International Law and the United Nations

Edward D. Re
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INTRODUCTION

The status and universal acceptance of International Law, in a world that has yet hardly commenced to recover from the irreparable destruction and devastation caused by the scourge of war that demanded its supreme toll in the years 1941 to 1945, today rightly should be a question of foremost importance in the mind and moral conscience of every reasoning human being.

One cannot simply look to the failures of past efforts to achieve a lasting universal peace, and dejectedly conclude that the goal is merely a non-attainable pious aspiration, but rather, must retrace one's steps to ascertain the causes for the failure. The problem is logically one whereby we seek the defect to effectuate a remedy. One need not seek far for the facts of history have shown, that a feeble effort, or one without overwhelming support, is tantamount to no effort at all. The effort must be sincere. If the undertaking is to be universal in scope, it must of necessity receive the support of the peoples of the world. Success is contingent upon such support.

THE CHALLENGE TO THE WORLD

The League of Nations, as stated by one author, sought to prevent "unnecessary" war,¹ and sought to achieve a certain degree of international social and economic cooperation.²

The failure of the League of Nations to fulfill the expectations of its proponents is attributable to several

² Covenant of the League of Nations, Arts. 23, 24, 25.
reasons. However, it is impossible to deny the importance of the lack of public support afforded the League. This is especially true in the United States whose failure to enter into the League may be attributable to the popular will of its citizens, then unprepared to accept United States membership in an international organization.

The need of public support and recognition of an international organization was apparently recognized by the framers of the United Nations Charter, for whereas the Covenant of the League of Nations commenced "The High Contracting Parties," the opening phrase of the United Nations Charter is, "We the People of the United Nations." It is submitted that this change of phraseology is not insignificant. It follows a pattern desiring to make the document more real to the people themselves. At this point an interesting parallel is found between this development on the international plane, and the evolution of the American federation of states.

Although it is true that the Charter of the United

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3 See Goodrich and Hambro, Charter of the United Nations (1946) 50; Newfang, Road to World Peace (1924) 274-281; 2 Hayes, Political and Cultural History of Europe (1937) 1011. On the League System, see Steiner, Principles and Problems of International Organization (1940) 459-580; Marguerite, The League Fiasco (1936) 256-260. For one of the last documents of the League of Nations, sounding as a benevolent legacy of more than two decades of experience, see League of Nations, The League Hands Over (1946) 31, "Viscount Cecil of Chelwood, United Kingdom. 'Why, then, did it (The League) fail? I concur most fully with the Report in saying that its failure was not due to any weakness in the terms of the Covenant. To my mind it is plain beyond the possibility of doubt that it failed solely because the Member States did not genuinely accept the obligation to use and support its provisions. That was due to several causes. Speaking of my own country, I must admit that the general current of official opinion was either neutral or hostile. I suspect that was also true in other countries.'"


5 Covenant of the League of Nations (1919), "The High Contracting Parties, In order to promote international cooperation and to achieve international peace and security * * * Agree to this Covenant of the League of Nations." 2 Hayes, Political and Cultural History of Europe (1937) 1011, "It (The League) represented states, not peoples.

6 Charter of the United Nations, "We the People of the United Nations * * * Have Resolved To Combine Our Efforts To Accomplish These Aims." Cf. Goodrich and Hambro, Charter of the United Nations (1946) 19, 48, 55.

Nations is a document agreed to by "Governments, through representatives assembled in the city of San Francisco," and therefore cannot properly be regarded as a constituent act of the peoples of the world, notwithstanding its opening phrase "We the People of the United Nations," a phrase obviously inspired by the Constitution of the United States, it is nevertheless true that the content of that prefatory act represents the clear expression of the determination and resolution of the peoples of the world.  

In modern political thought the State is regarded as the agency, instrumentality or means whereby the collective ends of society may be realized. The State is created for the good of its citizens, and exists to secure those rights and liberties possessed by its citizens.  

However, it is an inexorable responsibility of citizenship to act so as to move or guide governmental action in certain directions. Therefore, ultimately, upon the individual citizen falls the responsibility for the success or failure of any effort in the direction of international organization.

There is the challenge upon which pivots the success of the United Nations.

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9 See Garner, Introduction to Political Science (1910) 312.

10 See Garner, Introduction to Political Science (1910) 311-318. On "The End of Law," see Pound, Introduction to the Philosophy of Law (1922) 55-99; id. 89, "*** began to think of the end law *** as a maximum satisfaction of wants." Cf. Kelsen, Law and Peace (1942) 121, "*** international law has the same function as national law: to render possible the peaceful living together of the subjects whose conduct is regulated by the legal order." For "The Concept of the State in International Law," see Niemeyer, Law Without Force (1941) 308.

11 See Dolivet, The United Nations (1946) 7 (Preface by Trygve Lie, Secretary-General of the United Nations, "It is the hope of all of us who have been associated with the creation and the activities of The United Nations that the organization will have the personal support of individual men and women throughout the World. In order to succeed we must have that support. And in order to have that support we must have understanding.")
ON INTERNATIONAL LAW: GENERALLY

International Law is that system of jurisprudence dealing with the precepts and principles that govern nations in their mutual dealings and relations. In view of the advancement of science and civilization throughout the world, it seems archaic today to restrict the operation of international law to "civilized" nations or States. A nation or State, from its very inception, becomes a subject of international law—unless we were to suppose the unreal hypothesis that any nation can exist exclusively unto itself whereby no one of its acts can have any effect upon any other nation or nations, and that it in turn is neither concerned nor affected by the acts of other nations.

The history of international law is an interesting one. The conventional treatment of the history of international law has been to divide the study into a pre-Grotian development, and the development that occurred subsequent to the contribution of Hugo Grotius. The contribution of Hugo Grotius has been a convenient and a justifiable landmark.

12 See Holland, Jurisprudence (1917) 388, "The body of rules regulating those rights in which both the personal factors are States, is loosely called, 'the Law of Nations,' but more appropriately 'Jus inter gentes,' or International Law"; 1 Blackstone, Commentaries (Jones ed. 1916) § 41.
13 The Paquete Habana, 175 U. S. 677, 44 L. ed. 320 (1900); The Scotia, 14 Wall. 170, 20 L. ed. 822 (1872); Westlake, International Law (1904) 1, "International Law, otherwise called the law of Nations, is the Law of the society of states or nations"; 1 Oppenheim, International Law (1905) § 13; Wheaton, International Law (Sixth ed. 1855) 1-26; 1 Hudson, International Legislation (1931) § 1; Hall, International Law (Seventh ed. 1917) 17; 1 Fauchille, Droit International Public (1922) 5-6; 1 Antokoletz, Derecho Internacional Publico (1924) 9; 1 Cruchaga, Derecho Internacional (1923) 3-79.
14 See United States v. Arredondo, 6 Pet. (U. S.) 691, 8 L. ed. 547 (1832) (The law of nations is the usage of all civilized nations); Lawrence, International Law (Winfield's ed. 1923) 1, "International law may be defined as the rules which determine the conduct of the general body of civilised states in their mutual dealing"; Hershey, Essentials of International Public Law and Organization (1935) 165, "The Law of Nations can be only partially applied to barbarians or half-civilized peoples, and still less to savages; but it should be applied to the greatest extent practicable."
15 The pre-Grotian writers include Legnano, Brunus, Belli, Ayala, Victoria, Gentilis and Suarez. The great writers of the seventeenth and eighteenth centuries were Gentilis, Grotius, Bynkershoek, Bentham, Zouche, Puffendorf, Moser, von Martens, Wolff and Vattel. See 1 Oppenheim, International Law (1905) § 43 et seq. For a scholarly discussion of the various views, see Scott, The Legal Nature of International Law (1905) 5 Col. L. Rev. 126.
It now remains to be seen if posterity will regard the Charter of the United Nations as the other landmark in history along the path of the development of international law. A purpose of this article shall be to ascertain what the Charter of the United Nations has accomplished toward fostering an effective international law. What mandate does that document impose upon the United Nations in this respect?

Like any other body of law, its growth and existence is attributable to a social need. In the last analysis, law is the result of the needs of the community. International law is no exception.

In 1513, Machiavelli, in a work entitled *Il Principe* (The Prince), expounded a doctrine that in matters of state the ordinary principles of morality did not apply. The pernicious effects of such views were arrested by a monumental work that appeared in 1625—*De Jure Belli a Pacis* by Huig Van Groot, commonly referred to as Hugo Grotius. Society, maintained Grotius, cannot exist without the recognition that there are mutual rights and obligations. Since rights that are common to all must be derived from something broader and of greater authority than the statutes and enactments of a particular state, this superior authority must be the “natural law,” the “dictate of right reason.” Hence, natural law, for Grotius, was a source of international law. Another pillar of the Grotian system of international law was the *jus gentium*, or “that law which has received an obligatory force from the will of all nations, or of many.” Hence, general consent was a second source. To the Romans, the *jus gentium* signified a body of law common to them and all other peoples. It possessed the elements of enlightened

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18 LAWRENCE, INTERNATIONAL LAW (Winfield's ed. 1923) §27.

19 See Somm's *Institutes* (Ledlie's trans.) (3rd ed. 1926) §§13, 14, 16 and §20 showing how it came to pass that the *jus gentium* finally displaced the *jus civile*. Ortolan, *Roman Law* (Cutler's second ed. 1896) 138, 438.
reason, and common consent of civilized and reasonable peoples throughout the then known world. The *jus gentium* came to be regarded as a universal law applicable to all mankind; common to all nations for it possessed as an inherent source the general sense of fairness and equity common to all peoples.\(^2^0\)

Much has been written about the nature of international law.\(^2^1\)

The ever-recurring inquiry has been, "what is its claim to being law?" Several leaders of diverging schools of thought have appeared.

The *analytical* jurists, of which school Austin is the chief exponent, regard law as consisting of *commands* imposed by a "sovereign," \(^2^2\) and consequently deny the existence of an international law for they state that it does not possess the two elements of *commands* and *sanctions*.\(^2^3\)

Savigny, of the *historical* school, conceives law as resting upon customary recognition, and consequently maintains that international law doubtlessly attains the dignity of law.

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\(^2^1\) Kocourek, *Introduction to Science of Law* (1930) 30-36, 34, "Since one of the attributes of the State is juridical sovereignty, it follows that the State itself can not be subject to law. The State can not give law to itself." Cf. Rodenbeck, *Anatomy of the Law* (1925) 169, 170, "The course of development of public law shows how persistent has been the natural law of human society and how slowly but surely it is tending toward a higher, better and more comprehensive form of political organization"; Miraglia, *Comparative Legal Philosophy* (1921) § 96.

\(^2^2\) Bodin, *Les Six Livres de La Republique* (1576). See Dunning, *A History of Political Theories* (1928) 96 et seq. Bodin is the first to have used the word sovereignty in its politico-legal sense. In origin it was devised to establish the power of a monarch, and that such power was absolute in the State over the citizens or subjects, unrestricted by law. It was a consequence or explanation of the divine right of kings theory. The concept has been accepted as a tool of political expediency with a resulting chaos and a confusion of thought. For authorities, see Bowman, *Elementary Law* (1929) § 17; Cohen, *Recent Theories on Sovereignty* (1937).

\(^2^3\) Austin, *Jurisprudence* (4th ed. 1823) 523. In an address before the American Bar Association in 1896, Lord Russell of Killowen, considering Austin's definition, stated, "In stages later still, as government becomes more frankly democratic, resting broadly on the popular will, laws will bear less and less the character of commands imposed by a coercive authority and acquire more and more the character of customary law founded on consent." See West Rand Central Gold Mining Co. v. The King, L. R. (1905) 2 K. B. 391; 1 Wildman, *International Law* (1820) 31.
The "naturalists," following the thought of Puffendorf, regard international law as a branch of natural law, deriving its character and force from the principles of natural right and justice.

In opposition to the "naturalist" school we have the "positivists" who conceive international law as consisting of positive precepts predicated upon the agreement or the practice among States, and not upon abstract notions of natural law and justice.

At this late stage of world development all of this literature discussing the nature and sources of international law is merely of an academic and historical interest. It is at most of a persuasive authority, and is a contribution only insofar as it may have, or may continue to promote the development of international law.

It is always pitiful indeed to a proponent of world peace and order based on law, to have to answer inquiries as to whether there exists a body of law applicable to all nations.24 Notwithstanding the pathetic remarks of skeptics and cynics, the fact remains that there is an international law, and that the sporadic violation of that law is not evidence of its non-existence, any more than the commission of crime would be evidence of the non-existence of penal laws or criminal codes.25 Not only does there exist an international law, but more than ever in the history of mankind there exists a positive need of international law.

Courts of the highest dignity have applied principles of international law;26 jurists of eminence have written of

24 See 1945 Annual Survey of American Law (1945) 3; Mower, International Government (1931) 160; Garner, Recent Developments in International Law (1925) 1-42; 1 Hackworth, Digest of International Law (1940) §§ 1-2.
25 See Shawcross, International Law: A Statement of the British View of Its Role (1947) 33 A. B. A. J. 31, 32, "The important thing is that, whether lawyers quibble about it or not, no state has ever denied the existence of international law. They have broken its rules, certainly; but in so doing they have often been at pains to assert that the law was on their side."
26 The "Lotus," Publications of the Permanent Court of International Justice, Series A, No. 10 (1927); The Government of the Greek Republic v. The Government of His Britannic Majesty, Publications of the Permanent Court of International Justice, Series A, No. 2 (1924); The Paquete Habana, 175 U. S. 677, 44 L. ed. 320 (1900); The Antelope, 10 Wheat. 66, 6 L. ed. 268 (U. S. 1825); The Scotia, 14 Wall. 170, 20 L. ed. 822 (U. S. 1872); West Rand Central Gold Mining Co. v. The King, L. R. (1905) 2 K. B. 391; The
it, and the problem today is not to continue what has taken the form of an international intellectual debate, but rather to play an active part in the development of that body of law to insure its effectiveness in the determination of conflicting interests between or among nations. Its function is to resolve conflicts that may arise between the nations of the international community.

THE FAMILY OF NATIONS

It should appear axiomatic today that we, as individuals, are citizens of a particular nation, that is in turn a member of a family of nations. Since there exists, in fact, an international community, it is normal and indispensable that there be a body of law to govern this community or family of nations—ubi societas, ibi jus.

Under conditions of present world interdependence, an effective body of international law is indispensable. World conditions have been such that old concepts and traditions had to wither and vanish. Isolationism, for one, disappeared in the face of the reality that the international community, because of scientific advancements, has in effect shrunk in proportions. This fact was finally admitted by the United States, and our traditional policy of non-

Charkieh, L. R. 4 Adm. and Eccl. 59 (1873); Triquet v. Bath, 3 Burr. (K. B.) 1478 (1764); The Prometheus, Hong Kong Supreme Court, 2 Hong Kong L. R. 207 (1906).


30 See Cardozo, The Nature Of The Judicial Process (1921) 101, "The old forms remain, but they are filled with a new content."

31 89 Cong. Rec. (1943) 7724 et seq. U. S. House of Representatives Concurrent Resolution, No. 25 (Introduced by Representative J. W. Fulbright, Arkansas), Passed 21 September 1943 by a vote of 360 to 29. "That the Congress hereby expresses itself as favoring the creation of appropriate inter-
participation in the realm of international organization was consequently officially reversed, and we played a major role in the creation of an international organization "to maintain international peace and security," dedicated to the principle of "international cooperation in solving international problems of an economic, social, cultural or humanitarian character." 

ORIGIN

THE ROAD THAT LED TO THE UNITED NATIONS

The recognition of the necessity for post-war security is evidenced in the Atlantic Charter as early as 14 August
1941.  

This declaration of principles declared the "desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancements and social security," and spoke of the "establishment of a wider and permanent system of general security."

On 1 January 1942, appeared a "Declaration by United Nations," in which the signatories, being in accord with the principles enunciated in the Atlantic Charter, pledged themselves to full cooperation to attain a successful termination of the war. That declaration embodied an invitation or appeal by concluding, "The foregoing declaration may be adhered to by other nations which are, or which may be, rendering material assistance and contribution in the struggle for victory over Hitlerism." 

On 30 October 1943, was issued the monumental Moscow Declaration in which,

The governments of the United States of America, the United Kingdom, the Soviet Union and China: united in their determination, in accordance with the Declarations by the United Nations of January 1, 1942, jointly declare: 4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security. 

The Congress of the United States convinced of the need of an international organization, issued resolutions to the same effect.

The Cairo Declaration, released 1 December 1943, and the Teheran Declaration signed 1 December 1943, further evidenced the intention and determination of the peoples of

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36 Promulgated by President Roosevelt and Prime Minister Churchill. Documents can be found in Goodrich and Hambro, Charter of the United Nations (1946) 305-386.
37 GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS (1946) 306.
38 IX DEPARTMENT OF STATE BULLETIN 308 (6 NOVEMBER 1943); GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS (1946) 307.
39 Supra note 31.
40 SUMMERS, DUMBARTON OAKS (1945) 100.
41 SUMMERS, DUMBARTON OAKS (1945) 100.
the leading nations of the world, through their representatives, in continuing the successful war-time alliance.

These far-reaching events were followed by the "Dumbarton Oaks Conversations" resulting in the "Dumbarton Oaks Proposals." These proposals submitted to the world on 7 October 1944 declared that, "There should be established an international organization under the title of the United Nations, the charter of which should contain provisions necessary to give effect to the proposals which follow." The proposals covered matters relating to the purposes, principles, membership, and the principal organs of the proposed international organization with their functions and powers.

The Crimea Conference, 11 February 1945, became our next landmark. "We have agreed that a conference of United Nations should be called to meet at San Francisco in the United States on April 25, 1945 to prepare the charter of such an organization, along the lines proposed in the informal conversations at Dumbarton Oaks." The historic United Nations Conference on International Organization convened at San Francisco on 25 April 1945. All of the sponsoring and invited governments were represented, bringing together an unprecedented array of the leaders of the nations of the world. Differences of theories and practice had to be reconciled—diverging ideologies were represented—compromises were inevitable. On 26 June 1945, this titanic undertaking accomplished its mission; the United Nations Conference on International Organization submitted to the world the Charter of the United Nations.

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43 XII DEPARTMENT OF STATE BULLETIN 213 (18 February 1945).

44 The four sponsoring governments were the United States, the United Kingdom, the Soviet Union and China. The list of the fifty participating governments is found in Goodrich and Hambro, THE CHARTER OF THE UNITED NATIONS (1946) 10-11. For a list of the delegations and personnel, see Dovel, THE UNITED NATIONS (1946) 125-152.
The Charter was ratified by the Senate of the United States on 28 July 1945, and on 24 October 1945, Mr. James F. Byrnes, then Secretary of State, having received the required instruments of ratification from the necessary signatories to the Charter, announced to the world that the Charter of the United Nations had become effective.

**Principal Organs of the United Nations**

The Charter of the United Nations established an international organization to be known as the United Nations, consisting of six principal organs, a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat. These principal organs shall be surveyed very briefly to give some idea of the machinery established by the Charter of the United Nations to attain its purposes and principles.

**The General Assembly**

The General Assembly is the organ in which all of the members are represented, and have an equal voice regarding all matters under consideration. It is not a world Parliament—it cannot legislate, but it functions by way of resolu-
tions and recommendations. The extremely broad scope of the functions of the General Assembly place upon that body an onerous obligation.

The General Assembly is the organ constitutionally empowered to discuss and consider any question or matters within the purview of the Charter, or relating to the powers and functions of any organs created by the Charter, and, with one exception, may make recommendations on all such matters. It may consider principles of cooperation in the maintenance of peace and security, and may call the attention of the Security Council to situations likely to endanger international peace and security. It shall initiate studies and make recommendations to foster international cooperation in the political, economic, social, cultural, educational and health fields, and assist in the realization of human rights and fundamental freedom for all, without distinction as to race, sex, language, or religion. The General Assembly shall receive and consider annual reports from the Security Council, and shall receive and consider reports from all of the other organs of the United Nations. It has definite functions and powers in the administration of the Trusteeship System. It exercises a form of supervision over the other organs of the United Nations by virtue of its duty to consider and approve the budget of the Organization. In short, the General Assembly is a world forum—its resolutions represent the considered judgment of statesmen representing the peoples of the world.

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54 Id. Article 10. The power to make recommendations is limited by Article 12, in that if the Security Council is performing the functions assigned to it under the Charter in respect to any dispute, the General Assembly shall not make a recommendation with regard to that dispute unless the Security Council so requests.
55 Id. Article 11.
56 Id. Article 13. The mandate of Article 13, placing upon the General Assembly the responsibility of "encouraging the progressive development of international law, and its codification," will be discussed subsequently.
57 Id. Article 15 (1).
58 Id. Article 15 (2).
59 Id. Article 16; Chapters XII and XIII of the Charter.
60 Id. Article 17.
THE SECURITY COUNCIL

The Security Council 61 consisting of eleven members, of whom five members are permanent and six are elected by the General Assembly,62 has the primary responsibility for the maintenance of international peace and security.63 It is so organized as to be able to function continuously,64 and may investigate any dispute or situation which might lead to international friction or give rise to a dispute.65 However, any member may bring any such situation to the attention of either the Security Council or of the General Assembly.66 The Security Council is the organ empowered to take action, and since the members of the United Nations have agreed that in carrying out its duties the Security Council acts on


62 Charter of the United Nations, Article 23. Article 18 provides that certain decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. The election of the non-permanent members of the Security Council is such a question requiring a two-thirds majority vote.

63 Id. Article 24.

64 Id. Article 25.

65 Id. Article 34. The voting requirement of the Security Council is found in Article 27 of the Charter. Each member of the Security Council is given one vote, and on "procedural" matters an affirmative vote of any seven members is required. Decisions on all other matters, i.e., matters not procedural, shall be made by an affirmative vote of seven members, which must include the concurring votes of the five permanent members. However, in decisions under Chapter VI (Pacific Settlement of Disputes), and under paragraph 3 of Article 52 (the encouragement of pacific settlement of local disputes through regional arrangements), "a party to a dispute shall abstain from voting." For a clarification of Article 27, representatives of delegations other than the Sponsoring Governments, submitted 23 questions to the Delegates of the Sponsoring Governments. The Delegations of the Sponsoring Governments issued a statement "of their general attitude towards the whole question of unanimity of permanent members in the decisions of the Security Council." That statement may be read in defense of what has come to be termed the "veto" power of the "Big Five." Goodrich and Hambro, Charter of the United Nations (1946) 124-134. See supra note 61. Unanimity Rule in Security Council (First Committee's Recommendations) 1 U.N. Weekly Bulletin 20 (17 Dec. 1946); Unanimity Rule in Security Council (General Assembly adopts recommendations for new procedures) 1 U.N. Weekly Bulletin 44 (24 Dec. 1946).

66 Charter of the United Nations, Article 35.
their behalf, they agree to accept and carry out the decisions of the Security Council.

It may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, or it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. All members of the United Nations 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 to maintain international peace and security. A Military Staff Committee is established to advise and assist the Security Council.

The Economic and Social Council

The Economic and Social Council, consisting of eighteen members elected by the General Assembly may make or initiate studies and reports with respect to international economic, social, cultural, educational, health and related matters, and may make recommendations on such matters to the General Assembly, to the members of the United Nations and to specialized agencies concerned. It may make recommendations to promote respect for, and observance of human rights and fundamental freedoms for all. It shall

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\(^{67}\) Id. Article 24.

\(^{68}\) Id. Article 25. *See also* Article 2 (5).

\(^{69}\) Id. Article 41.

\(^{70}\) Id. Article 42.

\(^{71}\) Id. Article 43 (3), "The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council **." It is interesting to note that Article 43 authorizes the Security Council, an organ of the United Nations, to enter into what is a treaty with certain members of the United Nations.

\(^{72}\) Id. Article 43.

\(^{73}\) Id. Articles 46, 47. By virtue of Article 51 a Member's right or "self-defense" is retained, however, its exercise must be immediately reported to the Security Council that remains authorized and responsible to take necessary action to maintain or restore international peace and security. *Id.* Article 51.


also perform such functions as may be assigned to it by the General Assembly."

**The Trusteeship Council**

The Trusteeship Council is composed of those members of the United Nations administering trust territories, the permanent members of the Security Council that are not administering trust territories, and as many other members elected by the General Assembly as may be necessary to ensure that the total number of members is equally divided between those members that administer trust territories and those that do not. Thus, we see that the Trusteeship Council is composed of the members administering trust territories and the permanent members of the Security Council, as permanent members, and those members elected by the General Assembly (for three-year terms) as non-permanent members.

The powers of the Trusteeship Council are relatively insignificant when compared with those of the other organs. It cannot make recommendations to the General Assembly or to the individual members. However, under the authority of the General Assembly, the Trusteeship Council may consider reports submitted by the administering authority, accept petitions and examine them in consultation with the administering authority, and provide for periodic visits to the respective trust territories at times agreed upon with the administering authority. It shall formulate a questionnaire on the political, economic, social and educational advancement of the inhabitants of the trust territory.

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77 Charter of the United Nations, Article 66 (3).
78 Id. Article 86.
79 Id. Article 86 (1) (c).
80 Id. Article 87-91.
81 Id. Article 87.
82 Id. Article 88.
The International Trusteeship System created by Chapter XII of the Charter of the United Nations, establishes certain objectives 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. The terms of trusteeship for each trust territory shall be agreed upon by the states directly concerned, and shall be approved by the General Assembly, except as to any trust territory located in an area designated as a "strategic area" in the trust agreement, in which event the approval required is that of the Security Council. The trust agreement shall in each case include the terms under which the trust territory is to be administered and shall designate the authority which will exercise the administration of the trust territory. The Trusteeship System is commendable insofar as it unequivocally recognizes the paramountcy of the welfare of the inhabitants of the trust areas, and their ultimate attainment of self-government and independence.

THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice is the principal judicial organ of the United Nations. The Statute of the International Court of Justice founded upon the Statute of the Permanent Court of International Justice prescribing the composition and functions of the court, forms an integral part of the Charter of the United Nations. The members of the United Nations are automatically parties to the Statute of the International Court of Justice, and are authorized

83 Id. Article 76 (b).
84 Id. Articles 79, 85.
85 Id. Articles 82, 83 (1).
86 Id. Article 81.
87 Id. Articles 76, 83 (2).
88 Id. Article 92; Statute of the International Court of Justice, Article 1; XII DEPARTMENT OF STATE BULLETIN 1134 (24 June 1945). For documents relating to the drafting of the Statute of the International Court of Justice, see DEPARTMENT OF STATE (Publication 2491) THE INTERNATIONAL COURT OF JUSTICE (1946).
to submit cases within the purview of its jurisdiction.\footnote{Charter of the United Nations, Article 93; Statute of the International Court of Justice, Article 35. See Kelsen, Membership in the United Nations (1946) 46 Col. L. Rev. 391.} Upon the recommendation of the Security Council, upon conditions to be determined by the General Assembly, a State, not a member of the United Nations, may nevertheless become a party to the Statute of the International Court of Justice.\footnote{Charter of the United Nations, Article 93 (2).} The members of the United Nations have undertaken to comply with the decision of the International Court of Justice in any case to which it is a party, and if a party to a case does not perform its obligations pursuant to a judgment of the Court, the other party is given recourse to the Security Council which may make recommendations or decide upon measures to be taken to give effect to the judgment of the Court.\footnote{Id. Article 94.} In this important respect the Security Council performs an executive function necessary to give effect to the judgment of the Court.\footnote{See Fenwick, Intervention: Individual and Collective (1945) 39 Am. J. Int. L. 645, 663.}

This tribunal, like the Permanent Court of International Justice under the League of Nations System,\footnote{Covenant of the League of Nations, Article XIV. See Hudson, Permanent Court of International Justice (1934) §§218, 453; Bustamente, The World Court (1926) 253-266; Moore, International Law and Some Current Illusions (1924) 96-146; Finland and Russia: Eastern Carelia Case, Publications of the Permanent Court of International Justice, Series B, No. 5 (1923).} is given the function of rendering advisory opinions.\footnote{Charter of the United Nations, Article 96; Statute of the International Court of Justice, Article 65.} However, the scope is broadened insofar as the request for the advisory opinion may come from the General Assembly, the Security Council, or any other organ and specialized agencies with the authorization of the General Assembly. Under the League System, the authority to request was limited to the Assembly and the Council.\footnote{Supra note 93.} Under the Charter of the United Nations the General Assembly or the Security Council may request an advisory opinion on any legal question, while the other

\footnote{Charter of the United Nations, Article 93; Statute of the International Court of Justice, Article 35. See Kelsen, Membership in the United Nations (1946) 46 Col. L. Rev. 391.}

\footnote{Charter of the United Nations, Article 93 (2).}

\footnote{Id. Article 94.}

\footnote{See Fenwick, Intervention: Individual and Collective (1945) 39 Am. J. Int. L. 645, 663.}

\footnote{Covenant of the League of Nations, Article XIV. See Hudson, Permanent Court of International Justice (1934) §§218, 453; Bustamente, The World Court (1926) 253-266; Moore, International Law and Some Current Illusions (1924) 96-146; Finland and Russia: Eastern Carelia Case, Publications of the Permanent Court of International Justice, Series B, No. 5 (1923).}

\footnote{Charter of the United Nations, Article 96; Statute of the International Court of Justice, Article 65.}

\footnote{Supra note 93.}
organs or specialized agencies are limited to legal questions arising within the scope of their activities.\textsuperscript{96} The jurisdiction of the Court extends to all cases that the parties may refer to it, and to all matters specially provided for it in the Charter of the United Nations or in treaties or conventions in force.\textsuperscript{97} However, the Court does not possess what has come to be termed "compulsory jurisdiction," except insofar as such jurisdiction has been or may be accepted by States pursuant to the "optional clause" of the Statute of the International Court of Justice.\textsuperscript{98} Pursuant to Article 36 of the Statute,

2. The States parties to the present Statute may at any time declare that they recognize as compulsory \textit{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:

\begin{enumerate}
\item the interpretation of a treaty;
\item any question of international law;
\item the existence of any fact which, if established, would constitute a breach of an international obligation;
\item the nature or extent of the reparation to be made for the breach of an international obligation,
\end{enumerate}

and consequently the Court does not have compulsory jurisdiction until a declaration is deposited with the Secretary-General of the United Nations accepting such jurisdiction.\textsuperscript{99} Upon this important issue, the Committee of Jurists charged with the responsibility of drafting the Statute of the International Court of Justice, disagreed, and two alternative

\textsuperscript{96} Charter of the United Nations, Article 96.
\textsuperscript{97} Statute of the International Court of Justice, Article 36 (1).
\textsuperscript{99} Charter of the United Nations, Article 36 (4).
texts were submitted to the United Nations Conference on International Organization. The text that provided for the compulsory jurisdiction of the Court unfortunately was not approved.\textsuperscript{100} Nevertheless, once a declaration has been deposited, in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court itself.\textsuperscript{101} It is encouraging to note that the Court is charged with the responsibility of deciding disputes submitted to it "in accordance with international law."\textsuperscript{102} What may be termed the sources of that body of law are stated to be as follows: \textsuperscript{103}

\begin{itemize}
  \item a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  \item b. international custom, as evidence of a general practice accepted as law;
  \item c. the general principles of law recognized by the civilized nations;
  \item d. subject to the provisions of Article 59,\textsuperscript{104} 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.
\end{itemize}

Furthermore, that same Article goes on to state that the above provisions shall not prejudice the power of the Court

\textsuperscript{100}\textit{14 Documents U.N.C.I.O.} (1945) 547. The U. N. Committee of Jurists submitted the following alternative draft for Section 2 of Article 36 of the Statute of the International Court of Justice on 20 April 1945. "(2) The Members of the United Nations and States parties to the present Statute recognize as among themselves the jurisdiction of the Court as compulsory \textit{ipso facto} and without special agreement in any legal dispute concerning:" The fact that this alternative provision on this important matter was not adopted was properly considered as an initial set-back for the United Nations.

\textsuperscript{101}Statute of the International Court of Justice, Article 36 (6). The declarations that have been made pursuant to the provisions of Article 36 of the Statute of the Permanent Court of International Justice are still in force, and are deemed acceptance of the compulsory jurisdiction of the new International Court of Justice. Statute of the International Court of Justice, Article 36 (5). It is estimated that approximately twenty such declarations immediately became effective pursuant to the provisions of Article 36 (5) of the Statute.

\textsuperscript{102}Statute of the International Court of Justice, Article 38 (1).

\textsuperscript{103}\textit{Id.} Article 38 (1).

\textsuperscript{104}\textit{Id.} Article 59, "The decision of the Court has no binding force except between the parties and in respect to that particular case."
to decide a case *ex aequo et bono*, if the parties agree thereto.\(^{106}\)

**THE SECRETARIAT**

The Secretariat, the administrative agency of the United Nations, is headed by a Secretary-General appointed by the General Assembly upon the recommendation of the Security Council.\(^{106}\) The Secretary-General, as the chief administrative officer of the United Nations, is empowered to appoint the staffs required by the various organs of the United Nations, pursuant to regulations established by the General Assembly.\(^{107}\) The Secretary-General is charged with the responsibility of making an annual report to the General Assembly on the work of the Organization,\(^{108}\) and may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.\(^{109}\)

"**THERE CAN BE NO WISDOM IN THE CHOICE OF A PATH UNLESS WE KNOW WHERE IT WILL LEAD**"\(^{110}\)

A wealth of literature has appeared discussing the international machinery established by the United Nations.\(^{111}\) Many see in that organization the hope of mankind. Obviously, it does no more than to establish a *machinery* for world cooperation. Its success is inextricably linked with the manner of its implementation. Its success will be in proportion to the goodwill and spirit of cooperation that will prevail among its members.

\(^{105}\) Id. Article 38 (2). *See* Cardozo, *The Nature of the Judicial Process* (1921) 98-141.  
\(^{106}\) Charter of the United Nations, Article 97.  
\(^{107}\) Id. Article 101.  
\(^{108}\) Id. Article 98.  
\(^{109}\) Id. Article 99.  
Materials appearing in other lands evidence a degree of optimism not customarily found in our articles.\textsuperscript{112} Can this be attributed to a certain degree of complacency remaining as a vestige of isolationism? Do we require more than two wars, an economic depression, and the unleashing of the atomic bomb to bring about a long-needed overhauling of our thought processes? On the other hand, can it be that those writing in lands that have been devastated by war, with memories completely filled with sorrow, happily accept what is a step leading to a better world society?

It would seem clear that undue criticism is unwarranted, and that the United Nations is a step forward in the right direction—a step closer to the attainment of the goals for which it stands.\textsuperscript{113}

\textbf{THE DEVELOPMENT OF INTERNATIONAL LAW}

A purpose of the United Nations is the settlement of international disputes or situations which might lead to a breach of the peace “in conformity with the principles of justice and international law,”\textsuperscript{114} and the International Court of Justice must decide disputes submitted to it, “in

\textsuperscript{112} M. Nicoloff Antonii, \textit{La Revision des Traites et la Charte des Nations Unies} (1946) 24 \textit{Revue de Droit International} 224, “The Charter of the United Nations, signed at San Francisco 26 June 1945, is destined to fulfill in the future the functions of a world constitution, and to serve, perhaps, as the basis for the establishment of the greatest federation that humanity has ever seen. Synthesis of a past experience, filled with tragedy, and of the most optimistic hopes for the future, the new Charter undertakes to regulate the relations among the Nations of the world, on the basis of respect for international law, morality, and the fundamental rights of man” (author’s translation); cf. Reves, \textit{The Anatomy of Peace} (1946) 273, “Let us be clear about one thing. A league of sovereign nation-states is not a step, neither the first step nor the ninety-ninth, toward peace. Peace is law. The San Francisco league is the pitiful miscarriage of the second World War.” Ago, \textit{L’Organizzazione Internazionale dalla Società delle Nazioni alle Nazioni Unite} (1946) 1 \textit{La Comunità Internazionale} 5.

\textsuperscript{113} Peaslee, \textit{The Dumbarton Oaks Proposals} (1945) 14 \textit{Fordham L. Rev.} 55, “We endorse, presumably, almost unanimously the Dumbarton Oaks Proposals as being a distinct advance in the right direction.” Eagleton, \textit{The Demand for World Government} (1946) 40 \textit{Am. J. Int. L.} 390, 393. (Discussing the possibility of scrapping the UN for a scheme of world government, Professor Eagleton states that we would risk losing what we have gained, “for the UNO is a gain.” “On the other hand it may be possible to develop UNO in the desired direction.”)

\textsuperscript{114} Charter of the United Nations, Article 1 (6).
accordance with international law.” 115 We now proceed to inquire into the measures provided by the Charter of the United Nations to foster the development of international law. In this important respect the Charter is disappointing. Article 13 of the Charter has imposed this inexorable obligation upon the General Assembly, in the following terms:

**Article 13**

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

a. * * * encouraging the progressive development of international law and its codification;

One is pleased to note that there is a dual obligation, i.e., to develop and to codify, rather than merely codify or endeavor to develop by codification.116 If the General Assembly were to be a legislative body empowered to bind its members by its enactments, the problem would be no different nor more difficult than the enactment of laws for national purposes. It could declare, modify or abrogate existing principles, or create entirely new ones essential to the general welfare.117 However, the recommendation that the General Assembly be empowered to declare or modify international law (with the agreement of the Security Council) was doomed to failure. Therefore, the problem confronting the General Assembly is to accomplish that end within the sphere of its recommendatory powers. Fortunately, the persuasive authority and effect of a resolution or recommendation of such an international body cannot be underestimated,

115 Statute of the International Court of Justice, Article 38.
116 For treatment of the basic processes of codification, see Hackworth, The International Court of Justice and the Codification of International Law (1946) 32 A. B. A. J. 81.
117 See Keen, International Legislation (1945) 27 J. Comp. Leg. & Int. L. 78-87, wherein the author states that the key to the world peace problem lies in the creation of an international legislative body, and that the Charter of the United Nations by not establishing such a body fails to provide the most fundamental requirement. Cf. Kelsen, Peace Through Law (1944) 12, 49, wherein Professor Kelsen sets forth his “Pure Theory of Law,” and states that “peace can be sought only within the framework of international law,” and that requires “the establishment of an international court with compulsory jurisdiction.”
for it would represent the collective judgment of the representatives of the world after discussion and deliberation of its subject matter. The General Assembly must instill meaning into Article 13 of the Charter by ascertaining the most effective means of performing its obligation.

Soon after the completion of the Charter of the United Nations, and its ratification by the United States, the Committee on the Codification of International Law of the American Bar Association in its report to that Association, suggested that the United States delegates in the General Assembly propose the establishment of a Standing Committee on the Progressive Development of International Law and its Codification. The committee, to be composed of jurists, would report a specific plan of action to the General Assembly. Other suggestions made to the American Bar Association included making the contribution of the international lawyers in the United States as effective as possible, and that the Chairman of the Section of International and Comparative Law be instructed to convene a meeting of American organizations such as the American Society of International Law, the American Branch of the International Law Association, the Harvard Research in International Law, the Maritime Law Association of the United States, and the American Law Institute, to consider ways and means to cooperate in this undertaking.118

On 10 December 1946, upon the recommendation of its Standing Committee No. 6 (Legal), the General Assembly recognizing the obligation imposed upon it by Article 13 of the Charter, resolved to establish a committee of sixteen members of the United Nations, each member to have one representative, and directed this committee to study—

(a) the methods by which the General Assembly should encourage the progressive development of international law and its eventual codification

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118 Report of the Committee on Codification of International Law, Proceedings of the Section of International and Comparative Law, American Bar Association (1946) 76-85.
(b) methods of securing the cooperation of the several organs of the United Nations to this end

c) methods of enlisting the assistance of such national or international bodies as might aid in the attainment of this objective.\textsuperscript{119}

The committee was directed to report to the General Assembly at its next regular session, and the Secretary-General was requested to provide such assistance as the committee might require to carry on its work.

Therefore, thus far, the accomplishment in this direction may be said to be as follows:

1. The actual establishment of a Committee of eminent jurists that will have as its sole concern the task of ascertaining the methods to achieve the progressive development of international law and its codification;

2. Recognition of the fact that development is not necessarily a matter of codification, and that a development is the immediate goal to be attained, rather than its present codification, for the resolution clearly speaks of its eventual codification. This, of itself, is in the nature of a fresh approach, for under the League System, the efforts were in the direction of a codification of international law;\textsuperscript{120}

3. Recognition of the fact that the traditional method of approach is neither advisable nor profitable. Since the United Nations embodies new concepts of international relations, modifying previously accepted principles, these new concepts are to be studied and formulated into doctrines and precepts stating the rights and obligations of States under the Charter of the United Nations;\textsuperscript{121}

\textsuperscript{120}League of Nations—Legal Section—Codification of International Law (Documents 1921-1935); Buell, International Relations (1925) 656; Stowell, International Law (1931) 684 et seq.
\textsuperscript{121}See proposal of delegation of Saudi-Arabia, 3 December 1946, United Nations General Assembly Legal Committee, and Draft Report and Resolution Proposed by Sub-Committee 1 of Legal Committee, on the Progressive Development of International Law and its Codification (Rapporteur: Mr. Hopkins (Canada)) A/C.6/114, 4 December 1946.
4. Recognition of the fact that the work of the Committee can be greatly facilitated by enlisting the cooperation of the already existing agencies and organizations working separately toward the attainment of a similar goal, coupled with a request for their assistance and cooperation. One entertains no doubt that such organizations will be only too happy to assist the new Committee in the carrying on of its work.

The horizons open to the new Committee are boundless. However, a systematic step by step method of approach is to be preferred to commencement on a grandiose scale. Once the Committee has ascertained the method of approach, it, or any other Committee assigned the task of carrying on such work, needs to treat the specific topics requiring development or clarification. How and to what extent has the Charter of the United Nations modified or abrogated existing concepts and principles? The United Nations is not authorized to intervene in “matters which are essentially within the domestic jurisdiction of any state or [nor] 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.”

Here is fertile ground for work. When is a matter “essentially within the domestic jurisdiction of any state,” and at what point does such a matter become of international concern to give the United Nations jurisdiction? What is the status of the various inter-governmental organizations performing functions pursuant to their respective Charters? What is the relationship between the principles of law embodied in these Charters, and the tenets of the Charter of the United Nations? Such a Committee cannot overlook the developments in the field of international criminal law. What traditional concepts are shattered, and what international standard of morality is established by the Charters of the International Military Tribunal at Nurnberg and the International Military Tribunal for the Far East?

These are some of the tasks that the new Committee will have to deal with. The task will be an arduous one, but the results will more than justify its labors.

**THE UNITED STATES ACCEPTS THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE**

On 26 August 1946, the United States filed its Declaration with the Secretary-General of the United Nations, accepting the jurisdiction of the International Court of Justice, for the submission of justiciable disputes within the enumerated categories.\(^{123}\) The historic importance of that event, however, was somewhat dimmed by certain reservations contained in that Declaration. The Declaration was authorized by a Senate Resolution 196.\(^{124}\) The sponsor of this Senate Resolution was Senator Morse of Oregon, who received the support of many national figures and organizations.\(^{125}\) One of the provisions of Senate Resolution 196 was that the Declaration would not apply to—

b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

In spite of the fact that a great deal can be said with validity, as to whether such a provision was necessary in view of Article 2 Section 7 of the Charter of the United Nations,\(^{126}\) an unfortunate amendment was affixed to the proviso, adding the words, “as determined by the United States.” This additional limitation, proposed by Senator Connally, unfortunately, was finally adopted.\(^{127}\) It is apparent at a glance that such an amendment is a retrogression, and completely out of harmony with the fundamental concept of an obligatory jurisdiction. Serious doubt arises as to the very legality of the limitation, “as determined by the United States,” in

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\(^{123}\) *Historic Declaration as to World Court Filed by the United States* (1946) 32 A. B. A. J. 654.

\(^{124}\) *92 Cong. Rec.* (1946) 10850.


\(^{126}\) *Supra* note 122.

view of Article 36 Subdivision 6 of the Statute of the International Court of Justice, that states most clearly, "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." The issue simply stated is this: Can any nation deny the Court jurisdiction by the simple expedient of labelling a dispute a "domestic" one? If a dispute were to be referred to the Court by a party, could the United States, if it were to be the respondent, unilaterally divest the Court of jurisdiction by its determination that the dispute is "essentially within the domestic jurisdiction of the United States"? We are agreed that if the dispute is such in fact, the Court does not have jurisdiction, however, are we to be the judges in our own cause, and thereby determine for the Court whether it will have jurisdiction? Such a clause in our Declaration casts some doubt upon our good faith, and places upon us the burden of manifesting that good faith. Our intentions can best be evidenced by a reconsideration of the matter, and the submission of a new Declaration devoid of obnoxious provisos.

OLD WORDS—NEW MEANINGS REQUIRED

International organization cannot attain any degree of progress as long as certain concepts retain their traditional meaning in our thinking. The foremost obstacle in our field of discussion has been the notion of "sovereignty." The United Nations is based on the principle of "the sovereign equality of all its Members." The word "sovereign" is

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128 See Wilcox, The United States Accepts Compulsory Jurisdiction (1946) 40 AM. J. INT. L. 699, 710; Preuss, The International Court of Justice, the Senate, and Matters of Domestic Jurisdiction (1946) 40 AM. J. INT. L. 720; Hyde, The United States Accepts the Optional Clause (1946) 40 AM. J. INT. L. 778; Potter, "As Determined by the United States" (1946) 40 AM. J. INT. L. 792.
131 Charter of the United Nations, Article 2 (1).
used, but surely it cannot be maintained that it possesses the traditional meaning attributed to what has been termed "absolute sovereignty." The very nature of the United Nations is to establish an organization to maintain peace and security, based on law. An "absolute sovereignty" concept is what some have called "irresponsible sovereignty," it being devoid of all limitations upon the power of the State. Such a concept is diametrically opposed to the fundamental notion of a State as being a member of a community of nations possessing rights and obligations. It is repulsive to logic and experience to speak of nations as possessing rights in a world wherein they do not simultaneously acknowledge duties and obligations. Such a concept of sovereignty must of necessity either bend or break. Interestingly enough, "sovereignty" became a political tool that developed even beyond the expectations of its originator.\textsuperscript{132} Admitting the obvious fact of the existence of the international community, one must conclude that the members of that community are not and cannot be "sovereign" in the sense that they are irresponsible. States have in the past acknowledged what today should appear obvious, that States are subject to external restraint, and that there exist certain principles demanding the submission of states for the general welfare of all.\textsuperscript{133} New norms need to be established for the common good.

Therefore, today, sovereignty can mean no more than a freedom of action or independence enjoyed by a State, subject to the limitations imposed by the principles of international law.\textsuperscript{134} Any other conclusion would be inviting


\textsuperscript{133} Freeman, The International Responsibility of States for Denial of Justice (1938) 15-19; Eagleton, The Responsibility of States in International Law (1928) 3, 206.

world anarchy, denying the very foundations of all of our labors.\textsuperscript{135}

**CONCLUSION**

Our orientation, upon a background devoid of an attitude of futility and pessimism, will tend to show that the weaknesses of the Charter of the United Nations can be remedied—if there exists the will to do so. Needed changes may be brought about by the formal process of amendment,\textsuperscript{136} or by the more flexible process of interpretation in the process of its implementation. The General Assembly and the International Court of Justice can perform functions of far-reaching importance. One can ascertain and declare world public opinion within the scope of its deliberative powers, while the Court can give such mores of society the dignity of law by their application to cases that will come before it. This will be the development of an international judicial process.

The General Assembly and the International Court of Justice, with the assistance and support of the existing organized associations in this field\textsuperscript{137} must take the lead in the formulation of new concepts necessary to the understanding and solution of world problems on the basis of legal principles. Devoid of legal norms founded upon moral axioms, international politics would be a sheer struggle for power. There must result an attitude of mind and sentiment that might be termed an *enlightened internationalism.*\textsuperscript{138} Such a goal of necessity implies the revamping of existing


\textsuperscript{136} Charter of the United Nations, Articles 108, 109. Statute of the International Court of Justice, Articles 69, 70.


notions. Sovereignty must assume a meaning consistent with morality.\textsuperscript{139}

The system of collective security established by the Charter of the United Nations must be made to succeed in the interest of peace. It does not matter whether international law is said to occupy a primary or a secondary position in the Charter. It is apparent that the emphasis is upon matters of security. Such emphasis is readily understandable. The drafting of the Charter of the United Nations occurred during the most horrible war known to mankind. Peace and order were the immediate purpose. Hence, the concentration is upon matters of "peace and security." The attainment of such a goal of necessity implies the existence of moral and legal norms to guide the nations.

Efforts to attain these ends will not be discouraged. The undertaking cannot be abandoned. All must actively strive to strengthen the United Nations, for the peace that will endure is a condition for a reign of law among the family of nations.

Temporary discord does not warrant envisioning the darkest of horizons. It remains to pierce the clouds to see the light beyond.

\textbf{Edward D. Re.}

\textsuperscript{139} For an interesting article discussing the neutrality concept in a system of jurisprudence wherein States have rights and duties, see Eagleton, \textit{Neutrality and the Capper Resolution} (1929) 6 N. Y. U. L. Q. Rev. 346.