

EDITORIAL COMMENT

THE "UNITING FOR PEACE" RESOLUTION OF THE UNITED NATIONS

On November 3, 1950, the General Assembly of the United Nations adopted by an overwhelming vote (52 to 5) a resolution awakening dormant powers which place it alongside of, or possibly superior to, the Security Council as the executive body of the United Nations in preserving and restoring peace. It permits the Assembly to do much of what the Council was authorized to do under Chapter VII of the Charter. This has been called the most momentous action ever taken by the General Assembly. The five Soviets voted against the resolution and India and Argentina abstained. This epochal action was a result of the organic imbecility of the Security Council whereby the Soviets obtained a strangle-hold on the proceedings through the veto and other tactics. When this grip was perchance loosened in June by the boycotting absence of the Soviet representative, the Security Council was able to act with facility and vigor sufficient to the Korean crisis in its resolutions of June 25 and 27, 1950. But when the Soviet Union returned to the Council on August 1, further action in respect of Korea was stalled for thirty-one days by maneuvers of the Soviet president.

The resolution, labeled "Uniting for Peace":

(1) Resolves that "if the Security Council because of lack of unanimity of its permanent members fails to exercise its primary responsibility" as to the maintenance of international peace and security in case of a "threat to the peace, breach of the peace or act of aggression," the General Assembly shall consider the matter immediately with a view to making "appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary to maintain and restore international peace and security." If not in session, an emergency session may be called within twenty-four hours upon request of the Security Council by vote of any seven members, or by a majority of the Members of the United Nations.

(2) Establishes a Peace Observation Commission or "peace patrol" which for 1951 and 1952 shall be composed of fourteen Members (named) which "could observe and report on the situation in any area where there exists international tension . . . likely to endanger the maintenance of international peace and security." The Commission may be utilized upon a vote of two-thirds of the Members of the Assembly present and voting, if the Security Council is not exercising its functions as to the same matter. It may also be utilized by the Security Council.

¹ Supplement to this JOURNAL, p. 1.

(3) Recommends that "each Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available"² for service in behalf of the United Nations upon recommendation of the Security Council or *General Assembly* without prejudice to the right of self-defense under Article 51. A panel of military experts appointed by the Secretary General is to be made available to Members for technical military advice.

(4) Establishes a Collective Measures Committee of fourteen Members (named) to study and report by September 1, 1951, on methods to maintain and strengthen international peace and security, including consideration of (3) above, as well as collective self-defense and regional arrangements under Articles 51 and 52.³

While the United Nations prior to last June had to its credit several accomplishments to ease tensions and preserve peace, they have all been acts of moral persuasion or acts short of physical compulsion. Witness, among others, the action in the Balkans and Greece, Iran, Indonesia, Israel and South African. The June resolutions of the Security Council concerning the attack upon the Republic of Korea were the first occasions in history when an international organization as such used force to stop force. The resolution of November 3, 1950, proposes to perpetuate this advanced position taken by the Security Council under Chapter VII of the Charter.

The elements of this epoch-making resolution are not new. They have been expressed in various quarters heretofore. In this relation it is interesting to note particularly the Thomas-Douglas proposal (Senate Concurrent Resolution 52, July 8, 1949). This resolution proposed a Convention under Article 51 of United Nations Members to provide, in the event the Security Council is prevented from fulfilling its duties because of its voting procedures, for the use of force against an aggressor upon a call of two-thirds of the General Assembly, including three of the Big Five Powers, and for specification in advance of certain military, naval and air components for the use of the Security Council or the General Assembly.

Finally, on September 20, 1950, Secretary Acheson at the Fifth Session of the General Assembly outlined the four main features above indicated. Mr. Dulles of the American Delegation was selected to present the resolution and engineer its passage through the Political and Security Committee and the Assembly. He pointed out strikingly that the June resolutions

² On this point Mr. Dulles in the Political and Security Committee stated: "There was no question of binding commitments for the future," and each Member "would continue to be able to avail itself of all of its armed forces" for use under Article 51. "Since the Security Council had not taken the initiative prescribed by Article 43 the Member States should now be invited to undertake some first steps without awaiting further negotiation attempts in the Security Council." *General Assembly, Fifth Sess., Official Records, First Committee, 354th meeting (U.N.Doc. A/C. 1/SR.354), p. 64.*

³ In the Political and Security Committee, Mr. Dulles said the draft resolution involved "no objectives or methods that were not in conformity with the Charter into which new life should be breathed without further delay." *Ibid.*

regarding Korea and the enforcement action of the Security Council were possible only because of three accidental circumstances: the elimination of the veto due to the absence of Russia from the Security Council, the presence of considerable armed forces stationed nearby in Japan and vicinity, and a United Nations Commission on the spot in Korea to report the facts of aggression. The purpose of the resolution is to make these accidental conditions permanent in preparation for any recurrence of aggression anywhere in the world.

It remains to be seen whether the plan will work expeditiously and smoothly in case of a crisis caused by a sudden outbreak of aggression. Bringing the delegates together for a special session from all parts of the world on twenty-four hours' notice need not be difficult. It can be accomplished by using members of the diplomatic missions in this country as special delegates in case the regular delegates are absent.

The earmarking of military units and reserves for international use will raise many of the difficulties encountered in raising an international force under Article 43. Bringing a balanced land, naval and air force together quickly enough to stem an aggression at or near the outset in distant parts will be a tremendous task. Even a force such as the United States had in Japan would be exceptional and not likely to be duplicated at many points in the world, unless carefully arranged beforehand. Provision will have to be made for the strategic location and movement of such forces. Obviously, transport planes of large size and great numbers would be a necessity. The difficulty of welding many military units of diverse origins and nationalities into a workable and solid whole is stupendous. This was pointed up in World War II. To be effective the organization would have to be complete from the commander-in-chief down to the lowest rank of the service. The problem of logistics and armaments is equally important and devastating in proportions.

Aside from these practical aspects there is the political angle to be considered, which involves the question of sovereignty. Could the International Military Staff direct certain forces to move to a disturbed district or to defend a specific area? Could it order that bases be established in a certain country to be manned by troops of another country? Could it replace national officers with foreign officers if need be? Would the national commander-in-chief delegate his constitutional rights in these respects to others of the international command? Will troops give due allegiance to an international organization or to a world command above that to the country of which they are nationals?

What if a threat to the peace, breach of peace or aggression is committed by one of the great Powers? The pressure of the other Powers and the use of force would no doubt mean a world war and perhaps the break-up of the organization. Is it not likely that the plan, which contemplates enforcement and dictation, will not work in case of a great Power and will work only in case of a minor Power which can be safely pressured

without opening a general war. In other words, if an unruly great Power cannot be pressured under Chapter VII, it would seem war can only be avoided by *joint compromise* among the great Powers.

The resolution is operative only if the Security Council, because of lack of unanimity of its permanent members, "fails to exercise its primary responsibility" under Chapter VII. This may become an element of delay. Considerable debate may ensue in the Council, perhaps a sort of filibuster, as occurred last August. At what point will failure occur? Will the Assembly decide this question? The Security Council can itself determine the question by refusing to act on the matter in hand or discharging itself of it or laying it before the Assembly (Articles 11, 12, 20 of the Charter). Also mere failure to act because of a veto clearly falls within the terms of the resolution. Until the Council so disposes of the question, it will be seized of it and, by the Charter, the Assembly cannot make recommendations on a matter which the Council has under consideration. Could the Council take up another phase of the subject after the Assembly has taken over? Or if the Council action is too limited or piecemeal or weak, could the Assembly proceed to handle the matter on a broader, more complete and forceful scale?

An opportunity is at hand for a practical application of the "Uniting for Peace" Resolution. General MacArthur reported early in November that late in October, when on the point of victory over the North Koreans, large and fully equipped units from the armies of Communist China had intervened on behalf of the North Koreans. They have gone into battle against the United Nations forces. Obviously, this is a fresh "act of aggression" calling for further action by the United Nations. It is the prime duty of the Security Council to handle this new situation with a view to restoring peace. The Assembly is in session and could take up the matter, but it must await proceedings in the Security Council. If the Council, after debate, issues merely a warning to Communist China (not a United Nations Member) to desist and withdraw her forces, could the Assembly, believing more decisive action is required, recommend that General MacArthur, as United Nations Commander, take military steps to defeat the intervention? ⁴

⁴ Since this was written the proceedings have been briefly as follows: From Nov. 10 to 30 the Council debated two Soviet resolutions in effect condemning the United States as an aggressor, and a resolution sponsored by the United States, United Kingdom and four other countries calling for the withdrawal of the Chinese forces and giving assurance that the interests of Korea's neighbors would be respected. The Soviet resolutions were snowed under. The other resolution received a vote of 9 to 1, but was finally vetoed on Nov. 30 by the Soviet Union. Thereupon steps were taken to remove the subject of Chinese aggression to the Assembly. There the six-Power resolution in somewhat modified form was introduced, by the several Asian and Arab Powers, instead of supporting it, presented another resolution setting up a committee of three (Iran, India and Canada) to negotiate a cease-fire with the Chinese. This resolution was approved in committee on Dec. 14 by a vote of 52 against 5 of the Soviet bloc, which left the six-Power resolution in abeyance. The sum total of the Soviet votes on these resolutions indicates that Russia is not interested in resisting the progress of hostilities or working out a peaceful settlement.

It should be noted that the resolution contemplates armed action by a two-thirds majority of the Members of the General Assembly present and voting (Article 18) without regard to the great Powers, although they must as a practical matter furnish the bulk of the men and armaments involved. Thus, in case a question as to maintaining peace and security is vetoed in the Security Council, the Assembly by a two-thirds vote can proceed under the resolution to consider the matter and make recommendations, including the use of force, if need be. Consequently the principle of unanimity in the Security Council so much applauded by the five great Powers at San Francisco, has in effect been circumvented and exchanged for a two-thirds vote of the Assembly in case the Security Council fails to act. Thus the right of veto on issues of war and peace would be lost to each of the great Powers. It is conceivable that the great Powers might be in the minority or divided on the issue and that the small nations who have always chafed under the veto would hold the balance of power in voting and at last come into their own as a force for peace. On the other hand, this opens a great opportunity not only for playing politics in the Assembly, but for splitting rifts in the United Nations. Would the great Powers which opposed the action be enthusiastic about furnishing troops to support it? They have a specific obligation under Articles 25, 48 and 49 of the Charter to carry out decisions of the Security Council and also "any action it [United Nations] takes in accordance with the present Charter." (Article 2 (5)). It would seem necessary, however, that at least some of the great Powers which would bear the burden should back the proposed action, as the small Powers could not survive alone.

The legality of the "Uniting for Peace" Resolution was denied vehemently by the Soviets in the debates and has been doubted earnestly in other quarters. It is said to be an attempt to by-pass the Security Council, to usurp its constitutional powers and relegate it to a secondary position in the United Nations structure, in other words, a back-door way of amending the Charter.

It is not surprising, therefore, that the efforts of the committee to negotiate a truce were bluntly rejected by the Peiping government on Dec. 22, when it declared the only acceptable bases for negotiation were its earlier demands in the Security Council: the withdrawal of all foreign troops from Korea, the removal of the U. S. fleet from Formosan waters, and the admission of Communist China to the U.N. Nevertheless, the committee made another cease-fire proposal, which fortunately was rejected on Jan. 17 with the demand that these conditions be granted first. Thus, even while intensified hostilities by Communist China continued against U.N. forces, 2½ months have been consumed in fruitless debate and ignominious maneuvers and yet she had not once been declared an aggressor nor requested to retire her troops from Korea. A U. S. resolution of Jan. 20 to this effect was opposed by the Asian-Arab group, which proposed a seven-Power conference with the Chinese on cease-fire and other questions. Finally, the committee on Jan. 30 rejected the Asian-Arab proposal and approved the American resolution by a vote of 44 to 7. It would seem that the Assembly must at least affirm this stand under the "Uniting for Peace" resolution or stultify the Charter and the June resolutions. Anything less will be a moral, if not a dishonorable, defeat.

The Charter provides a regular method of amendment by a vote of two-thirds of the Members, followed by ratification by them, including all the permanent members of the Security Council (Article 108) or by similar action in a general conference of the Members (Article 109). The resolution, however, proposes simply to tap a reservoir of plenary powers of the Assembly set up in the Charter—powers which cannot be abridged by the veto. Thus, the Assembly may “discuss any questions or any matters within the scope of the present Charter or relating to the power and functions of any organs provided for in the present Charter, and . . . may make recommendations to the Members . . . or to the Security Council or to both on any such questions or matters” (Article 10); “discuss any questions relating to the maintenance of international peace and security . . . and . . . may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both” (Article 11). But Article 12 makes a special exception (also mentioned in Articles 10, 11, 35) that the Assembly “shall not make any recommendation with regard to that *dispute or situation*” while the Security Council is exercising its functions in regard thereto. And “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 also “immediately the Security Council ceases to deal with such matters” (Article 12). There is not a precise prohibition in the latter clause as in the first clause, but it is assumed that the intention was to prohibit the Assembly from acting on any of these matters *pari passu* with the Security Council. In short, the Security Council is charged by the Charter with the primary responsibility for maintaining and restoring peace among nations, and the Assembly is not to interfere in any such matter of which the Council is already seised, but otherwise the Assembly has full power to express its views on the subjects mentioned.

On the other hand, the Security Council can discharge itself of any matter on the agenda (being a procedural action) by a majority vote. Probably in most instances this could be brought about by the group anxious to get the matter before the Assembly for consideration without the impediments of Security Council procedure. However, there appears to be a restriction here. The last clause of Article 11, paragraph 2, requires that “any such question [relating to the maintenance of international peace and security] on which *action* is necessary shall be referred to the Security Council by the General Assembly before or after discussion.” By clear inference the Assembly may discuss such questions but may not itself take enforcement action thereon. Such action appears to be reserved as an exclusive function of the Council. But presumably the Assembly may still make a recommendation for what it may be worth in its moral quality, and it might serve as a rallying point for voluntary collective action.

A question has been raised as to the recommendation of the resolution

that armed units be maintained for the use of the Security Council *or the Assembly*. The only provisions in the Charter for the raising and use of armed forces are in Articles 42-48, and 53. Under these articles forces are to be made available according to *special agreements* negotiated by Members with the Security Council and are to be subject to the call of the Security Council, which decides upon their employment with the assistance of the "Military Staff Committee."⁵ The resolution overrides these special provisions and makes the straight recommendation that each Member maintain armed forces for use of the Security Council *or General Assembly*.⁶ The Charter does not give the Assembly any authority to make provision for armed forces or to use them unless it be read into some of the general articles of the Charter.

One exception is maintained in the resolution (as it is in the Charter), namely, the "inherent right of individual or collective self-defense if an attack occurs against a member," but this prevails only until the Security Council has taken the necessary measures to maintain peace and security (Article 51). It seems clear that the resolution is not limited to self-defense action under Article 51, but contemplates troop movements upon recommendation of the Assembly—a function which the Charter grants primarily, at least, to the Security Council.

From the point of view of the United States there is a constitutional angle which deserves consideration, particularly with reference to a declaration of war in case the United Nations contingents are called on to repel aggression. President Roosevelt once said he might never declare war but he might make war. The United States on numerous occasions has landed small contingents on foreign shores, but the alleged purpose has been to protect American lives and property. In a few other cases the United States has used naval forces to protect American commerce on the high seas without a formal declaration of war, as in the Barbary pirate depredations and in the so-called Security Zones of the United States during the last war. President Truman's action, however, in sending troops into Korea was for a quite different purpose, namely, to resist foreign aggression in a foreign land. This may be mere police action in the eyes of the United Nations, but in the view of many in the United States, calling out the Army and Navy to halt aggression abroad is war, though it be given another name. What then becomes of the constitutional requirement that Congress

⁵ Until the special agreements are negotiated, the great Powers under the Moscow Declaration of October 30, 1943, are to consult together and with other Members with a view to joint action for maintaining peace and security (Article 106). No action appears to have been taken under this article.

⁶ The initiative in providing armed forces is admitted in the preamble of the resolution to belong to the Security Council, but it is deemed desirable to have available "means for maintaining peace and security" pending conclusion of the arms agreements with the Security Council. An accompanying resolution (Resolution B) calls on the Security Council to devise measures for "placing of armed forces at the disposal of the Security Council by the States Members of the United Nations."

shall declare war? When the Charter was before the Senate this question was raised and fully debated on the floor, and the feeling was that the problem was one to be spelled out when the military agreements with the Security Council were negotiated and submitted to the Congress for approval by appropriate Act or joint resolution. It was thought the problem could be solved at that time and the prerogative of Congress to declare war could still be protected.

The resolution reserves the "constitutional processes" of Member States in this regard. But no military agreements have been negotiated with the Security Council, nor has the "process" been settled by Congress. Meanwhile, our representative in the Assembly may, under the new resolution, cast a vote for the use of United States forces anywhere in the world without any consideration or approval by Congress of the action taken. This might amount to making war without declaring war, as is now the case in Korea. It is submitted that in the absence of such military agreements there is no legal obligation to send American forces to Korea or anywhere else.⁷

There remains only to consider the attitude of the Soviet Union and its satellites. They have consistently opposed this resolution and other resolutions looking to peaceful settlement, preparing machinery to strengthen peace and security, and to combat breaches of peace and active aggression (including the Korean resolutions)—all of which are essential objectives of the Charter.

About a year ago (December 1, 1949) the Soviet *bloc* voted against the resolution of the General Assembly on the "Essentials of Peace," calling on Member nations to refrain from "threatening or using force contrary to the Charter" and to cooperate in other stated ways. On June 30 last the Soviet Union, in reply to the request of the United States, refused to use its influence with the North Korean authorities to withdraw their invading forces. On October 12 Stalin telegraphed the North Korean premier assuring the aggressors of his moral support and hoping they would be successful. And now comes the charge of deliberate and premeditated aggression by the United States as stated by the Soviet Union in the Security Council.

What can these acts all mean except an open and shameless revolt of these five Members against the principles and the obligations which they undertook to carry out when they signed the Charter? It amounts to giving aid and comfort to the North Koreans in opposition to the action of the United Nations—a warlike defiance of the world. Their attitude is aimed to ob-

⁷ On June 30, 1950, President Truman told the American people: "We are not at war; the action we have taken is police action." On Dec. 15 he said: "There is actual warfare in the Far East. . . ." On Jan. 4, 1951, he indicated that the nation is not formally at war, but is carrying out an obligation assumed when it signed the Charter. But Congress in the implementing Act (Sec. 6) carefully limited its authorization to the future military agreements with the Security Council.

struct the effort to gain effective collective security in any form and especially through the Security Council. The instances are too frequent, too systematic to admit of any other conclusion, tragic though it is. As the Philippine Foreign Secretary is quoted as saying: "It is difficult to escape the feeling that the opposition to this resolution is inspired by the desire to conceal aggressive aims, to nourish them in secret, and to pursue them by stealth." And this, though in the Charter they agreed to suppress aggression and to refrain from assistance to the aggressor. Mr. Churchill once said in regard to the Charter, "the aggressor who breaks this contract will stand naked in infamy before the embattled conscience of an outraged world."

It is said that the resolution in question has rejuvenated and invigorated the spiritual decline of the United Nations. Nevertheless it would seem that the United Nations is in jeopardy so long as the world is divided into two warring camps, carrying on virulent propaganda, "cold wars," armament races, threatening maneuvers, armed forays or attacks. These only lead to stop-gap measures such as power *blocs*, regional arrangements of collective self-defense and the use of armed force to quell aggression under Chapter VII. That is anything but peace among nations. The only harvest is ill-will and conflict. It is submitted that real peace can only come about when the nations are willing to settle disputes by the use of the peaceful resources open to them in the pacific routines of Chapter VI. No greater reservoirs of peace have been conceived by man. But the mutual will to drain them is lacking.

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LEGALITY OF THE SECURITY COUNCIL RESOLUTIONS
OF JUNE 25 AND 27, 1950

The Korean War is the first experiment in international enforcement action by military measures undertaken by the United Nations in the case of a breach of the peace. At the time of writing,¹ the ultimate outcome of this experiment is not yet clear, especially in the light of armed intervention by Communist China at a moment when the Korean War, as such, seemed to have been won. The Korean War has taught us, even up to now, many lessons in the military and political field. It has shown that an international enforcement action is, for all practical purposes, a war and that the most important thing, as in any war, is to win it. It has shown the continuing great importance of the long and unduly neglected laws of war.

The Korean War may give rise to many political problems. It may revive the old debate between the adherents and opponents of international armed enforcement action. It may revive the argument that any such action is in danger of leading to general war. It may bring up the question of whether the United States, as the principal military arm of the United Nations, should and can, at bitter expense in casualties and treasure, take such enforcement action in any corner of the world, whereas this country's

¹ November 15, 1950.