BOOK REVIEW


It is a backhanded compliment perhaps to claim that the work under review, first published in 1968 and re-issued in 2005, could have been written in recent years. That is a compliment to Zacklin, to be sure: his approach and understanding of the topic still look fresh, his insights still seem to the point, and it is only on points of detail (and then only a handful of those) that his study has become outdated. Whether it is a compliment to the international law community, or international organizations law community, is less certain, for it would suggest that the theoretical and methodological insights gained over the last four decades are hardly being manifested in recent scholarship. But then again, maybe this simply means that time-honoured legal methods are, well, time-honoured legal methods, and are time-honoured for good reason.

After an opening chapter discussing general problems relating to the amendments of constitutions, Zacklin discusses the development and application of procedures within some of the technical unions, the Versailles institutions, the UN Charter, and the Specialized Agencies. By and large, he situates amendment within the tension between desirable change and the expectation of protection of sovereignty, realising all too well that a final chapter had to be devoted to more informal methods of changing constitutive amendments.

The main thesis underlying the study is that amendment should somehow reconcile two diverging desiderata: on the one hand, there is the need for swift modification, dictated as it may be by changing political circumstances; on the other, there is something to be said for stability, certainty, and the protection of sovereign interests as well: “It is the right balance between rigidity and flexibility which must be sought by the framers of the amendment clause…” (p. 27). While this applies to treaties generally, an added complication when it comes to constituent instruments of international organizations is that these tend to create institutional structures as well, and surely, it is not terribly practical to have different decision-making procedures for different member states depending on which of them have accepted a particular amendment.

Zacklin distinguishes three phases in the creation of amendments which, he suggests, manifest the “inherent logic of the amendment process” (p. 131).
The first stage concerns initiation. The second involves adoption within the competent organ of the organization concerned, whereas the third involves acceptance, approval or ratification by the competent domestic authorities of the member states. While the first stage concerns issues such as which organ (or which member state) may table amendment proposals, the second stage often involves decision-making by some form of (qualified) majority. The third stage, however, is different. Typically, amendments become binding for those that have approved or ratified them after a certain number of approvals or ratifications has been received, but there are exceptions.

One of these exceptions is the UN Charter which, in article 108, declares that amendments become binding on all members upon acceptance by two thirds of them including the permanent members of the Security Council. In such a case, it would be wise to have an exit mechanism, and while indeed the drafters of the Charter discussed the desirability of a withdrawal clause, they decided against including one, informed perhaps by the depressing experiences of the League of Nations. Instead, a declaration was adopted suggesting that member states of the UN would be expected to continue membership unless “exceptional circumstances” would occur; Zacklin carefully concludes that this generally is seen as furnishing a legal basis for withdrawal (p. 164). Another exception applied to the telegraph and postal unions. Here, as amending agreements are deemed to abrogate and replace the earlier treaty, the member state resisting amendment would cease to be a member.\(^1\) Likewise, Article 26 of the League of Nations Covenant held that a state not accepting an amendment would cease to be a member.

Zacklin’s analytical framework is extremely useful. Not only does he distinguish three stages in the amendment process, he also identifies three distinct sources. There is, quite obviously, the constitutive instrument itself; in addition, the organization may also have rules of procedure touching on amendment. Most interestingly though, there is a third, “very important” source: the organization’s practice. This in turn may be formalised (by means of a resolution, for example), “or it may remain informal in the sense of not being consecrated in legal form” (p. 132).

In the end, Zacklin presents a twofold conclusion. On the one hand, he argues that ineffective amendment provisions (such as that of the UN Charter, with its \textit{de facto} veto for the permanent members) need not be fatal: the Charter, after all, has been changed, revised and modified over the years in considerable