

CORRESPONDENCE

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LETTER FROM PROFESSOR B. A. WORTLEY

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One passage in the interesting article published in your last number, by Dr. R. Higgins, struck me as all too true: she indicates that there is

. . . a movement away from the attempted settlement of disputes by a bargaining process. The technique is closer to that of labor bargaining, within a legal framework, than to judicial adjudication. This raises acute problems for the state which believes its actions to be legally impeccable. It sees itself subjected to illegal acts by its adversary, and, when seeking a clear denunciation by the Security Council, finds that it can achieve at most a resolution admonishing both parties to desist from all illegal acts.

Unfortunately, this "bargaining process" usually amounts to conciliation which does not bind the parties to a dispute, and the admonitions which are handed out can have little effect in countries without a free press. It is submitted that these procedures do little for the rule of law.

When the Security Council can indicate that (as it did in the case of the North Korean aggression) unlawful force may be resisted by collective lawful defensive measures, more can be achieved. Experience shows that the veto may prevent this, but if it does, it may excuse but cannot alter the illegality of a deliberate invasion undertaken without a genuine attempt at pacific settlement. Conciliation, or the use of the veto, may obscure illegalities, but it cannot alter their character, nor can either impair the right of third states to discriminate against an aggressor.

In the 1946 *British Year Book of International Law*, at page 110, I stated:

If a permanent Member commits an act of aggression the veto may render impossible any action under the Charter, but action will still be possible under the ordinary international law, since the Charter merely attempts to implement and not to stultify international obligations.

After nearly a quarter of a century, the United Nations still lacks real teeth and it still remains true to say as I did then in 1946:—

The military agreements to give the Security Council means of enforcement action are subject to veto. None has yet been made between any Member of the United Nations and the Security Council. Until it has ratified such an agreement, each state remains free to refuse to do so: that is, to veto the military agreement proposed. Any state refusing to ratify an agreement might, of course, be expelled from the United Nations—subject to the veto being exercised in its favour.

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