

⁴ Jenks, *loc. cit.* 68.

such as to make their passage difficult or virtually impossible.”⁵ Dr. Jenks illustrates this absence of flexibility in the Covenant of the League of Nations and in the Constitution of the International Labor Organization, and asserts that the provisions for amendment of these documents “were in practice virtually impossible to fulfill except in respect of uncontroversial amendments and even in such cases only subject to long delay.”⁶ It may be, of course, that prevailing political climates are more determinative of successful amendment than is any degree of constitutional engineering. On the other hand, it may be demonstrated that contemporary constitution-makers have eliminated the “nearly insuperable obstacles” of former decades. The specialized agencies afford evidence sustaining this conclusion.

II. THE AGENCIES AND THEIR CONSTITUTIONS

The present study analyzes the amendment of the constituent documents of fourteen intergovernmental agencies related to the United Nations. Thirteen of these organizations are specialized agencies, identifiable as such by the fact of agreements made between each agency and the United Nations in pursuance of Articles 57 and 63 of the Charter.⁷ To these may be added the International Atomic Energy Agency, which in structure and purpose is analogous to the specialized agencies but enjoys a special relationship to the General Assembly. For the present analysis, it is essential to list the dates of adoption and entry into force of the constitutions of these fourteen agencies.⁸

Food and Agriculture Organization of the United Nations (F.A.O.).
Constitution: drafted at Washington, D. C., by the United Nations Interim Commission for Food and Agriculture, 1943-1945; entered into force October 16, 1945.

Inter-Governmental Maritime Consultative Organization (I.M.C.O.).
Convention: adopted by the United Nations Maritime Conference, Geneva, March 6, 1948; entered into force March 17, 1958.

International Atomic Energy Agency (I.A.E.A.).
Statute: adopted by the Conference on the Statute of the International Atomic Energy Agency, New York, October 26, 1956; entered into force July 29, 1957.

International Bank for Reconstruction and Development (I.B.R.D.).
Articles of Agreement: adopted by the United Nations Monetary and Financial Conference, Bretton Woods, July 22, 1944; entered into force December 27, 1945.

⁵ Luard, *The Evolution of International Organizations* 23 (1966).

⁶ Jenks, *loc. cit.* 65.

⁷ Professor Bowett's label for these agencies is “Global Organizations of Limited Competence.” He speaks of twelve specialized agencies, expressly limiting I.D.A. as a bank affiliate to something less than a separate agency. Bowett, *op. cit.* 56, 94. I.D.A. entered into relationship with the U.N. as a specialized agency by agreement effective March 27, 1961.

⁸ Texts of these documents are printed in various volumes of *Yearbook of the United Nations*; also in Peaslee, *International Governmental Organizations: Constitutional Documents* (2 vols., 1956, and rev. 2nd ed., 1961). The revised edition is not consistent as to the inclusion of amended texts.

International Civil Aviation Organization (I.C.A.O.).

Convention: adopted by the International Civil Aviation Conference, Chicago, December 5, 1944; entered into force April 4, 1947.

International Development Association (I.D.A.).

Articles of Agreement: adopted by the Executive Directors of I.B.R.D., Washington, D. C., January 26, 1960; entered into force September 24, 1960.

International Finance Corporation (I.F.C.).

Articles of Agreement: drafted by Executive Directors of I.B.R.D., Washington, D. C., April, 1955, at request of the General Assembly of the United Nations; entered into force July 20, 1956.

International Labor Organization (I.L.O.).

Constitution: adopted as Part XIII of the Treaty of Versailles, 1919; revised by International Labor Conferences at Paris, 1945, and Montreal, 1946. The Instrument of Amendment, 1945, entered into force September 26, 1946; the Instrument of Amendment, 1946, entered into force April 20, 1948.

International Monetary Fund (I.M.F.).

Articles of Agreement: adopted by the United Nations Monetary and Financial Conference, Bretton Woods, July 22, 1944; entered into force December 27, 1945.

International Telecommunication Union (I.T.U.).

Convention: The Convention establishing I.T.U. as successor to the International Telegraph Union (formed in Paris in 1865) was adopted by the Radio-Telegraph Conference, Madrid, December 2, 1932; entered into force January 1, 1934. Successive conventions were adopted by the Plenipotentiary Conferences of I.T.U., as follows: Atlantic City, 1947, entered into force January 1, 1949; Buenos Aires, 1952, entered into force January 1, 1954; Geneva, 1959, entered into force January 1, 1961.

United Nations Educational, Scientific and Cultural Organization (UNESCO).

Constitution: adopted by the Conference for the Establishment of an Educational, Scientific and Cultural Organization of the United Nations, London, 1945; entered into force November 4, 1946.

Universal Postal Union (U.P.U.).

Founded at Bern in 1874, the Postal Union was governed by a number of successive conventions. Beginning with the Twelfth Postal Congress, conventions were adopted as follows: Paris, 1947, entered into force July 1, 1948; Brussels, 1952, entered into force July 1, 1953; Ottawa, 1957, entered into force July 1, 1959.

Constitution: adopted by the Universal Postal Congress, Vienna, 1964; entered into force January 1, 1966.

World Health Organization (W.H.O.).

Constitution: adopted by the World Health Conference, New York, July 22, 1946; entered into force April 7, 1948.

World Meteorological Organization (W.M.O.).

Convention. The International Meteorological Organization, founded at Utrecht in 1878, was governed by Statutes adopted at Paris, 1919. The Twelfth Conference of Directors adopted a Convention creating the W.M.O., Washington, D. C., October 11, 1947; entered into force March 23, 1950.

While all of these basic documents have similar purposes, they differ considerably in form. Not only are four different identifying labels used, but upon occasion an agency may replace one form with another. Agencies

with conventions are tending to express a preference for constitutions, as exemplified by the U.P.U. decision of 1964,⁹ the recent attention given to this question by W.M.O.,¹⁰ and the current study in I.T.U. which may result in the adoption of a constitution at its Plenipotentiary Conference scheduled for 1971.¹¹

Whatever the specific label, these documents represent what A. D. McNair has characterized as "treaties akin to charters of incorporation."¹² All were directed to the purpose of establishing intergovernmental organizations; all were drafted by multilateral conferences or intergovernmental organs; and all have come into force through ratifications by the respective member nations. Four of the agencies have a pre-United Nations history; the remainder are progeny of the United Nations era.¹³ Concomitant with arrangements to associate themselves with the United Nations, the former undertook extensive revisions of their constituent documents, as indicated in the above listing.

III. THE SUBJECT MATTER OF AMENDMENTS

The years 1945-1966 comprise the period to be considered in the present analysis. For agencies existing before World War II, the data are taken from the point at which a postwar revision of the constitution of each entered into force. Constitutional amendments of these twenty years (less than twenty for the newer agencies) will be enumerated and, despite a certain amount of overlapping and ambiguity, catalogued as to subject matter.

Number of Amendments. Most agencies have made a very limited number of changes in their constitutions. Moreover, nearly two thirds of all amending activity is accounted for by two agencies—F.A.O. and UNESCO. A count of the resolutions of amendment adopted by each agency to 1966 presents these totals: I.M.F., I.D.A.—none;¹⁴ I.A.E.A., I.B.R.D.—one each; I.F.C., I.M.C.O., W.H.O.—two each; W.M.O.—four; I.C.A.O., I.L.O.—five each; UNESCO—14; and F.A.O.—25. This is a

⁹ The Constitution is "the basic Act of the Union" (Art. 22). The Universal Postal Convention remains as one of the technical Acts of the Union.

¹⁰ Among the subjects referred to the working group on the Convention was the question of replacement of the Convention by a constitution. See note 115 below.

¹¹ At the Montreux Conference, 1965, the task of preparing a suitable draft of a constitution was assigned to a study group of experts. I.T.U., Report on the Activities of the ITU in 1965, p. 35. See also, International Organization, Summer 1966, 650-651. The hope expressed by Dr. Jenks that constituent instruments would be "disentangled" from technical conventions may eventually be fulfilled. Jenks, *loc. cit.* 15.

¹² McNair, "The Functions and Differing Legal Character of Treaties," 11 Brit. Yr. Bk. Int. Law 117 (1930).

¹³ Everyman's United Nations, 8th ed., pp. 487-545 (1968); also successive editions of the United Nations Yearbook.

¹⁴ Unlike other agencies, increases in the number of executive directors in the four financial agencies do not require constitutional amendments. Similarly, increases in financial quotas can be made without a constitutional amendment. Currently projected is an amendment of the Articles of Agreement of I.M.F.; see note 26 below.

total of 61 amendments for the twelve agencies that treat their constituent documents as permanent charters. Two agencies, I.T.U. and U.P.U. (previous to 1966) cannot be subjected to similar tallying as these have adopted new conventions at each regular session of their plenary bodies. While revisions made in this manner cannot be enumerated as separate amendments, certain specific changes so made will be identified in the present analysis.

This total of 61 resolutions of amendment reveals, however, an incomplete picture of the quantity of change. Revisions comprised within these resolutions vary in content from replacement of a single word to the addition or deletion of an entire article. In fact, five of the 61 resolutions carry two substantive changes each (F.A.O., 1947; I.L.O., 1953; I.M.C.O., 1964, 1965; UNESCO, 1954); and five resolutions of amendment are of an omnibus nature, each accomplishing extensive revisions affecting several articles (F.A.O., 1950, 1955; I.C.A.O., 1954; UNESCO, 1952; W.M.O., 1963).

A further fact relative to quantity should be noted at this point. Of the total of 61 amendments here enumerated, six have at this writing not entered into force. By agencies, these are: I.C.A.O.—one (1962); I.L.O.—three (all of 1964); I.M.C.O.—one (1965);¹⁵ and W.H.O.—one (1965).

Categories of Content. These 61 amendments fall conveniently into five subject-matter categories. These categories, with the number of amending resolutions indicated for each, are as follows: first, changes in structure of an agency or in composition of its organs (26); second, aspects of membership (9); third, new powers or modifications of powers (9); fourth, procedural changes (7); and fifth, drafting changes of an editorial nature (10).¹⁶ This order of presentation is an effort to suggest the relative value, in descending order, of the revisions viewed as a whole. The order would vary, of course, if expressed in terms of the significance of amendments adopted by each agency considered separately.

(1) *Revisions in Structure and Composition.* The most significant use of the amending power has been to produce modifications in agency structure or in the composition of various organs. The greatest pressure for change has come from the fact of vastly increased membership of each agency, the most immediate impact of which has been the demand to increase the size of executive boards or councils. No agency has escaped this development. A tally of amendments for this one purpose reveals the following: F.A.O.—five; UNESCO—four; I.L.O., I.T.U., W.M.O.—two each; and I.A.E.A., I.C.A.O., I.M.C.O., W.H.O.—one each.¹⁷ While this

¹⁵ This amendment to Art. 28 was ratified on Nov. 3, 1967, to enter into force twelve months thereafter.

¹⁶ This five-fold classification contains several arbitrary placements, due to the multiple content of some amendments and to the fact that some could logically fall under alternative headings.

¹⁷ Increases in the nine agencies were adopted in these years: F.A.O. Council: 1947, 1953, 1959, 1961, 1965; I.M.C.O. Council: 1964; I.A.E.A. Board of Governors: 1961; I.C.A.O. Council: 1961; I.L.O. Governing Body: 1953, 1962; I.T.U. Administrative Council: 1959, 1965; UNESCO Executive Board: 1952, 1954, 1956, 1962; W.H.O.

area of growth has presumably passed its peak, pressures are continuing both for increases in membership of the councils and for reallocation of seats for each region. At its 1965 Conference, for example, F.A.O. decided that another increase, this time of three seats, should be adopted and implemented at the 1967 session of the Conference.¹⁸

Upon occasion these amendments were adopted with alacrity; more often they were the subject of extended study and of diplomatic negotiation. Prominent also have been debates concerning the principle of an appropriate ratio of seats to total membership. Reflections of the international political climate are imprinted throughout the records of these debates.

Amendments relating to executive boards or councils have dealt also with aspects other than size. F.A.O. replaced its Executive Committee with a Council (1947);¹⁹ I.L.O. increased the number of states of chief industrial importance on its Governing Body from eight to ten (1953); UNESCO extended the terms of office of members of its Executive Board from three to four years (1952); a major change was promulgated regarding UNESCO's Executive Board by a decision to elect states to membership in place of electing members as individuals (1954); I.M.C.O. added a requirement of geographical representation for both the Council (1964) and the Maritime Safety Committee (1965), and increased the size of the latter from 14 to 16 (1965); U.P.U. replaced its Executive and Liaison Committee (created in 1947) with an Executive Council (1964);²⁰ and I.T.U. changed the status of members of the International Frequency Registration Board from election of states to election as individuals (1959), later reducing that membership from eleven to five (1965).

During earlier years, some agencies wrestled with the question of the frequency of meetings of their plenary bodies. The principal argument for a change away from annual sessions was the matter of cost, both in money and in human energy; major objections were the difficulty in extending programs and budgets over the longer period, and the potentially reduced influence and control of plenary bodies over administra-

Executive Board: 1959; W.M.O. Executive Committee: 1959, 1963. As the composition of the Executive Council of U.P.U. is established by the General Regulations (Art. 102), increases do not require amendment of the Constitution (see note 20 below). The Fifth World Meteorological Congress adopted (April 28, 1967) an amendment to increase the size of the Executive Committee of W.M.O. The Twentieth World Health Assembly adopted (Nov. 6, 1967) an amendment to increase the Executive Board of W.H.O.; ratification of this amendment will presumably require about two years.

¹⁸ F.A.O., Report of 13th Sess. of the Conference, Rome, 1965, p. 82.

¹⁹ Dates in parentheses represent the year of approval of the amendment by the respective plenary body, and are not necessarily the year of entry into force. For details of each adoption, see official records of plenary meetings for the year indicated.

²⁰ By Art. 102 of the General Regulations adopted at Vienna July 10, 1964, the new Executive Council would consist of 27 members, an increase of three over the preceding Executive and Liaison Committee. U.P.U., Constitution and General Regulations, p. 71 (English translation prepared by the British Post Office).

tive activities. Changes to biennial sessions were adopted by F.A.O. (1949) and UNESCO (1952), and to triennial sessions by I.C.A.O. (1956).

Several miscellaneous amendatory revisions should also be noted in this category. Non-governmental organizations were authorized to send observers to UNESCO General Conferences (1948); the terms of office of UNESCO's Executive Board were made variable, to coincide with adjournment dates of the General Conference (1950); I.T.U. replaced its two assistant secretaries general with a deputy Secretary General (1959); F.A.O. decided to permit members to appoint more than one alternate delegate to the Conference (1961); a specific term of four years was adopted for the Director General of F.A.O. (1961);²¹ U.P.U. changed the title of the head of the International Bureau from Director to Director General (1964);²² F.A.O. decided to permit the establishment of sub-regional offices (1963), and to create a permanent Committee on Fisheries (1965); and I.T.U. determined that henceforth its administrative conferences should be organized within two categories: world and regional (1965).²³

(2) *Aspects of Membership.* While only five agencies have adopted amendments in this category, the proposals were often highly significant, as well as highly controversial. Most unusual was an incident involving I.C.A.O. (1947). As a condition for entering into agreement with the United Nations as a specialized agency, the General Assembly required I.C.A.O. to adopt an amendment to its Convention permitting the debarment of any member debarred from membership by the United Nations. The expressed object of this action was Franco Spain.²⁴

Amendments regarding membership were required both to remedy omissions and to meet new situations. Two agencies, F.A.O. (1946) and UNESCO (1949), added provisions specifying that a member would have no vote in the plenary body if it was in arrears on its financial obligations. UNESCO provided the privilege of unilateral withdrawal from membership (1954). The category of associate member was created in two agencies, UNESCO (1951) and F.A.O. (1955). Finally, vigorous opposition to the practice of *apartheid* by the Government of South Africa expressed itself in the approval of three amendments, two by I.L.O. (1964) and one by W.H.O. (1965),²⁵ providing for suspension or expulsion of any member suspended or expelled by the United Nations or deliberately following a policy of *apartheid* or racial discrimination.

(3) *Powers and Duties.* Very few of the powers and duties expressed in these constitutions have been added to or modified by means of amendment. The most substantial grants of new powers were those made in two

²¹ Only two agencies included such a provision in their original constitutions: UNESCO (6 years) and I.A.E.A. (4 years).

²² By Res. C2, Universal Postal Congress, Vienna, 1964, this revision was given immediate effect.

²³ An increase from two to three in the number of vice presidents of W.M.O. was adopted (April 28, 1967) by the Fifth World Meteorological Congress.

²⁴ Res. A1-3, adopting Art. 93 bis. I.C.A.O., Proceedings of the First Session of the Assembly, Montreal, 1947, pp. 84-87.

²⁵ None of these three had been ratified at the time of this writing.

financial agencies. The first of these expanded the authority of I.F.C. to invest its funds, adding capital stock as a permissible investment (1961). The second such expansion required amendment of the Articles of Agreement of both I.B.R.D. and I.F.C., to permit the Bank to loan to the Corporation and the Corporation to borrow from the Bank (1964).²⁶

Other amendments have operated to modify duties, redefine obligations, or expand existing powers. UNESCO revised the respective duties and responsibilities of the Director General and the Executive Board regarding program, budget, and reporting (1952, 1954). The Conference of F.A.O. delegated powers to the Council to submit conventions or agreements to member states (1953), revised the article regarding establishment of commissions, committees, conferences, and working parties (1955), empowered itself to authorize the Director General to enter into agreements with member nations for the establishment of international institutions in the field of food and agriculture (1957), and spelled out the powers of the Conference and the Council to establish joint commissions between F.A.O. and other international organizations (1963). In I.T.U., the power to elect the Secretary General and his deputy was transferred from the Executive Committee to the Plenipotentiary Conference (1959). Finally, an amendment adopted by I.L.O. proposed to modify the obligation to apply labor conventions to dependent territories (1964).²⁷

(4) *Procedural Changes.* A number of amendments have produced revisions in organizational procedures prescribed by constitutions. UNESCO has deleted two requirements: that its rules of procedure be adopted annually (1947), and that the place of meeting of the General Conference vary annually (1948); and has added that the rules of procedure may specify cases in which decisions of the General Conference shall require a two-thirds majority (1958).²⁸ The Assembly of I.C.A.O. is required to have a three-fifths majority for the passage of any resolution of relocation of the agency's headquarters (1954). In F.A.O., two copies of any convention or agreement are to be certified (1955), and the vote required for the Conference to make budget changes was revised from "approval" to "two-thirds majority" (1959). The number of requests needed for calling an extraordinary session of the Assembly of I.C.A.O. was increased from "10" to "one fifth" of the contracting states (1962).²⁹ Finally, two procedural changes have been approved by I.M.C.O.: all

²⁶ A new function for I.M.F. is projected by Res. No. 22-8, adopted by the Board of Governors at Rio de Janeiro (October, 1967). The resolution proposes the establishment of a "Facility Based on Special Drawing Rights in the Fund," and requests the Executive Directors to prepare not later than March 31, 1968, a report proposing amendments to the Articles of Agreement for consideration and approval by the Board of Governors. See article by Joseph Gold in 62 A.J.I.L. 365 (1968).

²⁷ This Instrument of Amendment (No. 1) 1964, to amend Arts. 19 and 35, had not been ratified at the time of this writing.

²⁸ This amendment of Art. IV.C.8(a) has been implemented by Rule 81(2), Rules of Procedure of the General Conference. UNESCO, Manual of the General Conference (1965 ed.) 11, 47.

²⁹ Res. A14-5, 14th Sess. of the Assembly; adopted Sept. 14, 1962, but not ratified at the time of this writing.

members of the Council are to be elected by the Assembly (1964),³⁰ and the Assembly is to have a greater choice in election of members of the Maritime Safety Committee (1965).³¹

(5) *Editorial Changes.* Numerous changes of an editorial nature, correcting or clarifying various words or phrases or inserting items that were consequential to major amendments, account for the resolutions of amendment in this category. Most of these were promulgated by the extensive revisions of the F.A.O. Constitution (in a series of seven resolutions in 1950, 1955, and 1957), of the UNESCO Constitution (1952), and of the W.M.O. Convention (1963).³² These amendments will be identified below in the section on general review and revision.

Minor but interesting amendments have included the following: English, French, and Spanish were made equally authentic languages for the Constitution of F.A.O. (1951); UNESCO revised the statement regarding the right to vote in the event of financial arrears (1951); W.M.O. restated the manner in which the question of membership was to be worded on its agenda (1963);³³ and F.A.O. added "freedom from hunger" to the statement of purposes of the Organization expressed in the preamble of the Constitution (1965).

IV. THE AMENDING PROCESS

All but one of these fourteen constitutions contain articles establishing procedures for amendment.³⁴ The exception is the Convention of I.T.U., which provides simply that the Plenipotentiary Conference shall "revise the Convention if it considers this necessary."³⁵ As all the agencies are intergovernmental in nature and are similar in structure, a high degree of similarity in their procedures for amendment might be anticipated.

³⁰ Res. No. 69, I.M.C.O. Assembly, Second Extraordinary Session, September, 1964, adopting amendments to Arts. 17 and 18. These amendments entered into force Oct. 6, 1967. The amendment to Art. 28, by Res. No. 70, Fourth Session of the Assembly, Paris, 1965, regarding the Maritime Safety Committee, will enter into force Nov. 3, 1968.

³¹ A recent procedural change has been effected in the adoption by the Fifth World Meteorological Congress, Geneva, 1967, of amendments to Arts. 5, 10, and 16 of the W.M.O. Convention. These permit the calling of extraordinary sessions of the Congress, and the taking of decisions of the Executive Committee and of the total membership, by means of correspondence. W.M.O. Convention, Provisional Edition, 1967 (manuscript).

³² The 1967 session of the Congress of W.M.O. (see note 31 above) made substantial revisions affecting eight articles, requiring a number of consequential changes throughout the text of the Convention.

³³ This section of Res. 2(Cg. IV) amending Art. 10(a)(2) implemented the change in wording adopted by the W.M.O. Congress in 1959 but which had not entered into force. W.M.O., *Abridged Report with Resolutions*, 4th Cong., Geneva, 1963, p. 46.

³⁴ Revisions of constitutions have occasionally changed the number of the amending article. Following are the current article numbers: F.A.O. (Art. 20); I.M.C.O. (Arts. 52-54); I.A.E.A. (Art. 18); I.B.R.D. (Art. 8); I.C.A.O. (Art. 94); I.D.A. (Art. 6); I.F.C. (Art. 7); I.L.O. (Art. 36); I.M.F. (Art. 17); UNESCO (Art. 13); U.P.U. (Arts. 29, 30); W.H.O. (Art. 73); W.M.O. (Art. 28).

³⁵ Art. 6(h).

Such is not the fact; constitution-making falls quite short of producing a common body of content, a condition especially noticeable in procedures for revision. In one essential only do all the agencies agree, *viz.*, that all proposals for amendment must be considered by the plenary body of the organization as one stage in the adoption process.

Some amending articles are more complete than others; all leave gaps in one or another aspect of procedure. Each article presumably comprehends the essentials of the amending process as viewed at the time by the constitution-framers, and is seldom revised. The gaps are filled by implication, by custom and usage, and by the adoption of formal rules of procedure as supplements to the constitutional articles.

Constitutional provisions governing the amending process may be analyzed under these content headings: (1) sources of proposals, (2) prior communication, (3) consideration by plenary bodies, (4) adoption of proposals, (5) effective dates, and (6) the binding effect of amendments. Analysis of these aspects will be supplemented by a presentation of three topics that follow from such a survey: (7) defeated or rejected proposals, (8) general review and revision, and (9) revision of the amending articles themselves.

(1) *Sources of Proposals.* Seven constitutions specify how amendments or modifications may be proposed. For the Statute of I.A.E.A., proposals may be made by any member.³⁶ In F.A.O., proposed amendments may be communicated to the Director General by the Council or by member nations.³⁷ Proposals for modification of the Articles of Agreement of the four financial agencies may emanate from a member, a governor, or the Executive Directors.³⁸ The Constitution of U.P.U. grants the right to present amending proposals to the Postal Administration of any member country.³⁹ The remaining constitutions are silent on this matter, and the source of proposals becomes a matter of practice or of regulation by rules of procedure of the plenary body.

In practice, the most common procedure is for a member government to communicate a draft proposal to the Director General, or for several governments to submit a joint draft. Executive boards or councils are also prime sources of draft proposals; in these a resolution is often adopted embodying a draft text to be submitted to the plenary body. Less common, but also significant, are proposals originating with the Director General. These may take the form of reports on agenda items or of draft texts to be accepted or rejected by the plenary body, with a right of modification dependent upon the rules of procedure.

Proposals also originate in sessions of the plenary body itself. The Conference of F.A.O., for example, may adopt the draft text of a proposed amendment, to be transmitted to the Council and submitted by it to member governments for study, in preparation for final adoption at the ensuing session of the Conference. A modification of this procedure, in

³⁶ Statute, Art. 18(A).

³⁷ Constitution, Art. 20(3).

³⁸ Articles of Agreement: I.B.R.D., Art. 8(a); I.D.A., Art. 9(a); I.F.C., Art. 7(c); I.M.F., Art. 17(a).

³⁹ Constitution, Art. 29.

which the plenary body adopts a resolution recommending that the council prepare and submit an amendment on a specified subject for consideration and approval at the next plenary session, is often used by I.A.E.A., I.C.A.O., W.H.O., and W.M.O. In I.C.A.O., the Council has determined that proposals may originate with a contracting state, or any body of the Organization, or the Secretariat;⁴⁰ but the Assembly has reinforced the responsibility of the Council to study specific amending proposals, ascertain the views of contracting states, and submit draft amendments to the Assembly.⁴¹

Participation of all three main bodies of any agency—conference, council, Director General—is commonly to be expected, with circumstances determining the rôle of initiator. In 1952 and 1953, for example, on the question of the size of the Governing Body of I.L.O., the Director General prepared a report dealing with the implications of an increase, and the Governing Body drafted an amendment which was considered and adopted by the Conference.⁴² A variation of this procedure occurred in W.H.O., when the Executive Board prepared (1952) some draft alternative amendments in pursuance of the Assembly resolution of 1950 to accept the principle of biennial sessions.⁴³ In 1965 the Executive Board of W.H.O. had before it eleven proposals received from members, but three successive draft resolutions failed of passage;⁴⁴ it remained for the Assembly to become the more successful forum for arriving at consensus.⁴⁵ The Executive Board did agree, however, on the desirability of increasing its own size, and in 1966 requested the Director General to transmit relevant documents to all members of the agency with a view to future action by the World Health Assembly.⁴⁶

As a final illustration of the initiation of proposals, a 1959 resolution of the World Meteorological Congress may be adduced. While recognizing that only states have a "prescriptive right" to propose amendments, the resolution held that states, acting through a resolution of the Congress, may "instruct" the Executive Committee to do so.⁴⁷

⁴⁰ I.C.A.O., Proceedings of the Council, 4th Sess., May 25–June 26, 1948, pp. 68–69.

⁴¹ Res. A2-5. I.C.A.O., Proceedings of the Second Assembly, Geneva, 1948, pp. 365–366.

⁴² I.L.O., Minutes of the 120th Sess. of the Governing Body, Nov. 25–28, 1952, pp. 61–65, 117–118; Record of Proceedings, 36th Sess., International Labor Conference, Geneva, 1953, pp. 423–427.

⁴³ W.H.O., Official Records, No. 40: Executive Board, 9th Sess., January 21–February 4, 1952, pp. 18, 76–92.

⁴⁴ *Ibid.*, No. 143: Resolutions, 18th World Health Assembly, Geneva, 1965, pp. 136–145.

⁴⁵ Adoption of amendment to Art. 7, May 20, 1965; *ibid.*, No. 144: 18th World Health Assembly, Geneva, 1965, pp. 184–186.

⁴⁶ Res. EB38.R20; *ibid.*, No. 153: Executive Board, May 23–24, 1966, p. 9.

⁴⁷ Res. 4(Cg. III): The Congress "instructs the Executive Committee under Article 14(h) to keep the Convention under continuing review between meetings of Congress, and . . . to submit to Congress the text of any proposed amendment to the Convention which may appear to the Executive Committee to be necessary." W.M.O., No. 88.RC.17: Abridged Report with Resolutions, Third Congress, Geneva, 1959, pp. 60–61.

(2) *Prior Communication.* For six agencies, communication of the texts of all proposals to the members in advance of consideration at a plenary session is a constitutional requirement. The most common period established is six months (I.M.C.O., UNESCO, W.H.O., W.M.O.); F.A.O. requires 120 days, while the Statute of I.A.E.A. imposes an advance period of ninety days.⁴⁸

Plenary bodies of agencies act generally to sustain or to augment the constitutional requirements; in three agencies (I.C.A.O., I.L.O., U.P.U.) rules specifying the requirement of prior communication have been established in the absence of constitutional provisions. The Assembly of I.C.A.O. (1950) adopted a policy requiring that proposals be submitted by contracting states to the Council six months prior, and by the Council to all contracting states three months prior, to a forthcoming Assembly session.⁴⁹ The Standing Orders of I.L.O. provide that any proposal of amendment shall be "included in the agenda of the Conference" at least four months before the opening of the session.⁵⁰ By its General Regulations, the Congress of U.P.U. has established a sliding scale for submission of amendments.⁵¹

A supplemental rule adding to constitutional standards is sometimes employed. In W.M.O. (1959), the Congress adopted a resolution proposing that draft amendments be communicated nine months, rather than six, in advance of the next Congress.⁵² In UNESCO, substantive changes in draft amendments previously communicated may be submitted and communicated to all members not less than three months prior to a General Conference, and no prior communication is required for mere drafting changes. In case of doubt as to classifying such submissions, the General Conference shall decide by a two-thirds vote.⁵³

Numerous instances indicate that the requirement of prior communication is adhered to with strictness. Attempts to obtain consideration for proposals in the absence of prior communication have been unsuccessful in at least five agencies (F.A.O., I.M.C.O., UNESCO, W.H.O., W.M.O.).⁵⁴

⁴⁸ F.A.O. Constitution, Art. 20(4); I.M.C.O. Convention, Art. 52; I.A.E.A. Statute, Art. 18(A); UNESCO Constitution, Art. 13(1); W.H.O. Constitution, Art. 73; W.M.O. Convention, Art. 28(a).

⁴⁹ Res. A4-3, "Policy and Programme with Respect to the Amendment of the Convention"; I.C.A.O., Proceedings of the Fourth Assembly, Montreal, 1950, pp. 95-96, 333.

⁵⁰ Standing Orders of the International Labor Conference, 1963 ed., Art. 46(1).

⁵¹ General Regulations, Art. 118. All proposals received at least six months before the Congress are to be published; those received between six and four months will be published only if supported by at least two Administrations; and proposals received less than four months preceding the Congress will be published only if supported by at least eight Administrations. U.P.U., Constitution and General Regulations, Vienna, July 10, 1964.

⁵² Res. 4(Cg. III); W.M.O., No. 89.RC18: Proceedings, Third Congress, Geneva, 1959, pp. 71-72.

⁵³ Rules 104-106, Rules of Procedure of the General Conference, 1965 ed.

⁵⁴ F.A.O., Report of 9th Sess. of the Conference, Rome, 1957, p. 191; I.M.C.O., Documents A.III/SR.5 and 6, 3rd Sess. of the Assembly, London, 1963; UNESCO,

A special complication exists in I.A.E.A. in that a substantive change adopted by the General Conference, in a proposal before it, cannot be finally acted upon until at least ninety days after communication to members and consideration anew of the observations of the Board of Governors.⁵⁵

An exception to the strict application of the rule of prior communication occurred in I.C.A.O. in 1965: the Assembly by majority vote suspended the rule so that a draft amendment to permit the suspension of South Africa could be immediately considered. The draft was defeated for lack of a two-thirds majority.⁵⁶

(3) *Consideration by Plenary Bodies.* In all agencies, amending proposals must be submitted to the plenary bodies for consideration. With the exception of the finance agencies, the constitutionally specified vote for approval is a two-thirds majority. The respective Articles of Agreement of I.M.F., I.B.R.D., and I.D.A. (using identical wording) require "approval" by the Boards of Governors, with no special majority indicated.⁵⁷ I.F.C. procedure differs in a way that will be indicated presently.

The required majority for approval is, with two exceptions, based on members "present and voting." For U.P.U., the two thirds applies to total membership; for W.M.O., the two thirds applies to "Members which are States."⁵⁸ Some constitutions place additional qualifications upon this requirement: the two thirds must equal at least one half of the total membership (F.A.O.); the two thirds must include the concurring votes of a majority of the members of the Council (I.M.C.O.); the General Conference can vote only after considering the observations of the Board of Governors (I.A.E.A.); only members which are states may vote on proposed amendments (W.M.O.); and associate members are prohibited from participation in this process (I.M.C.O.).⁵⁹

Procedures employed by plenary bodies differ considerably as compared with each other and as between successive proposals within each agency. The general practice is to assign the agenda item embodying the proposed drafts (as circulated prior to the session) to a standing committee. Debate may be extensive or brief; the committee will submit a report to

Resolutions, 11th Sess. of the General Conference, Paris, 1960, pp. 192-193; W.H.O., Official Records, No. 55: Seventh World Health Assembly, Rome, 1954, pp. 366-372; W.M.O., Annual Report, 1959, p. 51.

⁵⁵ I.A.E.A., General Conference, Rules of Procedure, GC(VIII)/INF/60 (1963), Rule 103.

⁵⁶ I.C.A.O., Minutes of the Plenary Meetings, 15th Sess. of the Assembly, Montreal, 1965, pp. 137-142.

⁵⁷ I.B.R.D. (Art. 8(a)), I.D.A. (Art. 9(a)), I.M.F. (Art. 17(a)): "Any proposal to introduce modifications in this Agreement . . . shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank [Association, Fund] shall, by circular letter or telegram, ask all members whether they accept the proposed amendment."

⁵⁸ U.P.U. Constitution, Art. 30(1); W.M.O. Convention, Art. 28(b) and (c).

⁵⁹ F.A.O. Constitution, Art. 20(1); I.M.C.O. Convention, Art. 52; I.A.E.A. Statute, Art. 18(C)(i); W.M.O. Convention, Art. 28(b) and (c).

the plenary session, and approval by the necessary majority will complete this stage. Draft texts are, with occasional exceptions, presented and adopted in the form of numbered resolutions; I.L.O. uses a special form called "Instrument of Amendment," and the Constitution of U.P.U. provides that amendments "shall form the subject of an additional protocol."⁶⁰

Oftentimes a draft proposal will afford little or no controversy, and will be adopted in plenary session by voice vote or by roll call, either as a separate resolution or as embodied in a committee report. As a rule, consideration will have continued until consensus is reached, so that upon final vote all but a handful of resolutions have received unanimous approval. In all instances the presiding officer takes care to announce that the measure has been approved by the required majority. Controversial proposals may be marked by parliamentary maneuvers, by questions of interpretation of the rules or of constitutional clauses, and by efforts of opponents to modify the content of a draft or by proponents to produce consensus.

In all agencies this process is governed by general or by specific rules of procedure.⁶¹ In some, rules pertaining to amendment are little more than repetitions of the terms of constitutions; in others, the rules are rather elaborate directions covering all stages of the process.⁶² The Assembly of I.C.A.O., after observing a moratorium on amendments for three years (1948-1950), adopted an eight-paragraph "Policy and Programme with Respect to the Amendment of the Convention,"⁶³ in which it established tests of appropriateness and emphasized the responsibility of the Council to consider proposals.

Extraordinary sessions of their assemblies for the sole purpose of considering proposals of amendment have been held by two agencies, I.C.A.O. (1961) and I.M.C.O. (1964).⁶⁴ In each instance the sessions were of only a few days' duration and accomplished the objective of approving increases in the size of their respective councils.

Consideration in plenary meeting often works a substantial revision in the text of a draft proposal. On the question of frequency of sessions of the Conference of F.A.O. (1949), the draft text was adopted by the Conference after reversing the Council's recommendation, thus establishing

⁶⁰ I.L.O., Standing Orders of the International Labor Conference, Art. 47(6); U.P.U. Constitution, Art. 30(2).

⁶¹ UNESCO Constitution, Art. 13(2): "The General Conference shall have power to adopt by a two-thirds majority rules of procedure for carrying out the provisions of this Article." Other agencies rely upon the general rule-making authority of their plenary bodies. Varying titles are used for these rules, *e.g.*, "General Rules of the Organization" (F.A.O.); "Rules of Procedure" (I.A.E.A.); "Standing Rules of Procedure of the Assembly" (I.C.A.O.); "Standing Orders of the International Labor Conference" (I.L.O.); "Rules of Procedure of the General Conference" (UNESCO); "General Regulations" (U.P.U.).

⁶² For an example of the latter, see Arts. 46 and 47 of Standing Orders of the International Labor Conference, 1963 ed. ⁶³ See note 49 above.

⁶⁴ I.C.A.O., 13th (Extraordinary) Session of the Assembly, Montreal June 19-21, 1961; I.M.C.O., Second Extraordinary Session, London, Sept. 10-15, 1964.

biennial sessions as the rule, annual sessions as the exception.⁶⁵ The question of changing from annual sessions was considered by the World Health Assembly over a four-year period (1950-1953). The decision reached was to make no change, largely because of the anticipation expressed that the Assembly could better direct and control the growth of the activities of the agency through annual meetings.⁶⁶

Various avenues may lead to the rejection of proposals at plenary sessions. In F.A.O. (1963), a standing committee recommended a proposal for adoption with 52 favorable votes; after debate in plenary session the proposal was defeated, receiving only 47 favorable votes.⁶⁷ The General Conference of I.A.E.A. (1965), upon considering the observations transmitted to it by the Board of Governors, as it is required to do by the Statute, decided to delete from the agenda a draft proposal of amendment.⁶⁸ The experience of W.M.O. in 1963 is unusual: after adopting a lengthy list of amendatory proposals during the final two days of the Congress, several significant proposals met defeat for lack of the required two-thirds majority of the membership, not because of opposition to the proposals but because hardly more than two thirds of the membership was present.⁶⁹

In addition to the proposals just referred to, as many as a dozen significant drafts have been defeated in plenary sessions (see the section below on rejected proposals).

(4) *Adoption of Proposals.* For some agencies, approval by the plenary body completes the adoption of an amendment; for others, a two-stage procedure is the rule; and for some a combination of the two methods exists. The two-stage rule requires "acceptance" (ratification)⁷⁰ by member states following approval by the conference, congress, or assembly. Adoption by action of the plenary body is labeled by Professor D. W. Bowett the "legislative" principle, while the two-stage procedure is the "consent" principle.⁷¹ The former is the only method available in I.F.C., and the only one used to date by F.A.O., UNESCO, and W.M.O. For the remaining agencies, the "consent" principle, involving ratifications, is mandatory.

The constitutions of F.A.O., UNESCO, and W.M.O. foresee two types of amendments—those which propose new obligations for the member states⁷² and those which do not.⁷³ Only the former type requires the two-stage procedure for adoption. The question of whether a draft

⁶⁵ F.A.O., Report of the 5th Sess. of the Conference, Washington, D. C., 1949, p. 50.

⁶⁶ Res. WHA6.57. W.H.O., Official Records No. 48: 6th World Health Assembly, Geneva, 1953, p. 39.

⁶⁷ F.A.O., Report of 12th Sess. of the Conference, Rome, 1963, p. 81.

⁶⁸ I.A.E.A., Doc. GC(IX)/311. Report of the General Committee, Sept. 22, 1965.

⁶⁹ W.M.O., Proceedings, 4th Congress, Geneva, 1963, pp. 177-180.

⁷⁰ Regarding the usage of these terms, see Schwelb, *loc. cit.* 55, note 5.

⁷¹ Bowett, *op. cit.* 330-331.

⁷² Or additionally for UNESCO, proposals which involve fundamental alterations in the aims of the Organization.

⁷³ F.A.O. Constitution, Art. 20(2); UNESCO Constitution, Art. 13(1); W.M.O. Convention, Art. 28(b) and (c).

amendment contains the conditions requiring its submission for ratification must be determined by the plenary body at the time of approval by it, and a statement to the effect that it does not is normally included in each resolution of adoption in these three agencies.

For adoption by the "legislative" principle, the two-thirds majority in F.A.O. and UNESCO is based on votes cast, whereas in W.M.O. the two thirds is of the total membership. The basis of total membership is also applied in five of the agencies using the "consent" principle (I.A.E.A., I.C.A.O., I.L.O., I.M.C.O., W.H.O.);⁷⁴ that is to say, the amendment enters into force upon its ratification by two thirds of the members. The Assembly of I.C.A.O. must specify an acceptance (ratification) figure of "not less than two thirds" of the total number of contracting states. For I.L.O., a further requirement is ratification by five of the ten members represented on the Governing Body as members of chief industrial importance.

In the weighted voting system of the financial agencies, the amending process is completed (for I.M.F., I.B.R.D., and I.D.A.) upon acceptance by three fifths of the members having four fifths of the total voting power.⁷⁵ As noted above, I.F.C. amends solely by action of the Board of Governors, with the required majority being three fifths of the Governors exercising four fifths of the voting power.⁷⁶ The Articles of Agreement of all four list certain exceptional clauses that can be amended only by unanimity.⁷⁷

Some interesting uncertainties have appeared in the adoption procedures of the World Meteorological Organization. In 1959, after an unsuccessful attempt at approval by a postal ballot, the Congress ruled that it was neither permissible nor desirable to approve amendments by correspondence.⁷⁸ At the same session, however, a resolution having received three votes less than two thirds, the Congress submitted the draft to member states, permitting them the choice of "acceptance" (ratification required) or "approval" (without ratification).⁷⁹ Neither of these alternatives produced the necessary two-thirds majority. The item was reintroduced and adopted by the "legislative" procedure at the Congress in 1963,⁸⁰ evidencing a more acceptable and satisfactory procedure.

(5) *Effective Dates.* The time of entry into force of adopted amendments is expressed in some constitutions, but for others has to be implied from the provisions regulating approval or acceptance. Proposals in UNESCO and W.M.O. have immediate effect upon conference approval. The same is true in F.A.O., although the Conference has power to provide otherwise. The Convention of I.M.C.O. declares the effective date to be

⁷⁴ I.A.E.A. Statute, Art. 18.C(ii); I.C.A.O. Convention, Art. 94(a); I.L.O. Constitution, Art. 36; I.M.C.O. Convention, Art. 52; W.H.O. Constitution, Art. 73.

⁷⁵ Articles of Agreement: I.B.R.D., Art. 8(a); I.D.A., Art. 9(a); I.M.F., Art. 17(a).

⁷⁶ I.F.C. Articles of Agreement, Art. 7(a).

⁷⁷ I.B.R.D., Art. 8(b); I.D.A., Art. 9(b); I.F.C., Art. 7(b); I.M.F., Art. 17(b).

⁷⁸ W.M.O., Annual Report, 1959, pp. 50-51.

⁷⁹ *Ibid.* 49. This was a proposal to amend Art. 10(a)(2).

⁸⁰ Res. 2(Cg. IV). W.M.O., Abridged Report with Resolutions, 4th Cong., Geneva, 1963, p. 46.

twelve months after ratification. Amendments adopted by the four finance agencies are to enter into force three months after adoption, unless a shorter period is specified by the Boards of Governors, an action taken by I.F.C. in making its two amendments effective upon adoption.⁸¹

The Constitution of U.P.U. provides that amendments adopted by the Congress shall enter into force at the same time as any acts renewed at that session, unless Congress decides otherwise. In the Final Provisions of each I.T.U. Convention is expressed a date, usually twelve to fifteen months following the close of the Conference, on which the new text shall come into force and so supersede the existing document. A similar practice was applied by U.P.U. under its conventions, and will presumably be continued under the Constitution in view of the link between amendments and the other acts of the Congress.

For agencies using the two-stage ("consent") procedure, arrival of the effective date depends upon the speed with which governments proceed with ratifications. Following is a summary of the experiences of six agencies, with the time from approval to entry into force of their sixteen amendments: I.A.E.A.—one amendment, 15 months; I.B.R.D.—one amendment, 16 months; W.H.O.—two amendments, one in 17 months, the other not yet in effect; I.M.C.O.—two amendments, each in approximately 37 months; I.L.O.—five amendments, the first two in 11 months each, with three not yet in effect; and I.C.A.O.—five amendments, the first in 13 years and 10 months, the second, 47 months, the third, 30 months, the fourth, 13 months,⁸² and the fifth not yet in force.

Do these intervals constitute unreasonable delays in the effectuation of amendments? With certain exceptions, a qualified negative answer may be indicated.

Disregarding the first I.C.A.O. amendment,⁸³ a rough average range of intervals of 11 to 17 months may be derived. This comprehends five agencies with six amendments, and leaves two agencies, I.C.A.O. and I.M.C.O., presenting exceptional instances of five amendments requiring longer periods.

At this point, the five amendments not yet made effective by ratifications must be considered. Here again, I.C.A.O. is exhibit A, with an amendment approved by the Assembly in 1962 remaining unratified. Next in this category is I.L.O., with its three amendments approved by the International Labor Conference in 1964 lacking the required number of acceptances. Finally, there is the one unratified amendment of W.H.O.,

⁸¹ Res. No. 27, Summary Proceedings, Annual Meeting of Board of Governors, Vienna, 1961, p. 40; and Res. No. 50, *ibid.*, Tokyo, 1964, p. 21.

⁸² The fourth amendment of I.C.A.O. was ratified in time to make effective an increase in the size of the Council at the 1962 session of the Assembly; in the election of this expanded number all delegations were permitted to participate, whether or not their governments had ratified the amendment.

⁸³ This amendment operated to debar Spain from membership, and achieved its purpose merely by approval in the Assembly, coupled with voluntary withdrawal by Spain; there was therefore no incentive for its early consideration by governments and it must be viewed as an abnormal occurrence.

which is approaching three years of elapsed time since approval. Although there has been no instance of an amendment being killed for lack of ratification, this picture may be undergoing revision. It should be noted that no time limitations have been imposed, whether by constitutions, rules of procedure, or resolutions of adoption.

(6) *Binding Effect*. Are dissenters and abstainers bound by every adopted amendment? This question is directly faced in most constitutions. The Articles of Agreement of the four financial agencies and the Constitution of W.H.O. expressly state that adopted proposals shall enter into force "for all members." The Constitution of I.L.O. reaches the same result by implication.⁸⁴ The Constitution of F.A.O. and the Convention of W.M.O. state that amendments requiring ratification take effect for each member accepting the amendment, thus leaving open the question of the effect of non-acceptance. In contrast, the Constitution of UNESCO implies that an amendment accepted by the required two-thirds majority would be effective for all members.⁸⁵ As reported above, none of these latter three agencies has as yet activated the "consent" principle.

The Statute of I.A.E.A. provides that members unwilling to accept an amendment may withdraw from the agency by notice in writing. Amendments to the Convention of I.C.A.O. come into force with respect to states which have ratified each amendment, and the Assembly may provide that any state not ratifying within a specified period after the amendment has come into force shall thereupon cease to be a member.⁸⁶ The Assembly of I.M.C.O. may determine that an amendment is of such a nature that any member, by a declaration of non-acceptance within twelve months after the amendment comes into force, shall cease to be a party to the convention. The Assembly adopted such a determination in the resolutions of 1964 and 1965.⁸⁷

No question is presented concerning adoptions by the "legislative" principle; such amendments have binding effect upon all members.⁸⁸ A minor deviation from this rule was asserted, however, at the Congress of the World Meteorological Organization in 1963. On an amendment adopted by the "legislative" principle, three members (Ireland, Mexico, Portugal) reserved the right to act by "acceptance" (ratification) rather than by simple "approval."⁸⁹

⁸⁴ Art. 36: "Amendments to this Constitution which are adopted by the Conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified or accepted by two-thirds of the Members of the Organization. . . ."

⁸⁵ Art. 13: "Proposals for amendments to this Constitution shall become effective upon receiving the approval of the General Conference by a two-thirds majority; . . ."

⁸⁶ See Schwelb, *loc. cit.* 59, for analysis of the relation of binding effect to provisions for withdrawal from membership.

⁸⁷ I.M.C.O., A/ES.II/Res. 69, adopted Sept. 15, 1964; A IV/Res. 70, adopted Sept. 28, 1965.

⁸⁸ Bowett, *op. cit.* 319. In a session of UNESCO, the representative of Japan stated his unhappiness at what he characterized as these "departures from international law." UNESCO, Proceedings, II-20, 7th Sess., General Conference, Paris, 1952, p. 225.

⁸⁹ W.M.O., Proceedings, 4th Cong., Geneva, 1963, p. 180.

In those instances in which ratification is a requirement, what are the consequences for non-consenting members? There exists a divisive potential in any agency using that procedure, *viz.*, that two constitutions could result from the fact of non-acceptance by a minority of members who neither withdrew nor were expelled therefor. The only clear resolution of this difficulty may be automatic expulsion. On the other hand, as Professor Bowett suggests, "a good deal of faith is placed in the powers of political persuasion as opposed to clear-cut legal powers of terminating membership."⁹⁰ This is the essence of the experience of the Universal Postal Union, in which tardiness or non-action regarding ratification of successive conventions has been overlooked, once a state has performed an original acceptance of membership.⁹¹ In some agencies, however, a confrontation may arise in which the incompatibility of non-acceptance of amendments and continued membership will demand a solution.

(7) *Rejected Proposals.* The number of proposals meeting rejection is relatively small. Upon occasion, suggested amendments and even draft proposals have been put forward and then withdrawn by their sponsors before any action was taken upon them. The fact that a number of draft proposals have been debated and then defeated, sometimes by very close votes, indicates that there is generally no bar to presentation of controversial suggestions for change.

Some proposals are rejected at the committee stage, others are defeated after debate in plenary session; still others may never reach these stages, being blocked in executive boards or councils, including in some instances the opposition of secretariats. The following review of rejected proposals indicates the subject-matter of each and the path of, or reason for, its defeat.

A proposal to permit suspended or excluded members to send observers to the General Conference of UNESCO was rejected in committee for want of a second, and when introduced in plenary session was defeated by a heavy negative vote (1948).⁹² Although approved by the Executive Committee, a proposal to extend the authority of the Assembly of I.C.A.O. to relocate the headquarters of the agency was defeated for lack of a two-thirds majority (1950),⁹³ and two years later a proposal to study the question failed to obtain a simple majority.⁹⁴

In W.H.O., a proposed amendment to extend the power of the Executive Board regarding the budget was dropped in favor of a simple resolution adopted by the Assembly clarifying that power (1950).⁹⁵ The

⁹⁰ Bowett, *op. cit.* 332.

⁹¹ George A. Coddington, Jr., *The Universal Postal Union* 110 (1964). This tradition appears to be continued in the Constitution of U.P.U. (Art. 30), which states that amendments are to enter into force when approved by the Congress and "shall be ratified as soon as possible by Member Countries."

⁹² UNESCO, *Proceedings*, 3rd Sess. of the General Conference, Beirut, 1948, p. 469.

⁹³ I.C.A.O., *Proceedings of the Fourth Assembly*, Montreal, 1950, pp. 96-104.

⁹⁴ I.C.A.O., *Minutes of the Plenary Meetings*, 6th Sess. of the Assembly, Montreal, 1952, pp. 27-32.

⁹⁵ W.H.O., *Official Records*, No. 28: 3rd World Health Assembly, Geneva, 1950, p. 156.

question of changing to biennial sessions was considered by the World Health Assembly in 1958, and the change was approved in principle;⁹⁶ at the 1959 session, however, the Assembly adopted a recommendation of the Executive Board to continue annual sessions.⁹⁷ A proposal to place on the agenda of the Conference of I.L.O. the question of a change in the election of the Director General was rejected by the Resolutions Committee of the Conference (1962).⁹⁸ In I.C.A.O. (1956), a proposed amendment to certain technical requirements of the convention was defeated by a close vote in the Economic Commission of the Assembly, in favor of a simple resolution on the subject.⁹⁹ A proposal for extensive revision of finance and budgetary procedures was presented to the General Conference of I.A.E.A. in 1963; the decision was to take no action at the time but to request the Board of Governors to study the question.¹⁰⁰ The Executive Committee of W.M.O. submitted to the Congress (1959) a list of questions upon which a two-thirds vote should be required for approvals; the Congress decided against inserting the list into the convention.¹⁰¹ In 1963 the W.M.O. Congress adopted extensive revisions of the convention, but the texts of several proposals were defeated by one or two votes less than the required two thirds, due largely, as mentioned above,¹⁰² to the reduced attendance on the final day of the session.

In rejection, as in adoption, proposals dealing with the size or composition of executive boards or councils have been the most prevalent. Such a proposal was held by the Conference of I.L.O. (1949) to be inexpedient since the question had received full debate in 1946.¹⁰³ Proposals to change the status of the Executive Board of W.H.O. were considered and rejected by the World Health Assembly (1950, 1954).¹⁰⁴ Two proposals to increase the size of the Executive Board also failed, the first by two votes short of the necessary two thirds (1954);¹⁰⁵ the second was disposed of by the adoption of a simple resolution deciding to maintain the text of the existing article (1956).¹⁰⁶ Efforts to promote change in the existing geographical pattern of the Board of Governors of I.A.E.A. failed (1961),¹⁰⁷ although an increase in the size of the Board to give more

⁹⁶ Res. WHA11.25; *ibid.*, No. 87: 11th World Health Assembly, Minneapolis, 1958, pp. 27-28.

⁹⁷ Res. WHA12.38; *ibid.*, No. 95: 12th World Health Assembly, Geneva, 1959, p. 36.

⁹⁸ I.L.O., Record of Proceedings, 46th Sess., International Labor Conference, Geneva, 1962, pp. 655-656.

⁹⁹ Res. A10-36; I.C.A.O., Annual Report of the Council to the Assembly for 1956, p. 49.

¹⁰⁰ GC(VII)/Res./143; I.A.E.A., Resolutions and Other Decisions, 7th Sess., General Conference, Vienna, 1963, p. 4.

¹⁰¹ W.M.O., Annual Report, 1959, p. 50.

¹⁰² See note 69 above.

¹⁰³ I.L.O., Record of Proceedings, 32nd Sess., International Labor Conference, Geneva, 1949, p. 405.

¹⁰⁴ Res. WHA3.96; W.H.O., Handbook of Resolutions and Decisions, 8th ed., pp. 268-270; W.H.O., Official Records, No. 55: 7th World Health Assembly, Geneva, 1954, pp. 366-372.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, No. 71: 9th World Health Assembly, Geneva, 1956, p. 348.

¹⁰⁷ GC(V) OR.58; I.A.E.A., General Conference, 5th Regular Sess., Vienna, 1961, p. 12.

representation to Africa and the Middle East was adopted. Finally, a proposal to change the designation of a category of membership on the Board of Governors of I.A.E.A. was deleted from the agenda of the General Conference (1965), "in light of a communication from the Board of Governors."¹⁰⁸

Problems related to southern Africa have also been the subject of rejection as well as of adoption. In F.A.O. (1963), a draft amendment to provide for exclusion of any member for persistent violation of the principles of the Constitution was recommended for adoption by Commission III of the Conference by a vote of 52-28, but was then defeated on the floor of the Conference, 47-36, with 11 abstentions.¹⁰⁹ In I.C.A.O. (1965), after a suspension of the rule of prior communication was obtained, a draft proposal aimed at exclusion of South Africa from the Assembly was defeated, 42-30, far short of the 67 favorable votes essential for approval.¹¹⁰

(8) *General Review and Revision*. Only one agency has a constitutional provision for "review" corresponding to Article 109 of the United Nations Charter. The Statute of I.A.E.A. (Article XVIII) calls for the question of a general review of the provisions of the Statute to be placed on the agenda of the fifth annual session of the General Conference. Thereafter, proposals on the question may be submitted to any General Conference for approval by a majority, with the review to take place at the following session. At the 1961 General Conference, consideration in pursuance of Article XVIII led to a unanimous decision to take no action toward general review.¹¹¹ The prevailing expression was that five years was too short a time for testing the workability of the agency.

The Assembly of I.C.A.O., in a resolution of 1950, included this paragraph: "That no plans should be initiated in the near future for a general revision of the Convention."¹¹² In 1954 I.C.A.O. changed from annual to triennial sessions of the Assembly and in consequence adopted a resolution of amendment affecting several articles. Following the decision of the Conference of F.A.O. to change to biennial sessions, a committee undertook a general overhauling of the Constitution, Rules of Procedure, and Financial Regulations. At a special session of the Conference in 1950 revisions affecting twelve articles were adopted. The establishment of the classification of associate member by F.A.O. in 1955 also produced consequential revisions in eleven articles. At that session the Conference also established an *ad hoc* committee to study the structure, functions, and procedures of the Council and of certain committees. The 1957 Conference adopted four resolutions of amendment, affecting seven articles, as recommended by the *ad hoc* committee.¹¹³

¹⁰⁸ GC(IX)/311; I.A.E.A., General Conference, 9th Regular Sess., Vienna, 1965.

¹⁰⁹ F.A.O., Report of 12th Sess. of the Conference, Rome, 1963, p. 81.

¹¹⁰ I.C.A.O., Minutes of Plenary Meetings, 15th Sess. of the Assembly, Montreal, 1965, p. 142.

¹¹¹ Res. GC(V)/188/Rev.1 (Oct. 6, 1961); I.A.E.A., Documents, General Conference, 5th Regular Sess., Vienna, 1961.

¹¹² Res. A4-3; see note 49 above.

¹¹³ "The *ad hoc* Committee undertook a thorough and detailed analysis of the structure and working methods of the Organization. . . . They eliminated the ambigu-

Two other agencies have undertaken extensive revisions. At its 1952 session, in its decision to shift to biennial meetings, the General Conference of UNESCO accomplished twelve changes, mainly transitional, in its Constitution. Finally, extensive revisions in the Convention of W.M.O. resulted from the instructions of the World Meteorological Congress of 1959. A working group, assisted by a legal expert from I.L.O., prepared a detailed list of proposals which was transmitted to members nine months prior to the 1963 session of the Congress.¹¹⁴ Revisions were adopted by the Congress affecting fourteen articles. But it was an unfinished task; the Congress at that same session established another working group on the Convention to consider proposals that failed in 1963 as well as others, and to report eighteen months before the Congress of 1967.¹¹⁵ The working group held one meeting in December, 1964, in Geneva, but the President of W.M.O. having decided no further financing was available for this purpose, a provisional report was sent to members of the Organization at the end of 1965.¹¹⁶

(9) *Revision of the Amending Articles.* Despite certain expressed dissatisfactions, only minor changes have been made in the amending articles themselves, and these are confined to two agencies. The International Labor Organization enlarged its Governing Body in 1953 and consequent thereto a change was made in Article 36 in the number of ratifications required of members serving on the Governing Body as states of chief industrial importance: the original "majority of the eight" was replaced by "five of the ten," which in effect is a slight reduction in ratio.¹¹⁷

Three substantive changes have been made in the amending article of the Constitution of F.A.O. Along with several editorial clarifications made in 1950, the requirement for adoption of an amendment was reduced from two thirds of the members to two thirds of the votes cast.¹¹⁸ In 1955 the amendment procedure was extended to allow participation in that process by associate members.¹¹⁹ Finally, in 1959 the Conference

ties which resulted from the rather empirical manner in which the various parts of the Organization's machinery developed, and they corrected the faults which experience has brought to light." F.A.O., Report of 9th Sess. of the Conference, Rome, 1957, p. 171. The Conference appropriated \$20,000 for committee expenses.

¹¹⁴ "The Convention had been examined Article by Article and each time, the group had asked itself whether there were ambiguities or redundancies which could be avoided. . . . The group had carefully avoided making any change in the basic structure of the Organization or jeopardizing the rights of Members." W.M.O., Proceedings, 4th Cong., Geneva, 1963, pp. 43-44.

¹¹⁵ Res. 3(Cg. IV); W.M.O., Annual Report, 1963, p. 3-1.

¹¹⁶ W.M.O., Annual Report, 1965, p. 3-1. At the Fifth World Meteorological Congress, Geneva, 1967, revisions were adopted affecting eight articles of the Convention.

¹¹⁷ Instrument of Amendment, 1953; I.L.O., Record of Proceedings, 36th Sess., International Labor Conference, Geneva, 1953, pp. 245-253.

¹¹⁸ F.A.O., Report of the Special Session of the Conference, Washington, D. C., 1950, pp. 18, 33.

¹¹⁹ Res. No. 30/55; F.A.O., Report of 8th Sess. of the Conference, Rome, 1955, pp. 144, 192-196.

decided that Rule XXII, setting forth amending procedures, was too basic to be left as a standing rule and so transferred it to the Constitution.¹²⁰

Varying degrees of dissatisfaction with amending procedures have been expressed in I.C.A.O., W.H.O., and W.M.O. The Assembly of I.C.A.O. (1950), after lengthy consideration, arrived at a decision not to change Article 94;¹²¹ the World Health Assembly (1955) called for revision of Article 73,¹²² but no specific proposal was introduced; and the Congress of W.M.O. (1959) instructed the Executive Committee to study and report recommendations on Article 28 of the convention.¹²³ The latter body arrived at a unanimous opinion that Article 28 stood in need of revision,¹²⁴ but it has recommended none to the Congress.

V. CONCLUSIONS

Have the constitutions under review demonstrated a flexibility adequate to the demands of a rapidly changing international scene? A generalized answer may be deduced from the following summary observations.

(1) A very wide range exists in the incidence of amendments, from agencies with none (I.M.F., I.D.A.) to those in which amending proposals are under virtually continuous consideration (F.A.O., UNESCO).

(2) The most significant and most prevalent use of the amending power has been to revise the structure of agencies or the composition of their organs. Primarily this has been a democratic response to expanding memberships, but it also stems from needs demonstrated by experience. In some instances new or revised machinery has been established to administer expanded functions.

(3) Amendments have modified duties or redefined obligations, but have seldom been called upon to add new powers to those originally expressed. Presumably, original constitutions have proved adequately comprehensive in the delegation of powers and duties; most revisions have been based on administrative experience and very little on external demands.

(4) The relatively large number of editorial changes has two distinct bases: (a) the need for clarification and rearrangement, reflecting both inadequate drafting and the appearance of difficulties that could not have been foreseen; and (b) the adoption of a number of major substantive revisions requiring harmonization of related but scattered clauses.

(5) All agencies possess channels permitting ample opportunity for the proposal of amendments.

(6) Strict application of the rules of prior communication ensures to every member government adequate time for advance consideration.

¹²⁰ Res. No. 55/59; F.A.O., Report of 10th Sess. of the Conference, Rome, 1959, p. 218.

¹²¹ Res. A4-3; see note 49 above.

¹²² Res. WHA8.28; W.H.O., Official Records, No. 63: 8th World Health Assembly, Mexico City, 1955, p. 30.

¹²³ Res. 3(Cg. III); W.M.O., Abridged Report with Resolutions, 3rd Cong., Geneva, 1959, p. 60.

¹²⁴ W.M.O., Annual Report, 1960, pp. 45-46.

(7) The use of parliamentary procedure in every plenary body serves to provide a forum for open debate, limited by the intricacies of parliamentary rules, the pressure of time, and the impact of the contemporary political climate. The fact that controversial proposals have been sometimes approved and sometimes defeated demonstrates the freedom of opportunity to promote change.

(8) The dichotomy in procedures for effectuation of amendments is significant; four agencies effect adoption upon approval by their plenary bodies, whereas the remainder require ratification by member governments as a second step.

(9) A wide variation is reflected in the time interval between approval and entry into force of adopted amendments. In agencies using the "legislative" principle, approval carries immediate effect; in agencies requiring "acceptance" a period of one to two years can be normally anticipated between approval and entry into force, with continued uncertainty overhanging those proposals not yet ratified.

(10) While no controversy involving the non-acceptance of an adopted amendment has arisen, a potential difficulty is present in several agencies which have not provided for compulsory termination of membership as a consequence of non-acceptance.

(11) The texts of the amending articles in some constitutions have occasioned expressions of dissatisfaction, but revisions in those texts are infrequent.

(12) Finally, a survey of the content of amendments indicates that little use is made of this process as an avenue either to strengthen or to weaken the operation of agencies. A sizeable number of amendments has served merely to remedy omissions in the original texts. There is some indication that proposals with a strongly political bias tend to weaken rather than to sustain an organization.¹²⁵ The evidence supports the thesis that formal amendment is not the most productive method of adaptation and growth of a constitutional system.¹²⁶ Nevertheless, much of traditional legalism remains an essential element in contemporary intergovernmental relations, and written constitutions maintain a significant rôle.

The evidence may now be tested by the criteria suggested by Dr. Jenks. To generalize regarding fourteen agencies and their constitutions will no doubt produce certain distortions, but as an over-all evaluation the conclusions appear highly favorable.

(1) Is the amending process sufficiently easy to avoid undue rigidity, yet not subject to a snap vote? The latter condition is objectively true; the former is a relative matter, with the record showing an absence of formidable barriers and the successful passage of numerous proposals, both routine and controversial, in most agencies.

(2) Can any important amendment come into force against the opposition of a large and powerful minority? There is no indication that any

¹²⁵ Cf. C. Wilfred Jenks, "Due Process of Law in International Organizations," 19 Int. Organization 163-176 (1965).

¹²⁶ See Luard, *op. cit.* 9-24, for a concise discussion of the process of change in international organizations.

such event has occurred. Should a regional group or a combination of groups be in opposition, then the one third plus one veto could operate to defeat a proposal; should it be a great Power in opposition, then political considerations would be determinative, irrespective of rules of procedure.

(3) Has any agency developed a habit of amending its constitution lightheartedly? Here the performance only of the Food and Agriculture Organization might be called into question. An observer might conclude that this agency has been much too free with its two to four amendments in every biennial session. On the other hand, none of these amendments is frivolous in nature, and the total may indeed be adduced as evidence of a dynamic and responsive institution. It must be admitted, however, that ease of enactment has contributed to the compilation of this record-setting quantity.

It is evident that contemporary constitutions have generally achieved the desired balance between undue rigidity and excessive flexibility. There are, it is true, weaknesses in the procedures of some agencies that should be remedied. If sufficient interest were manifested by the legal staffs of a number of agencies, an inter-agency working group on constitutional amendment could undoubtedly produce suggestions of benefit to many agencies. A sharing of experiences and exchange of suggestions could not be other than mutually profitable. The experience of the World Meteorological Organization in receiving the services of a legal expert from the International Labor Organization should be considered a valuable indicator. Questions for consideration by such a group might include the following:

(1) Should the "legislative" principle of adoption be extended to more agencies, at least for proposals relating to subjects such as changes in structure and composition?

(2) Could the time between approval and entry into force be shortened in those agencies where the interval has been of undue length?

(3) Is compulsory withdrawal from membership the preferred solution in the event of non-acceptance of an adopted amendment?

(4) Would the drafting of a model amending article contribute to the strengthening of present procedures and to the alleviation of continued dissatisfactions?

Each agency has its own special problems, and there is, moreover, no urgency in any of these areas. It must be recognized that, with a very few exceptions, constitutional revision in the specialized agencies is accomplished within acceptable standards and constitutes a noteworthy aspect in the growth and development of these functional international institutions.

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