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## ARTICLES

### **The United Nations at Fifty**

By Carl-August Fleischhauer\*

#### I.

Fifty years ago, in the spring and early summer of 1945, while in Europe the Second World War ended and while it was drawing to a close in the Far East, the founding conference of the United Nations took place in San Francisco. The United Nations Conference on International Organization, as its official name read, opened with the participation of 50 States on 25 April 1945, and it ended with the signing of the United Nations Charter only two months later, on 26 June 1945. Another four months later 29 of the signatories of the Charter, including the five Permanent Members of the Security Council, had deposited their instruments of ratification, and the Charter, in accordance with its Article 110, entered into force on 24 October 1945. Important groundwork had been laid through the Joint Declaration of the President of the United States and the Prime Minister of the United Kingdom of 14 August 1941, known as the 'Atlantic Charter', and the ensuing Joint Declaration of 26 'United Nations' of 1 January 1942, as well as the two phases of the Dumbarton Oaks Conference (August-October 1944). Difficult obstacles had been overcome by the United States, the United Kingdom and the then Soviet Union at the Yalta Conference (February 1945). Even so, the drawing-up of such a monumental instrument as the Charter of the United Nations by a big conference in only two months, immediately followed by signature, and then ratification by the required number of States in only four more months, is an extraordinary achievement. The speed with which the Charter was drawn up and brought into force shows that the vast majority of States coming out of the horrors of the War felt an acute necessity for the speedy creation of a new forum for handling and transacting matters of vital concern to all peoples and the States representing them despite the little-encouraging experi-

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\* Dr. jur.; Judge of the International Court of Justice; former Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations. The views expressed are exclusively those of the author. The article takes account of events up to 1 July 1995, date on which the article was submitted for publication.

ences with the League of Nations. "We the peoples . . ." in the preamble of the Charter, in those days even more unusual in an intergovernmental text than today, vividly expresses the anxiety and the hope that accompanied the birth of the Organization.

Today, fifty years later, we can first note that the United Nations continues to exist and, what is more, continues to be a living reality. Its life has never been easy and it is not easy today; but the Organization has a central place and plays an important role in world affairs. Secondly, we can note that the organizational structure which was created in San Francisco remains unchanged. Questions are asked, inside and outside of the Organization, whether this structure is still adequate and, in particular, whether the structure and composition of the Security Council are still representative and continue to correspond to today's needs. The fact is, however, that except for the increase in the number of non-permanent members of the Security Council, brought about in the mid-sixties, which augmented the total membership of that organ from 11 to 15, and some consequential amendments, as well as the increase in the membership of the Economic and Social Council (ECOSOC) first from 18 to 27 and then from 27 to 54, the structural set-up of the Charter has not been altered. Thirdly, we can note that the purposes of the United Nations, as enunciated in Article 1 of the Charter, have not been changed either. These purposes are: to maintain international peace and security (Art. 1, para. 1), to develop friendly relations based on respect for the principle of equal rights and self-determination of peoples (Art. 1, para. 2), to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and the promotion and encouragement of respect for human rights and for fundamental freedoms for all (Art. 1, para. 3), and to make the United Nations a centre for harmonizing the actions of nations in the attainment of these common ends (Art. 1, para. 4). The fact that the purposes of the Charter have not been changed and that they are also unchallenged is certainly due, in part, to the political and procedural difficulty of amending the Charter and to the relative generality of the wording. The fact is nevertheless remarkable, in particular as the conditions under which and the surroundings in which the Organization today operates are completely different from what they were in 1945. While the Charter entered into force for 29 Member States, there are today no less than 185 Members. The Security Council is dealing with conflicts of a nature nobody would have thought of fifty years ago and international co-operation under the auspices of the United Nations is extending to more and more subject-matters. Decolonization has nearly been accomplished, although development remains a goal still to be achieved in many respects. The United Nations Secretariat has grown from a small operation to a vast administration concentrated no longer on the execution of topical programmes mandated by United Nations bodies but running, in addition, vast peace operations in distant countries involving ever new responsibilities.

## II.

Among the purposes enumerated in Article 1 of the Charter, the *maintenance of international peace and security* is the area where the activities of the United Nations have aroused, and are arousing, the greatest public attention and acclaim (bestowal of the Nobel Peace Prize 1988 on the peace-keeping forces of the United Nations), and where there is, particularly at present, the most severe public criticism.

The collective security system foreseen in the Charter is basically straightforward and simple to the point of being simplistic. Under that system, it is the Council which has the "primary responsibility for the maintenance of international peace and security" (Art. 24 of the Charter). Under Chapter VI of the Charter (entitled 'Pacific Settlement of Disputes') the Council has certain recommendatory functions with regard to disputes "the continuance of which is likely to endanger the maintenance of international peace and security" (Art. 33, para. 1). However, under Chapter VII, if the Council determines "the existence of any threat to the peace, breach of the peace or act of aggression" (Art. 39), it can make decisions on measures to be taken in order to maintain or restore international peace and security. Such measures are immediately enforceable and can range from a variety of sanctions not involving the use of armed force (Art. 41), to the use of military force. The system foreseen by the Charter thus centres around the idea that, once the Security Council has made the determination of the existence of a breach of or a threat to the peace or an act of aggression, the community of States unite around the Council in order to repel it. Obviously, under conditions of the Cold War, when the Veto Powers in the Security Council blocked each other, that system could not work. In all of the first forty years of the United Nations it was hardly possible to have recourse to Chapter VII at all. But the East-West confrontation of the Cold War era did not only affect the role of the Security Council under Chapter VII, it also hampered the full use of other methods provided for under the Charter for the peaceful settlement of disputes (Art. 33), and among them in particular the use of the International Court of Justice. The obstacles to the use of the International Court of Justice, which is the "principal judicial organ of the United Nations" (Art. 92) and to which "legal disputes should as a general rule be referred" (Art. 36, para. 3), arose from distrust of the independent role of an independent organ in a world divided on ideological lines. They were compounded by the initial lack of familiarity with this institution on the part of many of the newly independent States which had become Members of the Organization in the process of decolonization. In addition, one of the decisions of the Court, its 1966 judgment in the *South West Africa Cases*,<sup>1</sup> caused considerable indignation, especially among those States.

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<sup>1</sup> Judgment of 18 July 1966 (Ethiopia vs. South Africa; Liberia vs. South Africa, Second Phase), ICJ Reports 1966, 6.