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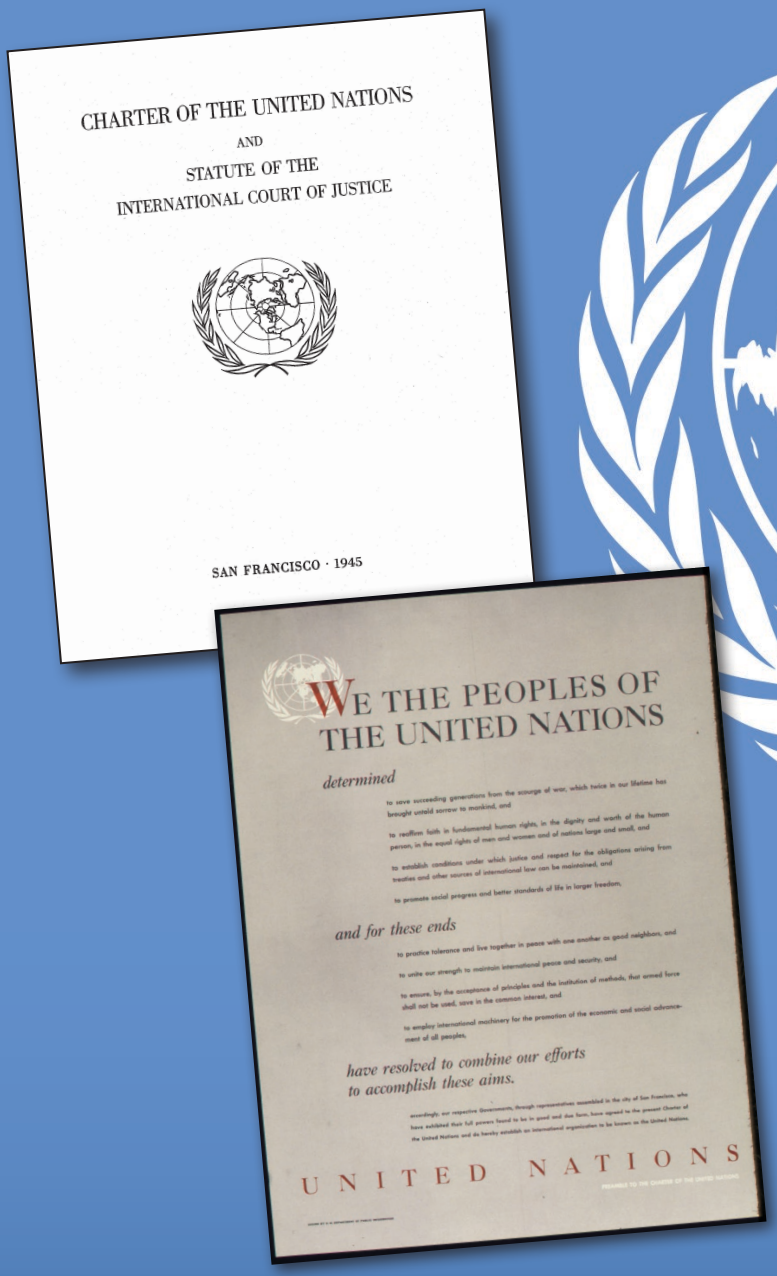
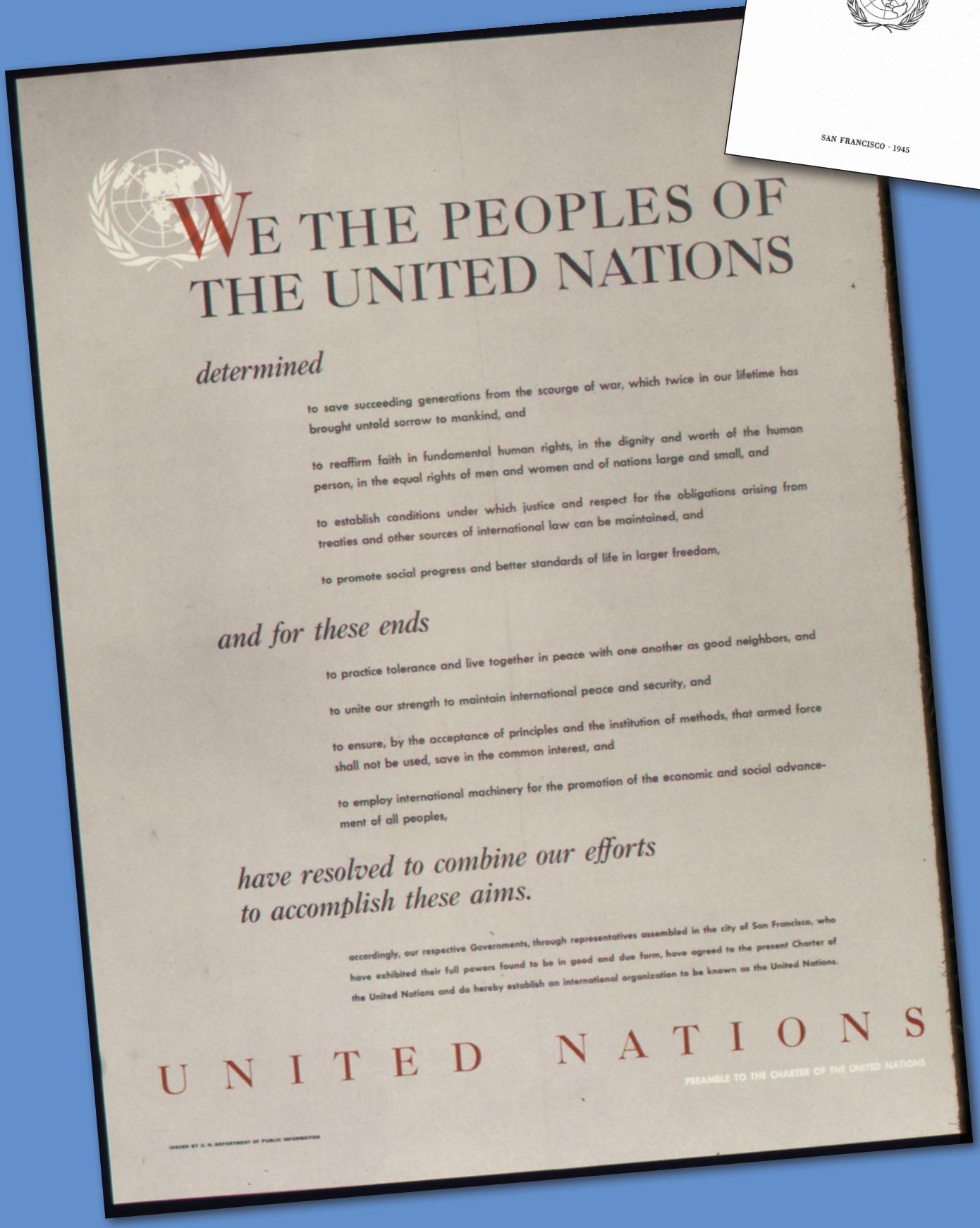


70 Years of the UN Charter

Le 70ème anniversaire de la Charte des Nations Unies

70 Years of the UN Charter

Read the Charter of the United Nations and Statute of the International Court of Justice following page 3.



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IADL, International Association of Democratic Lawyers, is a Non-Governmental Organization (NGO) with consultative status to ECOSOC and represented at UNESCO and UNICEF. The IADL was founded in 1946 by a gathering of lawyers who had survived the war against fascism and participated in the Nuremberg Trials.

The International Review of Contemporary Law is a digital legal journal published by IADL. It does not follow the mainstream, but instead analyzes legal questions in their cultural, economical, political and social context.

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From the Editor

The second issue of the Review is dedicated to the 70th Anniversary of the United Nations Charter— "The United Nations Charter: History, Violation, Enforcement."

Roland Weyl details the history of the Charter and argues that there is no alternative authority besides the Charter. The Charter is an indispensable and necessary instrument of international law. Lawyers must use their legal skills to guarantee the sovereignty of peoples.

Marjorie Cohn describes the manner in which the US has tried to manipulate the United Nations System from its founding through the present time, including a critical analysis of the "Responsibility to Protect."

Norman Peach also outlines the history of the Charter and asks whether it is "out of fashion." He concludes it is not.

Robert Charvin demonstrates with examples how the Charter is bent, ignored and violated and calls for action.

Géraud de Geouffre de la Pradelle analyzes the contradictions ambiguity of using the Charter vis-à-vis Palestine.

Adda Bekkouche examines in his contribution on the Atlantic Treaty the issues of sovereignty of peoples and the public power of the state.

Dinorah la Luz Feliciano explains in her essay that the United States of America has always manipulated the Charter. She examines Art.73 (e) of the Charter and the political status of the Commonwealth of Puerto Rico.

Phyllis Bennis reunites in her comment the Climate talks in Paris, the UN, terrorism and the Global War on Terror and concludes that the people want their United Nations and their UN Charter.

We have lost Gavrilow Josip Chiuzbaian of Romania following a long illness.

Selçuk Kozagaçli from Turkey has joined us as a new member.

And last but not least Marjorie Cohn (USA) is a member.

Evelyn Dürmayer
Vienna, 13 May 2016

De l'éditrice

Le deuxième numéro de la Revue est consacré au 70ème anniversaire de la Charte des Nations Unies sous le titre — „La Charte des Nations Unies – son histoire, sa violation, sa mise en oeuvre (son imposition)".

Roland Weyl détaille l´histoire de la Charte et argue qu´il n´y pas une autorité alternative à la Charte. La Charte a fondé le droit international sur la base de la souveraineté des peuples et les juristes doivent aider les peuples à exercer cette souveraineté.

Marjorie Cohn décrit la manière par laquelle les États Unis ont essayé de manipuler le système des Nations Unies depuis sa création jusqu´à nos jours, en incluant une analyse critique de la „Responsabilité de protéger".

Norman Paech esquisse également l´histoire de la Charte et se demande si elle n´est pas „démodée". Il conclut que non.

Robert Charvin démontre par des exemples comment la Charte est contournée, ignorée et réclame l´action. Adda Bekkouche examine dans sa contribution sur le traité transatlantique les questions de la souveraineté des peuples et de la puissance publique de l´État.

Géraud Geouffre de la Pradelle analyse la contradiction et l´ambigüité de l´utilisation de la Charte à l´égard de la Palestine.

Adda Bekkouche examine dans sa contribution sur le traité transatlantique ls questions de la souveraineté des peuples et de la puissance publique de l´État.

Dinorah La Luz Feliciano explique dans son essai que les États-Unis d´Amérique ont toujours manipulé la Charte. Elle examine l´Art.73 e de la Charte et le statut politique du Commonwealth du Puerto Rico.

Phyllis Bennis réunit dans son commentaire les négociations sur le climat à Paris, les Nations Unies et la Guerre Globale contre la Terreur and conclut que les peuples veulent leurs Nations Unies et leur Charte des Nations Unies.

Notre comité a perdu Yosip Gavrilov Chiuzbaian (Roumanie) après une longue maladie.

Selçuk Kozagaçli (Turquie) a été coopté et last but not least Marjorie Cohn (États- Unis) est également un nouveau membre.

Evelyn Dürmayer
Vienne le 13 mai 2016

CHARTER OF THE UNITED NATIONS

AND

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

SAN FRANCISCO · 1945

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

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

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

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

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

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

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

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

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

HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.

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

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

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

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

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

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

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

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

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

CHAPTER II

MEMBERSHIP

Article 3

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

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

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

Article 5

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

Article 6

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

CHAPTER III

ORGANS

Article 7

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

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

Article 8

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

CHAPTER IV

THE GENERAL ASSEMBLY

Composition

Article 9

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

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

Functions and Powers

Article 10

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

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a

Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

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

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

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

Article 14

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

Article 15

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

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

Article 16

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

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18

1. Each member of the General Assembly shall have one vote.

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

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

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

Procedure

Article 20

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

Article 21

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

Article 22

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

CHAPTER V

THE SECURITY COUNCIL

Composition

Article 23

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the

United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

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

Functions and Powers

Article 24

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

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

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

Article 25

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

Article 26

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

Voting

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

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

Procedure

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

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

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not

represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Mem-

ber of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and inter-

national cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

THE ECONOMIC AND SOCIAL COUNCIL

Composition

Article 61

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Voting

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

Procedure

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrange-

ments may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system,

in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the

administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL

Composition

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

a. those Members administering trust territories;

b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a. consider reports submitted by the administering authority;

b. accept petitions and examine them in consultation with the administering authority;

c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of

this Article may invoke that treaty or agreement before any organ of the United Nations.

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.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 1

THE INTERNATIONAL COURT OF JUSTICE established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I

ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list

in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to

discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to peri-

odic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among

those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid

down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III

PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the

case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV
ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

AMENDMENT

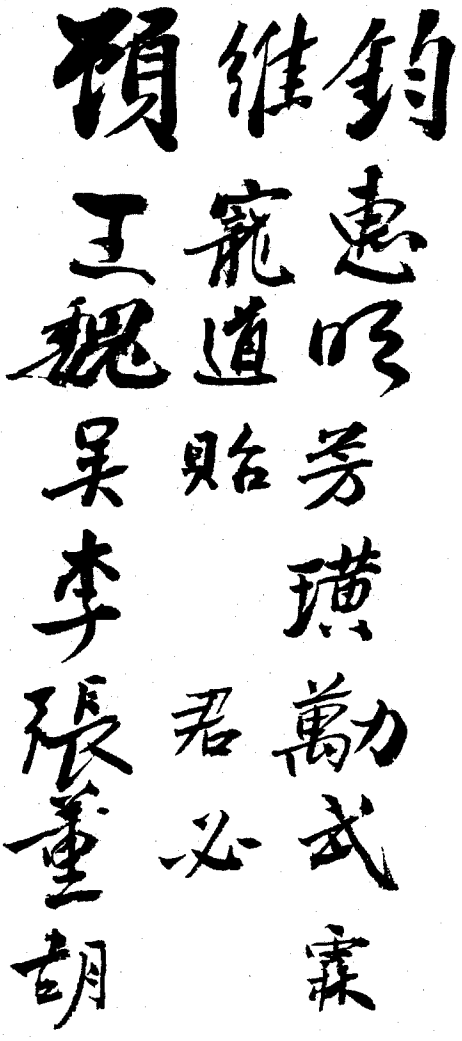
Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

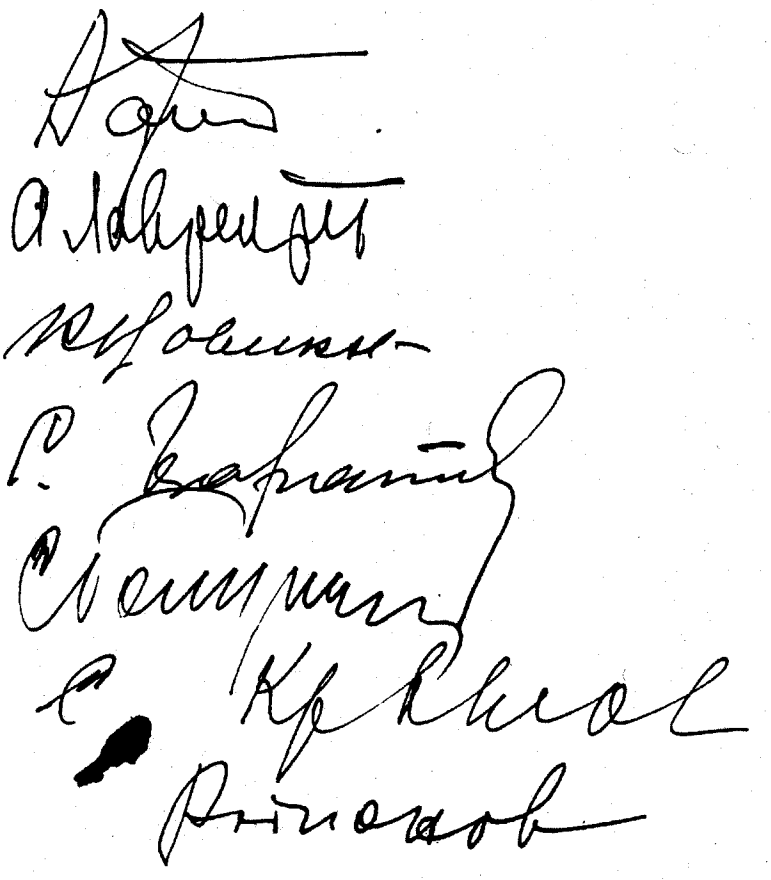
Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

FOR CHINA:
POUR LA CHINE:
中國:
За Китай:
POR LA CHINA:



FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:
POUR L'UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES:
蘇維埃社會主義共和國聯邦:
За Союз Советских Социалистических Республик:
POR LA UNIÓN DE REPÚBLICAS SOCIALISTAS SOVIÉTICAS:



FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
POUR LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD:
大不列顛及北愛爾蘭聯合王國:
За Соединенное Королевство Великобритании и Северной Ирландии:
POR EL REINO UNIDO DE LA GRAN BRETAÑA E IRLANDA DEL NORTE:

Halifax.
Cranborne.

FOR THE UNITED STATES OF AMERICA:
POUR LES ETATS-UNIS D'AMÉRIQUE:
美利堅合衆國:
За Соединенные Штаты Америки:
POR LOS ESTADOS UNIDOS DE AMÉRICA:

E. R. Stettinius, Jr.
Tom Connally
Arthur H. Vandenberg.
Sol Bloom
Charles A. Eaton
Harold E. Stassen
Virginia C. Gildersleeve.

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POUR LA FRANCE:
法蘭西:
За Францию:
POR FRANCIA:

FOR ARGENTINA:
POUR L'ARGENTINE:
阿根廷:
За Аргентину:
POR LA ARGENTINA:

FOR AUSTRALIA:
POUR L'AUSTRALIE:
澳大利亞:
За Австралию:
POR AUSTRALIA:

F. M. Forde
W. Watt.

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比利時王國:
За Королевство Бельгии:
POR EL REINO DE BÉLGICA:

A. de Schryver

FOR BOLIVIA:
POUR LA BOLIVIE:
玻利維亞:
За Боливию:
POR BOLIVIA:

J. Andrade
Salamanca
Eduardo.

FOR BRAZIL:
POUR LE BRÉSIL:
巴西:
За Бразилию:
POR EL BRASIL:

FOR THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC:
POUR LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE DE BÉLORUSSIE:
白俄羅斯蘇維埃社會主義共和國:
За Белорусскую Советскую Социалистическую Республику:
POR LA REPÚBLICA SOCIALISTA SOVIÉTICA BIELORRUSA:

FOR CANADA:
POUR LE CANADA:
加拿大:
За Канаду:
POR EL CANADÁ:

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智利:
За Чили:
POR CHILE:

FOR COLOMBIA:
POUR LA COLOMBIE:
哥倫比亞:
За Колумбию:
POR COLOMBIA:

FOR COSTA RICA:
POUR COSTA-RICA:
哥斯大黎加:
За Костарику:
POR COSTA RICA:

FOR CUBA:
POUR CUBA:
古巴:
За Кубу:
POR CUBA:

FOR CZECHOSLOVAKIA:
POUR LA TCHÉCOSLOVAQUIE:
捷克斯拉夫:
За Чехословакию:
POR CHECOESLOVAQUIA:

FOR DENMARK:
POUR LE DANEMARK:
丹麥:
За Данию:
POR DINAMARCA:

FOR THE DOMINICAN REPUBLIC:
POUR LA RÉPUBLIQUE DOMINICAINE:
多明尼加共和國:
За Доминиканскую Республику:
POR LA REPÚBLICA DOMINICANA:

FOR ECUADOR:
POUR L'EQUATEUR:
厄瓜多:
За Эквадор:
POR EL ECUADOR:

P2020

FOR EGYPT:
POUR L'EGYPTE:
埃及:
За Египет:
POR EGIPTO:

FOR EL SALVADOR:
POUR LE SALVADOR:
薩爾瓦多:
За Сальвадор:
POR EL SALVADOR:

Héctor Daniel Castro

Carlos Leiva, M.D.

FOR ETHIOPIA:
POUR L'ETHIOPIE:
阿比西尼亞:
За Эфиопию:
POR ETIOPÍA:

Yohannes Kassa

Ambassador

Ephrem T. Madebo

FOR GREECE:
POUR LA GRÈCE:
希臘:
За Грецию:
POR GRECIA:

FOR GUATEMALA:
POUR LE GUATEMALA:
瓜地馬拉:
За Гватемалу:
POR GUATEMALA:

FOR HAITI:
POUR HAÏTI:
海地:
За Гаити:
POR HAITÍ:

'OR HONDURAS:
POUR LE HONDURAS:
洪都拉斯:
За Гондурас:
POR HONDURAS:

Julián Bueso
Marcos Carías Reyes

FOR INDIA:
POUR L'INDE:
印度:
За Индию:
POR LA INDIA:

A Ramaswami Mudaliar
V. T. Krishnama Chari

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POUR L'IRAN:
伊朗:
За Иран:
POR IRÁN:

Mostafa Adl

FOR IRAQ:
POUR L'IRAK:
伊拉克:
За Ирак:
POR IRAK:

Mohd. Fadhel Jamali

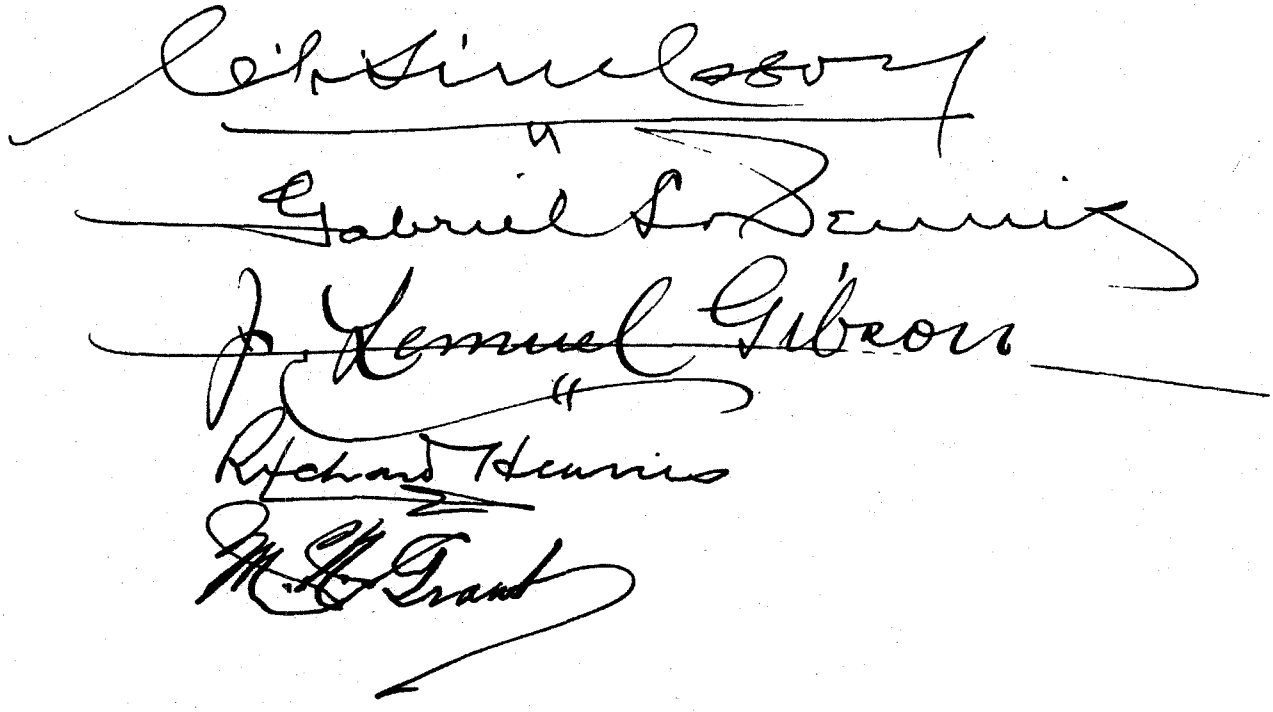
FOR LEBANON:
POUR LE LIBAN:
黎巴嫩:
За Ливан:
POR EL LÍBANO:

W. Naïm

A. Yafi

Charles Malik

FOR LIBERIA:
POUR LE LIBÉRIA:
利比里亞:
За Либерию:
POR LIBERIA:



FOR THE GRAND DUCHY OF LUXEMBOURG:
POUR LE GRAND DUCHÉ DE LUXEMBOURG:
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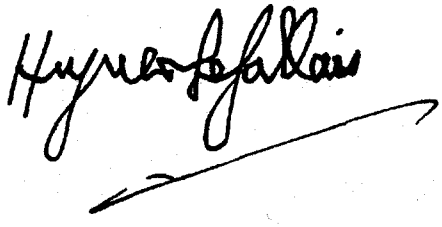
За Великое Герцогство Люксембург:
POR EL GRAN DUCADO DE LUXEMBURGO:



FOR MEXICO:
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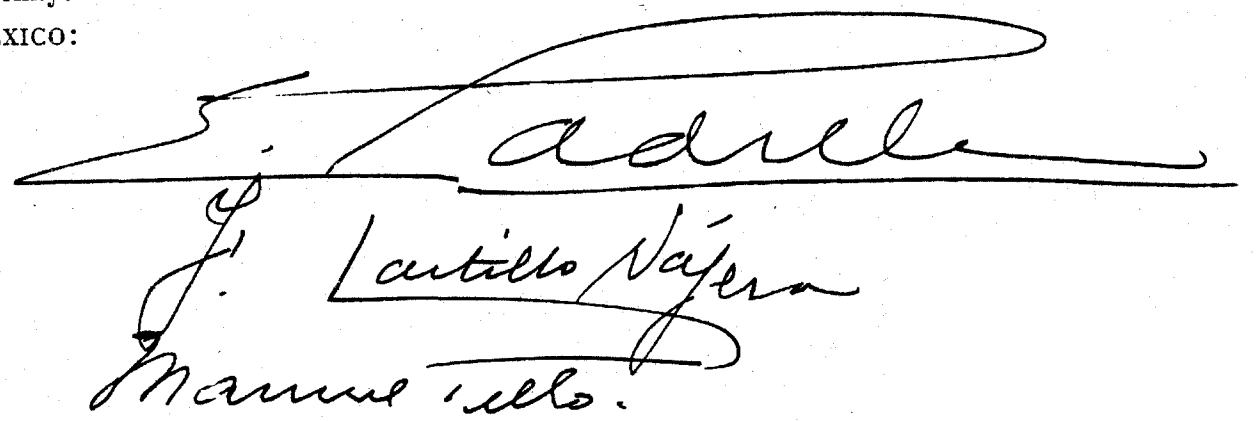
墨西哥:
За Мексику:
POR MÉXICO:



FOR THE KINGDOM OF THE NETHERLANDS:
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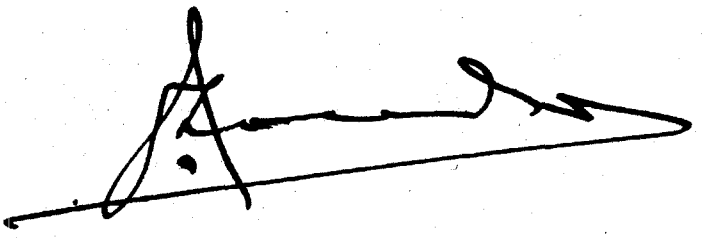
POR EL REINO DE HOLANDA:



FOR NEW ZEALAND:
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紐西蘭:
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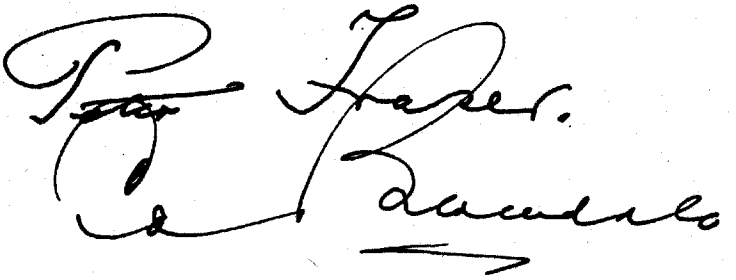
POR NUEVA ZELANDIA:



FOR NICARAGUA:
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尼加拉瓜:
За Никарагуа:
POR NICARAGUA:

FOR THE KINGDOM OF NORWAY:
POUR LE ROYAUME DE NORVÈGE:
挪威王國:
За Королевство Норвегии:
POR EL REINO DE NORUEGA:

FOR PANAMA:
POUR LE PANAMA:
巴拿馬:
За Панаму:
POR PANAMÁ:

FOR PARAGUAY:
POUR LE PARAGUAY:
巴拉圭:
За Парагвай:
POR EL PARAGUAY:

FOR PERU:
POUR LE PÉROU:
秘魯:
За Перу:
POR EL PERÚ:

FOR THE PHILIPPINE COMMONWEALTH:
POUR LE COMMONWEALTH DES PHILIPPINES:
菲律賓共和國:
За Филиппины:
POR LA MANCOMUNIDAD DE FILIPINAS:

FOR POLAND:
POUR LA POLOGNE:
波蘭:
За Польшу:
POR POLONIA:

FOR SAUDI ARABIA:
POUR L'ARABIE SAOUDITE:
蘇地亞拉伯:
За Сауди Аравию:
POR ARABIA SAUDITA:

FOR SYRIA:
POUR LA SYRIE:
叙利亞:
За Сирию:
POR SIRIA:

F. Al-Khouri

FOR TURKEY:
POUR LA TURQUIE:
土耳其:
За Турцию:
POR TURQUÍA:

Hasan Sakay

FOR THE UKRAINIAN SOVIET SOCIALIST REPUBLIC:
POUR LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE D'UKRAINE:
烏克蘭蘇維埃社會主義共和國:
За Украинскую Советскую Социалистическую Республику:
POR LA REPÚBLICA SOCIALISTA SOVIÉTICA UCRANIANA:

Дм. Мануїльський

Іван Сенін

Олександр Шлапін

Микола Петровський

FOR THE UNION OF SOUTH AFRICA:
POUR L'UNION SUD-AFRICAINE:
南非聯邦:
За Южноафриканский Союз:
POR LA UNIÓN SUDAFRICANA:

J. C. Smuts p.m.

FOR URUGUAY:
POUR L'URUGUAY:
烏拉圭:
За Уругвай:
POR EL URUGUAY:

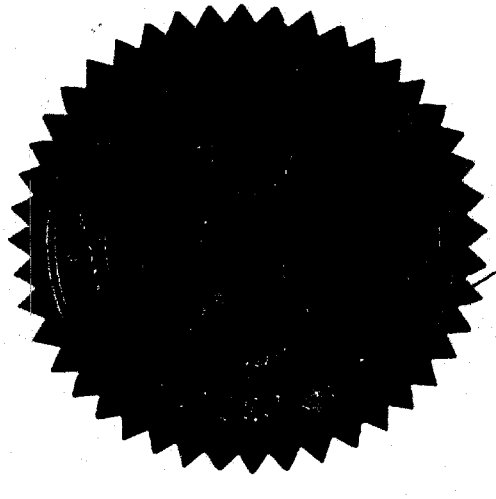
FOR VENEZUELA:
POUR LE VENEZUELA:
委內瑞拉:
За Венесуэлу:
POR VENEZUELA:

FOR YUGOSLAVIA:
POUR LA YOUGOSLAVIE:
南斯拉夫:
За Югославию:
POR YUGOSLAVIA:

Stanoje Simić

I Certify That the foregoing is a true copy of the Charter of the United Nations, with the Statute of the International Court of Justice annexed thereto, signed in San Francisco, California, on June 26, 1945, in the Chinese, French, Russian, English, and Spanish languages, the signed original of which is deposited in the archives of the Government of the United States of America.

In Testimony Whereof, I, EDWARD R. STETTINIUS, JR., Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by an Assistant Chief, Division of Central Services of the said Department, at the city of Washington, in the District of Columbia, this twenty-~~seventh~~ sixth day of June 1945.



E. R. Stettinius Jr.
Secretary of State

By M L Wentworth
Assistant Chief, Division of Central Services

La Charte Des Nations Unies, Fondement du droit international

ROLAND WEYL

La Charte d'abord, l'Organisation ensuite

Nous célébrons cette année le 70 ème anniversaire de la signature de la Charte des Nations Unies. En 2016 nous célébrerons aussi celui de l'installation de l'ONU. Mais le plus important est celui de cette année. Il est vrai que quand on parle des « Nations Unies » la pensée habituelle influencée par les médias dominants n'y voit jamais qu'une référence à l'Organisation, et pas à la loi qui l'a fondée.

On entend même trop souvent parler des « principes édictés par l'ONU », voire de « la Charte de l'ONU », alors que c'est l'ONU de la Charte, et que les principes n'ont pas été édictés par l'ONU, puisqu'ils l'ont été par la Charte un an avant la fondation de l'Organisation qui a été prévue par la Charte pour en appliquer les principes.

Cette mise au point est essentielle parce que toute organisation n'est qu'une structure dont les vertus dépendent de ceux qui y exercent leur influence. Faire confiance à une organisation revient donc à s'en remettre à ceux-là. Pour nous juristes, l'important n'est pas la soumission des rapports sociaux à la vertu de dirigeants supposés bons, mais aux règles qui doivent régir ces rapports sociaux, que les organes investis du pouvoir sont chargés de faire appliquer et respecter et qu'ils doivent eux-mêmes respecter, sous le contrôle démocratique de ceux dont ils organisent les rapports

C'est là toute l'importance du droit, et de la valeur que représente, pour la sécurité des rapports sociaux, la possibilité de s'y référer.

La valeur fondatrice de la Charte

Jusqu'en 1945, il n'y avait pas de véritable droit international. Il y avait certes ce qu'on appelait le « droit des gens ». mais qui était plus une somme de droit coutumier établissant entre les puissances des obligations mutuelles. Mais les relations internationales étaient entièrement livrées aux rapports de force entre ces puissances, qui, à coup d'alliances, de coalitions, de guerres et de traités de paix se partageaient les territoires, leurs richesses et le pouvoir sur leurs peuples.

On peut seulement considérer que déjà à la fin du 19è siècle une amorce de droit international s'était esquissée avec les conventions de la Haye, Genève et St Pétersbourg, qui tentaient d' « humaniser » la guerre.

Mais même la Société des Nations, dont on dit trop souvent à tort qu'elle est l'ancêtre de l'ONU, n'était qu'une convention entre puissances toutes impériales.

Et c'est en 1945 avec la Charte des Nations Unies que nait pour la première fois un véritable droit international, universel et égalitaire, comportant l'énoncé de sa philosophie, de ses buts et des règles qui en sont le moyen.

Il tient son universalité de ce qu'il est l'oeuvre commune des deux systèmes qui bien que divisant le Monde venaient ensemble de défaire l'agresseur universel et proclamaient ensemble la nécessité de ne plus jamais voir le Monde déchiré et ensanglanté comme il venait de l'être par deux guerres mondiales.

La philosophie de la Charte

L'objet

Son objectif premier va donc être la Paix, et il est magnifiquement résumé dans le Préambule de la Charte : *« Nous Peuples des Nations Unies, Résolus à préserver les générations futures du fléau de la guerre, qui par deux fois en l'espace d'une vie humaine, a infligé à l'humanité d'indicibles souffrances ».*

Les moyens

Comme les peuples sont les principales victimes des guerres, c'est à eux qu'elle confie la maitrise des relations internationales.

Dans le Préambule, ce sont eux qui parlent : « *Nous peuples*... ».

« *Nous Peuples...* » parce que s'il y a une population mondiale, elle est composée de peuples différents sur des territoires différents. Donc « *Nous Peuples des Nations* » mais ils ont un intérêt solidaire à la paix et au développement, donc « *Nous Peuples des Nations Unies… avons dédidé d'unir nos efforts* » ; La Charte crée donc une Organisation (l'ONU) qui ne sera pas un gouvernement sur les peuples mais un lieu de concertation entre les peuples.

Les règles qui en découlent

Et les règles qu'elle édicte en sont l'application :

La paix

Elle interdit le recours à l'usage et même à la menace de la force dans les relations internationales (article 2.4), et même la défense préventive est interdite, car l'Histoire est riche d'exemples d'agressions commises sous prétexte de se défendre à des menaces. En résumé la guerre est mise hors la loi et les différends qui peuvent exister doivent de résoudre pacifiquement, par la négociation.

Elle crée au sein de l'Organisation un outil « exécutif » qui peut avoir à recourir à la force, mais uniquement pour le maintien de la paix en s'interposant entre des peuples qui risquent se battre, et en mettant fin à une agression quand elle est commise.

La légitime défense ést admise, mais seulement si on est attaqué, et à condition d'alerter aussitôt le Conseil de Sécurité de l'ONU pour qu'il assume cette défense.

Donc seul le Conseil de Sécurité a le droit de recourir à la force, et seulement après avoir vainement épuisé les tentatives diplomatiques et les sanctions économiques

L'article 26 lui donne même mission de programmer un désarmement général au motif magnifiquement exprimé, de « *ne détourner vers les armements que le minimum des ressources humaines* »

Cela signifie que tout ce par quoi des Etats ou des groupes d'Etats s'approprient des droits d'intervention militaire est illégal, que ce soit des alliances ou des bases militaires en territoire étranger. C'est ce qu'on appelle le principe de « *sécurité collective* », qui n'est pas celui du droit pour des Etats d'agir collectivement, mais du monopole de la collectivité mondiale.

Les moyens

Le principe de maîtrise des peuples sur leurs relations internationales fonde celui du droit des peuples à leur libre détermination sans aucune intervention étrangère.L'article 2.7 interdit à l'ONU elle-même d'intervenir dans des affaires qui relèvent de la compétence d'un Etat.

Car, contrairement à ce qu'on entend trop souvent, ce n'ést pas l'Etat qui est souverain. Un Etat est une institution et donc seulement un instrument d'exercice de la souveraineté. Aux termes de la Charte,il est le moyen pour le peuple d'exercer la sienne.

C'est ainsi que le Préambule conclut : « *avons décidé d'unir nos efforts ; En conséquence, nos gouvernements ont signé la présente Charte* »

La question des membres permanents

On critique l'existence de 5 membres permanents qui constitueraient au sein du Conseil de Sécurité une sorte de directoire accaparant le pouvoir. Certes l'existence dc membres permanents est contraire au principe d'égalité des nations petites et grandes proclamé par la Charte, mais il ne serait pas gênant si la Charte était vraiment appliquée. En effet, il est faux qu'ils aient un pouvoir qui en fasse un « directoire ». ils disposent seulement du droit de veto, pour le cas où une majorité du Conseil prendrait une décision qui dépasserait ses pouvoirs.

Il est nécessaire à ce sujet de rappeler que le « droit de veto » ne figure nulle part dans la Charte, A l'origine, le privilège des 5 (et leur seul privilège) était que toute décision du Conseil de Sécurité recourant à des sanctions devait être prise à une majorité comprenant obligatoirement le vote affirmatif des 5. On appelait cela le « principe d'unanimité ». Il était motivé par le fait que le monde était divisé en deux blocs antagonistes dot chacun avait peur qu'une majorité de l'Assemblée Générale décide de lui faire la guerre. Aucune décision de recours à la force ne pouvait donc être prise sans l'accord des 5 qui appartenaient aux deux systèmes. Mais lors de la Guerre de Corée, en 1950, les soviétiques ne voulaient voter ni avec les Occidentaux ni avec les Chinois. Ils se sont donc fiés au principe d'unanimité pour ne pas venir, de façon à ce qu'il n'y ait pas de vote affirmatif des cinq. Mais les Occidentaux ont alors interrogé la Cour Internationale de Justice, qui a

dit que celui qui ne votait pas contre était d'accord et que cela valait vote affirmatif. Ainsi une simple interprétation de l'article 23.7 a transformé le principe d'unanimité en droit de veto, et inversé la portée d'une abstention.

Sur le veto dans une lecture correcte de la Charte

Le veto est beaucoup moins bloquant que l'unanimité. Et il est regrettable qu'il n'ait pas été utilisé quand la majorité du Conseil a manifestement violé l'article 2.7 en « autorisant » l'action de l'OTAN en Libye.

Par contre, c'est pertinemment qu'est souvent dénoncé le blocage qu'il permet quand par exemple les Etats-Unis l'utilisent au profit d'Israel quand il piétine la Charte en Palestine ou la France au profit du Maroc quand il la piétine au Sahara Occidental.

Mais ce détournement du droit de veto n'est possible que par une insuffisante application de la Charte. En effet, l'article 24.2 précise que le Conseil de Sécurité a pour fonction d'en faire respecter les principes Comme le veto résulte d'une interprétation de l'article 27.3, il serait possible, en complément de cette interprétation de considérer comme illégal et donc inopérant un veto destiné à faire obstacle à l'application des principes de la Charte, et l'appréciation au cas par cas pourrait être assurée soit par la Cour Internationale de justice ou même par l'Assemblée Générale dans le cadre de son pouvoir de recommandations au Conseil de Sécurité.

On pourrait certes le remplacer par une autre sécurité contre les abus de majorité. Mais cela supposerait d'engager une procédure de révision de la Charte (qui elle aussi, pour les mêmes motifs historiques, est soumise au veto des 5) et serait lourde d'autres risques.

Garder précieusement la Charte telle su'elle est

En effet, si même l'ONU viole aujourd'hui la Charte, ou si elle est si facilement ignorée pour revenir aux vieux rapports entre puissances, c'est parce que les Etats qui sont censés y représenter leurs peuples sont en réalité sous l'influence des puissances économiques dominantes, qui ne peuvent pas accepter que leur domination mondiale puisse être tenue en échec par une ONU fondée sur le pouvoir des peuples. L'enjeu est donc aujourd'hui entre une mondialisation « inter-nationale » telle que fondée par la Charte, et une « gouvernance mondiale » dont l'ONU serait l'instrument. Ouvrir une révision de la Charte serait y ouvrir la porte, alors que, comme on l'a vu, une analyse correcte du veto ne la rend pas nécessaire.

D'une autre réforme nécessaire du droit international

Il est vrai cependant qu'il existe une exigence impérative de réforme du Droit international, non pas dans ce que prévoit la Charte, mais dans ce qui lui échappe encore.

Car si la réalité internationale contemporaine offre un tel spectacle de retour aux relations de puissances au détriment du droit, en marginalisant l'ONU ou en la détournant, c'est parce que la Charte, œuvre universelle, ne donne aux peuples que le pouvoir politique, alors que les Occidentaux avaent pris la précaution, un an plus tôt, de construire séparément, par les accords de Bretton Woods, les instruments de leur maîtrise économique du monde, le Fonds Monétaire International, l'Organisation Mondiale du Commerce, et la Banque Mondiale, qui ne dépendent pas de l'ONU et ne sont ni universels ni égalitaires ni sous le pouvoir des peuples, sont donc en dehors de la légalité internationale définie par la Charte, dont la signature aurait dû entraîner l'abolition ou l'intégration après restructuration en instruments de coopération économique entre les peuples.

Ce n'est donc pas la Charte qui doit être révisée, mais les institutions financières internationales.

Demeure la question de la façon de le faire, et plus généralement d'imposer le respect et la mise een œuvre complète du droit international instauré par la Charte.

Le rôle indispensable des peuples et, à leurs côtés, des juristes

On a vu que la Charte met son avenir entre les mains des peuples. Il n'y a en effet pas d'alternative à cela.

Quand l'ONU ne contraint pas Israel à respecter le droit international, ce n'est pas parce que la Charte ne le lui permet pas. C'est parce que l'ONU n'applique pas la Charte. En effet, si on applique l'article 24.2 qui donne au Conseil de

sécurité la mission de le faire appliquer, le droit de veto peut être utilisé pour l'empêcher d'outre passer les limites de ses pouvoirs, mais il ne doit pas pouvoir être utilisé pour l'empêcher de les exercer. Et si le Chapitre VI permet au Conseil de prendre des résolutions non contraignantes, ce n'est qu'avant d'être obligé, en cas d'échec, de recourir aux mesures contraignantes du chapitre VII. Mais tout le droit international dans son application dépend exclusivement de l'action des peuples sur leurs gouvernements respectifs. C'est tout le problème de l'exercice d'une citoyenneté gouvernante conformément au principe du droit des peuples à disposer d'eux-mêmes.

Encore ne faut-il pas la noyer dans une prétendue citoyenneté internationale, qui alimenterait l'illusion de démocratisation d'une gouvernance mondiale : il faut plutôt parler de la part internationale de la citoyenneté nationale … C'est elle qui fonde un devoir de solidarité avec les peuples dont les droits sont violés, à la fois parce que l'indivisibilité du droit fait que si l'on permet qu'il soit violé contre d'autres on permet qu'il le soit aussi contre soi-même, et parce que chaque peuple, donc chacun de ses citoyens est responsable de ce que fait ou ne fait pas son Etat qui est censé le représenter.

La difficulté est que pour agir, il faut que le citoyen sache. C'est pourquoi le rôle et la responsabilité des médias, et aussi de l'école (et du contenu de ses programmes) est essentiel, et aussi pour cela le rôle des juristes.

Roland Weyl
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The US Is Still Violating the UN Charter After 70 Years

MARJORIE COHN

Seventy years after the creation of the United Nations Charter, armed conflict, especially wars initiated by the United States, continues to plague the world. In 1945, the UN Charter was created "to save succeeding generations from the scourge of war." It forbids the use of military force except in self-defense after an armed attack by another state. Yet the three most recent US presidents have violated that command.

In October 2001, George W. Bush led the US to attack Afghanistan, even though Afghanistan had not attacked the United States on September 11, 2001. Nineteen men, 15 of whom came from Saudi Arabia, committed a crime against humanity. Bush's invasion of Afghanistan did not constitute lawful self-defense and the Security Council never approved the use of force.

Two years later, before he invaded Iraq and changed its regime, Bush tried mightily to secure the imprimatur of the Security Council. Although the council refused to authorize "Operation Iraqi Freedom," Bush cobbled together prior Security Council resolutions from the first Gulf War in an attempt to legitimize his illegitimate war. Bush's war on Iraq was a disastrous gift that keeps on giving. It has resulted in hundreds of thousands of deaths, led to the rise of ISIS, and dangerously destabilized the region.

John Bolton, Bush's temporary UN ambassador, infamously declared, "There is no United Nations. There is an international community that occasionally can be led by the only real power left in the world, and that is the United States, when it suits our interest, and when we can get others to go along." Bolton added, "When the United States leads, the United Nations will follow. When it suits our interest to do so, we will do so."

Indeed, Bush's predecessor could have helped prevent the genocide in Rwanda. But instead, Bill Clinton prevented the United Nations from acting to stop the killing of 800,000 people in that country. Clinton's secretary of state, Madeline Albright, called the UN "a tool of American foreign policy." She oversaw the US-led NATO bombing of Yugoslavia in 1999, which also violated the UN Charter. Retroactive Security Council approval does not comply with the Charter.

Barack Obama and his counterparts in France and Britain secured a resolution from the Security Council approving a no-fly-zone over Libya in 2011. But the three powers engaged in forcible regime change, ousting Libyan president Muammar Qaddafi. This went far beyond what the resolution authorized. That action has also contributed mightily to the current instability in the region.

The Libya resolution mentioned the doctrine of "Responsibility to Protect." This doctrine is contained in the General Assembly's Outcome Document of the 2005 World Summit. It is neither enshrined in an international treaty nor has it ripened into a norm of customary international law. Paragraph 138 of that document says each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Paragraph 139 adds that the international community, through the United Nations, also has "the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the UN Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."

But the United States and its allies have not utilized the Responsibility to Protect doctrine to protect the people of Gaza from massacres by Israel, most recently in the summer of 2014.

The objective of the victorious powers of World War II in creating the UN system was to make sure they would continue to control post-war international relations. The League of Nations, which the US had refused to join, had failed to prevent the rise of fascism and the Second World War.

The United States made certain that the founding conference of the UN would be held on US soil, and it took place in San Francisco. In order to ensure that the US choreographed the meeting, the FBI spied on foreign emissaries and even on the US delegates themselves.

Stephen Schlesinger noted, "The US apparently used its surveillance reports to set the agenda of the UN, to control the debate, to pressure nations to agree to its positions and to write the UN Charter mostly according to its own blueprint."

George Kennan, architect of the US containment strategy against the Soviet Union, didn't pull any punches: "We have 50% of the world's wealth, but only 6.3% of its population … Our real task in the coming period is to devise a pattern of relationships which will allow us to maintain this position of disparity … We should cease to talk about the raising of the living standards and democratization. The day is not far off when we are going to have to deal in straight power concepts."

Without the power to veto decisions of the Security Council, the US and the Soviet Union would not have joined the UN. One of the major sticking points during the conference was the scope of the veto power. Australian foreign minister Gareth Evans described the motivation behind giving the permanent members the power to veto decisions of the Security Council. He stated, "to convince the permanent members that they should adhere to the Charter and the collective security framework embodied therein, a deliberate decision was taken to establish a collective security system which could not be applied to the permanent members themselves."

The Security Council has 15 members — five permanent members (US, UK, France, Russia, and China) and 10 rotating non-permanent members. The Soviet Union wanted the permanent members to have veto power over all decisions of the Security Council, which would have allowed them to prevent discussion about the peaceful settlement of disputes in which they were involved. A compromise was reached that gives the permanent members a veto only over "substantive" matters; the peaceful settlement of disputes is considered a "procedural" matter.

Some groups feared the veto would permit the big powers to use their military might against the small nations without accountability. A group of prominent Protestant ministers called it "a mere camouflage for the continuation of imperialistic policies and the exercise of arbitrary power for the domination of other nations."

Chile, Costa Rica, Cuba, Switzerland, Italy and the Vatican felt the proposed voting structure was not consistent with the sovereign equality of states and would place the permanent members above the law.

Interestingly, the word "veto" does not appear in the UN Charter. Article 27 says that decisions on procedural matters "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members." One permanent member can therefore exercise veto power by withholding a concurring vote.

The US, Great Britain, the Soviet Union and China, as the sponsoring powers of the conference, issued formal invitations. Fifty countries, primarily from the industrialized North, were represented at San Francisco. They comprised fewer than one-quarter of the countries of the world. About 35 were aligned with the US, five were allied with the Soviet Union, and 10 were non-aligned. At the time, most of the developing countries were under colonial or semi-colonial domination.

During the conference, conflicts erupted between the big powers and countries of the South. The Latin American contingent was made up of 19 countries that had been non-belligerents during the War. But since they had declared war on the Axis countries by the deadline, they were allowed to join the UN.

President Franklin D. Roosevelt had a warm relationship with Latin America, stemming from his Good Neighbor Policy in the 1930's. It provided for non-intervention and non-interference in the domestic affairs of the countries of Latin America. In return, the United States expected favorable trade agreements and the reassertion of US influence in the region. Roosevelt died 13 days before the San Francisco conference, leaving Harry Truman to represent the US in negotiations over the UN Charter.

Although the Latin American countries proposed the inclusion of Brazil as the sixth permanent Security Council member, the US successfully prevented it.

The Latin bloc sought to establish its own regional secu-

rity system apart from the UN. The Act of Chapultepec, which was developed at a prior Inter-American conference in Mexico City, said that an attack on one state in the region was an attack on all, which would result in immediate collective consultation and possible military action.

Objecting to a provision in the UN Charter that would give the permanent members the power to veto any action by a regional organization, the Latin countries advocated the principles of Chapultepec. The final draft of Article 51 of the UN Charter protects "the inherent right of individual or collective self-defense." In deference to the Latin bloc, "collective" is a reference to Chapultepec.

Article 2 of the Charter provides, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."

The original proposal stated that international law would determine what is "solely within the domestic jurisdiction" of a state. When the US Congress demanded that the words "international law" be removed, they were deleted.

Since then, not surprisingly, the United States has repeatedly violated international law in both the use of armed force and the killing of civilians, most recently in Obama's drone war.

The Charter established the International Court of Justice (ICJ) as the judicial arm of the UN system. Would states have to submit to its jurisdiction? US Secretary of State Edward Stettinius convinced Truman that the US Senate would never ratify an International Court of Justice statute with that provision. Thus, the court only has contentious jurisdiction over states that consent to its jurisdiction.

Indeed, when the ICJ ruled in 1986 that the US had violated international law by mining Nicaragua's harbors and supporting the Contras in their insurrection against the Nicaraguan government, the US thumbed its nose at the court, saying it was not bound by the ruling.

For 45 years during the Cold War, the veto power paralyzed the Security Council. But after the dissolution of the Soviet Union in 1991, the veto ironically turned the Security Council into a countervailing power to the US, as the council is the only international body that can legitimately authorize the use of military force.

The United Nations has succeeded in some instances in slowing down an immediate resort to military force, although it has failed to broker a solution to the Israeli-Palestinian conflict, or develop a treaty to outlaw nuclear weapons.

The US government feels compelled to try to obtain the Security Council's blessing for its military interventions. And although the US uses armed force without Security Council approval, it is increasingly apparent to the countries of the world that the United States is a notorious lawbreaker.

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70 years of the UN Charter

NORMAN PAECH

Whenever talking about the UN and the UN Charter 70 years after her creation there is more scepticism and critics than optimism. Regarding the wars in the Middle East and in Africa, as the confrontation between the Democratic Republic of China and her neighbours seems to be getting more acute, especially with the United States of America, there are increasing doubts wether the Charter is capable to achieve its goals namely "to maintain international peace and security … to develop friendly relations among nations based on respect for the principles of equeal rights and self-determination of peoples…"

Article I:
Outdated? Obsolete? Out of fashion or simply a faulty construction?

Let us look briefly into her creation. The UN and her Charter is owned of all things to the Americans, those who in the last years were those who got her into a mess.

In 1939 when the Deutsche Reich with its attack on the Sovietunion, the first attempt of a collective security system, staggered the Völkerbund after 20 years of inglorious history the ultimate deathblow. Strangely enough that the efforts of installing a peaceful postwar regime ended up in a similar system of collective security.

These efforts started in Newfoundland, where Roosevelt had invited his colleague Churchill in 1941 before the United States of America entered the war to discuss with him the future peace order. Churchill suggested an effective international organisation according to the model of the League of Nations. Roosevelt was not of the same opinion, he thought the British-American forces would guarantee a future peace. Both agreed on a common final and fundamentally important declaration on August 14, called the Atlantic Charter. They talked in a more general way upon free world trade, free access to commodities and in general upon „ a global and permanent organisation for universal security" to be preceed by the disarming of the aggression powers.

Only after the Japanese invasion of Pearl Harbour Roosevelt was prepared to include the Soviet Union in the alliance. Together with Churchill he drafted a "Declaration of the United Nations" signed on 1 January 1942 by 26 nations including the Soviet Union. Till 1945 21 other nations joined. France did not belong to this circle, because the Vichy government, after signing the armistice with Germany, being a collaborator, excluded itself. However Roosevelt accepted Moscow´s proposal to include also China in the closer alliance.

At both conferences in Moscow and Tehran October and November 1943 the ambassador of the Chinese Republic was invited. The American administration elaborated a model of an organisation.

First of all the negative experiences with the League of Nations should be avoided. There should not be a consensus among the big powers in the executive board, the future security council, so there the principle of unanimity among privileged members should prevail. However the proposal, already existing during the period of the League of Nations that those members, part of a conflicts, should abstain to vote, was not adopted. The main issue was the implementation of decisions, where, according to the State Department, the League of Nations had failed.

The alternative saw for a start to concentrate a contingent of national troops under the order of the executive board and to appoint them for sanctions, the other to establish a permanent international police force at the disposal of the executive board. As the second alternative caused to many political questions and problems of international law, it was dropped in favour of the first one.

In 1943 the proposals were compilated in the so-called Outline-Plan. It comprised the essential elements of the future UN Charter: an executive board of permanent and non permanent members equipped with fairly large decision- making and executive power, and a weaker organ the General Assembly relying basically on recommandations. The new International Court was likewise as the former permanent international Court of the League of Na-

tions limited by the principle of sovereignity. It meant that the submission to its jurisdiction was not automatically when entering the new organisation, but with a separate declaration. Today there are 71 declarations, Germany could only decide in 2008 to present such a declaration. And the United States of America withdrew their declaration in 1986 after they were condemned for severe violations of international law after a dispute with Nicaragua.

The Outline-Plan was the basis of the Conference that took place in Dumbarton Oaks near Washington, where from August till the beginning of September 1944 experts of the four powers elaborated a draft for the statutes of the new organisation. Over many problems an agreement could not be reached. For instance the request of the Sovietunion to include all her sixteen republics in the organisation — they feared a hopeless inferiority in the new organisation as already in the League of Nations. Not accepted was the anew presented British and American request, to limit the right to veto for the permanent members of the Council, being part of a conflict. The experts from the Sovietunion occluded the request, to include the Human Rights in the statutes — over social and economical rights there could not be an agreement and Churchill did not want them to be incorporated with regard to the Commonwealth.

The summit in Jalta in February 1945 brought some essential compromises. The Western powers accepted two republics Belarus and Ukraine, as independent members with a full right to vote and Stalin made concessions for the voting procedure of the Security Council. This issue was of major significance for the Soviets. Stalin feared, that future generations did not on personal experience, what they had gone through the war. "We all," he declared, "would like to secure peace for at least fifty years. The biggest danger lies between us, if we stay united, the German danger does not weigh much. So we have to consider how we could save this unity in the future and want guarantees will be needed, that the three big powers (and maybe China and France) maintain a common front. A system has to be concieved that eliminates conflicts among the leading big powers." Stalin feared most of all, that the former allies in the war, in particular the British and the French, would shortly ally against the Sovietunion, to exclude her from the United Nations as they had succeed in the League of Nations. This was how the veto right was established in the Security Council, one of the most controversial rules of the Security Council, with according to the position fatal or beneficial consequences.

If concessions were made to Stalin, he accepted Churchill´s request that the British colonies were not placed under the mandate (trusteeship) of the United Nations. Finally France was accepted as the fourth state among the priviliged big powers. And in Jalta it was decided that the Statutes with her compromises in the final conference of the 50 states of the "Atlantic Charter" in San Francisco and on 26 June 1945 as The Charter of the United Nations, entered into force on 24 October 1945, as the five permanent members of the Security Council and the majority of the signatory states had deposited their ratifications. One year later, in December 1946, the General Assembly accepted the proposal of the United States of America to establish the head office of the United Nations in New York.

The pledge of her existence "to beware future generations of the scourge of war" the United Nations with her Charter has as yet not been able to honor. Nor her role in the Second Gulf War against Iraq nor her failure in the genocide in Ruanda nor her exclusion by NATO in the war in Yugoslavia nor her abuse in the destruction of Libya might be interpreted as a more peaceful future. There are strong tendencies to work against the threat or use of force (Art. 2 4), to protect one´s own interests better with military means. But the setting is still strong enough and even a newly created responsability to protect has not been able to break down this construction. There is no alternative, and there are many projects for changes. They already existed while the United Nations were established. But the will of the big powers lacks, to accept a cut in their privileges and their sovereignity, to submit themselves to a collective security system and to restrain their imperial ambitions. And this is the vital problem of the United Nations and her Charter.

— Norman Paech

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Contournement, violations et ignorance de la Charte des Nations Unies

ROBERT CHARVIN

La Charte des Nations Unies et ce que la doctrine juridique dominante tend à appeler le droit international « classique » sont profondément inadaptés à la mondialisation néolibérale.

Plus précisément tout ce qui est droit international « politique » contraignant fait l'objet de manipulations, interprétations de mauvaise foi et de violations quasi-systématiques de la part des Puissances occidentales, à l'inverse d'un droit des affaires internationales de plus en plus développé et de plus en plus impératif.

Cette pratique occidentale peut se résumer dans la formule : « Feu sur la souveraineté » !

Le principe de l'égale souveraineté des États, cœur de la Charte des Nations Unies, a pourtant plus que jamais une fonction à assumer : une certaine protection des petits et moyens États contre une vaste opération de type impérial menée par les pouvoirs privés économiques et financiers, assistés par les États occidentaux les plus puissants. Cette alliance privé-public vise à liquider l'indépendance politique, économique, technologique des autres États, non par volonté comme par le passé de conquête territoriale, mais pour éliminer tout ce qui handicape les intérêts privés qui ont besoin d'une hégémonie transnationale.

Cette volonté destructrice s'étend à l'ensemble des normes du droit international et des dispositions de la Charte qui trouvent peu de défenseurs. Comme le dit Roland Weyl, il convient de les « sortir du placard » grâce à une appropriation populaire. C'est en effet une arme politique sous-utilisée par les forces progressistes, ce qui permet son instrumentalisation et sa mise dans l'état comateux qui est de plus en plus le sien !

La doctrine dominante, constituée de nombreux juristes de cour, est largement complice, ne voyant ni violation ni dégradation tandis que les gouvernements français successifs, comme la plupart des gouvernements des différents États, se dispensent le plus souvent de faire référence à la Charte des Nations Unies. Lorsqu'ils ne la violent pas ouvertement et avec elle, les résolutions qui sont adoptées par l'Assemblée Générale mais aussi par le Conseil de Sécurité1 !

Cette indifférence plus ou moins hostile à la Charte s'est, par exemple, manifestée lors de la présentation devant le Conseil de Sécurité par la délégation française du projet de résolution 2249 (2015) contre Daesh. Il a fallu un amendement de la Russie pour que les références à la Charte figurent dans le texte adopté !

Le contournement de la Charte

L'imaginaire politique occidental a édifié une vague « morale » internationale qui tend à se substituer à l'ordre juridique. Au nom d'une pseudo « légitimité » (largement médiatisée), de type prétendument humanitaire, le recours à la force armée, fondé sur la vieille théorie de la « guerre juste » d'origine vaticane, se banalise hors du cadre onusien. L'OTAN, dont l'existence a même perdu son fondement, qui progressivement élargit son champ d'intervention, tend à se constituer en système de sécurité non multilatéral : les États-Unis y exercent l'essentiel des pouvoirs. L'Union Européenne a adopté une conception essentiellement militariste de la sécurité ; le G5, le G8, le G20 occupent une place plus déterminante que les différents organes onusiens.

A cet escamotage de l'ONU s'ajoutent des pratiques radicalement étrangères à la Charte et hors droit humanitaire, tels les raids ciblés effectués par des drones (plusieurs milliers d'exécutions réalisées par l'armée américaine), ou l'incarcération de prisonniers de toutes nationalités sans jugement ni contrôle (Guantanamo), ce qui est paradoxal depuis la création de la Cour Pénale Internationale (à laquelle les États-Unis se sont gardés d'adhérer). L' « exceptionnalité » étasunienne perturbe ainsi tout le système juridique international !

Par ailleurs, le service juridique de l'ONU avance qu'une « Déclaration » des Nations Unies, lorsqu'elle est confirmée

par la revendication de la majorité des États « peut être considérée comme énonçant des règles obligatoires pour les États » (E/CN.4.1334, 2 janvier 1979, note 33)2. Or, ces déclarations ne sont aucunement prises en compte lorsqu'elles perturbent les intérêts des puissances dominantes. La Déclaration sur le Droit au développement de 1986, par exemple, fondée sur la lettre et l'esprit de la Charte, consacre les droits de l'Homme économiques et sociaux, en bouleversant la hiérarchie imposée par les Occidentaux en faveur des seuls droits civils et politiques. Le protocole du 10 décembre 2008 (la procédure de plainte auprès du Comité des droits économiques pour violation des droits économiques et sociaux) n'a pas eu grand succès, tout comme la Déclaration de 1986 elle-même. Le monde occidental poursuit en effet sa campagne au nom exclusif des droits civils et politiques, faisant de ce « droitdel'hommisme » sélectif un argument pour éliminer des régimes politiques et leurs leaders, allant jusqu'à détruire certains États, pourtant adhérant à la Charte des Nations Unies.

L'esprit même de la Charte est passé par pertes et profits pour certains conflits qui se prolongent depuis des décennies : l'inertie de l'ONU, en raison du blocage des États-Unis en particulier, se manifeste pour la question coréenne (alors que les Nations Unies ont une responsabilité directe dans la division du pays) ou pour l'occupation de la Palestine par Israël (en raison de l'exercice du droit de veto par les États-Unis et leurs alliés), par exemple.

L'ONU, totalement contournée lors de la création du Kosovo, entité artificielle fabriquée par l'interventionnisme occidental illégal, n'a eu pour réaction que de ratifier la pratique des Puissances responsables au mépris de la Charte. Elle a légitimé cet artifice en assurant un néo-protectorat, fondé sur un « remake » de la théorie de la « souveraineté limitée ». L'ONU, en dépit de l'esprit et de la lettre de la Charte, accepte la transformation des guerres civiles en guerres internationales, facilitant l'interventionnisme des Puissances sous le prétexte jamais prouvé de « menace contre la paix » internationale.

La Charte n'est pas prise en compte non plus lorsque les Puissances méconnaissent depuis l'origine son article 47: le Comité d'état-major qui devait faire des forces onusiennes une authentique police internationale, n'a jamais été mis en œuvre. Cette carence permet l'instrumentalisation par les États qui en ont les moyens des résolutions du Conseil de Sécurité décidant du recours aux « casques bleus ».

Les violations frontales de la Charte

Les Puissances ne se satisfont pas de contourner la Charte et l'ONU, dans certains cas, elles vont jusqu'à violer ouvertement les dispositions majeures de la Charte.

La doctrine juridique dominante n'utilise pas aisément le terme de violation. Elle préfère louvoyer et parler « d'interprétations souples ». Certes, le droit international n'a pas cessé d'être violé tout au long de l'Histoire, pour n'être invoqué par les États que lorsqu'il les servait. Toutefois, ces dernières années, dans le cadre de la société unipolaire euraméricaine, les violations du noyau dur du droit international, la Charte, prennent un caractère flagrant. On a bouleversé les équilibres originaires de la Charte : le Conseil de Sécurité a pris toute la place, reléguant l'Assemblée Générale, seule représentante de la communauté internationale, et tous les autres organes ; le Chapitre VI, axé sur la négociation, qui exprime la raison d'être profonde de la Charte, a été remplacé par le Chapitre VII, axé sur les sanctions ; le Secrétaire Général n'est plus qu'un agent de ceux qui ont le pouvoir de le désigner. Le Conseil des Droits de l'Homme a certes pris une place évidente dans le monde des ONG, mais ses commissions d'enquête, ses rapports ne pèsent que très modestement dans les politiques étatiques (voir, par exemple, le rapport Goldstone sur les pratiques d'Israël) et instaure une sorte de « démocratie du bavardage », dans le cadre des Nations Unies. L'usage que pourraient en faire les médias et les forces politiques est de surcroît très restreint.

Les résolutions adoptées par le Conseil de Sécurité échappent à tout contrôle de légalité ; leur interprétation par les États relève parfois d'une parfaite mauvaise foi (voir par exemple, celle sur la Libye conduisant à l'élimination d'un régime, à l'exécution de son principal dirigeant et à la destruction de l'État). La France, la Grande Bretagne et les États-Unis ont pratiqué un véritable dévoiement du mandat accordé par le Conseil de Sécurité. Celui-ci avait appelé à un cessez-le-feu (pour les deux parties) et avait autorisé la protection des civils dans les villes « menacées

» : les États hostiles au régime kadhafiste ont dévasté les infrastructures du pays pour appuyer la rébellion partie de Benghazi, ont éliminé les autorités régulières de Tripoli au mépris des populations civiles fidèles (à Syrte, Bani Walid et Sebha, par exemple). Ce qui a été réalisé sur le terrain est le contraire de ce qui avait été autorisé.

Un autre exemple est celui de la Côte d'Ivoire, à propos d'un contentieux électoral relevant du droit interne, qui a donné prétexte à l'ONU et aux forces locales de l'ONUCI à une assistance à la rébellion contre le pouvoir légal.

Peut être critiquée aussi l'interprétation abusive de l'article 51 par la France à propos de la Syrie, sur la légitime défense, ouvrant la porte à la notion absurde de légitime défense préventive déjà mise en œuvre par les États-Unis et Israël. La France et ses alliés sont longtemps intervenus contre Daesh seulement en Irak (pour protéger le régime de Bagdad installé par les États-Unis), « oubliant » Daesh présent en Syrie (dans l'espoir qu'il contribue à renverser le gouvernement de Damas, allié du Hezbollah et de la Russie). On transforme la nécessaire opération de police contre l'islamisme et son terrorisme (qui frappe essentiellement les peuples arabes) en guerre contre les États perturbant l'ordre occidental.

Pire encore, la reprise de la notion « d'ingérence humanitaire », née à la fin du XIX° siècle, avec les « interventions d'humanité » et en violation du principe fondamental de la Charte de non-ingérence, a ouvert la porte à des agressions armées, sous des prétextes divers. Cette forme d'ingérence s'est vue plus ou moins remplacée par « la responsabilité de protéger », justifiant la violation du principe de l'égale souveraineté des États au nom de la protection des populations civiles contre leur propre État. Les guerres civiles ont été ainsi internationalisées dès lors qu'elles avaient une orientation favorable aux Occidentaux.

Ces pseudo-nouveaux principes du droit international que la communauté internationale, contrairement aux prétentions occidentales, n'accepte pas comme tels, obscurcissent davantage encore le droit international au niveau de ses sources, comme de son contenu.

Ce confusionnisme renforce la difficulté que l'on rencontre pour le « sortir du placard » et le mettre au service des peuples.

L'ignorance de la Charte

Le néolibéralisme travaille à dissocier l'économique du politique. Dans l'ordre international, les principes de la Charte de l'ONU ne sont pas pris en compte par l'OMC, le FMI ou la Banque Mondiale, qui font pourtant partie du « système » des Nations Unies.

Si le droit international « politique » traverse une phase de confusion profonde risquant de le liquider, ce droit international économique acquiert une force contraignante croissante (par exemple avec l'ORD, juridiction de l'OMC). Au service avant tout des pouvoirs privés transnationaux, il se constitue de plus un authentique droit des affaires internationales, détaché du droit au développement, mortné, de tout projet social, indifférent aux intérêts populaires comme au sous-développement3.

Les sources de ce droit des affaires, au-delà du droit économique, sont bouleversées. Il n'est plus essentiellement le produit des États, toujours contraints à des compromis entre les intérêts contradictoires. Il est de plus en plus le fruit des grands cabinets d'affaires, associés à des représentants des grands groupes économiques et financiers4, ayant à leur service de très vastes réseaux financiers et autres. Certains sont même côtés en bourse. Leur chiffre d'affaires voisine avec le budget de certains États du Sud. Ils jouent un rôle moteur dans la production d'un droit parfaitement ajusté, notamment, en usant du « forum shopping », offrant aux entreprises et aux ministères, le « moins-disant normatif », c'est-à-dire le cadre national le plus profitable aux pouvoirs privés transnationaux. L'impact est grand sur le législateur national qui développe une « course vers le bas social » pour rester attractif.

Ces cabinets privés, en osmose avec les entreprises et les groupes financiers, imposent des normes standards (normes de « qualité », normes comptables, etc.) qui ont, malgré leurs aspects purement techniques, un impact économique et financier. Lorsqu'ils rédigent un contrat de portée transnationale, ils tendent à produire un contrat-type, devenant standard sur le marché concerné (par exemple, les contrats de « dette souveraine », les contrats de « prêts syndiqués », etc.).

Ils aident à la réalisation de « Codes de bonne conduite » donnant aux grandes firmes une légitimité peu coûteuse pour elles.

Il est à noter que la Commission Européenne soutient ces cabinets et leur production d'« objets normatifs non-identifiés », selon l'expression des juristes critiques belges de l'U.L.B.

Il y a donc complicité étroite entre les grands intérêts occidentaux, les puissances occidentales, l'Union Européenne. Ils sont devenus les « conseillers du Prince » dans la plupart des grands pays occidentaux (par exemple, aux États-Unis, le droit du Delaware (où 50% des grandes firmes américaines ont leur siège), fabriqué par ces cabinets, est souvent avalisé par le Congrès.

Ils exportent aussi leur production dans les petits pays allant jusqu'à vendre du « kit constitutionnel » (Bosnie, Kosovo, Somalie, Afghanistan, par exemple).

Ce « droit » des affaires internationales n'a aucune légitimité. Les valeurs sociales et démocratiques, si souvent mises en exergue dans le discours politique, sont totalement négligées. Le droit des Nations Unies et des Institutions spécialisées à vocation sociale (OIT, OMS, UNESCO, etc.) est nié par ce qui n'est peut-être pas même du droit, mais qui dans les faits assure la régulation effective des grands intérêts privés dominants le monde.

Les conclusions sont évidentes :

- Sur le fond, la souveraineté nationale n'est pas le cœur des blocages. Elle est le meilleur garant de la souveraineté populaire, en dépit des contradictions qu'elle soulève. La Nation et donc l'État n'ont pas encore épuisé leur rôle historique progressiste. Néanmoins, le concept de « Bien Commun » à l'échelle planétaire, encore essentiellement théorique, peut être développé (avec prudence) comme l'embryon d'un communisme planétaire.
- Au plan organisationnel, il y a nécessité de médiatiser au maximum les dispositions de la Charte et non simplement y faire référence.
- Chaque média où les progressistes peuvent s'exprimer doit, en chaque circonstance, être sensibilisé à une analyse de la problématique juridique.
- La dénonciation du droit des affaires internationale doit être une priorité en tant qu'instrument unilatéral des intérêts privés dominants.
- Doit être stimulée la construction d'un Front des ONG progressistes, constitutif d'un renouveau (modeste) de l'internationalisme qui fait aujourd'hui défaut.

Le droit des Nations Unies doit devenir une arme pour le mouvement populaire et chacune de ses violations faire l'objet d'une dénonciation.

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La Palestine et la Charte des Nations Unies

GÉRAUD DE GEOUFFRE DE LA PRADELLE

La situation de la Palestine au regard de la Charte illustre assez bien l'essence politique des institutions juridiques internationales et, par conséquent, leur ambigüité.

La Charte est un traité — donc, du point de vue juridique, la source de droits et de devoirs valables entre les parties contractantes, mais entre elles seules. Toutefois, la portée politique de ce contrat est immense car il unit presque tous les Etats du monde et fonde une "Organisation" dont la mission est universelle, s'agissant, notamment, de "*créer les conditions nécessaires au maintien de la justice et du respect des obligations nées des traités et autres sources du droit international*" (Préambule, al. 3) ; *de "Maintenir la paix et la sécurité internationales… ; Développer entre les nations des relations amicales... ; Réaliser la coopération internationale…*" (art. 1).

A cette fin, les instances de l'Organisation ont reçu le pouvoir juridique — la "compétence" — d'aider, le cas échéant, de contraindre, les Etats membres à poursuivre les "*buts*" et à se conformer aux "*principes*" définis au Chapitre premier de la Charte. Mais, en même temps, la Charte donne à l'une de ces instances — le Conseil de sécurité — et, plus particulièrement, à chacun des "*membres permanents*" de ce Conseil (art. 23 et 27) les moyens juridiques de priver ces principes de toute effectivité — ceci, au gré de leurs motivations politiques ; dans la pratique, ces moyens sont couramment employés.

Force est donc de constater que la Charte valide par avance les violations, sur le terrain et dans l'action, de la générosité pacifique qu'elle affiche solennellement au plan des principes. En d'autres termes, ouvrant la porte à toutes les manoeuvres conjoncturelles — surtout celles des membres permanents du Conseil de sécurité — la Charte consacre juridiquement une contradiction fondamentale.

La Palestine est l'une des plus évidentes victimes de cette contradiction.

Sans doute, les dispositions conventionnelles de la Charte s'adressent-elles directement aux "*Membres de l'Organisation*" (cf. art. 2) et à eux seuls. La Palestine n'est donc pas directement concernée par ces dispositions - car, elle n'a toujours pas été admise en tant que membre à part entière. En revanche, elle est fondée à se prévaloir de normes que la Charte énonce en direction des membres de l'ONU et dont les instances de l'Organisation ont, juridiquement, le pouvoir d'exiger l'application. Il se trouve que les dites instances ont caractérisé les droits que les membres de l'ONU doivent reconnaître, conformément à la Charte, au Peuple et à l'Etat de Palestine ; elles ont, en même temps, dénoncé leur violation. Toutefois, leurs déclarations n'ont à peu prés aucun effet pratique.

Ainsi, parmi les "*buts et principes*" des Nations Unies, figure le "*…respect de l'égalité de droit des peuples et de leur droit à disposer d'eux mêmes…*" ; donc, à se doter d'un Etat - par définition, souverain (art. § 2). Or, la Palestine ne bénéficie que très partiellement de ces dispositions (I).

Surtout, tandis que nombre d'atteintes graves aux droits fondamentaux tant de l'Etat palestinien que de sa population, ont été officiellement constatées, des obstacles politiques, jusqu'à présent insurmontables, neutralisent les "voies de droit" qui devraient être largement ouvertes sur le fondement de ces constatations (II).

Droit du Peuple palestinien à un Etat

Sur le plan des principes, la Charte garantit à tous les peuples la jouissance du droit à l'autodétermination (Art. 1, al. 2).

Ce droit n'a été que tardivement reconnu au Peuple palestinien par le Conseil de sécurité qui s'est dit "*Attaché à la vision d'une région dans laquelle deux États, Israël et la Palestine, vivent côte à côte, à l'intérieur de frontières reconnues et sûres…*" (Rés. 1397(2002) du 13 mars 2001 et Rés. 1515(2003) du 19 novembre 2003). Quoi qu'il en soit, aujourd'hui, selon la Cour internationale de justice, le droit du Peuple palestinien à l'autodétermination "*ne saurait plus faire débat*" (Avis du 9 juillet 2004 concernant le mur, § 118; v. aussi, § 148, 155 et 156).

Or, l'Etat de Palestine avait été proclamé par l'OLP dès le 15 nov. 1988, à Alger et, depuis lors, cet Etat a été recon-

nu par un nombre croissant d'Etats ; ils sont actuellement plus de 130.

Surtout, la Palestine a été successivement admise à l'UNESCO, le 31 octobre 2011, comme membre à part entière — donc, en qualité d'Etat ; puis à l'ONU, en tant qu'Etat "observateur", le 29 nov. 2012.

Enfin, dans la foulée de son admission à l'ONU, la Palestine a adhéré à toutes sortes de conventions internationales — dont le Statut de Rome instituant la Cour pénale internationale. Jadis refusée, cette adhésion au Statut de la Cour a été admise comme allant de soi par le Secrétaire général de l'ONU, en conséquence de la qualité d'Etat "*observateur*" désormais reconnue à la Palestine. Déposée le 1er janvier 2015 avec acceptation de la compétence de la Cour à compter du 13 juin 2014, l'adhésion est effective à compter du 1er avril 2015.

Cependant, le statut d'Etat ainsi reconnu très officiellement, réalise un compromis bâtard et profondément "politique" — au mauvais sens du terme — dans la mise en oeuvre des dispositions juridiques de la Charte.

Ce compromis transparaît d'abord, dans l'admission à l'ONU.

En effet, une fois reconnue en tant qu'Etat par une large majorité des membres de l'Organisation, la Palestine remplit manifestement les conditions de fond d'une admission à part entière. Ces conditions sont posées à l'article 4, § 1 de la Charte : il doit s'agir d'un Etat "*pacifique*", la Palestine l'étant ni plus ni moins que les autres membres à part entière ; un Etat qui "*accepte les obligations*" découlant de la Charte et qui est "*capable de les assumer*".

Pourtant, une condition de procédure n'est toujours pas remplie : le vote du CSNU qu'exige l'article 4, § 2 de la Charte. En d'autres termes, l'admission de la Palestine en qualité d'Etat seulement "*observateur*" apparaît comme la mise en forme juridique d'une réalité politique contrastée : d'un côté, l'Etat est massivement reconnu par les membres de l'Organisation ; d'un autre côté, les membres du Conseil de sécurité sont politiquement incapables d'en tirer les conséquences juridiques.

Mais le compromis bâtard se manifeste plus encore à propos des droits fondamentaux tant des personnes que de l'Etat.

Droits fondamentaux des personnes et de l'Etat

Les instances compétentes de l'ONU - Assemblée générale et Conseil de sécurité — ont progressivement affirmé conformément à la Charte que les principes de droit international applicables en Palestine étaient grossièrement méconnus au détriment de l'Etat mais aussi des personnes. Sont ainsi visés, notamment, le droit des individus à retourner dans "leur pays" (A), des violations graves de la Convention de Genève relative à la protection des personnes civiles (B) et l'illicéité de l'acquisition de territoires par la force (C).

Or, l'efficacité de ces déclarations est pratiquement nulle en raison de la manière dont sont mises en oeuvre les dispositions de la Charte relatives au Conseil de sécurité (D).

A. Le "retour" des personnes

On peut lire dans la Déclaration universelle droits de l'homme du 10 décembre 1948 que "*Toute personne a le droi …de revenir dans son pays*" (art.13.1). Si la Déclaration n'est pas juridiquement obligatoire, le droit de retour n'en est pas moins validé en tant que "*…droit d'entrer dans son propre pays*" par le Pacte international du 19 décembre 1966 relatif aux Droits civils et politiques (art.13).

Or, ce Pacte oblige formellement l'Etat d'Israël qui l'a ratifié.

Quoi qu'il en soit, dès 1948, l'Assemblée générale a consacré le droit au retour des "*Réfugiés palestiniens*" : sa Résolution 194(III) du 11 décembre 1948, formellement acceptée par Israël, dispose en effet qu' "*…il y a lieu de permettre aux réfugiés qui le désirent de rentrer dans leurs foyers…*" Par la suite, la question a fait l'objet d'un grand nombre de résolutions de cette même Assemblée concernant successivement les réfugiés de 1947-1948, de 1967 et de 1973.

Enfin, le Conseil de sécurité s'est, à son tour prononcé, à partir de 1967, dans des termes quelque peu alambiqués : ses résolutions 237(1967) du 14 juin 1967 et 242(1967) du 22 novembre 1967 évoquent, en effet, la nécessité "*d'un juste règlement du problème des réfugiés*" — tandis que la résolution 338 (1973) du 22 octobre 1973 renvoie à la résolution 242 (1967)…

Ces résolutions n'ont été que relativement suivies d'effet. Si, en 1949, d'environ 100.000 personnes ont été admises au rapatriement, elles ne furent qu'à peu près 16.000 en 1967. Les Accords d'Oslo (v. "Déclarations de principe" du 13 septembre 1993) ont permis le retour de quelques milliers d'individus. Il reste que, les Autorités israéliennes excluent farouchement que des palestiniens reviennent sur le territoire d'Israël.

B. La protection des personnes

Certaines dispositions de la IVème Convention de Genève du 12 août 1949 relative à la protection des personnes civiles en temps de guerre, sont applicables en cas d'occupation militaire de territoires étrangers (art. 47 et s.).

En dépit de la position prise par les Gouvernements successifs d'Israël qui contestent l'existence de toute "occupation" au sens juridique du terme, une série de résolutions du Conseil de sécurité a déclaré que la Convention était applicable - et devait être appliquée (Rés. 237(1967) du 14 juin 1967 ; 271(1969) du15 septembre 1969 ; 446(1979) du 22 mars 1979 ; 452(1979) du 20 juillet 1979 ; 465(1980) du 1er mars 1980 ; 476(1980) du 30 juin 1980 ; 681(1990) du 20 décembre 1990 ; 799(1992) du 18 décembre 1992 ; 904(1994) du 18 mars 1994 ; 1544(2004) du 19 mai 2004…). L'Assemblée générale n'est pas en reste (voir, notamment les Rés. 56/66 du 10 décembre 2001 et 58/97 du 9 décembre 2003…).

Surtout, la Cour internationale de justice s'est prononcé en ce sens dans son Avis du 9 juillet 2004 (§§ 90 et 93) et la Cour Suprême d'Israël a fait de même - contredisant, sur ce point, la position officielle de son Gouvernement (voir notamment deux arrêts des 30 mai et 30 juin 2004).

Entre autres conséquences, il résulte de ces résolutions et de l'Avis de la Cour que sont illicites tous transferts de Palestiniens hors du territoire occupé comme toute introduction de colons israéliens dans ces mêmes territoires (art. 49 de la IVème Convention).

De tels faits constituent des crimes internationaux. Cette qualification découle de l'article 147 de la IVème Convention en ce qui concerne la déportation de Palestiniens et quant à l'introduction de colons, elle résulte de l'article 8 du Statut de la Cour pénale internationale qui est applicable en vertu de l'article 12, 2, a, du même Statut, aux actes commis en Palestine depuis le 13 juin 2013.

Pourtant, leur dénonciation par les plus hautes instances de l'ONU, conformément aux dispositions de la Charte, n'a strictement aucun effet : le nombre des colons ne cesse d'augmenter : les palestiniens arrêtés par les forces armées dans les territoires occupés sont systématiquement internés en Israël.

C. L'acquisition de territoires par la force

Conformément aux "*principes*" que la Charte pose avec solennité "*Les Membres…s'abstiennent …de recourir …à l'emploi de la force …contre l'intégrité territoriale de tout Etat…*" (art. 2, § 4). En d'autres termes, l'acquisition de territoires par la force est interdite.

En 1967, le Conseil de sécurité a formellement reconnu par que cette interdiction devait être respectée en Palestine. Sa résolution 242(1967) du 22 novembre 1967 souligne, en effet, "*l'inadmissibilité de l'acquisition de territoires par la guerre*" et rappelle que "*l'accomplissement des principes de la Charte exige l'instauration d'une paix juste et durable …qui devrait comprendre l'application des … principes suivants… : retrait des forces armées israéliennes des territoires occupés lors du récent conflit…*"

La CIJ a fait de même dans son Avis du 9 juillet 2004 (§ 87, v. aussi, §§ 115, 117, 119 et 121).

Dans ces conditions, l'annexion de Jérusalem par une loi du 27 juin 1967 a été déclarée "*Invalide"… "nulle et non avenue…*" par le Conseil de sécurité (Résolutions 252(1967) du 21 mai 1967 ; 476(1980) du 30 juin 1980 ; 478(1980) du 20 août 1980…).

Aucune de ses résolutions n'a eu le moindre effet sur le terrain. Il s'agit donc essentiellement de gesticulations politiques.

D. L'utilisation pernicieuse des dispositions de la Charte

Les faits qui viennent d'être évoqués sont notoires. Ils illustrent le sort bien connu que les grandes puissances réservent à la Palestine. Mais ils, révèlent également une réalité beaucoup moins bien perçue : la manière dont les dispositions juridiques de la Charte permettent aux mobiles politiques de certains membres du Conseil de sécurité de contourner les principes que fonde cette même Charte.

En effet, du strict point de vue juridique, les prises de position spectaculaires des instances onusiennes concernant les relations israélo-palestiniennes, ne sont aucunement contraignantes — qu'il s'agisse de l'Avis de la Cour ou des résolutions de l'Assemblée générale et du Conseil de sécurité. Ces dernières ont valeur d' "*invitations*" (art.33) ou de "*recommandations*" (art. 36) conformément aux dispositions du Chapitre VI de la Charte, mais nullement de "*décisions*" obligatoires. C'est que, jamais, à propos de ces relations, le Conseil n'a cru bon de relever — comme il en a le pouvoir - une "*menace contre la paix*" ou une "*rupture de la paix*", afin de fonder ses résolutions sur le Chapitre VII (art. 39 et 41).

Sans doute, ces résolutions évoquent-elles expressément des normes de droit international auxquelles renvoie, d'ailleurs, le premier chapitre de la Charte. Or, ces normes ont, en droit, une valeur contraignante indépendante de ce qu'en dit ce chapitre. Tout se passe, pourtant, comme si le fait d'être mentionnées dans des résolutions non obligatoires les dépouillait de ce caractère. Il s'agit, en quelque sorte, d'un effet politiquement pervers des dispositions juridiques de la Charte.

Géraud de Geouffre de la Pradelle, né en 1935. Agrégé de droit privé et sciences criminelles(1969). A enseigné le droit civil et le droit international privé pendant trente ans à l´Université Paris X Nanterre et accompli diverses missions d´ordre humanitaire au Moyen Orient depuis 1982.

Traité transatlantique, une atteinte à la démocratie et à la souveraineté des peuples

ADDA BEKKOUCHE

Le traité transatlantique[1], entre les États-Unis d'Amérique (EUA) et l'Union européenne (UE), fait l'objet de nombreux commentaires qui concernent surtout les domaines économique et commercial. Pourtant cet instrument concerne également les droits fondamentaux et démocratiques. Il y a donc lieu de s'attarder sur la manière dont ce traité va affecter ces droits et les principes qui en découlent. Aussi, peut-on affirmer d'emblée que si cet instrument entrait en vigueur, conformément aux orientations qui découlent du mandat de négociation [2], il s'agirait tout simplement d'une usurpation de souveraineté des peuples européens.

Sans procéder à une étude exhaustive et minutieuse des problèmes soulevés — cela nécessiterait sans aucun doute plusieurs ouvrages —, nous examinerons deux séries de questions se rapportant aux négociations de l'accord et aux risques d'atteinte à la souveraineté des peuples et aux prérogatives de puissance publique de l'État.

Les négociations de cet accord soulèvent de nombreuses questions quant aux modalités de sa négociation

Dans une démocratie, ce qui engage la collectivité, notamment en matière de traités internationaux, doit être négocié et conclu conformément à un mandat clair, préalablement défini et sous le contrôle d'instances élues. Ce n'est nullement le cas concernant le traité transatlantique. Ces négociations dérogent à de nombreux principes et pratiques habituels dans la formation des traités internationaux. De ce fait, elles portent atteinte au droit international et au droit constitutionnel de nombreux pays européens.

Notons d'abord que le mandat de négociation est confié au négociateur unique de l'UE avec les EUA, Karel De Gucht, commissaire européen au Commerce. Par ailleurs, cet accord est négocié sans publicité ni débat et dans une grande opacité[3] de la part de la Commission européenne (CE) et des gouvernements nationaux. Ainsi, ni le Parlement européen, ni les parlements nationaux ne sont tenus au courant du détail des négociations entre Washington et Bruxelles. Le Parlement européen et les États membres ne disposent que d'un accès restreint au détail des échanges[4]. Ajoutons à cela qu'aucun projet ou document précis n'a été ni publié ni même mis à la disposition du Parlement européen, afin que ce dernier, en tant que représentant des peuples des pays membres de l'Union, puisse en débattre. Enfin, la CE a commencé à négocier en mars 2013, alors que le mandat pour le faire ne lui a été conféré qu'en juillet 2013.

Et, élément supplémentaire qui tranche avec les règles de négociations étatiques classiques et qui met à mal les principes démocratiques, « l*es documents transmis par la direction générale du commerce sur le GMT ne concernent par ailleurs que les propositions de l'Union. Les États-Unis interdisent l'examen de leurs "positions de négociation" par les autres États ou le Parlement européen*. » [5]

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[1] Plusieurs noms sont utilisés pour désigner ce projet de traité, mais l'officiel est *Partenariat transatlantique de commerce et d'investissement* (PTCI), en anglais *Transatlantic Trade Investment Partnership* (TTIP). Dans ce texte, nous utiliserons le nom de traité ou accord transatlantique.

[2] Ce document du Conseil de l'UE comprend 46 articles. Il est daté du 17 juin 2013 et a été adopté le 14 juin 2013. La version officielle du document n'existe qu'en anglais et sa diffusion est restreinte. Il existe cependant des textes, en français, de traduction officieuse, dont l'une des plus fiables est celle de Raoul Marc Jennar.

[3] Martin Pigeon, « Grand marché transatlantique. Silence, on négocie pour vous », *Le Monde diplomatique*, Juin 2014.

[4] *Ibid.*

[5] *Ibid.*

Ainsi, alors que les négociations d'un tel traité devraient être portées à la connaissance des parlements européen et nationaux, la CE et les gouvernements nationaux s'y impliquent peu, ignorant les principes et règles de formation des traités internationaux. De plus, et c'est un aspect qui n'est pas des moindres, les négociations portent atteinte aux principes de la Charte des Nations Unies qui lient tous les États européens et les États-Unis. En effet, la Charte des Nations Unies dispose dans son article 1er :

« Les buts des Nations Unies sont les suivants :

1. […] ;

2. Développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes, et prendre toutes autres mesures propres à consolider la paix du monde ; […] »

Manifestement, au vu de ces dispositions, les négociations menées ne respectent guère le principe du droit des peuples à disposer d'eux-mêmes. Tout est fait de sorte que les peuples et leurs représentants ignorent les détails des négociations. Celles-ci sont menées de manière confidentielles, pour ne pas dire secrète. Or il s'agit de matières qui touchent non seulement les conditions de vie économique, sociale et sanitaire, mais le projet de traité touche les conditions d'exercice du pouvoir politique, et donc les principes démocratiques. Par conséquent, cette façon de faire n'est pas digne d'une démocratie et tend à la dépossession des peuples de leur souveraineté.

Les négociations de cet accord soulèvent de nombreuses questions quant à la constitutionnalité de son application

Nous ne reviendrons pas sur la constitutionnalité des modalités de négociation de l'accord, mais plusieurs de ses dispositions posent des problèmes quant à sa validation, sa révision et au processus de règlement des différends qu'il prévoit.

Notons d'abord qu'une grande imprécision est entretenue sur la question de la ratification de l'accord par les parlements nationaux de l'UE. Pour la Commission européenne, seuls le Conseil européen (les chefs d'État ou de gouvernement européens) et le Parlement européen seraient habilités à approuver ou rejeter l'accord[6]. Faut-il conclure que les parlements nationaux ne seront pas consultés sur sa ratification ? Mais, plus important, la question des modalités d'approbation et d'application dans l'ordre juridique interne de l'UE n'est pas aussi évidente que le laissent entendre les tenants de l'accord. Ainsi deux questions se posent :

1) l'approbation ou le rejet de l'accord par le Parlement européen suffisent-elles et engagent-elles définitivement les États membres de l'UE ?

2) en cas d'approbation, l'engagement de l'UE suffit-il pour rendre obligatoire l'intégration de l'accord aux ordres juridiques européen et nationaux ?

Du point de vue des ordres juridiques internes, qui sont similaires dans toutes les démocraties, un tel accord, s'il est conclu, ne peut pas être automatiquement applicable. Un vote du parlement est conforme aux principes démocratiques. Si on prend l'exemple de la France, l'interprétation selon laquelle son application serait automatique est anticonstitutionnelle au regard de son ordre juridique interne. Conformément à l'article 53 de la Constitution[7], l'accord ne peut, compte tenu des matières qu'il concerne, entrer en vigueur et donc faire partie de l'ordre juridique français qu'après sa ratification ou son approbation. En d'autres termes, une fois qu'on a réglé la question de l'approbation de l'accord par le Parlement européen, il

[6] « La Commission européenne informe les États membres de l'Union – via le Conseil – et le Parlement européen de l'évolution des négociations. Lorsque les négociateurs seront parvenus à un accord, il appartiendra à ces deux institutions d'examiner et d'approuver ou de rejeter l'accord final. Du côté américain, la décision appartiendra au Congrès des États-Unis. » Site internet de la Commission européenne consacré aux négociations transatlantiques, rubrique « Questions fréquentes ».

[7] « *Les traités de paix, les traités de commerce, les traités ou accords relatifs à l'organisation internationale, ceux qui engagent les finances de l'État, ceux qui modifient des dispositions de nature législative, ceux qui sont relatifs à l'état des personnes, ceux qui comportent cession, échange ou adjonction de territoire, ne peuvent être ratifiés ou approuvés qu'en vertu d'une loi. Ils ne prennent effet qu'après avoir été ratifiés ou approuvés.* »

faut examiner sa conformité à la Constitution française[8]. Si le Conseil constitutionnel en est saisi et si des dispositions sont jugées contraires à la Constitution, une révision de celle-ci devra intervenir pour les y intégrer.

L'autre point problématique du mandat de négociation concerne une contradiction de taille. Il y est indiqué que les compétences de souveraineté, appelées aussi prérogatives régaliennes de l'État, sont exclues des matières du futur accord. C'est ce que le mandat de négociation qualifie de « *services fournis dans l'exercice de l'autorité gouvernementale* »[9]. Or le mandat de négociation touche à des matières relevant de ces compétences. C'est le cas du suivi de l'application de l'accord et, dans une certaine mesure, de sa révision. En effet, les articles 26 et 43 du mandat de négociation prévoient la création d'une structure ou d'un cadre institutionnels pour le contrôle de l'application de l'accord et la poursuite de la « *compatibilité des régimes réglementaires* ». Un tel mécanisme n'est conforme ni au droit constitutionnel français ni au droit international.

En la matière, le principe est qu'en cas de divergence d'interprétation ou de révision d'un traité, il est fait appel à des procédures déterminées, nécessitant notamment de référer au préalable aux instances gouvernementales et, le cas échéant, à des juridictions. En d'autres termes et en l'espèce, des mécanismes portant sur des matières relevant des compétences de souveraineté seront mis en œuvre indépendamment du contrôle de l'État et de l'UE. Précisément, l'accord sera exclu des règles et procédures d'application et de révision des traités, quand bien même les matières concernées relèveraient des « *services fournis dans l'exercice de l'autorité gouvernementale* ». Ainsi, les mécanismes institutionnels de contrôle et de révision de l'accord prévus par le mandat de négociation sont illégaux et non-démocratiques. Il s'agit tout simplement, à travers ces processus institutionnels autonomes, de soustraire aux contrôles public et démocratique l'application et l'évolution de l'accord en matière d'harmonisation et de compatibilité des normes et des réglementations.

Mais le plus grave porte sur le mécanisme de règlement des conflits prévu par le mandat de négociation. Présent dans l'Accord de libre-échange de l'Amérique du Nord (ALENA) et dans l'accord, en voie de finalisation, entre le Canada et l'UE, ce mécanisme, prévu par les articles 23-2 et 45 du mandat de négociation, donnerait la possibilité aux entreprises étrangères d'exercer des recours devant un tribunal arbitral, dans les matières couvertes par l'accord, contre l'État et les collectivités publiques de tout niveau, si elles considèrent que leurs intérêts sont lésés. En cas de victoire de l'entreprise étrangère, elle peut prétendre à des indemnisations et des dommages et intérêts, *in fine* supportés par le contribuable.

Ce mécanisme qualifié en jargon de la CE d'ISDS (Investor-state dispute settlement) ou de RDIE (Règlement de différends investisseurs-État), permet aux instances privées d'arbitrage de régler des litiges entre des entreprises étrangères et des États. Selon ses défenseurs, ce mécanisme est constitué de meilleures garanties juridiques pour les entreprises afin qu'elles investissent davantage à l'étranger. En fait, il s'agit de mettre sur pied des garanties de protection maximale de l'investissement privé. Ses adversaires trouvent, au contraire, qu'il constitue une procédure d'exception, qui autorise des groupes privés à attaquer des États en justice, et ainsi démanteler les différentes protections juridiques, normes, règles, processus de régulations et politiques publiques. Plus grave, il désarme les États, en matière juridictionnelle et législative, au profit des entreprises transnationales.

Par ailleurs, ce mécanisme bat en brèche des principes de droit public et constitutionnel. Dans ce cas, les instances d'arbitrage auront la primauté sur les juridictions étatiques. En effet, le recours à l'arbitrage, qu'il soit national ou international, est permis selon des conditions précises. L'une des plus importantes est l'utilisation et l'épuisement de toutes les voies juridictionnelles publiques de recours internes et internationales. Ce n'est que lorsque toutes ces voies de recours sont épuisées que l'on peut faire appel à

[8] Article 54 de la Constitution : « *Si le Conseil constitutionnel, saisi par le Président de la République, par le Premier ministre, par le président de l'une ou l'autre assemblée ou par soixante députés ou soixante sénateurs, a déclaré qu'un engagement international comporte une clause contraire à la Constitution, l'autorisation de ratifier ou d'approuver l'engagement international en cause ne peut intervenir qu'après révision de la Constitution.* »

[9] Article 20 du mandat de négociation, *op. cit.*

des arbitres. Pour résumer, matière de règlement des différends, la norme est d'utiliser les juridictions publiques. Au cas où une des parties n'a pas obtenu satisfaction, elle peut faire appel à l'arbitrage, à condition que l'autre ou les autres parties l'acceptent. Ce sont ces règles et principes qui sont attaqués par cet accord, c'est la raison pour laquelle un mouvement européen s'est constitué pour refuser ce mécanisme, obligeant la CE à lancer une consultation publique sur le sujet[10].

En conclusion, on observe que l'objectif affirmé de cet accord est la suppression des entraves à l'investissement étranger. Soit, mais qu'entend-on par investissement ? Si l'investissement est constitué d'engagements de fonds financier pour la construction d'équipements et la mise en œuvre de politiques et de programmes publics œuvrant pour l'intérêt général, on ne peut qu'être pour. Mais il se trouve que, comme pour tous les accords de libre-échange, le résultat est le démantèlement des barrières et protections, de droits, normes et règles ayant abouti à la réduction des moyens publics, l'augmentation de l'endettement des États et l'appauvrissement des populations. Le processus sera donc l'affaiblissement de l'État-providence, voire sa disparition programmée. Or, quelles que soient ses insuffisances, et elles sont fort nombreuses, il reste encore un rempart contre les appétits voraces des entreprises transnationales et un protecteur des plus vulnérables. Le respect des droits fondamentaux et démocratiques demeure un des meilleurs moyens de le préserver.

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[10] La Commission européenne a achevé cette consultation publique La CE a reçu des centaines de milliers de réponses, en majorité négatives, à sa consultation sur le mécanisme d'arbitrage entre État et investisseur, l'un des volets les plus sensibles du futur accord de libre-échange entre Bruxelles et Washington. Reste à savoir comment la CE prendra en compte les réponses. Voir Ludovic Lamant, « Succès de la consultation publique sur un volet sulfureux de l'accord UE-USA », *Médiapart*, 26 juillet 2014, consulté le 30 juillet 2014.

The Case of Puerto Rico Under the United Nations Charter[1]

DINORAH LA LUZ FELICIANO

This essay brings forth the political status of Puerto Rico ("Commonwealth" or Estado Libre Asociado), how it was manipulated by the United States to mean "self-determination"; and, how the U. S. avoided its duty to inform under Art. 73 (e) of the United Nations Charter, by claiming the colonial status of the Island was resolved. Through this claim, the U. S. also avoided other obligations under the U. N. Covenants of 1966,[6] and U. N. Resolution 1514 (XV) of 1960.

Puerto Rico's Commonwealth"[3] has been presented internationally as an option to decolonization and self-government since its creation in 1952. In 1953, the United States argued before the United Nations that it would cease to inform the status of the Trustee territory, as Art. 73(e) of the U. N. Charter imposes,[4] since the Island had achieved self-government. If the Commonwealth was truly an act of self-determination, it is still being discussed at the United Nations Decolonization Committee,[5] and it is certainly an ongoing unresolved issue in the Island.[6]

Self-determination in the U. N. Charter divides the "principle"[7] of self-determination in two: under Art. 1(2)[8] and under Art. 55.[9] When the Charter was being drafted, self-determination was a term used to protect sovereignty of States. At the present time, self-determination is only mentioned twice in the context of "friendly relations among nations" and of "equal rights". Moreover, self-determination was not recognized as a "right" of peoples[10] when the U.N. Charter was drafted,[11] until the approval of G. A. Resolution 1514 (XV) in 1960.[12] Some commentators have argued that self-determination has evolved as *jus cogens*, based on an interpretation by the International Law Commission (1966) of the Draft Convention on the Law of Treaties, although few States at that time, wanted to include it as part of *jus cogens*.[13] Still others, based on the International Court of Justice cases, held that the right of peoples to self-determination "as it evolved from the Charter and from the United Nations practice [of States], has an *erga omnes* character." [14]

Chapters XI, XII, and XIII of the U. N. Charter have to be examined, as well, concerning "dependent territories".[15] There has been some debate on the application of Chapter XI (which includes Arts. 73 and 74)[16] regarding the demand for decolonization on the one hand, versus Chapters XII and XIII (which deal with the Trusteeship system) on the other. Chapters XII and XIII provide expressly for accountability and supervision of the "trust territories" (Trusteeship system.)[17] Nevertheless, for territories not under the Trusteeship system only Chapter XI would apply. Article 73 of Chapter XI is intended for U. N. Members which are also Administrators of "territories whose peoples have not yet attained a full measure of self-government." The wording of Art. 73 classifies the mandate as a "sacred trust" to promote the well-being of the inhabitants. Subsequent paragraphs specify the respect and ensure respect principle, as referred to the culture, the political, economic,[18] social, and educational advancement, "just treatment, and protection against abuses" (Para. (a)). Paragraph (b) of that same Art. 73 imposes the obligation to develop self-government, assist in the progressive development of free political institutions, and to promote development (Para. (d)). Article 74 deals with the "good-neighbor" principle and stresses the friendly relations among the rest of the Members in social, economic and commercial matters.[19] By the same token, Art. 76 (b) also imposes the duty to promote development towards self-government or independence. The Charter language evolved into a broader interpretation of the duties under Art. 73(e) in terms of the information to be provided (duty to provide) to the U. N. regarding the political progress made.[20] That same article imposes the duty to inform on the "economic, social, and educational conditions of the territory." Its precedent was Art. 22 of the League of Nations, which laid down the "principle of a trusteeship administration" (or mandate).

In January 19 and in March 20, 1953, the United States sent communications to the United Nations indicating

that it would cease to send information under Art. 73(e) of the Charter due to the constitutional change in Puerto Rico. Arguing that the Commonwealth status alternative had been "chosen" by the Puerto Ricans in 1952, implied that the U. S. did not have to inform on the progress of Puerto Rico and the United Nations so recognized it, based on the principles of Chapter XI of the U. N. Charter. Paragraph 4 of G. A. Res. 748 (VIII) confirmed that the People of Puerto Rico had chosen the Commonwealth status "as part of its self-determination". The then Governor Luis Muñoz Marín proposed the new political status: from a non-self-governing territory to a self-governing territory, or so he said. One can find in Puerto Rico's archives the letters that Muñoz Marín wrote to the President of Costa Rica, José Figueres, asking him to make a petition to the United Nations so that Puerto Rico would no longer be under trusteeship. In spite of such claim of self-determination, after the Puerto Ricans voted to adopt the Constitution in 1952, U. S. Congress reserved the right to change it by federal statute. In fact, as a condition for approval Congress unilaterally deleted Section 20 of the Constitution of Puerto Rico which included economic, social, and cultural rights.

Even though, Arts. 73 and 74 of the U. N. Charter included political, economic, social, educational advancement and rights to development, among others, few would argue today that Puerto Rico needs to return to the Trusteeship Council (as trustee or "territorios en fideicomiso") before the Council becomes completely inoperative, or that Puerto Rico should return to the list of non-self-governing territories ("territorios no autónomos") under Chapter XI of the U.N. Charter, where there are still approximately 16 territories waiting for self-determination. In different statements before the Decolonization Committee, Non-Governmental Organizations (NGOs) have stated that neither Resolution 748 (VIII) nor Chapter XI (non-self-governing territories) should be applied because Puerto Rico is still under the plenary powers of Congress in spite of what Resolution 748(VIII) affirms. With respect to plebiscites- and since the 1967 plebiscite to confirm the ELA status- the U. S. has not made any compromise to accept the results. Most NGOs that have petitioned the Decolonization Committee have argued that Resolution 1514(XV) should apply, and that the General Assembly should keep the case of Puerto Rico under review as has done during more than 40 years, and after more than 30 Committee resolutions.[21]

In what has been called the second phase of *self-determination and human rights*, it also became important the approval of Resolution 1514(XV) in 1960, the entry into force the International Covenants of 1966 (International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), and the Helsinki Final Act,[22] as basic instruments of human rights. Art. I of the International Covenant on Civil and Political Rights (ICCPR) reaffirms that self-determination is a "right,"[23] and even a pre-requisite to other human rights.[24]

In addition to the U. N. Charter and the Covenants, one should examine the U. N. Resolutions, particularly Resolution 1514(XV). Since the 1970's there was some doubt in the international community regarding the 1953 petition to take Puerto Rico out of the list of territories. The Decolonization Committee kept the Case of Puerto Rico under review based, precisely, on the Resolution 1514(XV) mandate. Meanwhile, the U. S. has never recognized the U. N. Committee's competence. Actually, the U. S. generic reservation regarding human rights instruments, and in particular regarding the ICCPR, has always been that none of the international obligations are self-executing.[25]

With respect to other U. N. Resolutions, some pro-annexation groups in Puerto Rico, tend to favor Resolution 1541(XV) of 1960, which proposes three procedural guidelines on how to determine whether the non-self-governing territory has attained full self-government, to wit, by independence, free association, or integration to another independent State.[26] Nevertheless, integration to the United States entails the inclusion of a different culture, which is far from the so-called U. S. "melting pot." Notwithstanding the cultural point of view, the Island faces a bankruptcy created by this colonial situation. When the political representatives have asked for some assistance, at least by amending the "Cabotage Laws,"[27] the U. S. Congress and the Executive Branch have simply ignored or blamed the Islanders for the economic insolvency.

CONCLUSION

As an Administrative power the U. S. has to comply with Part I, Art. 1, Para. 3, and with "the responsibility for the administration of Non-Self-Governing and Trust-Territo-

ries" under the ICCPR. The U. S., as a Member State of the U. N., cannot claim that Puerto Rico's status is a domestic matter because it pledged to adhere to the U. N. Charter; neither can it claim that the Decolonization Committee has no competence because it abstained when the G. A. Resolution 1514 (XV) was approved. Even though, the U. S. made a reservation when ratifying the ICCPR (by trying to undermine its obligations when saying that none of the international instruments are self-executing,) such reservation might be in conflict with the object and purpose of the treaty, as required in the Vienna Convention on the Law of Treaties. Moreover, the Supremacy Clause in the U. S. Constitution and the Paquete Habana Case are the Law of the Land and are probably in conflict with such reservations.

The People of Puerto Rico voted in 2014 in a plebiscite where 54% opposed the current status (Estado Libre Asociado). Even though, the U. S. Congress has yet to recognize these results, the U. S. Department of State has submitted an Amicus Curiae in December 2015 to the U. S. Supreme Court admitting to Puerto Rico's colonial status.

Clearly, the political status has to be freely determined by the People of Puerto Rico without coercion or outside intervention. The phrase "freely determined" is problematic when considering colonial peoples and/or alien domination, besides the colonial power has never been eager to let people determine their political destiny. In Puerto Rico's case, freedom to choose is also problematic, taking into account the history of political persecution and political prisoners still incarcerated in U. S. jails, solely for believing in the independence of their country.

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NOTES:

[1] The author wants to thank Vanessa Ramos, Esq., and Marjorie Cohn, Esq. for taking the time to review this essay. Also, my appreciation to Evelyn Dürmayer and the Editorial Board of the IADL's *International Review of Contemporary Law* for its publication.

[2] The U. S. ratified the International Covenants on Civil and Political Rights (ICCPR), and signed- but has yet to ratify- the Intenational Convenant on Economic, Social and Cultural Rights. Both International Covenants of 1966 include an Art. 1 that mentions self-determination. This discussion will be, mostly, about the ICCPR, and its Art. 1.

[3] "Estado Libre Asociado" (ELA), which literally means "Free Associated State" is not free nor a state of the United States. It has been traditionally translated as "Commonwealth", and has some resemblance to the "commonwealth" under the U. S. federal system. For a more detailed view of the political system, see, Efrén Rivera Ramos. "Self-determination and Decolonisation in the Society of the Modern Colonial Welfare State," in William Twining. *Issues of Self-Determination*. Proceedings of the 14th World Congress in Philosophy of Law and Social Philosophy. University of Edinburgh 17- 23 August 1989. ELA is strikingly similar to a "vassal state," which is "subject to the suzerainty of another state [...].[A] distinctive element of the feudal suzerainty relationship is that the suzerain holds the source of the governmental authority of the vassal State." Michael C. van Walt van Praag. *The Status of the Tibet* (Boulder, CO: Westview Press, 1987), 105-6, in Hurst Hannum. *Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press 1990, 1992), 18-19. See, Raúl Serrano Geyls. Derecho constitucional de Estados Unidos y Puerto Rico. Vol. I. (San Juan: Colegio de Abogados de Puerto Rico, 1986), pp. 449, et seq.

The "Insular Cases," resolved by the U. S. Supreme Court from 1901 to 1922 (De Lima v. Bidwell, 182 U.S. 1, among others), made the distinction between the incorporated versus the un-incorporated territory, meaning that the constitutional protections of the U. S. would not fully apply to the un-incorporated territories, and that the Island belonged to the U. S. but it was not part of the U. S. These cases were affirmed in *U. S. v. Sánchez*, 992 F.2d 1143 (June 4, 1992). In Sánchez, the Eleventh Circuit reiterated that Puerto Rico is an un-incorporated territory and that Congress could unilaterally revoke Puerto Rico's Constitution or change the U. S.-Puerto Rico federal relations. For a detailed discussion of the Insular Cases and post-insular cases (Balzac, and others), see, Juan R. Torruella. *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* (Río Piedras: Editorial de la Universidad de Puerto Rico, 1985).

[4] The criteria for self-government within the meaning of Art. 73(e) is included in G.A. Res. 742(VIII) of Nov. 27, 1953 para. 3: [self-government applies] "(1) when independence is achieved; (2) by means of a voluntary decision which is capable of revision, and which is arrived at by an adequately informed population in an open and democratic process, in favour of an autonomous political system under the sovereignty of the metropolitan power, but with its own legislative, executive, and judiciary organs, as well as its own autonomous organization of its economic, social, and cultural affairs; (3) by means of a voluntary decision arrived at in an open and democratic process in favour of integration on an equal basis into the metropolitan or other country, involving the loss of an independent international status. [Some citations omitted.] See, Bruno Simma, ed. *The Charter of the United Nations. A Commentary*. Second Edition. Vol. I. (Oxford: Oxford University Press, 2002), p. 1093.

A non-self governing territory is presumed *prima facie* that it is if "the territory is geographically separate and is distinct ethnically and/or culturally from the country administering it." Principle IV, to G. A. Res. 1541(XV) concerning duties of colonial powers to provide information. Simma, ed., íd.

[5] For the history of this process, see, Carmen Gautier Mayoral. "Treinta y tres años del caso de Puerto Rico en la ONU", in Carmen Gautier Mayoral, Angel I. Rivera Ortíz & Idsa E. Alegría Ortega, comps. *Puerto Rico en las relacionales internacionales del Caribe*. (Río Piedras: Eds. Huracán, 1990), pp. 36- 69.

[6] In the 1950's, Géigel Polanco, former Attorney General, advised of all the misgivings he had with the Commonwealth status and the Puerto Rican Constitution, which he called an "insignificant constitution." He also advised against the monopoly that the maritime transport were implementing in the Island with the complicity of the government. Vicente Géigel Polanco. *La farsa del Estado Libre Asociado* (Río Piedras: Editorial Edil, Inc., 1981), 61- 63. See, also, José Trías Monge. *Historia Constitucional de Puerto Rico*. Tomo IV. (San Juan: Editorial Universidad de Puerto Rico, 1983), 236. For today's version of the maritime monopoly and the laws passed by the Puerto Rican Senate, see, Antonio R. Gómez. "Senado acoge informe que recomienda combatir leyes de cabotaje." *Periódico El Nuevo Día*. 13 de abril de 2015 - 8:13 PM. [http://www.elnuevodia.com], (visited July 15, 2015).

[7] Rosalyn Higgins. *Problems and Process. International Law and How We Use It.* (Oxford: Clarendon Press, 1994, 1998), Chapter 7.

[8] Article 1(2) mentions as purposes of the United Nations the development of "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Self-determination is present in this Art. 1(2) of the Charter, but its implementation has been more through the *practice of States at the U. N., by implementing the decolonization process and making it a legal right.* (Emphasis supplied.) Today, it has been included (crystallized) into international instruments, for example, in the International Covenants on human rights of 1966. These Covenants created treaty obligations and are of "great importance for the interpretation of the Charter." Some commentators consider that Chapter XI of the U. N. Charter has less importance today, since its inclusion in mandatory instruments. See, Higgins, íd. See, also, Simma, ed. T*he Charter of the United Nations. A Commentary*. vol. II.

[9] Art. 55 mentions in Para. 1 that peaceful and friendly relations among nations is based "on respect for the principle of equal rights and self-determination of peoples", and promotion of (a) "higher standards of living" [...], "economic, social, health, and related problems; and international cultural and educational cooperation;" and, (c) "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race sex, language, or religion." Art. 56 reflects the compromise of Members ("All Members pledge themselves") [...] "for the achievement of the purposes set forth in Article 55." Both Articles are considered today as part of the basic instruments in international human rights.

[10] Higgins, *íd*.,112.

[11] Hanna Bokor-Szegö. *New States and International Law* (Budapest: Akadémiai Kiadó, 1970) [...] Karl Joseph Partsch. "Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination," Karel Vasak and Philip Aston. 1 *The International Dimension of Human Rights.* 2 vols. (Paris: UNESCO and Westport, CT: Greenwood Press, 1982), n. 95, pp. 62- 63; Sarah Wambaugh. *A Monograph on Plebiscites* (NY: Oxford University Press, 1920), p. 490, in Hannum, *Autonomy, Sovereignty, and Self-Determination*, p. 33. See, also, *Higgins*, pp. 113- 115.

[12] G. A. Res. 1514 (XV), 15 UN GAOR, Supp. (No. 16), U. N. Doc. A/4684 (1960).

[13] Antonio Cassese. Self-Determination of Peoples. A Legal Reappraisal. Hersch Lauterpacht Memorial Lectures. (Cambridge: Cambridge University Press, 1995, 1996), pp. 170- 171. Other commentators include Ian Brownlie and Gros Espiell. See, Ian Brownlie. Principles of Public International Law. Fifth Ed. (Oxford: Clarendon Press, 1998), p. 515; and, Héctor Gros Espiell (Special Rapporteur). "Implementation of the United Nations Resolutions Relating to the Right of Peoples under Colonial and Alien Domination to Self-Determination." E/CN.4/Sub.2/405 (vol. I), 20 June 1978.

[14] Case Concerning East Timor (Portugal v. Australia, 1995, ICJ 90, 102, 1995 WL 688255,) in Mark W. Janis & John E. Noyes. Cases and Commentary on International Law (St. Paul, Minn.: West 1997), p. 409.

[15] See, also, Simma, ed., vol. I, p. 52.

[16] Simma clarifies that those territories "whose peoples have not yet attained a full measure of self-government," (Arts. 73 and 74) include colonies, protectorates mandate territories and all the other forms by which one territory is subjected to or integrated into another State, without the status of equal rights, or without its free decision." Simma, ed., vol. II, at pp. 1089- 1090.

[17] Ralph J. Bunche. "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations," U. S. Department of State, Bulletin XIII, at 1040, in Leland M. Goodrich & Edvard Hambro. Charter of the United Nations. Commentary and Documents. Second Revised Edition (Boston: World Peace Foundation, 1949), p. 407. According to Goodrich and Hambro, the obligations imposed by Art. 73 to Members are, as follows: (a) obligation to ensure the 'political, economic, social, and educational advancement," and show "due respect for the cultures of the peoples"..., (b) to ensure the "just treatment," (c) "to ensure... their protection against abuses" (referring to abuses such as slave trade, etc.). The Netherlands Delegate added other (unfulfilled) obligations: (1) [the] 'failure to protect their land, particularly arable land; (2) forced labor; and, (3) the humiliation caused by the assertion of racial superiority. This Delegate asked the U. S. Delegate to "give an assurance that the provisions of this Article implied an obligation to deal with these abuses". Goodrich & Hambro, íd., pp. 407- 409.

[18] Not only the political aspect of self-determination is important but the economic, social and cultural, according to the expert Gros Espiell. The economic principle means that all peoples can determine its economic regime, and choose their social system, respecting their particular traditions and characteristics. In the cultural sense, peoples have a right to maintain and enrich their cultural legacy, and the right to have the access and to have an education. See, Héctor Gros Espiell. "El derecho a la libre determinación de los pueblos. Aplicación de las Resoluciones de las Naciones Unidas" (N.Y., 1979). Doc. E-CN.4-Sub.2-405-Rev.1, in Bohdan T. Halajczuk & María Teresa del R. Moya Dominguez. Derecho internacional público. Tercera Edición Actualizada (Buenos Aires: Sociedad Anónima Editora, Comercial, Industrial y Financiera, 1999), p. 213.

[19] Under Art. 10 the General Assembly "is authorized to discuss any matter within the scope of the Charter and to make recommendations on such matters to the Members," and has competence to discuss matters in arts. 73 and 74, without being considered an intervention on issues concerning international obligations when administering trust or mandates. Nevertheless, Members have been known to rebut these arguments based on domestic intervention arguments. Some other interpretations have prevailed in the sense that not only General Assembly can make recommendations if a Member has not fulfilled its obligations under Art. 10, but together with the Security Council it can "apply the sanction provided for in article 6 in case a Member violates its obligations under Arts. 73 and 74. If this is 'supervision', the Charter indeed does provide organs for the supervision of application of Chapter XI." In other words, General Assembly has competence "with respect to non-self-governing territories not under trusteeship in accordance with art 10 and (together with the Security Council) under art. 6, it is hardly possible to maintain that the UN has no jurisdiction over these territories," as the delegate of the U.S. has traditionally maintained since 1947. The United States delegation made a sharp distinction for non-self-governing territories under trusteeship (where the supervision of these trust territories lie in the U.N., and where it should hold the administering power to strict accountability, under Chapter XI), and those not under trusteeship (Chapter XII and XIII). For those not under trusteeship the U. S. has maintained that the U. N. has "no right at all to interfere". (Debate in the 4th Committee of the 1947 General Assembly). Actually, this author cites the discussion at the San Francisco Conference which led to the adoption of Chapter XI Working Paper (U.N.C.I.O. Doc. 323, II/4/12). It was clear from that Working Paper that it was not necessary for Member States to adhere to any special declaration but there was a contractual nature in Art. 73 (where Members "have or assume responsibilities") and "agree" (arts. 74 and 25) to "undertake" (arts. 43 and 94) and "pledge themselves" (art. 56). See, Hans Kelsen. The Law of the United Nations. A Critical Analysis of Its Fundamental Problems. Fourth Edition (N.Y.: Frederick A. Praeger Publisher, 1964), pp. 550- 555, n. 1 and 2.

U. S., France and U. K. did not recognize the competence of the G. A. and its Committees (Committee of 24) relating to the trust territories (U.N.Y.B. 1976, at 677), although, in practice the Committee of 24 did review both situations with trust territories and the implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples. See, also, G. A. Res. 1654(XVI), Nov. 27, 1961, in Simma, p. 1138.

[20] Higgins, íd., p. 113.

[21] Some of the NGOs that have repeated this petition include the Puerto Rico Bar Association, the American Association of Jurists, the Puerto Rican Independence Party (PIP), and Movimiento Nacional Hostosiano through their co-president, Wilma Reverón. See, Wilma Reverón, ¨Enfoques de política práctica que deben aplicarse por la ONU en el proceso de descolonización bajo el Derecho Internacional vigente: una mirada al Caso de Puerto Rico.¨ Ponencia ante el Seminario Regional del Pacífico del Comité de Descolonización de la ONU, Mayo 21-23, 2014, Nadi, Fiji. Reverón claims that the legal base lies in the number of years and the repetition in the resolutions issued by the Decolonization Committee, as a way to establish custom (as a peremptory norm.) I disagree with the argument on custom since, first of all, the elements in international custom are applied to States and not to international organs, agencies or committees. Moreover, the criteria of custom, as applied by the International Court of Justice cases are, as follows: (1) substantial uniformity; (2) consistency of the practice; (3) generality of the practice; (4) opinio juris et necessitatis (general practice accepted as law). No particular duration is required since this would have to be an evidence submitted on a case by case basis to the court (North Sea Continental Shelf cases, etc., in Ian Brownlie. Principles of Public International Law, pp. 5- 7. Meron specifies that opinio juris has also other elements, that is, it is composed of (a) bilateral treaties, diplomatic statements of the Executive branch, the practice of the State that also includes: military manuals, treaties and its voting records, declarations and resolutions, legislation and national jurisprudence if they are not contrary to the objects and purposes of the treaties; (b) ratified multilateral instruments (pacta sunt servanda); (c) crystallization of general principles in international cases, advisory opinions of international courts and ad-hoc tribunals, and U. N. resolutions.

See, Theodor Meron. "The Continuous Role of Custom in the Formation of International Humanitarian Law." 90 *A.J.I.L. 238*, no. 2 (April 1996). See, also, Nancy Kontou. *The Termination and Revision of Treaties in the Light of New Customary International Law* (Oxford, NY: Clarendon Press, 1994), pp. 140, et seq. Custom is also recognized in Art. 38 of the Statute of the International Court of Justice, and in Art. 53 of the Vienna Convention on the Law of Treaties.

[22] The U. S. has only ratified the ICCPR with Reservations. Helsinki Act is based on the Conference on Security and Co-operation in Europe, Final Act, 14 International Legal Materials 1292 (1975), in Janis, pp. 410, et seq. The U. S. and other 34 States already signed the Conference's Final Act, in Janis, íd., 411.

[23] Higgins, p. 119.

[24] David Filvaroff, Hurst Hannum, Virginia Leary, and Dinah Shelton. "The Substantive Rights and United States Law." Sec. 3.3. Hurst Hannum & Dana D. Fisher, eds. *United States Ratification of the International Covenants on Human Rights*. American Society of International Law Series (N.Y.: Transnational Publishers, Inc., 1993), p. 72. [Other citations omitted.]

[25] Dinah Shelton. "Issues Raised by the United States Reservations, Understandings, and Declarations." In Hurst Hannum & Dana D. Fisher, eds. *United States Ratification..., íd*., pp. 269- 277.

[26] Patrick Tornberry. "Self-Determination, Minorities, Human Rights: A Review of International Instruments." In Charlotte Ku and Paul F. Diehl, eds. *International Law. Classic and Contemporary Readings* (Boulder & London: Lynne Rienner Pub., 1998), p. 141.

[27] Cabotage laws limit the maritime transportation between Continental United States and its territories. See, Héctor I. Santos Santos, "Cabotage Laws: A Colonial Anachronism", 36 RDPUC 451, No. 2 [http://www.microjuris.com] (visited 8/13/15.)

[28] The U. S. abstained when voting along with 8 other Members, out of a total of 89 U.N. Member States present.

[29] Compatibility test of arts. 19-21 of the Vienna Convention on the Law of Treaties, adopted 22 May 1969; entered into force 27 Jan. 1980, 1155 U.N.T.S. 331. Sixty-nine States are part of it. The U. S. signed it in 1970, but did not ratify it. Dinah Shelton. "The Applicable Law." Sec. 2.1, International Law, in Hurst Hannum & Dana D. Fisher, eds., *U. S. Ratification of the International Covenants on Human Rights*, pp. 27- 49, 30.

[30] *The Paquete Habana*, 175 U. S. 677, 20 S. Ct. 290, 44 L. Ed. 320 (1900). In Oliver, Covey T., *et al., The International Legal System. Cases and Materials.* Fourth Ed. (Westbury, N.Y.: The Foundation Press, 1995.)

[31] The January 13th, 2016 hearing in the case of *The Commonwealth of Puerto Rico, Petitioner v. Luis M. Sánchez Valle & Jaime Gómez Vázquez, Respondents*, in the United States Supreme Court, Case No. 15-108, the political status question was presented in a double jeopardy case. See, also, Brief for the United States Solicitor General, Donald B. Verrilli, Jr., as *Amicus Curiae* supporting Respondents, *íd*.

Another case pending before the U. S. Supreme Court is *The Commonwealth of Puerto Rico v. The California Tax-Free Trust, et al.*, Petition for Certiorari of Aug. 21, 2015, granted in Dec. 4, 2015, (Cert. Petitions Nos. 15-233, etc.), regarding the constitutionality of Law 71 of 2014 (Puerto Rican bankruptcy law) under the U. S. Constitution. The First Circuit Appellate Court (Boston), decided on July 7, 2015 that Puerto Rico's Law 71 was unconstitutional based on Section 903(1) of Chapter 9 of the federal Bankruptcy Court, and that due to the preemption doctrine, Puerto Rico cannot approve legislation to restructure its financial situation. The First Circuit Court added that the U. S. Congress reserves the right to amend Chapter 9 at its will, and to apply it to Puerto Rico. See, "Justicia reitera ante Supremo federal necesidad de quiebra criolla (documento)," Noticel, August 24, 2015, 9:37 a.m. [http://www.noticel.com/noticia/180052/justicia-reitera-ante-supremo-federal-necesidad-de-quiebra-criolla-documento.html] (visited, Jan. 18, 2016).

[32] This is especially true when the colonial power has traditionally intimidated independence groups through the U. S. FBI. For example, "Carpetas" or Police files were released in the 1990's as part of a court case regarding political persecution. The Carpetas that were not claimed are being kept in the Puerto Rico's General Archives as part of the collective memory. The Federal FBI files (or rather, copies of the files) are kept in the Legislative Library (Oficina de Servicios Legislativos). See, Ramón Bosque Pérez & José Javier Colón Morera. *Las Carpetas. Persecusión política y derechos civiles en Puerto Rico. Ensayos y Documentos* (Río Piedras: CIPDC, Inc., 1997).

The Paris Climate Talks, the UN, Terrorism, and the Global War on Terror

PHYLLIS BENNIS

The world is immersed in multiple crises — all interconnected, all global, all desperately urgent — that require international solutions. Sometimes that means multilateralism, the work of governments; other times it requires a broader internationalism, linking governments, civil society, and the United Nations.

Those crises — military escalations, climate chaos, collapse of the social fabric, violations of international law, weakening of UN institutions, sidelining of the rule of law and many more — demand an empowered and democratized United Nations, but such a goal remains increasingly out of reach. The legacies of domination by the U.S., privileging of the five permanent members of the Security Council and their veto power, the welcoming of profit-driven and often profiteering corporations to partnerships with every UN agency and to the highest echelons of UN decision-making all remain largely unchallenged. Seventy years after the founding of the global organization, the UN remains caught between the demands of power and democracy.

Concern about both U.S. control and the corporate influence in the UN's climate talks — both at a public fever pitch in the lead-up to the December 2015 Paris negotiations — is not a new phenomenon. The 1992 Earth Summit in Rio, or UN Conference on Environment and Development, succeeded in putting environmental concerns on the international agenda. But U.S. opposition meant the treaties signed in Rio did not result in a serious shift in priorities or implementation. And the summit's timing, in the midst of post-war boosterism following Washington's Desert Storm attack on Iraq the year before, the Earth Summit also provided a new showcase for the White House to demonstrate its domination of multilateral diplomacy in the post-Cold War world.

In what the *Los Angeles Times* called a "tactical tour de force," the Bush administration beat back the environmental concerns of Europe and the developing countries alike. "Thanks to the Bush administration," the *Times* wrote even before the conference began, "government leaders will sign a global warming treaty that has none of the teeth sought by U.S. allies and trading partners in the industrialized world.[1] Even aside from the needs of the South, Washington asserted and held the line on its own sharply limited commitment to environmental goals, and in doing so, reasserted U.S. hegemony over global environmental action. James Speth, who chaired the President's Council on Environmental Quality during the Carter administration, and later became director of UNDP, said grudgingly, "It is a treaty worth having. But because of the United States, what could have been a giant step has become only a baby step forward.[2]

Rio also saw the dominant influence of major corporations in setting Bush administration and global environmental policy — the same corporations that represent the greatest disdain for ecological concerns. The corporations themselves banded together for lobbying strength in Rio, creating new alliances with such eco-friendly names as the "Global Climate Coalition," which in fact grouped 25 major corporations and 18 large trade associations including the anti-environment U.S. Chamber of Commerce, the Edison Electric Institute (representing electrical utility companies) and the National Coal Association (representing some of the dirtiest fossil fuel industries). Their goal was to prevent Washington from signing the treaties, or at least to ensure their lack of enforceability. According to Tia Armstrong, an "environmental specialist" for the U.S. Chamber of Commerce, "Every time we see timetables and targets, we go berserk."[3] As it turned out,

[1] Rudy Abramson,"U:S: Flexes Its Muscle Before Earth Summit," *Los Angeles Times*, May 30,1992.

[2] Ibid.

[3] Marlise Simons, „North-South Divide is Marring Environmental Talks," *New York Times*, March 17,1992.

the corporate eco-spindoctors had no cause for even mild irritation, let alone "going berserk." Their will prevailed.

The broader U.S. agenda for the UN played a role too, beyond the corporations' own intervention. One of the last projects of the UN's Center on Transnational Corporations (CTC) before it was dismantled in February 1992 was a plan to be introduced in Rio for monitoring corporate adherence to Earth Summit resolutions. But instead, as early as three months before delegates gathered in Rio, it was clear that

> "the biggest gap in the official UNCED documents being negotiated for signing by world leaders in Rio in June is the absence of proposals for the international regulation or control of big businesses and transnational corporations to ensure that they reduce or stop activities that are harmful to the natural environment, human health and development. The Agenda 21 document being negotiated now does have a section on "strengthening the role of business and industry," but locates it in a section on how the rights of major groups (such as women, youth, indigenous people and non-governmental organizations) can be strengthened. Thus, industry and TNCs are being treated as entities whose roles or rights can be strengthened, rather than as entities whose activities should be regulated."[4]

Ten years after the Rio Earth summit, in response to then-Secretary General Kofi Annan's "Global Compact" campaign to create a UN partnership with multinational corporations, the term "blue-washing" would emerge to describe the use of UN legitimacy to claim credibility for corporations often responsible for massive environmental, labor, human rights and other international law violations.

The fact that the Center on Transnational Corporations was about to be shut down was far from irrelevant. The promotion by some U.S. (and UN) officials of the corporate-backed Business Council for Sustainable Development as a legitimate force in the UN's environmental work, without the oversight potential the Center would have made possible, reflected an extraordinary cynicism in the claimed "good world citizenship" of powerful transnational corporations.

More than ten years after that, in 2015 in Paris, the role of Washington and multinational corporations largely succeeded in derailing COP 21 from playing the role so desperately needed to at least begin to slow global warming.

Another UN is Possible

But neither corporate control nor U.S. domination, however rooted in UN history, are inevitable in UN decision-making. The great example of the UN rejecting U.S. as well as UK pressure, standing up for its Charter's call to "end the scourge of war," came in 2002-2003, in an extraordinary eight-month campaign of resistance to U.S. and British demands that the UN support the then-looming war against Iraq.

From August 2002 until May of 2003, as people poured into the streets of capitals around the world to protest and governments stood up to say no to the planned U.S.-British invasion of Iraq, the world also saw a clear moment of strengthened UN resistance — within the Security Council, among General Assembly members, and even including parts of the UN secretariat itself. The "Uncommitted Six" on the Security Council — the U.S.-dependent and generally compliant Angola, Cameroon, Chile, Guinea, Mexico and Pakistan — joined committed war opponents France, Germany, Russia, and China in the Council to prevent a UN authorization of war. The secretary-general and heads of both UN arms inspection agencies for Iraq rebuffed U.S. pressure to endorse the war or to provide false intelligence designed to make Washington's war look good.

But ultimately the resistance couldn't hold. In May 2003, two months after the U.S. invasion and only weeks after Bush's specious declaration of "mission accomplished" in Iraq, the UN's opposition foundered as governments' defiance collapsed and the Security Council, however bitter and reluctant, passed Resolution 1483, "recognizing" the US and Britain as the occupying powers in Iraq. Only more than a year later, in September 2004, when UN resistance was largely history and the U.S.-British war at its height, did the secretary-general finally acknowledge that yes, the war was in violation of the UN Charter and illegal under international law — a finding that might, just might, have had a real impact two years earlier.

[4] Martin Khor Kok Peng, „Regulating TNCs Is Biggest Gap in UNCED," Third World Resurgence, (Kuala Lumpur, Malaysia) no.20, March 1992,p.21.

The UN resistance, even in collaboration with the vast global mobilization of people and governments against the war, was not enough to prevent the invasion and occupation of Iraq. But it did play a huge role in creating what *The New York Times* quickly dubbed "the second super-power" following the massive global protests of February 15, 2003. While centered primarily on the global social movements that had worked tirelessly to bring more than 14 million people into the streets of 800+ cities around the world, and the governments that had resisted threats and pressure from Washington and London, the role of the UN in resisting the war remained critical in that trajectory. *The Times* described how "once again there are two super-powers in the world, the United States and global public opinion." And the centrality of the UN in that phenomenon meant, among other things, that the war was understood around the world to be illegal under international law and the UN Charter, as well as illegitimate.

And it is important to recognize that while that "second super-power" did not prevent the war against the Iraq, it did create new forms of global protest that had never existed before, and inspired new versions of those protests in years that followed. Key organizers of the Arab Spring's Tahrir Square protests in Cairo, that led to the overthrow of the U.S.-backed dictatorship of Hosni Mubarak, described how they were inspired to continue their organizing after February 15. "We watched on television these white, whiskey-swigging infidels, in their millions, protesting a war in our part of the world," one of them says ruefully in Amir Amirani's great film "We Are Many" and they felt they had to go and do better. Overthrowing a U.S.-backed dictator pretty much nails it as "doing better."

It is certain that the political pressure erupting from the protests of February 15, 2003 were also a key factor in the George W. Bush administration's decision not to attack Iran during the escalated U.S. threats against Tehran in 2007 and beyond. The fact that the U.S. did not go to war with Iran and did not allow Israel to go to war with Iran, and the success of the 2015 Iran nuclear deal are all attributable, at least in part, to that mobilization.

Terrorism & The War Against Terrorism Spreading

Terrorism and the escalating war against terrorism are both on the rise. Terrorist attacks in Paris and Beirut, San Bernardino and Ankara, Kukawa (Nigeria) and Istanbul, among others, are only the most recent attacks outside the recognized "war zones" of Syria, Iraq, Afghanistan. Those are examples of terrorism committed by small groups; the other, far more deadly kind of terrorism is committed by states. But state terrorism is too often excluded from our common understanding of what terrorism is and what must be done to stop it — indeed stopping state terrorism is rarely on any government agenda at all.

Part of the problem is the clash of definitions. There are over 100 different definitions of terrorism just among various legal systems, let alone the myriad of definitions and understandings that shape popular and media use of the word. Generally "terrorism" refers to violence that is politically motivated and carried out against uninvolved civilians. The U.S. State Department uses language deliberately designed to limit the applicability of the "terrorism" designation to only those acts for which the U.S. government finds the appellation useful.

Thus for the State Department, terrorism[5] is defined as "premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents." Note the limitations: "non-combatant targets" means the U.S. can define as "terrorism" attacks against clearly military targets, such as the warship *USS Cole*, the Khobar Towers military barracks in Saudi Arabia, and more. The State Department's own documents acknowledge that "the term 'non-combatant,' which is referred to but not defined in 22 USC. 2656f(d)(2), is interpreted to mean, in addition to civilians, military personnel (whether or not armed or on duty) who are not deployed in a war zone or a war-like setting." So attacks on soldiers, according to the State Dept, can count as terrorism — if they're sleeping, or on duty and armed but not at that moment shooting…and especially, if they're ours.

"Subnational groups" means attacks by governments

[5] State Dept, "Legislative Requirements and Key Terms," http://www.state.gov/documents/organization/65464.pdf

don't count as terrorism; "clandestine agents" might include secret government representatives, but it is deliberately left vague enough that actual acts of state terror, such as U.S. bombing of the Nicaraguan harbors during the contra wars of the 1980s, or Israel's lethal bombing of Gaza in 2012 and again in 2014 in what Israelis widely identified as "cutting the grass," are never included in the terrorism definition. According to *The New York Times*, in Israel in 2012, "the operative metaphor is often described as 'cutting the grass,' meaning a task that must be performed regularly and has no end."[6]

And now the global war on terror comes home. In the U.S., mass shootings — defined as killing or wounding more than four people, and most of them carried out by angry young white men — have become commonplace, happening more than once each day in 2015.[7] Because of a Facebook message found after the carnage of a mass shooting in San Bernardino, California, those killers were identified with ISIS. In fact, it seems the mass shooters in the United States actually have a great deal in common with the young French or Belgians going off to join ISIS — not out of ideological or theological affinity, but in outraged response to isolation, dispossession, and alienation. In the Middle East, those who head off to join ISIS or its violent counterparts are more likely to be responding to the dispossession caused by invasions, foreign occupations, and the massive corruption and incompetence of repressive governments.

The war against terror is real — but it continues to fail to end terrorism because you can't bomb terrorism out of existence. You can only bomb people, or cities — when you get lucky, and manage to kill a terrorist, it only causes more terrorism.

Terrorism survives war; indeed, terrorism thrives on war. Only people don't.

The U.S., Empire and its Latest Wars

The U.S. remains an empire — but it is weakening. In particular, the "soft" components of imperial strength face greater challenges than ever before — diplomatic, economic and cultural power and influence remain strong, but less than in the past. The U.S. empire is weakening in the context of the rising multi-polarity that followed the immediate post-Cold War period. There are rising economic powers; until the 2008 recession crisis, the BRICS countries represented a collective economic challenge to U.S. The U.S. also faces rising and increasingly global social movements that challenge the legitimacy, if not the capacity, of U.S. power.

Only in the military arena does U.S. power far surpass any other challenger or group of challengers. The problem for the U.S. on the military side isn't insufficient power; it's that the massive power under the Pentagon's command is of little use against the small-scale "non-conventional" means of warfare that have become all too conventional in the wars raging around the world, primarily within rather than between nations.

And the military faces a loss of legitimacy itself, because of how it is used. The U.S. invasion and occupation of Iraq, more than any other single action, significantly undermined U.S. military and indeed national credibility and legitimacy. Like Israel, whose policies of occupation and apartheid have led to Tel Aviv losing what former UN Special Rapporteur on Human Rights in the Occupied Palestinian Territory, Professor Richard Falk, calls the "legitimacy wars," the U.S. has long ago lost the legitimacy war in the greater Middle East.

When President Barack Obama was elected at the end of 2008, there was a small hope that the former constitutional law professor — and opponent of what he called the "dumb war" in Iraq — would bring a greater U.S. focus on the rule of law *at home*, not only abroad, and on internationalism in some form. Maybe even greater support for the United Nations, perhaps defining the UN differently than what then-UN Ambassador Madeleine Albright called it, "a tool of American foreign policy." Maybe there would be fewer attacks on the institutional independence and power of the UN.

But while the ideologically-driven attacks on the UN itself diminished, that broader level of respect for the rule of

[6] As Battlefield Changes, Israel Takes Tougher Approach," Ethan Bronner, *The New York Times*, Nov. 16, 2012.

[7] National Public Radio, http://www.npr.org/sections/thetwo-way/2015/12/03/458321777/a-tally-of-mass-shootings-in-the-u-s

law or the United Nations did not happen on a significant scale. And on the social movement side, the U.S. and global organizations that traditionally engaged with the United Nations on an institutional level, and that might have pushed the Obama administration towards greater respect for the UN, faced significant divides into separate interest silos, very much reflecting broader divides within the progressive social movements as a whole. So the climate justice, Palestinian human rights, anti-corporate and other movements all connected with relevant sections of the UN, challenging it and collaborating with it at various points. But there was no real coordinated civil society engagement with the UN as an institutional whole. And our movements are weaker for that lack.

In the anti-war movement, already largely weakened for the last six years or so despite the broad and successful mobilizations to prevent U.S. bombing of Syria in 2013 and to defend the Iran nuclear deal in 2014 and 2015, there was little connection to or focus on UN initiatives. Support for the effort by UN special envoy to Syria Staffan de Mistura to build local truce and ceasefire arrangements, the demand for the UN itself (rather than Washington and Moscow) to lead the Vienna/Geneva talks, even responding to the huge challenges facing the UN's beleaguered humanitarian agencies struggling with insufficient funds to care for the refugees flooding out of Syria — none of these became sufficiently unified, major focuses of anti-war mobilization.

So What Comes Next?

As usual, there remains a huge amount of work to do to reclaim the centrality and legitimacy of the United Nations as part of a truly internationalist "second super-power."

In the long term, that would require a major campaign to democratize the UN, in the context of overcoming its long history of privileging power over democracy. That means reversing the current power dynamic in which the Security Council, arguably the least democratic part of the UN, holds the most power, where only SC resolutions are considered binding components of international law, while the General Assembly, clearly the most democratic (however flawed the version of democracy) part of the UN, is relegated to advisory positions. It means ending the veto power, ending the privileges of the five officially nuclear-armed nations, and empowering the General Assembly. It would also mean somehow making real the UN Charter's claim to represent "We the *peoples* of these United Nations…."

In the medium term, a return to a coalition of "like-minded" governments to press for greater UN independence and centrality might have the potential to begin a more serious process towards democratization than we have seen so far.

And in the short term, perhaps it is time to mobilize civil society to demand real support — or at least an end to the undermining — of the UN's efforts in diplomatic leadership and humanitarian aid in the crises du jour we see rising on a daily basis. Social movements should be demanding a bigger role for the UN in diplomacy — such as preventing the U.S. from excluding Iran from earlier iterations of the Syrian talks, or Turkey and Russia from excluding Kurdish forces, or all of the powerful countries from excluding representatives of Syria's non-violent political opposition, its women, its brave and embattled civil society…

On the morning of the February 15, 2003 protests, the day the world said no to war, a small delegation was escorted through the police-imposed "frozen" zone in front of the United Nations, and headed up to the 38th floor to meet with Kofi Annan. The delegation included Nobel peace laureate and South African Archbishop Desmond Tutu, actor-activist Harry Belafonte, and me. Bishop Tutu opened, facing the secretary-general who was at that moment under enormous U.S. pressure to endorse Washington's war, and said "we are here on behalf of the people marching today in 665 cities all around the world. And we're here to tell you that those people marching all around the world, we claim the United Nations as our own. We claim it in the name of our global mobilization for peace."

Our claims have yet to be realized. But for the United Nations, that's the direction we need to move.

Phyllis Bennis is a fellow of the Institute for Policy Studies in Washington DC and the Transnational Institute in Amsterdam. Her latest books include Understanding ISIS & the New Global War on Terror: A Primer. *Certain sections of this article are drawn from her two earlier books on the United Nations:* Calling the Shots: How Washington Dominates Today's UN, *and* Challenging Empire: How People, Governments and the UN Defy U.S. Power.

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