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THE AMERICAN POLICY OF COLLECTIVE SECURITY
THROUGH THE UNITED NATIONS AS EXPRESSED
IN THE KOREAN ACTION

By

Frank Ohler Leighton

A THESIS SUBMITTED IN PARTIAL PULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE
OF
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UNIVERSITY OF RHODE ISLAND

1952

ABSTRACT

The purpose of this inquiry has been to subject to a critical analysis the American policy of collective security as expressed in the Korean action, in order to determine how that policy has been expressed in a significant international issue. The writer has approached the problem as a citizen of a world community composed of national states pledged to the task of managing that community for the common good.

It has been the writer's aim to present a study of the developing policy of the United States in regard to collective security within the framework of current international developments. An extensive study of the official records of the United Nations has been made in order to locate primary material which might serve as the basis for historical evaluation. The main body of the thesis has been developed from those records. Portions of the speeches of the delegates or summaries of them which preserve as much of the flavor of the delegates' statements as possible are frequently cited.

In addition to the official records of the United Nations, the records of the San Francisco Conference have been examined at length in order to ascertain the intentions of the signatories to the United Nations Charter and to serve as a guide in interpreting the Charter. Significant expressions

of American policy have been cited from the San Francisco Conference, from questions considered before the Security Council prior to the Korean action, and from the evolution of the American position with respect to Korea. The major elements of positions held by other states have been included where necessary, in order to examine the American position within the overall context of the particular issue in question.

The results of the study seem to indicate some major developments in the American policy of collective security through the United Nations. First, the United States no longer places the degree of trust in the unanimity principle which it held at San Francisco. The study of the development of American policy in the United Nations prior to the outbreak of hostilities indicated a persistent movement by the United States away from the position it had held at San Francisco.

Second, the Korean action marked the complete breakdown of great power unity as the sole means of supplying effective collective measures with which to implement a policy of collective security. The United States and other members of the United Nations were forced to develop improvisations in order to cope with the Korean problem.

Third, consideration of the Korean problem has led to the development of a new interpretation of the Charter as witnessed in the "Uniting for Peace" resolution. For the first time, the United States has been willing to allow the General

Assembly to participate, if necessary, in recommendations for enforcement measures.

Last, the United States has demonstrated that it views its national interests as vitally affected by the welfare of the United Nations.

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CHAPTER I

INTRODUCTION

From the earliest times of recorded history the attempts of human beings to erect structures to preserve peace have been witnessed and passed on to succeeding generations. The League system developed by Athens--and exploited by that ancient democracy in such a way as to produce its own ruin--gave way to the Pax Romana of the Roman Empire. With the collapse of the Roman Empire, little organization to preserve peace was feasible, and warfare in the Middle Ages was noted¹ for its savagery and lack of humanitarian rules.

With the Reformation, the idea of universal papal supremacy was destroyed, and the rise of national states was favored. As these national states contended with one another to advance themselves or mutual interests, concepts of international organization advanced with them. The British Empire, with its balance of power system, emerged in the nineteenth century as the strongest single nation capable of preventing a major world conflagration. Great Britain managed to preserve a fair degree of harmony in the world by adroitly shifting her power to favor one side or another at the opportune moment.

¹ Arthur Nussbaum, A Concise History of the Law of Nations (New York, 1950), p. 35.

Early in the twentieth century the balance of power system broke down and the result was the First World War. The entrance of the United States into the European conflict tipped the balance in favor of the Allies and paved the way for the creation of the League of Nations. After the war was over, the American people were not as willing as President Wilson to depart from the policy of isolation they had followed since the time of Washington's Farewell Address. The United States attempted to avoid responsibility in international affairs and pursued her own national interests with little regard for the effects which her policies might have on other nations or the stability of world peace. In the meantime, the League of Nations struggled desperately to achieve some means of preventing armed conflicts between nations, but was powerless to enforce its will against a major power.

The tremendous destruction brought about by the Second World War, which followed so close to that of the first, convinced the overwhelming majority of Americans that the time had come to cast loose from the doctrine of isolation and to venture forth to create some lasting organization for the preservation of international peace. On October 24, 1945, the American people bound themselves to a new experiment in government. On that day, Secretary of State James F. Byrnes signed and published the protocol of

deposit of ratifications of the United Nations Charter in
1
behalf of the American people.

The objectives of this study will be to examine the manner in which the United States has expressed her policy of collective security in seven selected questions considered by the United Nations prior to the Korean action, and to endeavor to determine how that policy has been modified or developed by the Korean action. The method used in the inquiry will be to present material taken from the official records of the United Nations and other sources, in order to determine significant expressions of American policy within the context of the particular issue or issues involved. From the material presented the writer will offer an interpretation of the developing American policy and the possible significance of the issues brought forth in the development of collective security through the United Nations.

1
J. Eugene Harley, Documentary Textbook on the United Nations (Los Angeles, California, 1950), p. 841.

CHAPTER II

COLLECTIVE SECURITY: THE EVOLUTION OF AMERICAN POLICY IN SEVEN QUESTIONS CONSIDERED BY THE SECURITY COUNCIL OF THE UNITED NATIONS

A Comparison of Certain Characteristics of the United Nations and the League of Nations

As the nations of the world approached their second attempt in the twentieth century at international government, questions were raised as to the extent of authority to be delegated to the United Nations. The League of Nations had been based upon the strict sovereignty of national states and required unanimity among the member states to obtain consent for action. The United Nations Charter was drafted during the Second World War, when the effectiveness of unanimity among the great powers acting together to suppress the militant expansion of the Axis was clearly apparent. Desiring to retain this instrument of collective security, the five great powers insisted upon, and were accorded, permanent seats on the new Security Council; and each power was permitted to frustrate Security Council recommendations and orders by means of a negative vote.

Since the Charter conferred "primary responsibility for the maintenance of international peace and security" on the Security Council and endowed it with enforcement powers

of a military nature,¹ the United Nations clearly seems to have been designed to be capable of enforcing its will upon offending states of lesser rank. It remained to be seen whether the Charter would be at all adequate as an instrument of collective security if the great powers should quarrel among themselves. By the same token, it remained to be seen whether the United Nations would grow so much in power and authority, through strong leadership and Charter interpretation, as to become eventually a supranational authority.

Was it to become endowed with an authority superior to that of the sovereign nations; or was it an organization acting as an agent of sovereign nations, and, hence, incapable of going beyond the wishes of any one of its great power principals? The United States would have a major part in the outcome. The policy of the United States as indicated during seven cases² considered by the Security Council from 1946 to 1950 will be analyzed in an endeavor to ascertain how the United States as a member state has expressed her views in regard to the problem of collective security through the United Nations.

¹ Charter of the United Nations, chap. VII, par. 39-51.

² The seven cases selected are: the Iranian, Greek, and Indonesian questions, the Corfu Channel Incidents, and the Palestine, India-Pakistan, and Berlin questions.

The Procedure for Handling International Disputes
Culminating in or Likely to Culminate
in Armed Conflict

The United States has contributed a great deal to the development of an orderly procedure within the United Nations to cope with international disputes leading to armed conflict. Proceeding from the Iranian question in 1946 to the developments of the India-Pakistan question in 1950, a rather consistent evolution in procedure has taken place in which the United States has been the principal designer. The United States has contributed mainly by the resolutions which she has drafted, those to which she has lent her support, and those against which she has used her vote and influence. Ernest Gross summarized this procedure during February, 1950, while speaking before the Security Council on the India-Pakistan question.¹ Drawing on the experience of the Renville Agreement in the Indonesian case and the experience of the armistice agreements in the Palestine case, he stated the American position. The method outlined by Gross was composed of three main steps: elimination of military pressure, supervision by the United Nations, and the attainment of a lasting political solution.

This procedure aimed first at eliminating the "military pressure" between the two parties. The elimination of

¹
United Nations Security Council Official Records,
5th Yr., 467th Meeting, 24 February 1950, No. 9, pp. 12-18.
Hereafter referred to as U. N. S. C. Off. Rec.

this pressure was to be regarded as a "stop-gap measure" only. It was to serve as a means of bringing about a more favorable atmosphere, freer of tension, in order that the parties in dispute might be able to arrive at a more lasting political settlement--and thus remove the differences from the realm of armed conflict. This settlement was to be made under the "aegis" of the Security Council, as Warren Austin¹ had recommended earlier in the India-Pakistan question.

The second part of the process concerned the amount of initiative the United Nations Security Council was to take. According to the American position, the Security Council was to be free to step in, if necessary, while "the effectuation of a cease-fire and demilitarization program was in process."² Early in the India-Pakistan case, Philip Jessup maintained that the subsidiary organs of the Security Council should be endowed with "broad powers and responsibility," and that the Council should "place great reliance on these subsidiary organs or individuals performing a similar task."³

The last phase of the solution of the problem lay in attaining the lasting political solution. Here the American

¹
U.N.S.C. Off. Rec., 3rd Yr., 235th Meeting,
24 January 1948, No. 1-15, pp. 260-62.

²
Ibid., 5th Yr., 467th Meeting, 24 February 1950,
No. 9, pp. 12-18.

³
Ibid., 3rd Yr., 382nd Meeting, 25 November 1948,
No. 127, p. 9.

position of placing that responsibility upon the parties to the dispute has been a difficult one to implement. Although the American position within the United Nations has generally followed the sincere efforts of its delegates to pursue a policy deduced from such a premise, the present day realities of international politics have introduced another element.

Any appraisal of the effectiveness of a collective security policy pursued under the aegis of the United Nations is subject to the complications introduced by the inequality of the influence exerted by the great powers in an international community of allegedly "equal" states. Thus, in the Palestine case, the sudden de facto recognition of the State of Israel by President Truman doubtless acted as a strong factor in determining the eventual political solution (even though one of the parties to the dispute was strongly against just the solution this action fostered--partition and the recognition of Israel as an independent state). A similar instance of having to differentiate between the effectiveness of United Nations measures as United Nations measures and measures adhered to because of the influence

1

F. Lee Benms, Europe Since 1914 in its World Setting (7th ed.; New York, 1949), p. 744. The President took action so rapidly that he did not even pause to notify the American delegation at the General Assembly prior to his announcement. At the time, the American delegation was pressing a plan for temporary trusteeship, having asked the Council to suspend the implementation of the partition plan.

of great powers was demonstrated in the Indonesian case, where again the lasting political solution was effected by the influence of a great power.¹

The United States' Definition of
"Threat to the Peace"

In the Berlin question the American definition of what constituted a threat to the peace was summarized by Jessup in asking that Chapter VII of the Charter be invoked. According to Jessup, a "threat to the peace is created when a state uses force or the threat of force to secure compliance with its demands" This definition maintained that "when the act is aggressive and threatens the use of force, but falls short of an armed attack, it constitutes an act of aggression or a threat to the peace" Jessup concluded that armed attack might be repelled by armed attack under the right of self defense, individually or collectively, under Article 51 of the Charter.²

¹
U.N.S.C. Off. Rec., 4th Yr., 398th Meeting, 11 January 1949, No. 2, pp. 2-10. The United States denounced the Netherlands government for its non-cooperation with the Committee of Good Offices and for its violation of the Charter by the illegal use of force in open defiance of an order of the Security Council. The United States delegation then concluded its position by announcing the admiration with which its government viewed the efforts of the Indonesian people to gain their independence, and stated that the United States would continue to support them in an endeavor to work out a peaceful adjustment of the dispute.

²
U.N.S.C. Off. Rec., 3rd Yr., 363rd Meeting, 6 October 1948, No. 115, pp. 1-27.

The Position of the United States on the
Implementation of a United Nations
Collective Security Policy
and the Veto

At the San Francisco Conference the United States delegation, confronted with strong resistance from many delegates to the exercise of a negative vote by a permanent member which produced the requirement of unanimity among the permanent members (the veto), had contended that the veto would be exercised seldom, if ever. It implied that failure to agree to the unanimity principle among the permanent members would be tantamount to defeating acceptance of the Charter; and, furthermore, that the great powers would use the veto for the interests of the world organization rather¹ than for their own selfish interests.

The extreme position regarding the unanimity principle--adhered to tenaciously by the United States at San Francisco--was modified in the process of considering the Greek question. The United States had sponsored a resolution establishing a commission of investigation consisting of one² representative of each member of the Council. The commission had investigated the question on the spot from January to

¹
United Nations Conference on International Organization Documents, Vol. 11, Commission III, Security Council, (New York, 1945), p. 493. For the strong objections to the veto principle as set forth see the reports of Committee III/1, pp. 429-531 of Vol. 11. Hereafter referred to as U.N. Conf. Intntl. Org.

²
U.N.S.C. Off. Rec., 1st Yr., 2nd Series, 87th Meeting, 19 December 1946, No. 28, pp. 700-01.

April of 1947, then submitted a divided report.¹ During July and August of 1947, five proposals had been made and rejected in an attempt to resolve the issue. The United States had then proposed the establishment of a commission to implement the recommendations of the investigation commission. When this proposal had been rejected, the United States then proposed that the Council determine that a threat to the peace existed under Chapter VII of the Charter. In anticipation of a rejection by veto of the second resolution by the Union of Soviet Socialist Republics, the American view was strongly worded. The United States delegation contended that such a veto in the Council could not "preclude individual or collective action by states willing to act as long as they act in accordance with the general purposes and principles of the United Nations."² Nevertheless, the second proposal was also rejected, and, after much debate, the United States proposed that the matter be dropped from the Security Council agenda and sent to the General Assembly.³

The negative vote by the U.S.S.R. in the Corfu Channel case had prevented the acceptance of the report of

¹
No. 2. U.N.S.C. Off. Rec., 2nd Yr., Special Supplement,

²
No. 74, Ibid., 2nd Yr., 180th Meeting, 12 August 1947, p. 1910.

³
p. 2405. Ibid., 202nd Meeting, 15 September 1947, No. 89,

the investigating subcommittee--¹a report which clearly imputed Albanian responsibility for the laying of the mines which had damaged British warships.²

The Greek question and the Corfu Channel case brought forth the problem anticipated by many of those at San Francisco--the obstruction of the Council from performing its stated purpose by the use of the veto. The United States modified her San Francisco position and even went so far as to take the position that she would disregard the veto in order to carry out the purposes and principles of the Charter.

American Policy by 1950 on
Chapters V, VI, and VII
of the Charter

By February 1950, the United States had clarified her position in regard to Chapters V, VI, and VII of the Charter. Gross' summary before the Council³ that month clearly showed that the American policy of collective security through the United Nations meant that the United States intended the United Nations to play a strong part in the settlement of international disputes. A regular procedure for handling disputes was developed in which the situation was to be kept as much as possible within Chapter VI

¹
U.N.S.C. Off. Rec., 2nd Yr., 122nd Meeting,
25 March 1947, No. 29, pp. 608-09.

²
Ibid., 120th Meeting, 20 March 1947, No. 27,
Supplement 10, Annex 22, pp. 77-109.

³
Ibid., 5th Yr., 467th Meeting, 24 February 1950,
No. 9, pp. 12-18.

(Pacific Settlement of Disputes) of the Charter. This was to be accomplished by: the establishment of commissions of investigation, the facilitation of negotiation, truce commissions, and other means which might aid the effectuation of a lasting political solution by the parties to a dispute--all under the aegis of the Security Council.

If the measures advanced by the Council under Chapter VI were deemed to be inadequate, Chapter VII should be invoked by declaring the existence of a "threat to the peace," a "breach of the peace," or "an act of aggression." The Council should then make its recommendations, and the various nations should move to implement these recommendations, placing great reliance on the subsidiary organs established by the Council.

If the Council (in the performance of its "primary responsibility for the maintenance of international peace and security" as stated in Chapter V) were to be obstructed by a negative vote of a permanent member, such a misuse of the veto was not to "preclude individual or collective action by states willing to act as long as they act in accordance with the general purposes and principles of the United Nations." Thus, a "strict" interpretation of the voting procedure in regard to permanent members under Chapter V was to be avoided. Instead the United States favored a "loose construction." She advocated strongly the interpretation that the veto was to be used seldom if at all, and that

action in conformity with the purposes and principles of the United Nations Charter could be taken even though a veto had been used. In effect, the United States' position was that a misuse of the veto rendered the veto unenforceable.

By the time the Korean problem came to the attention of the Security Council in 1950, American policy in regard to the veto had changed considerably from the views the United States had expressed at San Francisco. From the extreme position of insistence upon the principle of unanimity, the United States' position had been modified to the point where it advocated the disregard of a veto (when a sufficient number of the Security Council delegations indicated that the will of the Council might be obstructed, and the Council might be rendered incapable of performing its responsibilities under the Charter). The United States had followed a consistent policy of strengthening the authority of the United Nations as each case was considered. American policy regarded the United Nations as an international authority with greatly expanded powers of investigation and with the ability to advocate strong enforcement measures if necessary to maintain international peace and security. The Korean problem provided the occasion for the United States to go so far as to advocate the use of the General Assembly to support enforcement measures--even if this policy meant the reversal of the position held by the United States at San Francisco.

CHAPTER III

THE BACKGROUND OF THE KOREAN PROBLEM, 1945-1950

Korea's Historical "Independence"

Until the Japanese-Korean treaty of 1876, Korea had been a dependent of China, exercising local autonomy, but paying tribute to China and being regarded as her ward. Japan interpreted the treaty of 1876 as granting Korea independence in the Western sense¹ and proceeded to exploit Korea until conflict with China over their competing interests culminated in the Sino-Japanese War and the end of the "shu-pang" relationship between China and Korea.² With the Treaty of Shimonoseki (1895) Korea became an independent sovereign state under Western international law.³ Rivalry between Japan and Russia led to the Russo-Japanese War, and in the Treaty of Portsmouth (1905) Russia, as the loser, acknowledged Japan's paramount interest in Korea. On November 17, 1905, Japan secured control of the foreign relations of Korea by treaty,⁴ and Korea became a protectorate of Japan with

¹ M. Frederick Nelson, Korea and the Old Orders in Asia (Baton Rouge, La., 1946), pp. 131, 134-37.

² Ibid., pp. 212-13.

³ Ibid., p. 242.

⁴ William L. Langer, An Encyclopedia of World History (Boston, 1948), p. 892.

1
American consent. The Second World War brought far-reaching changes in Asia and, with them, the renewed question of Korea's "independence."

When President Roosevelt, Prime Minister Churchill, and Generalissimo Chiang Kai-shek met at Cairo from November 22-26, 1943, they laid the foundation for the post-war policy in Asia which later met with serious difficulties in Korea (Russia was not represented at the Cairo Declaration, not being at war with Japan at the time). The decisions of the meeting were clearly stated:

The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.²

Allied Agreements, 1945

At Potsdam, July 26, 1945, the President of the United States and the Prime Minister of Great Britain signed the Potsdam Proclamation (concurrent in by despatch by the President of the National Government of China) confirming

1
M. Frederick Nelson, Korea and the Old Orders in Asia, pp. 267-71. Japan annexed Korea by 1910.

2
Cairo Declaration, cited by Harold R. Isaacs, New Cycle in Asia (New York, 1947), p. 29.

the Cairo Declaration: "(8) The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."¹

On August 6, 1945, an atomic bomb was dropped on Hiroshima. On August 8, a bomb was dropped on Nagasaki, and the Soviet Union declared war on Japan and invaded Manchuria. On August 10, the Japanese government announced² readiness to surrender. In her declaration of war against Japan, the Soviet Union associated herself with the pledge contained in the Cairo Declaration and confirmed at Potsdam, that Korean independence would be restored in "due course."³

As a result of a military decision to effect the surrender of Japanese forces in Korea, Japanese troops north of the thirty-eighth parallel were to surrender to Soviet forces, and those south of the thirty-eighth parallel were to surrender to United States forces. After this decision had been put into effect, in September, 1945, the thirty-eighth parallel was interpreted by the Soviet occupation authorities to be a permanent delineation between two military zones. The United States commander attempted to negotiate arrangements which would allow passage between the

¹ Potsdam Proclamation Defining Terms for Japan's Surrender, cited by Isaacs, New Cycle in Asia, pp. 5-6.

² Ibid., p. 3.

³ Ibid., p. 88.

two sections of the country, but the Soviet occupation authorities regarded the delineation as a military one, and the question was taken up on a governmental level.¹

In December, 1945, the Foreign Ministers of the United States, the United Kingdom, and the Soviet Union, meeting in Moscow, arrived at an agreement concerning the future status of Korea. This Moscow agreement received the adherence of the Chinese Government also. It provided for: (1) the "creation of conditions for developing the country on democratic principles"; (2) the establishment of a Joint Commission, consisting of representatives of the United States command in southern Korea and representatives of the Soviet command of northern Korea, to assist in the formation of a provisional Korean government; (3) the submission of proposals of the Joint Commission "concerning a four-power trusteeship of Korea for a period up to five years" to the four powers; and (4) a conference within two weeks of representatives of the United States and Soviet commands in Korea for the purpose of effecting permanent coordination in administrative-economic matters between northern and southern Korea.²

Deadlock of the Joint Commission

The Joint Commission met on March 20, 1946, but soon

¹ U. S. Department of State, Korea 1945-1948, Publication 3305, (Washington, 1948), p. 3.

² Communiqué of the Moscow Conference of the Three Foreign Ministers, cited by Isaacs, New Cycle in Asia, pp. 90-91.

became stalemated through inability to agree on the definition of the word "democratic" as it pertained to representatives of the parties and social organizations mentioned in the Moscow Agreement, and the Commission adjourned sine die on May 8, 1946. In a letter delivered to Foreign Minister V. M. Molotov during the Foreign Ministers' Conference in Moscow in April, 1947, General George Marshall (United States Secretary of State) brought the matter to the attention of the Soviet Foreign Minister in requesting that the Joint Commission reconvene.¹

Molotov replied a few days later with a proposal that the Joint U.S.S.R.-U.S.A. Commission resume its work on May 20, 1947, in order to implement the Moscow Agreement pertaining to Korea. Molotov also proposed that during July and August of 1947 the Commission should "submit to the two governments for consideration the results of its work in elaborating recommendations in respect to the establishment of a provisional Korean democratic government."²

The Joint Commission reconvened on May 21, 1947, and soon became stalemated again. The United States and Soviet delegations were not even able to agree on a joint report on the status of the deliberations in the Joint Commission.

¹ Marshall Letter on Korea, cited by Isaacs, New Cycle in Asia, pp. 94-96.

² Molotov's Reply, cited by Isaacs, New Cycle in Asia, pp. 96-99.

The United States then proposed to the Soviet Union, on August 26, 1947, that four power meetings be held to consider how the Moscow Agreement could be speedily carried out.

On September 4, 1947, the Soviet Union rejected the proposal--on the grounds that such a conference would be outside the scope of the Moscow Agreement. The United States, feeling that further negotiations with the Soviet Union were futile and would only delay the urgent claims of the Korean people to independence, brought the whole question of Korean independence before the General Assembly¹ on September 17, 1947.

Korea Before the General Assembly

The question of "the independence of Korea" came before the second regular session of the General Assembly, a session that was noted for the conspicuous acrimony and bad² feeling between the United States and the Soviet Union. When the United States representative introduced the problem for consideration by the First Committee, he blamed the U.S.S.R. for the failure of the Joint Commission because it had refused to grant consultations to political parties and social organizations opposed to trusteeship. He declared that his country (United States) was eager to withdraw her

¹ U. S. Department of State, Korea 1945-1948, pp. 5-6.

² Eugene P. Chase, The United Nations in Action (New York, 1950), pp. 113-15.

troops, but such a withdrawal would have to follow the formation of a single government representing the Korean people. He proposed the establishment of a United Nations Temporary Commission to observe elections with the purpose of establishing a National Assembly. This Assembly would then form a national government for all Korea and take over the functions of the commanders of the occupation forces in Korea.¹

The U.S.S.R. charged that the United States had violated her obligations under the Moscow Agreement in regard to the selection of the political parties and social organizations entitled to be heard. It was further charged that the United States had rejected the U.S.S.R. proposal on the establishment of a Korean Constituent Assembly which would consist of representatives of the political parties and social organizations with which Korea might form a provisional government. The Soviets stated that the United States had refused to accept their proposal advocating simultaneous withdrawal of the U.S.S.R. and American troops from Korea early in 1948, and, therefore, the United States was responsible for the breakdown in the Joint Commission. The U.S.S.R. maintained unsuccessfully that the Korean question, in the

1

United Nations Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, p. 4. Hereafter referred to as U. N. Secretariat.

same category as other questions connected with peace treaties, should be decided by the two powers concerned and did not lie within the jurisdiction of the United Nations.¹

The Soviet government held that a free government could not be established until after the complete withdrawal of foreign troops; therefore, the General Assembly should consult with representatives of the Korean people before making a decision on the matter. The U.S.S.R. introduced a proposal to invite representatives of the Korean people from Southern and Northern Korea to take part in the discussion of the question. The United States maintained that such consultations should be held in Korea in order that a United Nations Commission might be able to ascertain who the elected representatives of Korea might be.² The majority of the Political Committee favored the American view; as a result, the U.S.S.R. declared that if a United Nations Temporary Commission were to be set up without the participation of the Korean people in the discussions of the General Assembly, the U.S.S.R. would be unable to take part in the Commission.³

¹ U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, p. 5.

² Ibid., p. 6

³ United Nations General Assembly Official Records, 2nd Session, 1947, Summary Record of Meetings, 16 September-19 November, First Committee, p. 281. Hereafter referred to as U.N.G.A. Off. Rec.

United Nations Temporary Commission on Korea

Nevertheless, on November 14, 1947, the General Assembly proceeded to form a United Nations Temporary Commission on Korea. The task of the Commission was to facilitate the establishment of a national government of Korea by means of nation-wide elections and to provide for the withdrawal of the occupation forces. This Commission was composed of Australia, Canada, China, El Salvador, France, India, Syria, Philippines, and the Ukrainian Soviet Socialist Republic. It was authorized to travel, observe, and consult throughout Korea. The Ukrainian S. S. R. refused to participate in the work of the Commission on grounds similar to those presented¹ by the U.S.S.R.

The Temporary Commission endeavored to carry out its task, but was unable to make contact with military authorities in North Korea. The U.S.S.R.'s permanent representatives at the United Nations headquarters made references to the "negative" attitude of their government toward the establishment of the Temporary Commission in Korea. The Commission then decided to consult with the Interim Committee in order to obtain its view on a method of procedure.²

The Interim Committee

The Interim Committee had been established by the

¹ U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 6-7.

² Ibid., pp. 7-8.

General Assembly in November of 1947 to function until the next regular session of the Assembly. Among its powers were those authorizing the Temporary Commission on Korea to consult the Interim Committee with respect to the application of the Assembly's resolution establishing the Temporary Commission. (The U.S.S.R. had strongly objected to the establishment of the Interim Committee and had refused to participate in its work, on the grounds that it was a violation of the Charter and was an unconstitutional method of avoiding the unanimity rule of the Security Council--a device which ultimately would usurp the powers and prerogatives of the Security Council itself.)¹

The Temporary Commission informed the Interim Committee that under the General Assembly resolution it was to be concerned with the whole of Korea and not just one part of it. Under the circumstances, most of the members of the Temporary Commission felt that the formation of a separate government in South Korea could not be a "national government", nor would it facilitate the withdrawal of the occupying forces. The Australian representative believed that an election in only one part of Korea would be contrary to the

¹
U.N.G.A. Off. Rec., 2nd Session, Summary Record of Meetings, 16 September-19 November 1947, First Committee, pp. 329-35. The representatives of the Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, the Ukrainian S.S.R. and Yugoslavia sided with the Russian argument, and also refused to participate in the work of the Interim Committee.

General Assembly resolution, and that the setting up of a government in the South would give rise to the establishment of a government in the North--which would place the United Nations in a difficult position. The Interim Committee, nevertheless, decided on February 26, 1948, that the Temporary Commission should implement the General Assembly's resolution in such parts¹ "as are accessible to the Commission."

The Formation of Two Rival Governments in Korea

The Temporary Commission could not gain access to North Korea, but proceeded to supervise elections on May 10, 1948, in South Korea. The election in South Korea resulted in the majority of seats in the National Assembly going to the National Association for the Rapid Realization of Korean Independence (led by Syngman Rhee). The Commission observed that "only rightist parties and groups had officially supported the elections." It also observed that, since the elections were restricted to South Korea, they "were opposed by some political parties and kindred organizations in that area."²

In the meantime, according to the Commission's best information (it had no direct contact with North Korea), a

¹
U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 8-9.

²
U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 9-11.

rival government had been formed under General Kim Il Sung. This government of the North claimed that 1,080 representatives from South Korea had met in Haeju in North Korea and had elected 360 Assemblymen. The 360 Assemblymen elected by the delegates from the South combined with the 212 North Korean Assemblymen claimed to constitute the Supreme People's Assembly, and, on September 9, 1948, they established the Government of the People's Republic of Korea. In October, the U.S.S.R. recognized the northern government, the Democratic People's Republic of Korea, and later it was recognized by some ten other states. In February, 1949, it applied for membership in the United Nations, but was ¹ rejected.

The Temporary Commission, in its report to the General Assembly, called attention to the fact that a separate government had been established in the north without consulting that Commission and recommended that the government in the south be recognized by the Assembly. It urged unification of the country as a necessary prerequisite to the withdrawal of the occupying forces if an internecine war ² were to be avoided.

¹
U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 11-13.

²
Ibid., p. 13.

The General Assembly established a new Commission (the six states that had refused to participate in the work of the Interim Committee again refused to vote, reiterating their objections) and announced the establishment of a lawful government (the government of the Republic of Korea) "having effective control and jurisdiction over that part of Korea where the Temporary Commission was able to observe and consult and in which the great majority of the people of all Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such Government in Korea."¹

The Government of the Republic of Korea was granted full recognition by the United States in January, 1949. It has also been recognized by the National Government of China, France, the United Kingdom, Philippines, and other states. Formal application for membership in the United Nations was made by the Republic of Korea in January, 1949, but was rejected by a negative vote of the Soviet Union, although it

¹
U.N.G.A. Off. Rec., Plenary Meetings, 3rd Session, Part 1, Annexes to the Summary Records of Meetings, 1948, DOC A/788/ pp. 549-51, Par. 2 of the Resolution adopted by the General Assembly at the 187th Plenary meeting 12 December 1948. Par. 9 of the same resolution recommended that "Member States and other nations, in establishing their relations with the Government of Korea, take into consideration the facts set out in Par. 2 of the present resolution."

met all the requirements for acceptance by that body with
nine votes in its favor.¹

The Withdrawal of Occupation Forces

The United Nations Commission observed and verified the withdrawal of American occupation forces, which was completed on June 29, 1949. Military material was not withdrawn but was transferred to the Korean security forces. An American Military Advisory Group of 500 men remained in order to give advice to the Korean Military Academy.²

The Commission signified its readiness to offer its services, as directed by the General Assembly resolution of December 12, 1948, to observe the withdrawal of U.S.S.R. occupation forces. No reply was received to its request from the Soviet Government, but according to Tass, the Soviet News Agency, Soviet evacuation was completed on December 25, 1948.³

The Commission's Conclusions of July, 1949

By July, 1949, the United Nations Commission was able to summarize the results of its experiences in Korea. It stated that the Government of the Republic of Korea had maintained a negative attitude with respect to the Commission's

¹ U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, p. 15.

² Ibid., p. 19.

³ Ibid., p. 20. On September 18, 1948, the Foreign Ministry of the Soviet Union had notified the United States Government that the evacuation of Soviet troops from North Korea would be completed at the end of December, 1948.

endeavors to establish contact with the North. The Commission felt that the Republic was still politically divided internally by a breach stemming from the differences of views over the elections of May 10, 1948. The Commission felt that the government had made no attempt to heal the breach and that, as a result of the activities of the North, it had adopted a somewhat brutal attitude in its conduct, which had engendered suspicion of those who were independent or critical in spirit. The Commission maintained that the Korean problem was basically one phase of the world-wide antagonism between the United States and the U.S.S.R., and that no substantial progress toward the achievement of unity in Korea could be made without an understanding on the problem by those two powers.¹

The Renewal of the Commission, October 21, 1949

When the Commission applied to the Ad Hoc Political Committee for continuation of the Commission with enlarged powers, a Philippine proposal was adopted to invite the delegation of the Republic of Korea to participate, without vote, in the discussions of the Committee. Representatives of North Korea were excluded since they refused to recognize or cooperate with the United Nations Commission on Korea. The U.S.S.R. maintained that the United States had created a

¹

U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 20-22.

puppet government in South Korea and pressed for the immediate termination of the Commission. The United States urged continuation of the Commission, warning of the growing danger of a "cruel civil war." On October 21, 1949, the General Assembly approved the renewal of the Commission with slightly expanded powers and with some alteration of purpose. The first task of the renewed Commission was to "observe and report any developments which might lead to or otherwise involve military conflict in Korea."¹

¹
U. N. Secretariat, Research Section, Background Papers, No. 62, 18 May 1950, pp. 22-29.

CHAPTER IV

ARMED CONFLICT IN KOREA AND THE APPEALS FOR COLLECTIVE ACTION: THE RESOLUTIONS OF JUNE 25 AND JUNE 27, 1950

The Composition of the Security Council From January until August, 1950

At the first meeting of the Security Council on January 10, 1950, the U.S.S.R. brought to the attention of the Council requests from the Central People's Government of the People's Republic of China. These requests stated that the government of the People's Republic of China held the presence of "the delegates of the Chinese Kuomintang reactionary remnant clique" (Nationalist Chinese delegates) in the Security Council to be illegal, and asked for the expulsion of those delegates. The U.S.S.R. then submitted a resolution to the Council calling for the exclusion of "the representative of the Kuomintang group." The U.S.S.R. took the position that the Kuomintang delegate represented neither China nor the Chinese people and gave notice that if the Council failed to take appropriate action, the U.S.S.R. would not participate in the work of the Council as long as that delegate had not been excluded.¹

¹
U.N.S.C. Off. Rec., 5th Yr., 459th Meeting,
10 January 1950, No. 1, pp. 1-3.

The Yugoslav delegate supported the Soviet resolution, pointing to the fact that five governments represented on the Council recognized the new government of China and five governments recognized the old one. He stated that the increasing number of recognitions was due to the fact that it had become obvious that the sovereign will of the Chinese people had been expressed in the establishment of the Government of Mao Tse-tung.¹ Nevertheless, the Soviet resolution was rejected, and the representative of the U.S.S.R. left the Council chamber with the statement that the U.S.S.R. would "not recognize as legal any decision of the Security Council adopted with the participation of the Kuomintang group," and would "not be guided by any such decisions."² The Soviet delegate did not return to the Council until August 1, 1950.

The June 25 Resolution

On June 25, 1950, the Security Council convened at the request of the United States to consider a reported "aggression upon the Republic of Korea."³ At three o'clock of that morning, Ernest Gross, the American representative, had read a message to the President of the Security Council

¹ U.N.S.C. Off. Rec., 5th Yr., 460th Meeting, 12 January 1950, No. 2, pp. 2-4.

² Ibid., 461st Meeting, 13 January 1950, No. 3, pp. 9-10.

³ Ibid., 473rd Meeting, 25 June 1950, No. 15, p. 1.

which stated:

The United States Ambassador to the Republic of Korea has informed the Department of State that North Korean forces invaded the territory of the Republic of Korea at several points in the early morning hours of June 25 (Korean time).

Pyongyang Radio under the control of the North Korean regime, it is reported, has broadcast a declaration of war against the Republic of Korea effective 9 P.M., E.D.T., June 24.

Upon the urgent request of my Government, I ask you to call an immediate meeting of the Security Council of the United Nations.¹

At the opening of the meeting of the Security Council a cablegram from the United Nations Commission on Korea was introduced, which read:

Government of Republic of Korea states that about 04.00 hrs. 25 June attacks were launched in strength by North Korean forces all along the thirty-eighth parallel Pyongyang radio allegation at 13.35 hrs. of South Korean invasion across parallel during night declared entirely false by President and Foreign Minister in course of conference with Commission members and Principal Secretary. Allegations also stated People's Army instructed repulse invading forces by decisive counter attack and placed responsibility for consequences on South Korea

Commission wished to draw attention of Secretary-General to serious situation developing which is assuming character of full-scale war and may endanger the maintenance of international peace and security 2

The United States representative then submitted a resolution which called upon the North Korean authorities to

¹
U.N.S.C. Off. Rec., 5th Yr., 473rd Meeting,
25 June 1950, No. 15, p. 1, n.

²
Ibid., p. 2, n. The cablegram was dated June 25, 1950.

cease hostilities and to withdraw their armed forces to the thirty-eighth parallel. The resolution also called upon "all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities." The cautious response of the United Kingdom to the American resolution is noteworthy. Sir Gladwyn Jebb held to the view that a certain amount of restraint was necessary and that "the Security Council should not at this moment take action which might be beyond the bounds of the evidence which has been placed at its disposal by its own Commission in Korea." The Yugoslav delegate proposed that the Council enlarge the bounds of evidence by granting an opportunity for a representative of North Korea to present his case. Until that transpired, he said, final judgment should be withheld. After calling attention to the fact that the Council had heard the representative of South Korea, Mr. Nincic introduced a resolution that would have granted a similar privilege to a representative of North Korea.¹

The American resolution was adopted by nine votes in favor, Yugoslavia abstaining, and Russia absent.

¹
U.N.S.C. Off. Rec., 5th Yr., 473rd Meeting,
25 June, 1950, No. 15, pp. 4-15.

The Yugoslav resolution was rejected, six votes against, three
1
abstentions, and one absent.

Recommendations of the United Nations
Commission on Korea

On June 27, 1950, the Security Council met to renew its consideration on the "Complaint of Aggression upon the Republic of Korea." Four cablegrams had been received from the Commission in reply to a request which had been included in the Security Council's resolution of June 25.

The first cablegram stated that North Korean advances had created a dangerous situation with possibilities of rapid deterioration, and, in the light of past experience, the Commission was convinced that North Korea would neither heed the Council's resolution nor accept its good offices. It suggested that the Council either invite both parties to agree on a neutral mediator to negotiate peace, or that the Council request Member Governments to undertake immediate mediation.

The last cablegram stated that the Commission had met to consider the latest reports on hostilities and the results

1
U.N.S.C. Off. Rec., 5th Yr., 473rd Meeting, 25 June, 1950, No. 15, pp. 16-18. The procedure of the Security Council called for a vote on the American resolution first. Immediately after the presentation of the Yugoslav resolution, the delegate of Norway, Mr. Sunde, stated that his country would support the American resolution. The Council then moved to vote on the American resolution immediately. There was no opportunity given to discuss the Yugoslav resolution which was put to a vote after the Council had adopted the one proposed by the United States.

of "direct observation along the parallel by UNCOK military observers over period ending forty-eight hours before hostilities began." The Commission's view on the basis of that evidence was that the Northern Regime was carrying out a "well-planned, concerted and full-scale invasion of South Korea"; that the "South Korean forces were deployed on a wholly defensive basis"; and that the South Korean forces "were taken completely by surprise, as they had no reason to believe from intelligence sources that invasion was imminent."¹

The American Position of June 27

Warren Austin, speaking for the United States before the Security Council, called attention to the report of the United Nations Commission for Korea which confirmed that the armed invasion of the Republic of Korea was continuing. He noted that the Security Council's call for a cessation of hostilities had been broadcast to the North Korean authorities, but that they had completely disregarded it. The con-

¹
U.N.S.C. Off. Rec., 5th Yr., 474th Meeting,
27 June 1950, No. 16, p. 2. The last report of the Commission cited here (S/1507) deserves some special attention. No date was given in the Security Council Records to indicate the time it was sent, but, according to other records, the date was June 26 (Korean date). (U.N.G.A. Off. Rec., 5th Session, Report of the United Nations Commission on Korea 19 December 1949 to 4 September 1950, Supp. 16, New York 1950, p. 3.) However, the "on the spot" observations by the military observers of the U. N. Commission terminated 48 hours prior to the commencement of hostilities. Therefore, in this report the information concerning activities at the time of commencement of hostilities was drawn by the Commission from Government of Korea sources.

tinued armed attack upon the Republic of Korea was then, according to Austin, an attack upon the United Nations itself.

Since the most important provisions of the Charter were those outlawing aggressive war, and since these were precisely the provisions which the North Korean authorities had violated, the plain duty of the Security Council was to invoke stringent sanctions to restore international peace. Since the Republic of Korea had appealed to the United Nations for protection, Austin was happy and proud to report that the United States was prepared, as a loyal member of the United Nations, to furnish assistance to the Republic of Korea. Accordingly, he submitted a draft resolution for the Council to consider as the next step to restore world peace. The resolution called attention to the appeal of the Republic of Korea and recommended "that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."¹

After submitting the resolution, Austin read a statement which the President of the United States had made that day (June 27th). In his statement the President took the view that the attack upon Korea had made it "plain beyond all doubt" that Communism had "passed beyond the use of subversion

¹
U.N.S.C. Off. Rec., 5th Yr., 474th Meeting, 27 June, 1950, No. 16, pp. 3-4.

to conquer independent nations," and would now "use armed invasion and war." He made it clear, also, that the United States did not regard the attack on South Korea as simply a North Korean enterprise, nor the American interest in Korea as detached from the American interest in China. Thus, he declared that since the Communists had defied the order which the Security Council of the United Nations had issued to preserve international peace and security, "the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific area and to the United States forces performing their lawful and necessary functions in that area." Therefore, he had ordered "the Seventh Fleet to prevent any attack on Formosa" and "the Chinese Government on Formosa to cease all air and sea operations against the mainland." The Seventh Fleet was to see that his orders concerning Formosa were carried out, and the determination of the future status of Formosa "must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations."

As supporting measures for this Pacific security action, President Truman revealed that he had directed that "United States forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated." He had also directed that "acceleration of military assistance to the forces of France and the associated states of Indo-China" be provided, together with "the dispatch

of a military mission to provide close working relations with those forces."¹

The Position of Yugoslavia

After Austin had offered the American draft resolution, the Yugoslav delegate reiterated his request for a program of mediation. He stated that the war in Korea was a direct consequence of the general tension in the post-war world, which stemmed from the practice, "widely applied after the Second World War, of dividing certain geographical areas into spheres of influence or interest." He likened this policy to that to which his own and other Balkan countries had been subjected.

The Yugoslav delegate called attention to the fact that the United Nations Commission on Korea had recommended the adoption of a procedure of mediation in its cable of June 26, 1950. In order to facilitate this process, he proposed once more that the Council invite the government of the People's Republic of Korea (North Korea) to send a representative to the headquarters of the United Nations immediately--with full powers to participate in the procedure of mediation.²

¹ U.N.S.C. Off. Rec., 5th Yr., 474th Meeting, 27 June 1950, No. 16, pp. 4-5.

² Ibid., pp. 5-7.

Other Attitudes Expressed in the Security Council

The moderate character of the Yugoslav proposal seemed to embrace a view which was similar to that which the Security Council had taken on previous occasions in handling international disputes culminating in armed conflict. It soon became apparent, however, that the atmosphere in the Council was to become one of condemnation of the North Korean authorities. Previous procedure seemed to be forgotten in an effort to punish a group which had flouted the authority of the United Nations.

The next spokesman after the Yugoslav delegate was the representative from the Republic of Korea (South Korea). He made a fervent appeal through the Council to all members of the United Nations to participate actively in expelling "the marauding forces" which had invaded his country. The delegations of France and the United Kingdom then spoke in favor of the United States resolution. They were followed by the Chinese Nationalist delegation, which spoke out strongly against a policy of mediation. The Chinese Nationalist representative stated that an offer of mediation under the circumstances would only serve to condone an act of aggression. The event in Korea, he stated, had been established by the Commission as a clear case of unprovoked aggression, and the invader had defied the authority of the Security Council. As for Formosa, it was looked upon by the Chinese people he said in the same light as the other provinces of China. He

expressed his gratitude, therefore, for "the decision of the United States Government to use its fleet to prevent an attack on Formosa." The Chinese people, he stated, "expect their Government to utilize the human and material resources of Formosa to recover the territorial integrity and the political independence and freedom of China."¹ Cuba, Norway, and Ecuador added their support to the United States resolution.

The meeting was then suspended for five hours in order that the delegates of Egypt and India might receive instructions from their governments. The instructions were not received, however, and when the United States resolution was put to a vote it was adopted seven to one (Yugoslavia against). Two did not vote (Egypt and India), and one member was absent (U.S.S.R.). The Yugoslav amendment was² rejected with seven votes against it.

The Positions of Egypt and India

By June 30, 1950, the delegates of Egypt and India had received instructions from their governments and were able to convey the views of their governments to the Council. Egypt stated that she would have abstained from voting on the resolution adopted by the Council on June 27, had she

¹ U.N.S.C. Off. Rec., 5th Yr., 474th Meeting, 27 June 1950, No. 16, pp. 7-11.

² Ibid., pp. 11-17.

been able to participate in the voting. The reasons given for Egypt's position were: first, that the conflict under consideration was a "new phase in the series of divergences between the western and eastern blocs," divergences which themselves threatened world peace and security; and, secondly, that there had been "several cases of aggression against peoples and violations of the sovereignty and unity of the territories of State Members of the United Nations." On previous occasions, Egypt held, when such aggressions and violations had been submitted to the United Nations, the latter had not taken any action to put an end to them as it had done now in the case of Korea.¹

The representative of India stated that the Indian Cabinet had found it necessary to spend two days considering the resolution, since India was so near the scene of conflict and would have to give most serious consideration to the implications and possible consequences of implementing the resolution. After this deliberation the Indian government had decided to "accept" the resolution, with the qualification that this did not mean any change in India's foreign policy. India was opposed to any attempt to settle international disputes by resort to force, and felt that "the halting of aggression and the quick restoration of peaceful conditions" were "essential preludes to a satisfactory settlement." The

¹
U.N.S.C. Off. Rec., 5th Yr., 475th Meeting, 30 June 1950, No. 17, p. 2.

government of India hoped that "even at this stage" it might be possible to "put an end to the fighting and to settle the dispute by mediation."¹

The Position of the U.S.S.R. and
Other Communist Countries

Since the Soviet Union was absent from the Security Council meetings during this period, her views were sought through diplomatic channels. On June 27, 1950, the American Embassy at Moscow communicated with the Soviet Foreign Minister.

The reply from Deputy Foreign Minister Andrei Gromyko stated that the Soviet Government had ascertained that "the events taking place in Korea were provoked by an attack by forces of the South Korean authorities on border regions of North Korea"; therefore, the responsibility for those events rested upon the South Korean authorities and those who backed them. Secondly, said Gromyko, "the Soviet Government withdrew its troops from Korea earlier than the Government of the United States and thereby confirmed its traditional principle of non-interference in the internal affairs of other states." The Soviet government, added Gromyko, would continue to adhere to "the principle of the impermissibility of interference by foreign powers in the internal affairs of Korea." Thirdly, the Soviet Government was quite willing to take part

¹
U.N.S.C. Off. Rec., 5th Yr., 475th Meeting,
30 June, 1950, No. 17, pp. 2-3.

in the deliberations of the Security Council, but was being prevented from doing so because of the position taken by the government of the United States, which precluded the admission of China (Communist China) to the Council as a permanent member. The exclusion of Communist China from the Council, according to the Soviet Union, made it impossible for the Security Council to make decisions having legal force.¹

Other Communist countries (except Yugoslavia) took a position similar to that of the Soviet Union in denouncing the Security Council resolutions of June 25 and June 27 as illegal. The Minister of Foreign Affairs of the Korean People's Democratic Republic (North Korea) sent a cablegram, dated June 29, 1950, to the United Nations, stating that his government did "not recognize the discussion and decisions of the Security Council on the Korean question as lawful."²

American Policy on the Use of Armed Force
to Restore Peace in Korea

At the meeting of the Security Council on June 30, 1950, the American delegation gave a summary of the steps being taken by the United States to enforce the Security Council decision. That morning, said the American representative,

¹
U.S. Department of State Bulletin, U.S.S.R. Responds to Requests for Mediation, Vol. XXIII, No. 575, July 10, 1950, released to the press June 29.

²
U.N.S.C. Off. Rec., 5th Yr., 474th Meeting, 30 June 1950, No. 17, p. 6.

the President of the United States had met with Congressional leaders, the Secretary of Defense, the Secretary of State, and the Joint Chiefs of Staff, and had reviewed the situation in Korea. In keeping with the request of the United Nations Security Council, the President had announced that he had authorized the United States Air Force to conduct missions on specific military targets in North Korea wherever militarily necessary. He had also ordered a naval blockade of the entire Korean coast. Furthermore, he had authorized General MacArthur to use certain supporting ground units.

Accompanying this summary, was a reference by Austin to a statement by the Secretary of State on the previous day (June 29):

The President has enunciated the policy of this Government to do its utmost to uphold the sanctity of the Charter of the United Nations and the rule of law among nations. We are, therefore, in conformity with the resolutions of the Security Council of 25 June and 27 June, giving air and sea support to the troops of the Korean Government. This action, pursuant to the Security Council resolutions, is solely for the purpose of restoring the Republic of Korea to its status prior to the invasion from the North and of re-establishing the peace broken by that aggression. The action of this Government in Korea is taken in support of the authority of the United Nations. It is taken to restore peace and security in the Pacific area.¹

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U.N.S.C. Off. Rec., 5th Yr., 475th Meeting, 30 June 1950, No. 17, p. 10. It is interesting to note the implied limitation placed on the commitment of American forces: "This action . . . is solely for the purpose of restoring the Republic of Korea to its status prior to the invasion from the North and of re-establishing the peace broken by that aggression." Later policy displayed a much broader scope.

CHAPTER V

FURTHER DEVELOPMENTS IN THE KOREAN ACTION AND THE INTERVENTION OF THE PEOPLE'S REPUBLIC OF CHINA

American Intervention in Korea and Communist Reactions to the June 27¹ Resolution

On Wednesday, June 28, 1950 (Tokyo time), the headquarters of General Douglas MacArthur in Tokyo announced that the United States was actively intervening in the Korean conflict. General MacArthur stated that a "small advanced echelon"¹ from his headquarters had been established in Korea, and that Far East Air Forces and elements of naval forces under his command were conducting combat missions south of the thirty-eighth parallel. The operations were "in support of the Korean Republic" whose government, the report stated, had been reinstalled in Seoul after armoured spearheads from Northern forces had been isolated. The announcement from Tokyo also stated that four North Korean fighters had been shot down by United States planes when they had attempted to interfere with the evacuation of women and children dependents of several United States Missions from Kimpo airfield, near Seoul. Operations of American forces were apparently restricted to activities south

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This is from a newspaper account. It necessarily lacks the precise description which could be obtained from confidential military records.

of the thirty-eighth parallel. On June 28 the initial drive¹ into South Korea had apparently been checked.

President Truman's order of assistance to the South Korean forces was promptly reported in the Soviet newspaper, Pravda. According to a June 28 London account of a Moscow broadcast, Pravda had said that "the Truman order signified that the United States Government has taken a direct act of aggression against the Korean people's democratic republic and against the people's republic of China."²

The North Korean government continued to assert its original position that the South Korean forces had precipitated the attack. According to reports, available to the New York Times, Premier Kim Il Sung accused President Syngman Rhee's government of taxing the people to a point of starvation in order to build up its war potential, and Rhee was blamed for "failure to unify the country peaceably." The democratic front in North Korea had made several proposals for unification, the last of which had been issued on June 7. As for the United Nations decisions, the government of North Korea issued a statement that they were illegal: first, because the Democratic People's Republic of North Korea had not been represented when its affairs had been discussed; second, because the Soviet Union and (Communist) China had not participated in the Security Council deliberations.

¹

New York Times, June 28, 1950, p. 1, col. 5.

²

Ibid., p. 18, col. 4.

On the second point, the North Korean statement observed that the United Nations Charter required unanimity of the five permanent members on matters of substance.¹

Although reports from Tokyo on June 28 had given hope that Seoul could be saved, on June 29 Tokyo announced that Seoul had fallen to the North Koreans the day before. Tokyo also announced, on June 29, that the South Korean Army had rallied below the river south of Seoul with the aid of "swarming fleets of United States warplanes."² On June 30, President Truman authorized the use of United States ground forces to repel the invaders in South Korea, the use of United States military aircraft against military objectives north of the thirty-eighth parallel, and a complete blockade of the Korean coast by the Navy.³ On the same day it was reported that the South Koreans had virtually given up fighting after North Korean tanks had broken through their defense at the Han River, outside of Seoul. American troops (estimated at 1,000) were flown into Pusan, far south of the battleline,⁴ in order to bring future help to the South Koreans.

The Offer of Chinese Nationalist Troops
for Korea

On June 29, the government of the Republic of China

¹ New York Times, June 28, 1950, p. 1, col. 6.

² Ibid., June 29, 1950, p. 1, col. 6.

³ Ibid., July 1, 1950, p. 1, col. 4.

⁴ Ibid., col. 8.

had received a communication from the Secretary General of the United Nations requesting it to furnish assistance to the Republic of Korea in accordance with the resolution passed by the Security Council on June 27. The Chinese Nationalist government accordingly offered, on June 30, to supply 33,000 troops, to be ready for embarkation in five days. The United States government held that, in light of the threat of invasion of Taiwan (Formosa) by Communist forces from the mainland, it would be desirable for General MacArthur's headquarters to hold discussions with the Chinese military authorities on Taiwan regarding its defense prior to committing any of its troops to Korea.¹

Continuation of the Conflict in Korea

The defenses south of Seoul crumbled before a drive by four North Korean columns. It was reported that at least two of the columns were led by tanks, and that the situation on the front had become serious. General MacArthur's headquarters announced that British and United States naval forces off the east coast had sunk five or six North Korean motor torpedo boats.² On July 4, it was reported that American troops had gone into action for the first time on the night of July 3.³

¹ New York Times, July 3, 1950, p. 3, col. 3.

² Ibid., p. 1, col. 8.

³ Ibid., July 4, 1950, p. 1, col. 8.

The North Korean government sent a bitter protest to the United Nations, charging that American intervention had obstructed the unity of the Korean people, but that in spite of this intervention the Korean people would rally under the banner of the Korean People's Democratic Republic in their "holy war for the freedom, unity and independence of their native land ."¹

On July 5, the Tokyo reports indicated that the struggle for South Korea had begun in earnest, with United State soldiers levelling an artillery barrage against a North Korean tank-led thrust and "considerable naval activity"² in the east, on the North Korean bridgehead in the Samchok area.

On July 7, 1950, the U.S.S.R. charged in a note sent to the United States Embassy in Moscow that the American blockade of Korea was a "new act of aggression." The Russian note was in reply to one sent by the United States, on July 4, which had informed the U.S.S.R. that the United States had established a naval blockade of Korea, "in keeping with the United Nations Security Council's request for support to the Republic of Korea in repelling North Korean invaders and restoring peace in Korea."³ In its reply the Soviet government stated that it would consider the Government of the United States responsible for any damage to its interest which might be

¹ New York Times, July 4, 1950, p. 4, col. 3.

² Ibid., July 5, 1950, p. 1, col. 8.

³ Ibid., July 7, 1950, p. 1, col. 6.

caused in connection with the blockade. About the same time it became apparent that the United States government was intensifying its effort to prevent shipments of oil and other war materials from reaching North Korean sympathizers. In keeping with the increased United Nations participation in the Korean conflict, a move was made to establish a unified command under the leadership of the United States.

The July 7 Resolution: The Recommendation for a
Unified Command Under the United States

When the Security Council met on July 7, 1950, France and the United Kingdom introduced a resolution designed to coordinate the assistance which the Security Council had recommended in the resolution of June 27. The new resolution recommended "that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions (June 25th and June 27th) make such forces and other assistance available to a unified command under the United States." It further recommended that the United States designate the commander of such forces, and requested the United States to furnish appropriate reports on "the course of action taken under the unified command." In addition, the unified command was authorized to fly the United Nations flag, at its discretion, together with the flags of the other

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New York Times, July 7, 1950, p. 1, col. 6.

2

U.N.S.C. Off. Rec., 5th Yr., 476th Meeting,
7 July 1950, No. 18, p. 11.

nations participating in the operations against the North
Korean forces.¹

Sir Gladwyn Jebb, of the United Kingdom, spoke in favor of the resolution and gave a summary intended to clarify its provisions. Prior to its adoption, Jebb pointed to the difficulties of complying with the provisions of Article 42 of the United Nations Charter, difficulties derived from the fact that the prior military agreements between the Security Council and Member states, which were to provide the former with power to enforce the security provisions of the Charter as envisaged in Article 43 had not come into force. (Specifically, Articles 42 to 50 inclusive are those which outline "action to be taken by air, sea, or land forces as may be necessary to maintain or restore international peace and security" under the direction of a "Military Staff Committee" drawn from the "Chiefs of Staff of the permanent members of the Security Council or their representatives.") Jebb stated that since a unified command was essential if confusion were to be avoided, and since the Charter had not come fully into force, the Council could "naturally act only under Article 39, which enables the Security Council to recommend what measures should be taken to restore international peace and security."²

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New York Times, July 8, 1950, p. 1, col. 4.

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U.N.S.C. Off. Rec., 5th Yr., 476th Meeting, 7 July 1950, No. 18, pp. 3-5. Jebb maintained that the "necessary recommendations were duly made in the resolutions of 25 and 27 June, but in the nature of things they could only be recommendations to individual Members of the United

The Franco-British resolution with respect to the creation of a unified command was adopted by seven votes to none, with three abstentions, and one member absent (U.S.S.R.). India joined Egypt and Yugoslavia in abstaining. None of those abstaining offered any comment on the resolution at the time of its adoption.

The representatives of Nationalist China and of the Republic of Korea both gave supporting speeches to the resolution of July 7 which established a unified command. The delegate of Nationalist China called attention to the Japanese war of aggression on China, which had begun on July 7, 1937 and which the League of Nations had failed to check. In

Nations. It could not therefore be the United Nations or the Security Council which themselves appointed a United Nations commander." According to Jebb, the function of the unified command was "not an operative one"; all it could do was to make sure that the individual efforts of the Members concerned were properly coordinated. Jebb based the function of the unified command on Article 39 of the Charter. But Article 39 provides for Security Council supervision over both measures involving the use of armed force and those not involving the use of armed force. Those involving the use of armed force are provided for in Articles 42 to 50 inclusive, while those not involving the use of armed force are provided for in Articles 40 and 41. One of the main functions of these Articles under Chapter VII of the Charter is to differentiate clearly between measures involving the use of force and those not requiring it. Under all the Articles from 40 to 50 inclusive, both those involving the use of force and those not involving the use of force--such as the severance of diplomatic relations, etc.--the Council's resolutions are regarded as decisions; and as such become mandatory for the parties concerned. The only portion of Chapter VII devoted to recommendations is Article 39. Recommendations by the Security Council are made under Chapter VI, Pacific Settlement of Disputes, and recommendations mentioned in Article 39 of Chapter VII would seem to refer to a twilight zone between Chapter VI and Chapter VII, in which the use of the coercive aspects of the latter Chapter could be avoided if that were desired. The legal aspects of Article 39 are discussed in Chapter VII of the thesis.

pleading for the support of the resolution before the Council, Mr. Tsiang reminded the delegates of the heavy price paid by the League's failure, and stressed the logic of the adoption of the resolution for a unified command to repel the aggression in Korea.¹ The delegate of the Republic of Korea, in a speech immediately following the adoption of the resolution, described with great emotion the heroism of the Korean people in what he called the bloody battle against violent Communist armed aggression. He compared the attack of June 25² on his country with the naked aggression on Poland and Pearl Harbor.

The representative of the United States (Austin) stated that the United States would accept the "big and special" responsibilities imposed upon her by the resolution. The "dastardly outbreak" (in Korea) had made an "issue of freedom or slavery" out of what appeared on the surface to be a small matter, and the United States would continue to discharge her obligations as a Member of the United Nations in carrying out the resolution establishing a unified command³ under the United States.

The Unified Command in Operation

On July 8, 1950, President Truman named General Douglas MacArthur as the commander of all United Nations

¹ U.N.S.C. Off. Rec., 5th Yr., 476th Meeting, 7 July 1950, No. 18, p. 6.

² Ibid., pp. 8-10.

³ Ibid., pp. 10-12.

military forces fighting in defense of the Republic of Korea. General MacArthur, hitherto commander of the occupation forces in Japan, thus extended his command to include Korea, under the July 7¹ recommendation of the Security Council. On July 15, 1950, President Syngman Rhee of the Republic of Korea placed all the Republic of Korea's armed forces under the Supreme Commander of the United Nations Forces, and on July 25, 1950 (Korean date), the General Headquarters of the United Nations Command was established in Tokyo. At the next meeting of the Security Council after the adoption of the July 7¹ Resolution, the first report of the Unified Command was submitted to the Council by the United States Government. The report stated that at "0400 Korean time on Sunday, 25 June 1950, the North Korean Army launched a completely unprovoked invasion of South Korea." After a description of the attacks launched, the report stated that from the size and character of the attacks it was indicated "clearly that the invasion had been carefully planned long in advance."²

The Return of the U.S.S.R. to the
Security Council, August 1, 1950

On August 1, 1950, the representative of the U.S.S.R. returned to the Security Council to preside as its President during the month of August. Jacob Malik (U.S.S.R.) opened the meeting with a presidential ruling to exclude the repre-

¹ New York Times, July 9, 1950, p. 1, col. 5.

² U.N.S.C. Off. Rec., 5th Yr., 477th Meeting, 25 July 1950, No. 19, pp. 2-9.

sentative of the "Kuomintang group" from the Council. His ruling was immediately challenged by Austin of the United States, and the Council became involved in a heated debate over the issue of the Chinese representative on the Council. India and Yugoslavia supported the President's ruling, but it was overridden by the other eight members of the Council. The President then engaged in a controversy with the American representative over the counting of the vote during which the President finally agreed to include the vote of the "Kuomintang group" in the count.¹

Mr. Malik then endeavored to have the Council adopt a provisional agenda which contained these items: "Recognition of the People's Government of the People's Republic of China as the representative of China," and "Peaceful settlement of the Korean question." After several meetings, during which long speeches were read by the representative of the U.S.S.R. citing the deeds of destruction being perpetrated in Korea by "the ruling circles of the United States," a vote was finally taken on the provisional agenda. The item concerning the recognition of the representative of the People's Republic of China was rejected with five in favor, five against, and one abstention; and that concerning the peaceful settlement of the Korean problem was rejected with only three votes in favor. A third item, "Complaint of aggression upon the Republic of Korea," submitted by the United States, was adopted;

¹
U.N.S.C. Off. Rec., 5th Yr., 480th Meeting,
1 August 1950, No. 22, pp. 1-10.

and the Council moved on to discuss this item at its next meeting. The U.S.S.R. delegate reiterated his charge that any discussion without the participation of a representative¹ of the People's Republic of China was illegal.

Military Activities in Korea:
Retreat and Counter Offensive

The Security Council then engaged in heated debate over the legality of the various resolutions adopted on the Korean problem. These resolutions concerned the question of the recognition of the representative of the People's Republic of China, the participation of representatives of North Korea in the Council discussions, the "complaint of bombings by² United States airplanes of the territory of China," and the³ "complaint of the armed invasion of Taiwan (Formosa)."

Meanwhile, military activities in Korea had taken a sudden turn. During the months of July and August the forces aiding the South Koreans had been driven into retreat. As they began to recover, active preparations were made for a counter offensive. A spectacular landing of 50,000 Marines and infantry at Inchon, near Seoul, on September 15, 1950, marked the beginning of the counter offensive. The North Korean Army had worn itself out in indecisive attacks, and by

¹
U.N.S.C. Off. Rec., 5th Yr., 482nd Meeting,
3 August 1950, No. 24, pp. 22-23.

²
Ibid., 497th Meeting, 7 September 1950, No. 39,
pp. 26-28.

³
Ibid., 503rd Meeting, 26 September 1950, No. 45,
pp. 29-34.

a rapid series of moves, General MacArthur's forces turned the North Korean resistance into a rout. The result was surprising. By October 1, 1950, the United Nations were faced with a decision as to whether their forces should cross the thirty-¹ eighth parallel into North Korea.

Accordingly, a resolution was introduced in the General Assembly's Political and Security Committee (First Committee) which asked for a recommendation that "all appropriate steps be taken to ensure conditions of stability through the whole of Korea" and "that all constituent acts be taken including the holding of elections under the auspices of the United Nations, for the establishment of a unified, independent and democratic government in the sovereign state of Korea."² General MacArthur, in an open statement "to the Commander-in-Chief of the North Korean forces," called on the North Koreans "to lay down your arms and cease hostilities" and to accept "such military supervision as I may direct." No mention was made of the political issues involved or the thirty-eighth³ parallel.

On October 4, the Political and Security Committee cast a 47 to 5 vote in favor of an eight power resolution giving indirect authorization to General MacArthur to cross the thirty-eighth parallel. The resolution was scheduled to go before the Assembly itself on October 6, with a clear

¹ New York Times, October 1, 1950, Sec. 4, p. 1.

² Ibid.

³ Ibid., p. 1, col. 8.

indication that it would be adopted. The Political and Security Committee rejected by a 46 to 5 vote the Soviet-backed resolution calling for: a cease-fire in Korea, immediate withdrawal of foreign United Nations troops, and then elections¹ to be organized by North and South Koreans.

On October 7, Tokyo announced that South Korean troops had crossed the thirty-eighth parallel in force the day before² (October 6th Korean time). In New York, the General Assembly, on October 7, voted 47 to 5 with 8 abstentions to adopt the resolution for unification of Korea by "all appropriate steps," thus giving its indirect support to the military advances³ across the thirty-eighth parallel. Tokyo announced that American ground forces had crossed the parallel for the first time in the Korean war at 5:14 P.M., October 7, Korean time (3:14 A.M., October 7th, Eastern Standard Time), in order to⁴ reconnoiter the enemy positions. Thus, some American troops had crossed the thirty-eighth parallel a few hours before the General Assembly put its final approval on the resolution for the unification of Korea by "all appropriate steps." On

¹ New York Times, October 5, 1950, p. 1, col. 6. This is the resolution which was adopted on October 7. Its performance necessitated the use of United Nations forces north of the thirty-eighth parallel.

² Ibid., October 6, 1950, p. 1, col. 8.

³ Ibid., October 8, 1950, p. 1, col. 6. See also U.N.G.A. Off. Rec., 5th Sess., Supplement 20, Resolutions adopted by the General Assembly during the period 19 September to 15 December 1950, pp. 9-10.

⁴ Ibid., p. 1, col. 8.

October 9, 1950 (Tokyo date), General MacArthur, in an ultimatum addressed to "the Premier and Government of North Korea," called on the North Koreans "for the last time" to lay down their arms and cease hostilities. He warned the North Korean government that unless it answered immediately he would have to proceed at once to "take such military action as may be necessary." The message was broadcast from Seoul and with it the text of the United Nations resolution recently passed by the General Assembly.¹ No answer appeared to be forthcoming, and the war raged on.

The Intervention of the People's Republic
of China

General MacArthur's forces pressed northward, and as they neared the Yalu River separating North Korea from Manchuria they met stiffened resistance. Nevertheless, it appeared, at the beginning of November, that the military phase of the Korean war would soon be over. Suddenly Chinese Communists poured across the Yalu River and brought advances to a standstill.² On November 3, Hong Kong reported that

¹ New York Times, October 9, 1950, p. 1, col. 8.

² The Chinese Communist build-up in North Korea probably started about October 16. In a special report submitted to the Security Council on 6 November 1950, General MacArthur mentioned the movement of Chinese Communist troops across the Yalu River on October 16 and October 20. These troops proceeded into North Korea to take position near the Chosen, Fusen, and Sui-Ho Dams. (U.N.S.C. Off. Rec. 5th Yr., 518th Meeting, 6 November 1950, No. 60, pp. 4-5).

an all-out propaganda campaign was being waged in China in order to gain public support for a more active participation by Chinese Communists in the Korean war. Premier Chou En-lai (People's Republic of China) had declared in a speech on September 30 that the Peiping regime would not "supinely tolerate" a crossing of the thirty-eighth parallel by the United Nations forces. The propaganda campaign was largely dormant, however, until the United Nations forces began to
1
near the Manchurian border.

On November 6 (Tokyo date), General MacArthur issued a United Nations communique on "intervention" in the Korean war. In the communique he stated that the Korean war had been brought to a practical end until the Chinese Communists had moved large numbers of forces across the Yalu River
2
into North Korea. Hong Kong reported on November 5, that all the parties participating in the Communist-dominated Peiping coalition government had issued a formal declaration giving full support to those Chinese who "voluntarily undertake the sacred task of resisting America, aiding Korea, protecting their homes and defending their country." The statement maintained that "positive action" was necessitated by the United Nations move across the thirty-eighth parallel and the advances of large forces toward the Yalu River

¹
New York Times, November 4, 1950, p. 3, col. 2.

²
Ibid., November 6, 1950, p. 5, col. 1.

boundary between Korea and Manchuria. The Peiping declaration maintained that the

United States imperialists are copying the old trick of the Japanese bandits--first invading Korea and then invading China. Everyone knows Korea is a small country, but that its strategic position is very important. Just as with the Japanese imperialists in the past, the main objective of United States aggression on Korea is not Korea itself, but China. History shows that the existence of the Korean People's Republic and its fall, and the security of or danger to China are closely intertwined.¹

Maintaining that United Nations forces had ignored Peiping's "warning" by crossing the thirty-eighth parallel and pushing toward China, the statement insisted that Communist China wanted peace and added:

We hold that the Korean question should be solved in a peaceful way and that the aggressive forces² of the imperialists should be withdrawn from Korea.

The Korean problem had entered a new phase. The intervention of the People's Republic of China dampened the ardor of those who had visualized United Nations supremacy throughout all Korea and the firm precedent that would have been established by the action of an international authority capable of halting the unsanctioned use of armed force.

¹ New York Times, November 6, 1950, p. 1, col. 7.

² Ibid.

CHAPTER VI

THE AMERICAN VIEW OPPOSED: THE POSITIONS OF THE PEOPLE'S REPUBLIC OF CHINA AND THE U.S.S.R.

The Invitation to the People's Republic of China to Meet with the Security Council

The intervention of the Chinese Communists changed the nature of the war in Korea. The event was of such profound significance that the Security Council proceeded immediately to consider the extension of an invitation to the People's Republic of China to send a representative to the Council in order to state that country's views. When the Council met on November 8, 1950, to consider the question, the United States representative was outspoken in his opposition to such an invitation.

Warren Austin rejected the proposition that an invitation should be extended to the Communist regime although this procedure would have been in accordance with the practice generally followed by the Security Council of hearing all parties to a dispute in order to avoid resolving controversies by violence. Instead, he maintained that witnesses for that regime should be summoned before the Council to give what explanations they could of the state of affairs which

had been¹ created.

The delegate of the U.S.S.R. took exception to Austin's remarks, maintaining that such words as "summon" or "call upon" were out of place in connection with an invitation to be extended to a sovereign state. Malik further asserted that the spokesman in question would represent the government of a country of 475 million inhabitants, a fact which gave particular point to the principle that relations between sovereign states² should not be conducted in terms of orders or dictations.

After some further discussion, a resolution proposed by the United Kingdom was adopted by 8 votes to 2, with one abstention. Communist China was to send to the Council a representative who would be permitted to participate in the discussion of the special report of the United Nations Command in Korea.³ The United States voted for the resolution.

The Combination of the Two Questions:

"Complaint of Armed Invasion of Taiwan (Formosa)" and
"Complaint of Aggression upon the Republic of Korea"

When the Council met on November 27, the President of the Council had placed on the provisional agenda a twofold question: "(a) Complaint of armed invasion of Taiwan (Formosa)" and "(b) Complaint of aggression upon the Republic of Korea."

¹ U.N.S.C. Off. Rec., 5th Yr., 520th Meeting, 8 November 1950, No. 62, pp. 1-2.

² Ibid., pp. 2-4.

³ Ibid., pp. 8-9. The special report was read to the Council at the 518th Meeting on November 6, 1950, pp. 3-5.

The delegate of the U.S.S.R. immediately objected to the combination, stating that the representative of the People's Republic of China was not empowered to speak on the second item, since his government did not recognize the Unified Command. Malik went on to explain that the delegate from Communist China was in New York not to answer the November 8 invitation of the Council, but in response to an earlier invitation extended in September.¹ The earlier invitation had been issued in connection with a discussion concerning the "complaint of the armed invasion of Taiwan."² With the earlier invitation in mind, this particular meeting had been called at the request of the U.S.S.R. to discuss subject (a).

The Chinese Communist delegate had been sent by his government to charge the United States with invasion of Taiwan (Formosa) and aggression in Korea, and to participate, if possible, in general discussions of the whole Korean problem.

¹
U.N.S.C. Rec., 5th Yr., 525th Meeting, 27 November 1950, S/PV 525, pp. 1-10. The reference denoted (S/PV 525) indicates that the source material is derived from mimeographed records of the Security Council forwarded to the University of Rhode Island library by the United Nations. These mimeographed records serve in lieu of the finished Official Records, which have not as yet been sent to this library, but are not to be considered official as they have not yet been fully corrected.

²
U.N.S.C. Off. Rec., 5th Yr., 506th Meeting, 29 September 1950, No. 48, pp. 3-5. On 29 September 1950, the Council adopted a resolution proposed by Ecuador which invited a representative of the People's Republic of China "to attend the meetings of the Security Council held after 15 November 1950 during the discussion of that Government's declaration regarding an armed invasion of the Island of Taiwan (Formosa)." There were 7 votes in favor, 3 against, and one abstention. The United States voted against the resolution.

After much heated debate, this procedure was finally agreed to by the Soviet Union, and it was decided to let the delegate of the People's Republic of China state his government's views under the combined heading originally proposed by the President of the Council.¹ Since then the Security Council has considered the two problems as aspects of a single problem.

The Position of the People's Republic of China

On November 28, 1950, Wu Hsiu-Chuan presented the views of the People's Republic of China to the Security Council.² First, he protested against the continued seating of the representative of the "Chinese Kuomintang reactionary remnant clique." Wu called attention to the fact that Premier Mao Tse-tung of the Central People's Government of the People's Republic of China had solemnly proclaimed to the whole world on October 1, 1949, that, that government was the sole legal government to represent all the people of China. Since November 15, 1949, he said, his government had been endeavoring to have the Chinese Kuomintang delegates expelled, but these efforts had been obstructed by the United States in spite of the affirmative votes of sixteen member states of the United Nations.³

¹ U.N.S.C. Rec., 5th Yr., 525th Meeting, 27 November 1950, S/PV 525, p. 71.

² U.N.S.C. Off. Rec., 527th Meeting, 28 November 1950, No. 69, pp. 1-26.

³ U.N.G.A. Off. Rec., 5th Session, Plenary Meetings, Verbatim Records of Meetings, Vol. I, 19 September-15 December 1950, p. 15. On September 19, 1950, India submitted

Wu maintained that the people of China had no reason to recognize any resolutions or decisions of the United Nations without the participation of the lawful representative of the People's Republic of China, and once more called for the expulsion of the Kuomintang group.

Wu charged President Truman with having instigated the "puppet Government of Syngman Rhee in South Korea" to start the civil war in Korea. He then asserted that President Truman had stated on June 27 that the "United States Government had decided to prevent by force the liberation of Taiwan by the Central People's Government of the People's Republic of China." To this end the United States had begun her full-scale open invasion of Taiwan. Taiwan, Wu continued, was an inseparable part of the territory of China. He invoked a United States White Paper¹ to show that the "native population for fifty years had been under the rule of a foreign invader" and that during the occupation "the principal hope of the people had been reunion with the mainland." Wu charged the United States with having also violated China's territorial waters and territorial air along and within its coastline, by conducting active reconnaissance and patrols. He called attention to a statement of President Truman on January 5, 1950, in which he had declared that "the United States and the other a resolution which would have granted United Nations recognition to the People's Republic of China. The resolution was rejected by 33 votes to 16, with 10 abstentions.

¹ U.S. Department of State, United States Relations with China, Publication 3573, p. 308.

Allied Powers have accepted the exercise of Chinese authority over the island," and to President Roosevelt's declaration at Cairo on December 1, 1943, that Formosa should be restored to the Republic of China. Putting both of these claims together with the provisions of Article 107 of the Charter, Wu contended that the United Nations had no right to alter¹ the status of Taiwan.

Wu went on to charge the United States with having followed a policy of open intervention in China's internal affairs from 1945 to the present. He maintained that American aid to "the Chiang Kai-shek Kuomintang reactionary clique" had made it possible for Chiang's government to launch a civil war against the people which was unprecedented in China's history for its scale and cruelty. He stated that American troops stationed in China had participated directly in the civil war and that the United States and Chiang's government had signed "all kinds of unequal treaties and agreements which reduced China to the status of a colony and military base of the United States." On the basis of these treaties and agreements, Wu charged, "the United States Government secured many naval and air bases in Kuomintang China and gained control of the military, political, financial, and economic branches of the Kuomintang Government."²

¹
U.N.S.C. Off. Rec., 5th Yr., 527th Meeting,
28 November 1950, No. 69, pp. 1-16.

²
Ibid., pp. 16-18.

Wu charged the United States with exploiting Taiwan economically and adverted to alleged naval and military activities of the United States and Chiang Kai-shek. He then asserted that "the United States Government continues, through the Kuomintang remnant clique, to try to prevent the People's Republic of China from liberating Taiwan, so that Taiwan may remain under the actual domination of the United States."¹

The American intervention in Taiwan, continued Wu, served to prove to the Chinese people that the United States viewed with hostility the victories of the Chinese people. He stated that the intervention in Taiwan was not an isolated affair but an integral part of an ever-all plan to enslave the peoples of Asia. He maintained that General MacArthur had revived Japanese fascism and was using Japan as the headquarters for aggression in Asia. Indeed, the Korean war was approaching so close to China that China was only separated from the conflagration by a narrow river, so that her security was gravely threatened. Wu could not see, on the other hand, how the security of the United States was jeopardized by the war in Korea when the United States was about 5,000 miles distant.²

¹
U.N.S.C. Off. Rec., 5th Yr., 527th Meeting,
28 November 1950, No. 69, pp. 18-20.

²
Ibid., pp. 20-21.

He asked the United Nations Security Council to condemn the United States for her actions and to take steps to stop American "armed aggression against the territory of China, Taiwan, and armed intervention in Korea." Secondly, he requested the Council to effect the complete withdrawal of United States forces from Taiwan, "in order that peace and security in the Pacific and in Asia may be ensured." Thirdly, Wu asked that the Council adopt measures to bring about "the withdrawal from Korea of the armed forces of the United States and all other countries, and to leave it to the people of North and South Korea to settle the domestic affairs of Korea themselves, so that a peaceful solution of the Korean question may be achieved."¹

The Position of the U.S.S.R.

On November 29, the representative of the Soviet Union gave a summary of the position of his government. Malik stated that since August 3, the U.S.S.R. delegation had produced documents and data to show that the events taking place in Korea had begun on June 25 as a result of a provocative attack by the South Korean authorities on frontier areas of the Korean Democratic People's Republic. He further maintained that the attack had been carried out in accordance with a "previously thought out and prepared plan under the direction and with the direct participation of United States

¹

U.N.S.C. Off. Rec., 5th Yr., 527th Meeting,
28 November 1950, No. 69, p. 25.

military advisers, as well as with the knowledge of highly placed officials of the United States"¹

The U.S.S.R. had pursued a policy of peace, its delegate stated, and, as early as August had submitted a resolution asking the Council to "consider it necessary to invite representatives of the People's Republic of China and also representatives of the Korean people to attend the discussions of the Korean question in the Council." This resolution, moreover, had contained a proposal to "put an end to the hostilities in Korea and at the same time to withdraw foreign troops from Korea." Malik contended that further proposals had been advanced in October by the delegation of the U.S.S.R., which would have guaranteed a decision on the question of the independence of Korea and a peaceful settlement. All these proposals, Malik said, were rejected by the United States delegation and delegations of other countries which frequently supported the United States. Calling attention to the Moscow Conference of Foreign Ministers in December, 1945, he held that a decision had been arrived at in that meeting which would have fully guaranteed the rehabilitation of Korea as an independent and democratic state. This decision, Malik states, had been sabotaged by the United States government² and the American command in South Korea.

¹ U.N.S.C. Rec., S/PV 528, 528th Meeting, 29 November 1950, p. 91.

² Ibid., pp. 92-94.

Malik charged the United States with having violated the Moscow agreement and taking the Korean question into the United Nations in violation of Article 107 of the United Nations Charter.¹ He argued also that the Commission's report to the United Nations concerning the outbreak of hostilities was unreliable and biased, particularly since it had been signed by "a representative of the Kuomintang called Chu-Tu." Malik then reiterated the position of the U.S.S.R. that the Security Council's resolutions of June 25 and June 27 were illegal because they were made without the participation of two permanent members of the Council--the U.S.S.R. and China.²

The Russian delegate charged the American government with having violated international agreements by having crossed the thirty-eighth parallel with military forces and advanced on the frontier of China. He claimed that the United States before the Communist victory had converted China into a colony by means of enslaving agreements, and had allocated over 5 billion dollars in the four post war years 1945-49 to aid Chiang Kai-shek to crush the liberation movement of the Chinese people. American policy, he said,

¹ Article 107 states, "Nothing in the present Charter shall invalidate or preclude action in relation to any state which during the second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the governments having responsibility for such action." Korea, of course, had been part of Japan during the war.

² U.N.S.C. Rec., S/PV 528, 528th Meeting, 29 November 1950, pp. 95-97.

was hostile to the Chinese people, and the seizure of Taiwan was a demonstration of this hostility. Malik maintained that President Truman's order of June 27, by which Taiwan had been seized, constituted an act of aggression. The seizure, moreover, was in violation of President Truman's own statement of January 5, 1950, that the United States would not intervene in Formosa. Malik contended that the armed seizure of Taiwan could not be a "United Nations action," since President Truman's order had been given prior to any decision by the Security Council. Indeed, the Security Council had not come to any decision on the seizure either before or after the order had been given. Malik contended that there was no justification in treating the issue of Formosa as one which was intimately bound up with the security of the Pacific. The problem of Formosa, he contended, was an internal affair of China, and the United Nations Charter specifically barred interference¹ with the internal affairs of states.

Finally, Malik stated that the government of the People's Republic of China had requested the U.S.S.R. to take urgent steps to require the withdrawal of troops from the territory of China and Korea. Accordingly, he urged measures² to bring about such a withdrawal.

¹
U.N.S.C. Rec., S/PV 528, 528th Meeting, 29 November 1950, pp. 99-107.

²
Ibid., p. 112.

CHAPTER VII

LEGAL ASPECTS OF THE KOREAN ACTION

Pre-Crisis International Agreements Concerning Korea

The Korean problem has brought to the surface a conflict of national interests in the Pacific area. Changes as a result of the Second World War were foreseen by the participants, and, with the aim of accommodating to these changes, a number of agreements were contracted while the war was still being waged. In these agreements, or treaties--¹ the Cairo Declaration of 1943, the Potsdam Proclamation of 1945, and the Moscow Agreement of 1945--lies much of the evidence of the legal status of Korea within the community of states prior to June, 1950.

¹ Herbert W. Briggs, The Law of Nations (2d ed.; New York, 1952). On page 838, Briggs cites the Harvard Research to the effect that a treaty may be defined as: "a formal instrument of agreement by which two or more states establish or seek to establish a relation under international law between themselves." And on page 839, Briggs concluded that "the narrow use of the term 'treaty' in American practice contains no implication that most of the large number of executive agreements concluded on behalf of the United States do not have the juridical force and effect of treaties in international law." (Since both the 1938 and 1952 editions of Briggs' work have been used in this thesis, references to the 2d edition will hereafter be denoted: Briggs, 1952; reference to the first edition will continue to be denoted: Briggs, 1938.

The Formation of Two States:
North Korea and South Korea

The Moscow Agreement was contracted in order to provide a means by which the independence of Korea could be achieved. When the United States became dissatisfied with the deadlock produced in the Joint Commission and asked for a new four power meeting to be held, its proposal was rejected by the Soviet Union. As a result, the United States took the question of Korean independence before the General Assembly of the United Nations. What was the standing of the Moscow Agreement of 1945? Had it become legally defunct following the refusal of the United States to continue working with the Soviet Union under that agreement? According to customary international law, the American interpretation of the Moscow Agreement was only one interpretation and did not bind the Soviet Union or other parties to the agreement.¹

Was the Moscow Agreement voided by the submission of the question of Korean independence to the United Nations? The general practice of international law argues against such a result. This practice has long indicated "that when

¹ Briggs, 1938, The David J. Adams Case, 1921, p. 441. Since the "fundamental principle of the juridical equality of States is opposed to placing one State under the jurisdiction of another State", it "is opposed to the subjection of one State to an interpretation of a treaty asserted by another State." On page 446, in the Editor's Note, Briggs states: "Treaties may be interpreted authoritatively only by the parties, either directly through mutual agreement or indirectly by submission of the dispute to conciliation or arbitration by some international agency or court mutually agreed upon and whose recommendation or decision they agree to accept."

a State has bound itself by a treaty with another State, it cannot thereafter relieve itself of the obligations it has assumed by concluding a later treaty with another [third] State under which it assumes obligations the performance of which would involve impairment or repudiation of the obligations previously assumed."¹ In the Moscow Agreement four States had undertaken to provide for the setting up of a "four power trusteeship of Korea for a period of up to five years," and unilateral decisions to alter that agreement could not be binding on other parties to the agreement.

Could the establishment of a United Nations Commission on Korea set aside the Moscow Agreement and provide a new mode of creating a National Government of Korea under the direction of the General Assembly? It is difficult to see where the United Nations could find the authority under its Charter to renounce the Moscow Agreement, or to alter the agreement to the extent that it could assert the authority to conduct elections throughout Korea over the objections of one of the parties to the agreement. Under what Articles of the Charter could this authority be asserted? If it were looked for under those concerning Trusteeships, Article 79 would prevent alteration of terms of the trusteeship without the consent of the U.S.S.R.² Since a search of

¹ Briggs, 1938, Editor's Note, Citation of Harvard Research, p. 468.

² Article 79 of the Charter states: "the terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned"

the Charter fails to reveal any article specifically authorizing the United Nations to send a commission into a territory in order to observe elections, such a power can only be implied. In the case of Korea the parties to the agreement drew different implications, and, as yet, no impartial tribunal has authoritatively determined the competence of the United Nations, or a part of it, to enforce a decision of this nature upon a dissenting state.

The result of the separate elections in North Korea and South Korea was the establishment of two rival governments in Korea.¹ Both of these governments developed the attributes of statehood. Each was organized and exercised effective control over a defined territory. The independence of each was recognized by other states, although South Korea, was, in addition, overtly recognized by the United Nations and North Korea was not. Whatever differences international lawyers may have over the effect of recognition on the legal status of the states in question, there was no doubt that both Korean Governments were physically capable of conducting their own international relations. Finally, although each Government claimed the right to represent all of Korea, each was the creation of a great power which was not likely to allow its protege, without protest at the very least, to be divested of control of its territory. Thus, there is a good

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Supra., pp. 25-28.

basis for the position that two states were in fact created
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from one Korea.

Status of the People's Republic of China

How do the issues raised in the Korean problem appear from the standpoint of the law of nations? Since the absence of the Soviet Union from the Council because of a difference of view on the question of the representation of China in the United Nations, the status of the People's Republic of China has become of increasing importance. On March 8, 1950, the Secretary-General of the United Nations circulated a memorandum to the members of the Security Council which commented on the legal aspects of the problem

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The writer feels that the succession of events in Korea from the time of the elections of May 10, 1948, on, created so many distinctions between North Korea and South Korea, which were likely to become permanent characteristics, that two separate states came into being. The holding of separate elections in the North and South was one step. Another was the stipulation of the United Nations Commission on Korea in its report to the General Assembly that Member States should take into account the limitations of the jurisdiction of the Republic of Korea in establishing their relations with it. (Supra., p. 27) The formation of a separate government in the North and its recognition by the Soviet Union and other states created another distinction. The limitation which Secretary Acheson announced had been placed on the use of American armed forces (to restore the Republic of Korea to its "status" prior to the invasion from the North) was still another. (Supra., p. 45) Finally, the ultimatum by General MacArthur addressed to the "Premier and Government of North Korea," before his forces crossed the thirty-eighth parallel, indicated clearly the conditions which in fact existed. (Supra., p. 60) It is felt that those events and others show enough of a distinction between North Korea and South Korea, politically and militarily, to warrant their being treated as two separate states under international law. This, of course, would not preclude an eventual political union.

of the representation of states in the United Nations. The memorandum held that the question of representation in the United Nations had been incorrectly linked with the question of recognition by the governments of member states. The memorandum maintained that it would be appropriate for the United Nations organs to decide a question of rival claims for representation in the United Nations on the grounds of ability to employ the resources and to direct the people of the state concerned in the task of fulfilling the obligations of membership. If a revolutionary government presented itself as representing a state and was found to exercise authority within the territory of the state and was habitually obeyed by the bulk of the population, these conditions should be sufficient to accord it the right to represent the state¹ in the organization.

What Secretary-General Lie had in fact done was to submit as criteria for seating in the United Nations the very criteria which traditionally have been employed by states for the purpose of according recognition to new governments. But in doing this, he had avoided the question of whether or not United Nations recognition of a government, for the purpose of conducting United Nations business, should be predicated upon a prior resolution of whether or not that

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U.N.G.A. Off. Rec., "Annual Report of the Secretary-General of the Work of the Organization, 1 July 1949-30 June 1950," 5th Session, Supp. 1, p. 33. Article 99 of the Charter states: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace."

government attained legal status by virtue of third party recognition apart from the United Nations.

In the Tinoco Arbitration case (1923), the Arbitrator, Chief Justice William Howard Taft, held that "the change by revolution upsets the rule of the authorities in power under the then existing fundamental law, and sets aside the fundamental law in so far as the change of rule makes it necessary."¹ Also "The legality or constitutional legitimacy of a de facto government is without importance internationally so far as the matter of representing the state is concerned."² The Tinoco decision made it clear that a revolutionary government which had established itself in such a way that "all within its influence recognize its control"³ binds the nations, and "so far as its international obligations are concerned, it represents the state."⁴ If one accepts the above criteria, he is obliged to conclude that the Central People's Government of the People's Republic of China is the actual government of the mainland of China.

In Luther V. Sagor (1921), a British Court of Appeals held that "if the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as

¹ Briggs, 1938, The Tinoco Arbitration, 1923, p. 120.

² Ibid., p. 117.

³ Ibid., p. 120

⁴ Ibid., p. 117.

those of an independent nation." ¹ Since the Central People's Government of the People's Republic of China was proclaimed to be "the sole legal government to represent all the people of China on October 1, 1949, ² and since no effective resistance to dislodge it as the Government of China has been witnessed since that date, under international law that Government should be regarded as the legal Government of China since October 1, 1949.

Although international law would support the view taken in the Secretary-General's memorandum to the Security Council in March, 1950, the various organs of the United Nations have preferred to take their stand in regard to Chinese representation on the ground of political expediency. They have taken this view in spite of the fact that the Secretary-General had cited precedent within the United Nations itself to the effect that there had not been a single instance of a challenge of the credentials of a representative of a revolutionary government in the United Nations until the Chinese question arose. ³

American objections to the recognition by the United Nations of the representative of the People's Republic of

¹ Briggs, 1938, A. M. Luther v. James Sager & Co., 1921, p. 101.

² U.N.S.C. Off. Rec., 5th Yr., 527th Meeting, 28 November, 1950, No. 69, p. 3.

³ Yuen-Li-Liang, "Recognition by the United Nations of the Representation of a Member State: Criteria and Procedure," American Journal of International Law, Vol. 45 (1951), p. 704.

China rested on two major grounds. In speaking before the Ad Hoc Political Committee, Ernest Gross maintained that the honesty and integrity of the United Nations was involved in the recognition of a new regime. He contended that "even in applying the criterion of control between two competing regimes, the question whether the people freely accepted either or both regimes might be considered in determining whether either regime had real control over the State." He also felt that "the purposes of the United Nations would not be furthered by ignoring the fact that one or other of two competing claimants for accreditation was unwilling and unable to carry out the obligations laid down in the Charter.¹ The United States, therefore, raised two questions which would have to be met by the People's Republic of China before it would be recognized by the United States. Did the Chinese people voluntarily accept their new government? Also, was the People's Republic of China willing to carry out the obligations laid down in the United Nations Charter?

The Status of Formosa

The wartime agreements also made provision for the future of Formosa. Under the Cairo Declaration, Formosa "was to be restored to the Republic of China,"² and this decision was confirmed by the Potsdam Agreement.³ But as a

¹ U.N.G.A. Off. Rec., Ad Hoc Political Committee, Summary Records of Meeting, 30 September-14 December, 1950, p. 120.

² Supra., p. 16.

³ Supra., pp. 16-17.

result of the civil war in China, Formosa became the seat of Chiang Kai-shek's Nationalist Government after its defeat on the mainland of China in 1949 and has continued so to the present day. To what country does Formosa then belong?

As noted by the Swiss Federal Tribunal in *Lepeschkin v. Gossweiler* (1923), "it is a universally recognized and incontestable principle of the law of nations that modifications in the form of government and in the interior organization of a state can have no effect upon its rights and obligations in international law; in particular, they cannot abolish the rights and obligations resulting from treaties which that State has concluded."¹ Since Formosa was to be returned to China after the second World War, and was actually delivered into the hands of Chinese Nationalist troops, what is its status as a result of the Chinese Civil War?

The Chinese Nationalist delegate in the Security Council said that "Formosa was looked upon by the Chinese people in the same light as the other provinces of China."² At the same time, he said that he was thankful for having the American fleet protect Formosa from an attack from the People's Republic of China. From the statements of the Chinese Nationalist delegates one can only conclude that the Chinese Nationalists have intended to use this protection in order to

¹ Briggs, 1938, *Lepeschkin v. Gossweiler & Co.*, Switzerland, Federal Tribunal, 1923, p. 483.

² *Supra.*, pp. 40-41.

gain the time and resources necessary to launch a counter-revolution on the mainland of China. Accordingly, the Formosan action taken by President Truman would seem best to be regarded as armed intervention by the United States in the Chinese Civil War. It is true that there "is no rule of international law which forbids the government of one state from rendering assistance to the established legitimate government of another state with a view to enabling it to suppress an insurrection against its authority."¹ But will that rule continue to apply in this case? It has already been pointed out that the government in question is no longer established on the mainland, and that since October 1, 1949, the Government of the People's Republic of China has been acting as the effective government of China.

In all likelihood, the Truman order of June 27, 1950,² prevented the Chinese Communists from seizing Formosa. Since that time the government of Formosa has been treated by the United States and many other states as the legitimate government of China. Preservation of the Chinese Nationalists on the island of Formosa, with a definite territory and a definite population under its control, plus the recognition by many other states of the right to conduct its own foreign relations, has served to make Formosa a de facto state. Thus we may conclude that there are actually two Chinas, one limited

¹ Briggs, 1938, Editor's Note, p. 744.

² Supra., pp. 37-38.

to the control of the mainland, and the other limited to Formosa.

It became apparent that the situation created by the formation of two rival Chinese states who disputed the territorial limits of their respective jurisdictions would create a menace to the security of the Pacific area. In an endeavor to solve the problems created by this condition, the United States appealed to the United Nations. On September 20, 1950, the American Secretary of State, Dean Acheson, stated that American position before the General Assembly. He said:

The aggressive attack upon the Republic of Korea created the urgent necessity for the military neutralization of the island of Formosa. The President of the United States, in announcing on 27 June the measures taken to effect that neutralization, emphasized that those measures were to prevent military attack by mainland forces against Formosa and by forces from Formosa against the mainland. The President made it clear, at that time, and he has made it clear on several occasions since, that those measures were taken without prejudice to the future political status of Formosa, and that the United States had no territorial ambitions and sought no special privileges or position with respect to Formosa.

It is the belief of my Government that the problem of Formosa and the nearly eight million people who inhabit it should not be settled by force or by unilateral action. We believe that the international community has a legitimate interest and concern in having this matter settled by peaceful means. Accordingly, the United States delegation proposes that the General Assembly should direct its attention to the solution of this problem in circumstances in which all parties concerned and interested have a full opportunity to express their views, and in which all parties concerned agree to refrain from the use of force while a peaceful and equitable solution is being sought. We shall therefore request that the question of Formosa should be added to the agenda as a matter of special and urgent importance.¹

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U.N.G.A. Off. Rec., Plenary Meetings, Verbatim Records of Meetings, Vol. I, 19 September-15 December, 1950, p. 25, par. 63-64.

The Intervention of the People's Republic
of China in the Korean War

Having come to the conclusion that two states had been created in Korea, the question arises as to the legality of the Chinese Communist intervention in that area in November, 1950. The argument could not be advanced in this case that this was aid to the established legitimate government to crush an insurrection against its authority. As explained above, North Korea and South Korea should be considered as independent states, and the war between them an international war, rather than a civil war. Thus, aid to one of the belligerents should be classed as aid to another state, and so constitute intervention in an international war.

The actual intervention of the Chinese Communists would seem to contradict an assumption that the Korean action was a legal Security Council enforcement measure. When the forces of Communist China entered the field, a powerful Chinese army went into military battle against an action supposedly endorsed by the representative of China on the Security Council. This anomalous state of affairs was brought about by a misrepresentation of the Chinese State in the Security Council. To contend that the Chinese Nationalist delegate in the Security Council represented the Chinese State, or its people, for the purpose of enforcement measures, would overlook the conditions which existed on the Chinese mainland.

Collective Security Through the United Nations:
Enforcement Measures Agreed Upon at San Francisco

At San Francisco the various ways in which enforcement measures should be taken in order to maintain or restore international peace were discussed at length. Two major plans were developed. One entailed the placing of primary responsibility in the Security Council. Its advocates pointed to the inequality of power which existed in fact in the international community. Because of this inequality, it was pointed out, the major burden of enforcement measures would have to be borne by the great powers. This burden would fall primarily on the shoulders of the great powers for three main reasons: first, because the great powers had the greatest potential resources for carrying out enforcement measures; second, because the great powers were capable of carrying a larger proportionate share of the obligation per state; and third, because collective action on the part of less powerful states would be ineffective if opposed by any single great power. The experiences of many of the lesser powers in the League of Nations and in international affairs in general led them to question the degree of security they might be able to expect from such an arrangement. These states felt that the unanimity principle gave too much power to the already great states--power which they might not devote entirely to the mutual interests of all concerned. The lesser states also feared that the great

powers might not reach agreement and thus might leave the international organization powerless and ineffective in a time of need. Accordingly, they advocated a plan which would subject the Security Council's decisions to review by the General Assembly, in which no veto applied, states were given an equal vote, and the decision of a two-thirds majority prevailed.

The lesser powers realized that the history of great powers lent little support to the view that great powers would be primarily motivated by altruistic principles in conducting their international relations. They realized that great powers, as well as lesser powers, had their own national interests to promote and that the promotion of those interests was not always in the common interest.

Italy's aggression in Ethiopia, Japan's aggression in Manchuria, and Germany's seizure of Austria were still fresh in the minds of many statesmen in the world. The lesser powers found it easy to visualize the culmination of circumstances under which they might become defenseless if they were entirely dependent upon the unanimity of the great powers in order to have at their disposal a legitimate means of effecting their collective security. Although they granted the superiority of a system of collective security which would place at the disposal of the international community the combined strength and resources of the great powers, they were not convinced that such a unity would always prevail. The lesser powers were informed that under some extreme

circumstances all the nations might have to choose among themselves whether they wished to go to war or not. The lesser powers were then confronted with two alternatives. The first was to place their trust in the great powers to act together to preserve the peace and to rely upon five great powers to act in unity in the common interest. The second alternative was to insist upon additional methods of maintaining peace which would be in addition to the unity of the five great powers. At this point, the lesser powers were informed at San Francisco that any attempts to alter or supplement the five power formula might see the representatives of the lesser powers returning to their countries without a Charter.

After much deliberation, a compromise was reached. The lesser powers would agree to the unanimity principle if the General Assembly would be granted as wide a scope as possible while the Security Council was not actually considering an issue. In addition, the Charter was to be construed with flexibility, and in such a way as to allow the United Nations to develop by precedent. Finally, the Charter was to be subject to amendment.

The great powers pledged a constructive use of the veto. The lesser powers agreed to place their trust in the great powers, with the stipulation that the General Assembly be granted the widest freedom possible in its discussion and consideration of international affairs. In order to insure that all the powers would still have a forum in which they

could speak on equal terms, the technical committee at San Francisco, which was considering the powers of the General Assembly, made an interpretive declaration to this effect, which was included in the permanent records of the conference. This declaration stated:

The General Assembly will have the right to discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided in the Charter. It will be authorized to call the attention of the Security Council to situations likely to endanger peace and security. When the Security Council in the discharge of its special responsibilities is dealing with a dispute or situation which may endanger the peace, the General Assembly cannot make recommendations on any such dispute or situation. It is, however, laid down that the Secretary-General shall, with the consent of the Security Council, notify the Assembly--or the members of the Organization if the Assembly is not in session--immediately the Security Council ceases to deal with any such matters. In other respects, however, its right of recommendation to the Security Council, the member states or both is as broad as its right of discussion. It includes the right to recommend measures for the peaceful adjustment of any situation, regardless of origin, which the Assembly deems likely to impair the general welfare or friendly relations among nations; the right to make recommendations on the general principles of cooperation in the maintenance of international peace and security, including those governing armaments and the regulation of armaments; and in addition wide powers of recommendation in economic, social, cultural, and humanitarian matters.

The Assembly will be empowered to "receive" and "consider" reports from other bodies of the Organization including the Security Council. The reports of the Security Council shall include an account of the measures which it has taken to maintain international peace and security.

Commission II calls particular attention to the word "consider" as used in the Charter in connection with reports of the Security Council and other organs. It is the intention of Commission II that this word shall be interpreted to encompass the right to discuss, and that the power of the Assembly to discuss and make recommendations as defined in Articles 10, 11, and 12 and 14 is not to be limited in any way with respect to

its consideration of reports from the Security Council. Commission II recommends that this plenary session approve this interpretive declaration of the Commission and include it in the permanent record of the conference.¹

The Resort to Improvised Security Arrangements
as a Result of the Failure to Achieve Great Power Unity

The unanimity principle agreed upon at San Francisco called for the negotiation of special agreements between the Security Council and member states in order to make available to the Council the armed forces upon which it was to rely, if necessary, to carry out its responsibility for the enforcement of collective security.² The Charter also provided for the establishment of a Military Staff Committee "to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security. . . ."³ This Military Staff Committee was to "consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives." It was to be responsible "for the strategic direction of any armed forces placed at the disposal of the Security Council."⁴ The collective security system envisaged at San Francisco was written into the Charter with explicit

¹ U.N. Conf. Intntnl Org., Vol. 8, Commission II (General Assembly), Revised Report of the Rapporteur of Commission II to the Plenary Session, June 24, 1945, pp. 266-67. The report was approved without comment or objection at the Ninth Plenary Session, June 25, 1945, U.N. Conf. Intntnl Org., Vol. I (General), p. 623.

² Charter of the United Nations, chap. VII, art. 43.

³ Ibid., art. 47.

⁴ Ibid.

provision having been made for retention by the permanent members of the direction of any United Nations armed forces.

It was foreseen that this system, based on the principle of unanimity, would not come immediately into force. Consequently, additional provisions were made for the period between ratification of the Charter and conclusion of the special agreements necessary to give effect to the enforcement measures envisaged in Chapter VII. For this purpose Chapter XVII (Transitional Security Agreements) was included in the Charter. Article 106 of this Chapter provided that:

Pending the coming into force of such special agreements referred to in Article 43, as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of Paragraph 5 of that Declaration, consult with one another and, as occasion requires, with other members of the United Nations with a view to such joint action on behalf of the organization as may be necessary for the purpose of maintaining international peace and security.¹

It may be seen from Article 106 that measures entailing the use of armed force under Chapter VII of the Charter depend upon the conclusion of the special agreements mentioned in Article 43 of the Charter. Since these special agreements have not as yet been concluded, it may be assumed that those Articles of the Charter which depend upon the agreements are inoperative. This renders Articles 42 to 47 of the Charter inoperative, and leaves Articles 48, 49, and 50 open to

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Charter of the United Nations. Chap. XVII, art. 106.

question, since the latter were originally written to accompany the former.

When hostilities broke out in Korea in June, 1950, and the Security Council found that its call for a cease-fire was ignored by the forces of North Korea, the United Nations was faced with the task of implementing some policy of collective security in order to restore international peace in the area. The Security Council therefore resorted to improvisations in order to restore international peace. Two of these improvisations were the resolutions of June 27 and July 7. Where in the Charter could authorization be found for enforcement measures?

It has already been pointed out that the lack of the special agreements mentioned in Article 43 of the Charter precludes the use of Articles 42 to 47. Would Article 106 then apply? According to the American interpretation of Article 106 expressed at San Francisco, "the Security Council would delay in exercising its functions only with respect to those functions whose performance would be impaired by the non-existence of appropriate special agreements under paragraph 5, Section B, Chapter VIII."¹ Since Article 106 left

¹
U.N. Conf. Intntl. Org., Vol. 12, Commission III, (Security Council), p. 534. The delegates at San Francisco revised the Dumbarton Oaks Proposals. The Dumbarton Oaks Proposals were arranged so that Chapter VIII bore the title: "Arrangements for the Maintenance of International Peace and Security Including Prevention and Suppression of Aggression." Under Chapter VIII were three sections: Section A, "Pacific Settlement of Disputes," Section B, "Determination of Threats to the Peace or Acts of Aggression and Action With Respect Thereto," and Section C, "Regional Arrangements." At San Francisco Section A provided the basis for Chapter VI of the Charter and Section B the basis for Chapter VII.

the determination of the degree to which it would be applicable up to "the opinion of the Security Council," one would expect the Security Council's opinion to be the deciding factor in the use of Article 106. The Security Council did not mention Article 106 at the time it considered the use of enforcement measures in Korea. Therefore, one could conclude that Article 106 was inapplicable.

The only remaining article in Chapter VII of the Charter which could be used as a basis for authorizing enforcement measures is Article 39. Article 39 of the Charter states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.¹

Since there had been difficulty at San Francisco in determining the meaning of the word "recommendations" and also the word "measures" as used in this text, an interpretation was drawn up which met with the unanimous approval of the technical committee considering the drafting of what became Article 39 of the Charter. The interpretation observed:

(1) In using the word "recommendations" in Section B, as already found in paragraph 5, Section A, the Committee has intended to show that the action of the Council so far as it relates to the peaceful settlement of a dispute or to situations giving rise to a threat of war, a breach of the peace, or aggression, should be considered as governed by the provisions contained in Section A. Under such an hypothesis, the Council would in reality pursue

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Charter of the United Nations, art. 39.

simultaneously two distinct actions, one having for its object the settlement of the dispute or the difficulty, and the other the enforcement or provisional measures, each of which is governed by an appropriate section in Chapter VIII.

(2) It is the Committee's view that the power given to the Council under paragraphs 1 and 2 not to resort to the measures contemplated in paragraphs 3 and 4, or to resort to them only after having sought to maintain or restore peace by inviting the parties to consent to certain conservatory measures, refers above all to the presumption in a threat of war. The Committee is unanimous in the belief that, on the contrary, in the case of flagrant aggression imperiling the existence of a member of the organization, enforcement measures should be taken without delay, and to the full extent required by the circumstances, except that the Council should at the same time endeavor to persuade the aggressor to abandon its venture, by the means contemplated in Section A and by prescribing conservatory measures.¹

As already mentioned, Section A of Chapter VIII of the Dumbarton Oaks Proposals became Chapter VI of the Charter, and Section B became Chapter VII of the Charter. Application of the San Francisco interpretation to Article 39 of the Charter in a case of flagrant aggression would require that the Council follow "simultaneously two distinct actions, one having for its object the settlement of the dispute or the difficulty, and the other the enforcement or provisional measures." Thus, in the case of Korea, if the Security Council should decide to invoke Article 39 in order to authorize enforcement measures, it would also be obligated to pursue another course of action simultaneously in the nature of recommendations under Chapter VI of the Charter and conservatory measures in an endeavor to persuade the aggressor to abandon its venture.

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U.N. Conf. Intntl. Org., Vol. 12, Commission III (Security Council), p. 507. Article 39 was discussed in conjunction with the establishment of a Unified Command on page 52-53 of the thesis.

When the Security Council considered the enforcement measures to be taken in Korea, no mention was made of Article 39. When Article 39 was mentioned in conjunction with the establishment of the Unified Command on July 7, Sir Gladwyn Jebb, the United Kingdom delegate, made it clear that Article 39 was not being invoked for its operative characteristics, but, rather, in a procedural sense.¹ We may thus conclude that the Council did not invoke Article 39 in order to authorize enforcement measures against North Korea.

One other course might be left open in order to provide a basis for enforcement measures under Chapter VII of the Charter. This course would allow the use of Article 51, but would be limited to collective self-defense until the Security Council had "taken the measures necessary to maintain international peace and security."² Neither the United States nor the other states providing military assistance to South Korea mentioned Article 51 of the Charter in connection with the plans made in the Security Council for furnishing this assistance. The United States developed the interpretation that authorization for enforcement measures could be found in Article 1 of the Charter.

¹
Supra., pp. 52-53.

²
Charter of the United Nations, art. 51.

The Korean Action: An Effective Collective
Measure under Article 1 of the Charter

The American action in Korea was described in the General Assembly by the American Secretary of State as an effective collective measure under Article 1 of the Charter.¹

This Article states:

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 of situations which might lead to a breach of the peace. . . .

It is obvious that this is a foundation article of the Charter and clearly denotes the intention of the parties. According to Brierly, "there are no technical rules in international law for the interpretation of treaties; its object can only be to give effect to the intention of the parties as fully and fairly as possible."² This view is also expressed by the Harvard Research, which states that "the function of interpretation is to discover what was, or what may reasonably be presumed to have been, the intention of the parties to a treaty when they concluded it, and that this is to be accomplished by the application of certain rules of logic and grammar to the instrument itself."³

¹ U.N.G.A. Off. Rec., Plenary Meetings, Verbatim Records of Meetings, Vol. 1, 19 September-15 December, 1950, p. 24.

² J.L. Brierly, The Law of Nations (4th ed. London, 1950), p. 234.

³ Briggs, 1952, Editor's Note, p. 898.

It is obvious from a study of the preamble and the main text of the United Nations Charter that the purpose of the signatories was to provide a system of collective security. The preamble states that the peoples of the United Nations are "to insure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest. . . ."¹ North Korea attempted to impose its will upon South Korea by armed force. A United Nations Commission determined that the North Korean attack was unprovoked and was assuming the proportions of a full-scale war. The Security Council called upon North Korea to cease hostilities, but the latter ignored the order and continued to press the attack.

Were the members of the United Nations to stand idly by while South Korea was devastated by the North Korean attack? According to the Charter, the Security Council would be expected to take action to stop the attack. But the special military agreement necessary for it to take enforcement action had not been made. This caused the military sanction clauses of Chapter VII to become inoperative, and hence of no assistance. Next, one would expect, from the Charter, that Article 106 (Transitional Security Arrangements) would apply. Here again the clause became inoperative, since Russia refused to assist in joint action.

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Charter of the United Nations, preamble.

Since the explicit provisions of the Charter for enforcement measures became inoperative, the Security Council resorted to the improvisations necessary to make the Charter effective. It attempted to follow the procedure outlined in the Charter as fully as possible by having the Security Council recommend¹ sanctions, and, later, a Unified Command which would make reports to the Security Council. The nations at San Francisco had signed a treaty which guaranteed their "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." Certainly, the signatories had a right to rely on that guarantee and to construe the Charter in a manner which would make it effective in time of need. Any other course would have allowed an independent nation to fall the victim of armed attack and would have rendered the Charter ineffective in performing its fundamental stated task.

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It should be noted that the term "recommend" is used here in its customary sense, rather than in the specialized sense discussed in connection with Article 39 of the Charter.

CHAPTER VIII

CONCLUSIONS

Military Pressure Might Be Necessary in Order to Implement a Policy of Collective Security

What is the significance of the Korean action for the development of the American policy of collective security through the United Nations? In the first place, it has demonstrated that the effectiveness of a policy of collective security at the present stage in world affairs may depend upon the ability of United Nations members to apply sufficient pressure against those who threaten the security of the members. The Korean action has been the first occasion in which the United States has felt it necessary to utilize armed might on the field of battle in order to implement a policy of collective security through the United Nations.

Distinctions Between the Korean Action and Previous Questions Considered by the Security Council

The use of military force by the United States and other nations in order to implement a resolution of the Security Council (the June 25 Resolution) has served to distinguish this case from previous ones considered by the Security Council. At the time of writing, the Korean problem is still in a stage at which the military pressures have not been reduced to the point where deliberations can proceed

in the more favorable atmosphere, freer of tension, that had been advocated so strongly in the pre-Korean policy of the United States. The pre-Korean policy of the United States emphasized the necessity of reducing the military pressure in the area of a dispute in order that the parties might arrive at a lasting political settlement. The Korean problem is still in a stage where the military pressure interferes with political settlement; hence any comparison of American policy with regard to collective security as expressed in the Korean action and the American policy in previous instances is subject to the limitations imposed by these special circumstances.

The despatch of armed assistance to the Republic of Korea by the United States even before the explicit approval of such assistance by the Security Council has a precedent in the position taken by this country with regard to the Greek case.¹ Although the United States did not come to the point of sending large scale military assistance to Greece in 1947, it did insist that it had a right to do so, even if the Soviet Union should cast a negative vote. The United States based its view in the Greek case on the right of states to act individually or collectively in order to promote the general purposes and principles of the United Nations in the face of a threat to the peace. It maintained that obstruction in the Security Council by a permanent

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Supra., p.p. 10-11.

member could not be used to prevent action based on Article 51 of the Charter, which allows for individual or collective self-defense against an armed attack "until the Security Council has taken the measures necessary to maintain international peace and security." In the Greek case it apparently was felt by the United States that the situation was not of such an extreme nature as to necessitate armed assistance to Greece. In the Korean case it is obvious that the United States regarded the situation as so acute that immediate military aid was necessary. It is interesting to note that, so far as policy is concerned, the American action in Korea was actually less extreme than that proposed in the Greek case. In the Greek case, the United States went so far as to assert the right to set aside the negative vote of a permanent member in order to achieve collective security under the Charter of the United Nations. There was no veto in the Korean case.

The persistent efforts of the United States to develop a policy of collective security through the United Nations have caused it to develop an interpretation of Article 51 of the Charter that would serve to answer these needs--if the Council should be unable to take action in its own right. The Berlin case provided another opportunity for the United States to announce a position with regard to collective security that was in a similar vein to that pronounced in the Greek case.

¹
Supra., p. 9.

In the Berlin case, Article 51 of the Charter was specifically named as justifying the repulsion of armed attack by the use of armed counter-attack.

Thus we may conclude that the American policy of collective security through the United Nations could be based on the right of members to repel armed attack through individual or collective armed measures--as long as the actions taken were "in accordance with the general purposes and principles of the United Nations." As we have seen, this policy had been announced on several occasions prior to the Korean action; the latter simply carried it out to its logical conclusions-- the actual sending of armed assistance to a nation which had been attacked.

In the Korean case the United States has developed an interpretation of Article 1 of the Charter to supplement its former policy developed around Article 51, and in addition has launched the "Uniting for Peace" resolution as a new interpretation of the Charter. Although the "Uniting for Peace" resolution is a product of the Korean action, as a new interpretation of the Charter, it is still in the process of development. Thus it is a possible basis for future action rather than a means by which the principle of collective security has been implemented in the Korean case.

The Unanimity Principle and Security
Council Action

At the time the Charter was drafted the Second World War was still in progress, and the successful conclusion of

that war necessitated the unity of the great powers. This necessity, in addition to the previous experience of successful unity during the war among the great powers, gave the great powers confidence in their ability to work together toward a common goal. It was only natural, in drafting an instrument for the preservation of peace in the post-war years, that the great powers should desire to continue a successful alliance then in sight of its goal of complete defeat of Germany and Japan. If the unity of the great powers could provide a means whereby the greatest aggressor nations in the twentieth century could be subdued, truly, such a combination might be valuable as the foundation for lasting peace. Unfortunately, a very important factor was overlooked in incorporating the premise of unity into the United Nations Charter. The circumstances under which this unity had been achieved were those of war. In war national interests not directly related to winning the war tend to be subordinated to a common goal. But the Charter was supposed to serve in time of peace, when conflicting national interests, no longer kept submerged out of respect for the common aim of defending national independence, were quite likely to make themselves felt.

The Efforts of the United States to Increase
the Powers of the General Assembly

The difficulties in obtaining unanimity among the great powers in the Security Council have led the United States to press for greater and greater extensions of authority to the General Assembly in security matters. The Korean case

is outstanding in demonstrating the degree to which the United States has come to accept many of the views expressed earlier by the lesser powers.

At San Francisco, in the committee assigned to discuss the relation of the General Assembly to the Security Council on enforcement matters, the New Zealand delegate had proposed expanded powers for the General Assembly. The New Zealand position embodied the views of many of the middle-sized and small powers in an amendment which proposed: "That this committee express its approval of the plan that in all matters of the application of sanctions, military or economic, the Security Council associate with itself the General Assembly."¹

At that time the delegate of the United States had expressed sympathy with the New Zealand point of view, but had disagreed with the conclusions reached. The American delegate stated that, given a Council which was free to act,

. . . it would not be necessary to send anyone's sons to die again. The Council, in continuous session would reach into situations which threatened the peace so as to prevent another world war. He pleaded that the Committee should not weaken the Council's powers by requesting a "voice" for the smaller nations, to the extent that the voice would be heard only in fighting a war, but not in keeping the peace.

The American delegate concluded his remarks by expressing the view that "it was inconceivable that any action of the Council would be contrary to the wishes of a majority of the Assembly."²

¹ U.N. Conf. Intntl Org., Vol. 12, Commission III, p. 296.

² Ibid.

And again, at a later meeting, the American delegate reiterated his plea "that the Committee preserve the Council as the vital agency to prevent aggression." In arguing against the New Zealand proposals the American delegate was most emphatic in his demand for the principle of unified action by the permanent members:

. . . . For the proper balance, he said, the Council must have strong executive authority; whereas, the democratic Assembly would assure every member an equal vote. If the New Zealand amendment were adopted, the Assembly would encroach upon the Council's powers. The Council, he said, would be a representative body of the Assembly, just as the Assembly would be representative of the various countries.¹

By the fall of 1950, the United States had decided that it could no longer place the trust in the unanimity principle that it had expressed at San Francisco. On September 20, 1950, Secretary Acheson announced the new American policy. He stated:

One of the fundamental purposes of the United Nations, expressed in Article 1 of the Charter, is that it shall "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 peace."

The action of the United Nations to put down the aggression which began on 25 June against the Republic of Korea was exactly the effective collective measure which was required. It marked a turning point in history, for it showed the way to an enforceable rule of law among nations.

The world now waits to see whether we can build on the start we have made. The United Nations must move forward energetically to develop a more adequate system of collective security, for if it does not move forward it will move back.

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U.N. Conf. Intntl Org., Vol. 12, Commission III, p. 316.

Article 24 of the Charter gives the Security Council primary responsibility for the maintenance of peace, and this is the way it should be. But if the Security Council is not able to act because of the obstructive tactics of a permanent member, the Charter does not leave the United Nations impotent. The obligation of all Members to take action to maintain or restore the peace does not disappear because of a veto. The Charter, in Articles 10, 11, and 14, also vests in the General Assembly authority and responsibility for matters affecting international peace. The General Assembly can and should organize itself to discharge its responsibility promptly and decisively if the Security Council is prevented from acting.¹

Acheson's proposals were developed in the First Committee by John Foster Dulles, who presented the American views with vigor. Holding that the Security Council did not have exclusive powers in the maintenance of peace, he outlined an interpretation of the Charter which would give greater powers to the General Assembly:

But the Charter, which gave the Security Council "primary responsibility" for peace and which sanctioned the veto, also gave the General Assembly the right to make recommendations even in cases where the right of veto could be exercised. Apart from Articles 11 and 14, Article 10 gave the Assembly the right to make recommendations to the Members on any matters "within the scope of the present Charter" except in relation to disputes or situations with which the Security Council was dealing.

In fact, at San Francisco the small Powers had only agreed to the power of veto on condition that the General Assembly were granted the power to intervene and to make recommendations within the framework of Chapters VI and VII of the Charter in cases where the Security Council was unable to discharge its primary responsibility. As the delegation of the U.S.S.R. had objected to the General Assembly having the right to overrule a veto, even by way of a recommendation, the United States had advised the Soviet Union on 19 June 1945, that, in view of the short time which remained before the ceremony of signing the Charter, the United States could wait no longer and that, in order to break the deadlock, it was going to negotiate

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U.N.G.A. Off. Rec., Plenary Meeting, Verbatim Record of Meetings, Vol. I, 19 September-15 December 1950, (279th Meeting, 20 September 1950), p. 24.

alone with the small Powers. The following day, the Chairman of the Soviet Union delegation had informed the Secretary of State that his Government agreed to the extension of the scope of Article 10. The time had now come to use the right obtained that day.

Section A of draft resolution A.C. 1/576 provided that the General Assembly could promptly make a recommendation if Security Council action were blocked. Obviously, a recommendation by the General Assembly had not the force of a decision of the Security Council taken under the terms of Chapter VII of the Charter. But the history of the Korean question had shown that the voluntary response to a recommendation could be even more effective than obedience to an order; although the Security Council had not exercised its powers of action, 1 fifty-three Members were carrying out its recommendation.

These proposals embodied the very principle which the United States had opposed at San Francisco--participation of the General Assembly in enforcement measures--and went a long way toward remedying the weaknesses of the unanimity principle. After much debate in the First Committee and in the Plenary meetings, the proposals (with some amendments) were adopted on November 3, 1950, by the overwhelming majority of 52 votes² to 5, with 2 abstentions. The measures adopted were grouped together under the title "Uniting for Peace." This resolution delegated much of the prerogative of the Security Council to the General Assembly in the event that the former should be unable to act. Some of the possibilities for future development under the "Uniting for Peace" resolution may be appreciated by a study of the following paragraph:

1. Resolves that if the Security Council because of lack of unanimity of the permanent members fails to exercise

¹
U.N.G.A. Off. Rec., First Committee, Summary Records, 20 September-18 December 1950, 354th Meeting, 9 October 1950, p. 64.

²
Ibid., 5th Session, Plenary Meetings, Vol I, 19 September-15 December 1950, p. 347.

its primary responsibility for the maintenance of international peace and security in any case where there appears to be 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 or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations.

A study of the Charter and its explicit provisions for the control of enforcement measures leads one to the conclusions that this resolution is in effect an extensive supplement to the Charter. Indeed, it would appear to be a new interpretation of the Charter. The resolution has brought up many questions of international law. As an expression of the American policy of collective security through the United Nations, it marks a definite departure from the stand taken by the United States at San Francisco.

The Korean Action as a Focal Point for
the Formulation of an Effective
Policy of Collective Security

At the time of writing, an armistice has not as yet been signed in the Korean war, and there are no definite in-

¹
- U.N.G.A. Off. Rec., 5th Session, Supplement 20,
Resolutions adopted by the General Assembly during the period
19 September-15 December 1950, p. 10.

²
For a discussion of some aspects both legal and political of this resolution see L. H. Woolsey's interpretation in the A.J.I.L., Vol. 45, 1951, pp. 129-137.

indications of the final terms of settlement. Any survey of the Korean problem, consequently, is limited by the fact that the problem has not been fully solved. Several observations can be made, however.

The Korean action has marked the first application of military enforcement measures through the United Nations. As such it has demonstrated the will of the bulk of the nations of the world to develop an effective program of collective security for their mutual preservation and for halting armed expansion at its source. In this program the United States has taken the lead in meeting force with force, in a sincere attempt to replace the rule of force with the rule of law in international relations. The experiences gained in the Korean action may serve as a focal point from which the American policy of collective security through the United Nations can be developed into a more effective guaranty of world harmony.

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