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The United Nations: Reflections on Fifty Years, 1945-1995

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Abstract

Introduction in relation to the 50th anniversary of the United Nations.

INTRODUCTION

THE UNITED NATIONS: REFLECTIONS ON FIFTY YEARS, 1945-1995

*Joseph C. Sweeney**

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 . . . have resolved to combine our efforts to accomplish these aims.

Excerpt from Preamble to the United Nations Charter,
drafted at San Francisco, 25 April to 26 June, 1945.

As a schoolboy in Boston in 1945, aged twelve, I was very much aware of the closing months of the Second World War; at school there was a large map of Europe tracing the progress of our armies in France and Italy. Although I didn't read the *New York Times*, I did follow the news on the radio, in the newsreels at the movies, and in the pages of a weekly national newspaper written for students. I remember the European victory celebration on May 8, 1945 when, after our national anthem, the school chorus valiantly essayed "La Marseillaise," "God Save The King," and the "Internationale" (the School Committee being unaware that the Soviets had adopted a new national anthem in 1944, instead of the cry of class warfare associated with Marx and Engels). The jubilation on May 8th was tempered, however, because twenty-six days before, on April 12, 1945, our fearless guardian and champion, Franklin Delano Roosevelt, had died. Our great country was like a gigantic and powerful ship without a rudder.

The uncertainty of wartime — the air raid drills, the ration

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books for meat and canned goods, the scrap metal drives, the shortages of gasoline and tires, the absence of the young represented by the blue and gold stars in their families' windows — would continue for another few months until September 1, 1945, when the war with Japan ended.

Surely, we thought, peace would bring the family of mankind together to end war forever and solve the world's problems through cooperation; but fifty years later we still have not seen the world governed by law and justice as we had hoped in 1945.

Unlike the situation of the First World War, which was supposed to be "the war to end all wars," the victors of 1945 were somewhat reticent about what had been achieved by the destruction of Nazi Germany and Imperial Japan. Fascism - whatever that meant - had been eliminated, and a new world order would soon reconstruct what had been destroyed. Nevertheless, even then it was difficult to focus on future relations with the USSR, our wartime ally, because of the secret and hostile practices of communism. Yet the new world order of collective security in the United Nations would depend on the ability of the superpowers to live in harmony with each other.

On his last day President Roosevelt was working on speeches that he planned to give to enhance the proposed United Nations, the name that he had chosen for the new world organization. One speech was to have been given in San Francisco at the opening of the diplomatic conference to frame the Charter of the United Nations, and a second was to have fulfilled a more immediate need, a political speech to persuade isolationist America of the need for the new world organization. His last written words in that speech were:

Today, as we move against the terrible scourge of war - as we go forward toward the greatest contribution that any generation of human beings can make in this world - the contribution of lasting peace, I ask you to keep up your faith. I measure the sound, solid achievement that can be made at this time by the straight edge of your own confidence and your resolve. And to you, and to all Americans who dedicate themselves with us to the making of an abiding peace, I say: The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith.

Roosevelt was, of course, greatly concerned that the United States would repeat the disastrous decision of 1919 when the

Treaty of Versailles with the built-in Covenant of the League of Nations was rejected by the Senate. He had been the vice presidential nominee of the Democratic party in the 1920 election and a strong supporter of President Woodrow Wilson's efforts to construct a league to enforce peace. Thus he was repudiated, along with his party, by the American people for his international views: the primitive collective security of the League of Nations. His political career would have to be rebuilt by his performance as the governor of New York and his virtual silence on world issues until the Pearl Harbor attack.

The failure of the League of Nations and its legalistic structure to prevent the Second World War made the drafters of the United Nations Charter at Dumbarton Oaks, Washington in August-September 1944 at the least ambivalent, if not hostile, to international law in the new organization. The draft charter was the work of delegates of the United States, the United Kingdom, and the Soviet Union. France was still occupied by German armies, and the Chinese would participate only after the Soviets had gone home. The Dumbarton Oaks draft charter was designed to prevent war among the members of the organization through enforcement of peace by the wartime allies in the Security Council. There was, however, no place for international law in the draft charter.

It was only with the diplomatic conference in April-June, 1945, attended by 51 nations, that international law became significant in the new organization. The smaller nations realized their peril in relying on the alliance of the superpowers. Another force - law - would be needed.

The Dumbarton Oaks draft not only had no reference to international law but also no preamble. The inspiration for the new organization would come from the San Francisco preamble which, except for the introductory phrase, "We the Peoples of the United Nations," supplied by an American woman, Dean Virginia Gildersleeve, was the work of Jan Christian Smuts, prime minister and leader of the South African delegation to the diplomatic conference. (Smuts was well-qualified to formulate the preamble as he had been the South African delegate to the 1919 Paris conference and had drafted the Covenant of the League of Nations. He also had framed a vision of a new order of collective security in his 1918 book, *THE LEAGUE OF NATIONS: A PRACTICAL SUGGESTION*).

Comparing the Dumbarton Oaks draft with the Charter language makes the absence of international law very clear. The draft charter had said in Article I (Purposes):

The purposes of the Organization should be:

1. To maintain international peace and security; and to that end to take collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace . . .

The redrafted Article I, however, incorporates international law into the framework of the organization.

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; . . .” (Emphasis added).

To ensure further the place of international law, the preamble makes the same point in words that preserve customary international law and the philosophy of natural law

to establish conditions under which justice and respect for the *obligations arising from treaties and other sources of international law* can be maintained.” (Emphasis added).

Why would the small nations of the world have insisted on putting international law in the Charter? The habit of law and the force of public opinion were the controls they sought over the superpowers. It reminds me of the explanation for the place of law in civilized society in Robert Bolt’s 1962 play, *A Man For All Seasons*, in Act I (p. 66 of the 1990 version of the text). Thomas More is confronting the enthusiastic young man who would be his son-in-law:

More: . . . What would you do? Cut a great road through the law to get after the devil?

Roper: I’d cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned round on you - where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down and you're just the man to do it — d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil the benefit of law, for my own safety's sake.

The only hope for the small nations to stand upright against the winds of superpower politics would be international law.

During the darkness of the cold war, Fordham students and faculty affirmed their belief in the importance of international law by establishing the *Fordham International Law Journal*. We are now beginning our eighteenth volume of international law studies at a time when despite the collapse of the communist menace, international law, as the teacher of civilization, is needed as much as it ever was.

I am happy to have been invited to open this eighteenth volume of the *Fordham International Law Journal* in the fiftieth year of the United Nations. I wish you every success in your efforts.