

1987

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### Recommended Citation

Pollack, Samuel (1987) "Self Doubts on Approaching Forty: The United Nations' Oldest and Only Collective Security Enforcement Army, the United Nations Command in Korea," *Penn State International Law Review*: Vol. 6: No. 1, Article 2.  
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# Self Doubts on Approaching Forty: The United Nations' Oldest and Only Collective Security Enforcement Army, The United Nations Command in Korea\*

Samuel Pollack\*\*

## I. Introduction

The General Assembly . . . calls upon all states and authorities to continue to lend every assistance to the United Nations action in Korea.<sup>1</sup>

"In effect," a UN official said, "the United Nations for years have dissociated itself from the United Nations Command in Korea, even in the absence of formal action to dissolve it."<sup>2</sup>

One of the minor accomplishments of the 1953 Korean Armistice Agreement,<sup>3</sup> which ended the hostilities in Korea between the United Nations Command (UNC) and the North Korean/Chinese armed forces, was to carve out, at the Peninsula's midpoint, a four kilometer wide Demilitarized Zone (DMZ) to serve as a buffer zone and to keep the belligerents safely apart.<sup>4</sup> Belying its title, the DMZ has become in the course of years a very heavily fortified area. It is a place where incidents of violence between the two sides occur

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\* The views contained herein are those of the writer and are not to be construed as official or as reflecting those of the Department of the Army.

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1. G.A. Res. 498, 5 U.N. GAOR Supp. (No. 20A) at 1, U.N. Doc. A/1775. Add. 1 (1951) (cited in W. BISHOP, INTERNATIONAL LAW, CASES AND MATERIALS 252-53, 3d ed. 1971 [hereinafter BISHOP]).

2. A.P. Dispatch, Pacific Stars and Stripes, Dec. 1, 1984, at 16, col. 1.

3. Agreement Between The Commander-in-Chief, United Nations Command, on the One Hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, on the Other Hand, Concerning a Military Armistice in Korea, July 27, 1953, 4 U.S.T. 234, T.I.A.S. No. 2782 [hereinafter the Agreement].

4. Article I, para. 1, of the Agreement states in part:

A Military Demarcation Line shall be fixed and both sides shall withdraw two kilometers from the line so as to establish a Demilitarized Zone between the opposing forces. A Demilitarized Zone shall be . . . a buffer zone to prevent the occurrence of incidents which might lead to a resumption of hostilities . . . .

*Id.* at 237.

frequently.

On the 23rd of November, 1984, a serious incident took place at Panmunjom, the truce village within the DMZ which serves as the meeting place for representatives of the UNC and its opponents from North Korea and China. The newspaper report of this incident, involving as it did a United Nations' agency, apparently sparked the deprecatory remark of the United Nations' official, as quoted above.

On the day and place mentioned, a young Soviet language student named Vasily Matuzok suddenly left his group and, seeking freedom, dashed across the boundary line into the southern part of the Joint Security Area in the DMZ which is under the control of the UNC.<sup>5</sup> A band of North Korean soldiers pursued the defector, to apprehend and return him to custody. An exchange of gunfire with UNC military personnel took place and three North Koreans were killed and five more wounded. On the UNC side, the soldier from the Republic of Korea (ROK), the state in the southern portion of the Peninsula, was killed and one United States soldier wounded. Matuzok, the Soviet defector, escaped unharmed and has found sanctuary in the West. In present day Korea, hostile acts by North Korea against the UNC/Republic of Korea, and at times outside the territory of the Republic of Korea,<sup>6</sup> are to be expected and guarded against. The shooting fray of November, 1984, is but one of hundreds of thousands of incidents, real or alleged, that have been recorded in the well over three decades of the Armistice's troubled existence.<sup>7</sup> While the Armistice and the UNC have both endured<sup>8</sup> it would seem that the UNC's claim to represent the sixteen states who

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5. Matuzok was a member of a Communist delegation visiting the North Korean sector of the Joint Security Area, a small area in the DMZ (formerly the Korean village of Panmunjom) now used as the site of Armistice meetings. Originally, the entire Joint Security Area had been accessible to both sides. On August 10, 1976, two United States officers were clubbed to death by North Korean guards in the Joint Security Area while supervising a work party. As a result, the two sides concluded an unpublished agreement to divide the Joint Security Area into two parts, north and south, and to prohibit military personnel from one side entering the other side. Copies of this "Agreement to Supplement the Agreement on the Military Armistice Commission Headquarters Area, Its Security and Construction," Sept. 6, 1976, are in the Office of the UNC Military Armistice Commission, HQ UNC, APO 96301, Postmaster, San Francisco [hereinafter UNCMAC].

6. On Oct. 9, 1983, for example, a bomb plot planned in North Korea was carried out by a North Korean officer in Burma where a group of high officials from the Republic of Korea, including the President, were on an official visit. Four of the officials were killed and many were wounded.

7. Department of Defense (DOD) records kept in UNCMAC indicate that the UNC has charged the North Koreans with over 170,000 violations; the North Koreans have charged the UNC with no less than 488,000 violations.

8. Despite the fact that international law gives a party under these circumstances an option to denounce the agreement. Art. 36, Regulations, respecting the Laws and Customs of War on Land, annexed to Hague Convention No. IV, Oct. 18, 1907, Chap. V (Annex), 36 stat. 2277 [hereinafter Laws and Customs]. (The 43 signatories are listed in Dept. of State Pub. 9136). See also E. SIMON, Operation of the Korean Armistice Agreement, Dept. of Army Pam. 27-100-47, 105, 137 (1970).

originally formed it,<sup>9</sup> and even to carry on with the Armistice, would be gravely compromised in the possible event of disownment by the organization that, in effect, created it.

Considering the political and legal progress made in other areas since the Second World War, the Korean situation has changed remarkably little since the hostilities in the early Fifties. A series of three Security Council resolutions that were issued in 1950,<sup>10</sup> and that form the legal basis for the UNC, remains on the books of the U.N., unchanged and unamended. Although tremendous economic and social progress has been made in the southern portion, governed by the Republic of Korea, the Peninsula is still divided and is constantly threatened by the totalitarian regime in the North. In Seoul, the capitol of the Republic of Korea, the UNC appears unaware of any drastic change in its relationship to the United Nations.<sup>11</sup> To outward appearances, Korea and the UNC appear as usual and the UNC appears, even if grudgingly, to be accepted by its opponents in Panmunjom as the representative of the World Organization and its component states.

The classical view of a military armistice is that it does not have the power to terminate the preexisting state of declared or undeclared warfare. An armistice merely suspends military action until a final peace treaty can be achieved.<sup>12</sup> The more elastic modern view, that a general armistice may acquire the characteristics of a peace treaty, or may devolve into one, also requires a complete cessation of acts of hostility, and an acceptance of the status quo.<sup>13</sup> No such situation exists in Korea today. The basic issue that led into the confrontation of 1950 is still basically unresolved: Is Korea as a whole to have a Soviet or a western political orientation? The Ko-

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9. Australia, Belgium, Canada, Columbia, Ethiopia, France, Greece, Luxembourg, The Netherlands, New Zealand, The Philippines, South Africa, Thailand, Turkey, the United States and the United Kingdom. Dept. of State Pub. 5609, *The Korean problem at the Geneva Conference* (International Organization and Conference Series II (Far Eastern)) at 191 (1951) [hereinafter *State 5609*].

10. The texts of these resolutions are contained in the Appendix to the present article.

11. The United Nations flag flies as always from the UNC's headquarters building; UNC officers proceed periodically to Panmunjom to conduct Armistice meetings with the North Koreans and Chinese; shooting incidents of one or another sort, such as the one with Matuzok, take place; and, infiltrations, bomb plots, sabotage, tunnels under the DMZ and maritime skirmishes on the seas surrounding the Peninsula, all occur and serve to raise tension. Finally, reports by the UNC are submitted to the Security Council in New York where they are accepted, perused and routinely filed.

12. Laws and Customs, *supra* note 8, at Art. 36, chap. V (Annex). See also Levie, *Nature and Scope of the Armistice Agreement* 50 AM. J. INT'L L. 880, 885, for an excellent exposition of the classical view.

13. The modern view proposes that a general armistice stretches the concept of war into the realm of peace. See J. STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT*; a *Treatise on the Dynamics of Disputes and War-Law* 646 (1954) and M. MCDUGAL AND F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER*, 93 (1961) [hereinafter *MCDUGAL AND FELICIANO*].

rean Peninsula maintains virtually the same legal status it held in 1953. From a factual viewpoint, it is an Asian tinder box, a volatile area and a continual source of world concern.

It would seem only reasonable that the states or entities most concerned with the problem — the United States, the Republic of Korea, North Korea, China, the Soviet Union and Japan — as well as the world at large, would prefer that the status quo continue to avoid any action that could possibly lead to a resumption of hostilities. On this assumption, the UNC should be permitted to operate and carry out the Armistice for the foreseeable future. Actually, however, the international army has encountered political opposition, centered particularly in the United Nations General Assembly, for many years.<sup>14</sup>

Opposition from the Soviet bloc continues, as expected. States that once sided with, or even formed part of, the UNC have taken a more perplexing posture. These states now see the UNC either as a hindrance to resolving the Korean problem or as such an outdated and vaguely disturbing relic from the past — a reminder of principles and ideals no longer much in vogue — as to merit merciful extinction.

It seems evident that the UNC and the United Nations are symbiotically bound together. Should the latter, in its collective capacity, announce to the world that the UNC no longer represents it in Korea, the right of the UNC to carry out the Armistice would be gravely compromised. In a larger sense, such an announcement would effect the UNC's right to hold itself out as the only collective armed force ever to have fought a major armed conflict in the name of the U.N. and for the principle of collective security.

An ancillary but pertinent aspect of this matter needs to be mentioned at the outset of this inquiry. Records indicate that more than two million UNC casualties fell during the hostilities in Korea, a total that included over fifty-four thousand dead American soldiers.<sup>15</sup> This human sacrifice cannot be approached by any other agency bearing or acting in the name of the World Organization.

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14. This matter will be discussed in more detail in Section IV *infra*. A detailed account of actions in the General Assembly on this point is contained in a study entitled "Korean Unification" published by the Institute for Far Eastern Studies, chap. 13 (1984).

15. UNCMAC records indicate the following totals of war dead: U.S. 54,246; Australia 1620; Belgium/Luxembourg 550; Canada 1687; Columbia 826; Ethiopia 776; France 1423; Greece 884; Netherlands 815; New Zealand 149; Philippines 580; S. Africa 62; Thailand 927; Turkey 4066; United Kingdom 5727; ROK 1,727,840. (Department of Defense Records 1958). Casualty totals for ROK are included within the UNC statistics, although the ROK technically was not one of the 16 UNC member states. However, at the onset of the hostilities, on July 14, 1950, the then ROK President wrote a letter to Gen. MacArthur placing all ROK armed forces under UNC command during the "Continuation of the present state of hostilities." This letter constitutes the basis, even at present, for a unique situation: the use of ROK military personnel as "augmentation" to the U.S. forces in Korea.

Even so, such numbers may be of little materiality to the student of power relationships who knows that gratitude for past services generally succumbs to political interests of national states. Nevertheless, to those who think that the World Organization should adhere not only to concepts of universal law and justice but to such simple matters as consistency or gratitude, the question seems to present itself: When so many men have fought and died under the United Nations' flag, and in a "United Nations action in Korea," should the army in which they served be attacked from the rear, and by a representative of the same Organization that spurred them on during the hostilities in which they died?

## II. A Collective Security Army is Born.

It is important that we should constantly have in mind that what is here at stake is not merely Korea, important as that is, it is the authority of the United Nations.<sup>16</sup>

The special relationship that exists between the World Organization and the Republic of Korea originally took form in 1947 when the General Assembly agreed, at U.S. request, to assume jurisdiction over the Korean problem. This relationship was firmed in 1948 when United Nations supervised elections resulted in the creation of the Government of the Republic of Korea. These bonds were annealed in the fire and bloodshed of the hostilities as UNC forces fought to rescue the Republic of Korea from the threat of annihilation.

Korea, long subjugated by Japan, received considerable attention during the Second World War, as reflected in the Cairo Conference of 1943 and the Potsdam Declaration of 1945.<sup>17</sup> At these meetings the Allied Powers, including the Soviets, agreed that Korea should regain its former free and independent status. In September 1945, as the war was ending, the U.S. authorities ordered a division of the Peninsula along the line of the 38th Parallel, which roughly divides the country into two equal halves, north and south. The line drawn was purely a military one, useful for the sole purpose of assisting in the surrender of the Japanese forces.<sup>18</sup> The Soviets, how-

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16. Secretary of State John Foster Dulles at the 1954 Geneva Conference. State 5609, *supra* note 9, at 46.

17. The Cairo Conference, Nov. 22-26, 1943. 6 Documents on American Foreign Relations 232, 233 (1943-44); for The Potsdam Declaration, *see* 13 Dept. of State Bulletin 137 (1945). For a more detailed account of events regarding the Republic of Korea in this early period *see* ODA, THE NORMALIZATION OF RELATIONS BETWEEN JAPAN AND REPUBLIC OF KOREA, 61 Am. J. Int'l L. 35 (1961) [hereinafter ODA]. *See also* State 5609, *supra* note 9 at 1-2.

18. The Japanese had already entered North Korea as early as August, 1945, one month before the arrival of United States troops. The line drawn was therefore also a measure to prevent total occupation of Korea by the Soviets. *See* ODA, *supra* note 17, at 37.

ever, disregarded the purpose of the line and converted it into a political, social and economic barrier, curtailing travel, disrupting relationships and separating the predominantly agricultural south from the more industrial north. The United States attempted, unsuccessfully, to resolve the problem at the Moscow Three Power Conference in December 1945.<sup>19</sup> In 1947, the United States requested the United Nations General Assembly to intercede and to establish conditions for a free and independent Korean State.

The General Assembly agreed to undertake the task and on November 14, 1947, acted to create a Temporary Commission to supervise the necessary elections for a National Assembly. The National Assembly, in turn, would form a National Government.<sup>20</sup> The Soviets, however, kept the U.S. Commission out of their part of the country. As a result, the Government of the ROK, which took office in August, 1948, could control only that section of the peninsula located south of the 38th Parallel. When a Soviet regime, the Democratic People's Republic of Korea (DPRK) took power in the North, there were then apparently, two states on the Peninsula, where one had been intended. In late 1948, the General Assembly stated in a resolution:

. . . there has been established 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 . . . 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 . . . this is the *only* such Government in Korea . . .<sup>21</sup>

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19. The three Powers had agreed to establish a Joint Commission of U.S. and USSR representatives to assist in the formation of a provisional Korean Government. Report of the Meeting of the Ministers of Foreign Affairs of the Union of Soviet Socialist Republics, the United States of America and the United Kingdom, at Moscow, Dec. 27, 1945, 20 U.N.T.S. 259, 284. However, the Soviet delegation succeeded in frustrating the Commission's work by insisting on consulting Communist organizations only. State 5609, *supra* note 9, at 2.

20. G.A. Res. 112, 2 U.N. GAOR at 16. U.N. Doc A/310 (1947). *See also* State 5609, *supra* note 9, at 28-9.

21. G.A. Res. 195, 3 U.N. GAOR at 25. U.N. Doc A/810 (1948). *See also* State 5609, *supra* note 9, at 30 (emphasis supplied). The U.S. and twenty-two other states immediately recognized the Republic of Korea. ODA, *supra* note 17, at 38. Presently, the issue whether the ROK or the DPRK is the lawful government for the entire Peninsula is a sleeping time bomb in Korea. The ROK Government makes this claim and it is understood that the DPRK makes a similar claim. Should either party come into possession of the other side's territory the question will be whether the territory is occupied or "liberated." The G.A. resolution favors legal superiority of the Republic of Korea. The author, however, reasons that any territory seized by one side from the other should be considered occupied and treated in accordance with international law, i.e., Hague Convention No. IV (*supra* note 8) at least initially. This follows the reasoning of the text, i.e., that the DPRK constitutes a de facto state.

This excerpt from the 1948 resolution clearly favors the Republic of Korea as the only lawful state in Korea. It also, and perhaps inadvertently, shows that the DPRK constitutes a

The U.S. withdrew its occupation forces from Korea in 1948, leaving the Republic of Korea with military strength sufficient only for internal security. During the ensuing two years, the situation on the Peninsula became increasingly tense and volatile. The situation was exacerbated in early 1950 when Secretary of State Dean Acheson stated in an address that an attack outside the United States "defensive perimeter"<sup>22</sup> would not be considered as an attack on the United States but would be met under the United Nations Charter.<sup>23</sup> This was taken by most to mean that the United States was not overly concerned with Korea.

The armed forces of the DPRK fell on the Republic of Korea in the early morning of June 25, 1950. With only sketchy reports available, United States officials decided, nevertheless, that the matter was of sufficient gravity to justify an immediate emergency session of the Security Council. During the night of June 24th, the officials prepared the draft for a Council resolution which noted that an armed invasion had taken place, and called upon the North Koreans to withdraw. The word "call" was used, rather than "order" both to show diplomatic strength and to avoid unnecessary offense. When the Security Council met the next day, the "armed invasion" was modified to "armed attack". The draft resolution, as amended, was unanimously adopted by the Security Council.

As Secretary Acheson's remarks indicated, the United States deemed it important that the World Organization furnish its name and approval for whatever action would be necessary. It was obvious that a serious violation of a major principle of the United Nations Charter had occurred and that the transgression had been directed against a small state to which both the United States and the United Nations had assumed important responsibilities. The Security Council bore primary responsibility under the Charter for the maintenance of peace and security. It was believed that action by the Security Council would thus form a basis for general support by the international community. Such support would also greatly assist the United States that, as the only power with troops stationed near the Korean Peninsula, was clearly chosen to be the initiator of whatever

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de facto state, as it has clearly exercised "effective control and jurisdiction" over its people and territory, and possesses other indicia of statehood, such as an army, territory, a constitution and a defined philosophy of government.

A similar situation existed in Viet-Nam and the problem there was also similar. See MOORE, *The Lawfulness of Military Assistance to the Republic of Viet-Nam*, 61 AM. J. INT'L L. 1, at 4.

22. This perimeter did not include Korea.

23. See HOYT, *United States Reaction to the Korean Attack: A Study of the Principles of the United Nations Charter as a Factor in American Policy-Making*, 55 AM. J. INT'L LAW 45, 48 (1961) [hereinafter HOYT]. The Hoyt article is recommended for a more detailed account of events in this period of crisis.



response would eventually be taken to the North Korean aggression.<sup>24</sup>

When the DPRK ignored the June 25th resolution, a second resolution issued from the Council on June 27th.<sup>25</sup> This resolution noted that North Korean authorities had “neither ceased hostilities nor withdrawn their armed forces to the 38th Parallel.”<sup>26</sup> Therefore “urgent military measures” were required to restore “international peace and security.”<sup>27</sup> The second resolution also took a substantial legal step forward by recommending that the member states take action “to repel the armed attack, and to restore peace and security in Korea.”<sup>28</sup>

The final Council resolution in the crisis was issued on July 7, 1950. By that date, it had become very clear that the United Nations and the world were facing a major test. When it became known that American air and sea forces had been ordered to proceed to Korea as early as June 26, the U.S. action received endorsement by United Nations Secretary General Lie. Secretary General Lie considered such action to be “fully within the spirit of the Council’s resolution of June 25.”<sup>29</sup>

The culminating action of the Security Council in the Korean crisis took place on July 7, 1950. It was abundantly clear that the North Koreans were in open defiance of the Security Council and that only the most positive measures would affect the situation. The problem was that no armed forces were available to the Security Council. As an ad hoc solution, the Council recommended to the Member States that they establish an international armed force to be called a “unified command.”<sup>30</sup> The Council further directed that the unified command operate under a U.S. Commander, fly the flag of the World Organization, and report back to the Council on its operations. The unified command’s mission was “to repel the armed

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24. This news reached Washington on the 24th, due to the differences in time. The presence of its military forces in Japan made the U.S. the only state with troops stationed near the Korean Peninsula.

As HOYT points out, the use of United States troops in land battle on the Asian continent had been previously ruled out by the Joint Chiefs of Staff on strategic grounds. However, as early as Sunday, June 25, President Truman had decided to authorize the Air Force to attack any North Korean fences that would interfere with evacuation of United States citizens. *Id.* at 52.

25. S.C. Res. 83, 5 U.N. SCOR Supp. (Jan.-Nov. 1950) at 5, U.N. Doc. S/1511 (1950) [hereinafter S.C. Res. 83].

26. *Id.*

27. *Id.*

28. *Id.*

29. LIE, IN THE CAUSE OF PEACE 332 (1954), as cited in HOYT, *supra* note 23 at 53, n.23.

30. S.C. Res. 84, 5 U.N. SCOR Supp. (Jan.-Nov. 1950) at 6, U.N. Doc. S/1588 (1950).

attack and to restore international peace and security to Korea.”<sup>31</sup> It is this resolution that formed the legal basis for the UNC’s actions during the hostilities and thereafter, as well as for the contributions, military and non-military of the other member states.

The general political atmosphere in the free world during the crisis was both idealistic and concerned. Concern existed over a possible Communist challenge to the basic principles for which the Allied Powers had fought and sacrificed so much in the recently concluded Second World War.

Moreover, the general consensus among the states that responded to the call of the Security Council was that the UNC was in fact engaged in a “United Nations action in Korea.” This understanding was reflected in a published order of the Far East Command, dated July 25, 1950, renaming the “unified command”: “United Nations Command”.<sup>32</sup> The Security Council accepted this new title without question. The assumption of the new title was no more than a reflection of the fact that the unified command was truly engaged in a “United Nations action”.

Although the UNC was a creation of the Security Council, the General Assembly was also proprietary and approving toward the UNC during the course of the hostilities. Indeed, the unfortunate decision, made in the latter part of 1950, as the North Koreans were in full retreat and the prospects for total victory bright, to proceed northward to the Yalu River at the border with China, was in accord with a General Assembly resolution of October 7, 1950, instructing the “United Nations Command Armed Forces” to “ensure conditions of stability *throughout Korea*”.<sup>33</sup> It was in full conformance with this General Assembly resolution that the UNC proceeded to its ill-fated rendezvous with the “Chinese Volunteers” in the wintry mountains of North Korea.

### III. The UNC and the U.N. Charter

Korea provides the first example in history of a collective security organization in actual operation.<sup>34</sup>

Should the UNC prove to be the first and last collective security army ever to be established, it should nevertheless have an honorable place in the law of nations as the first generally successful attempt to repel a flagrant instance of aggressive warfare in violation of the

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31. S.C. Res. 83, *supra* note 25.

32. BISHOP, *supra* note 1, at 252-53; *see also* WEISSBERG, THE INTERNATIONAL STATUS OF THE UNITED NATIONS 81-3, n.13 (1961) [hereinafter Weissberg].

33. G.A. Res. 376, 5 U.N. GAOR supp. 20, at 9, U.N. Doc. A 17/1775 (1950) (emphasis added).

34. State 5609, *supra* note 9, at 46.

United Nations Charter. Indeed, the UNC stands alone in the topography of international law as a large and powerful army that actually fought a major conflict to repel and frustrate a state condemned by an international agency as a transgressor. No other similar example presents itself. In this respect, both the UNC and the Charter represent a substantial step forward from such predecessors as the Covenant of the League of Nations.<sup>35</sup>

The United Nations Charter attempts to strike a compromise between the principle of sovereign equality and the aim of collective security.<sup>36</sup> This may well be the reason for its general inability to cope successfully with problems that involve the interests of major powers. In its attempt to overcome the contradictions within itself and to accomplish its aim of outlawing aggressive war, the Charter sets forth basic rules for international conduct that generally reflect accepted legal norms for states. The most fundamental rule of conduct within the Organization is that all states are bound to settle international disputes by peaceful means and to refrain from the threat or use of force against other states.<sup>37</sup>

The Security Council and the General Assembly form the primary collective bodies of the United Nations. The Charter assigns primary responsibility for the maintenance of international peace and security to the Security Council. In carrying out these responsibilities, the Council purports to act on behalf of all Members of the United Nations.<sup>38</sup> In contrast to the Covenant of the League of Nations, the Charter requires all its members to accept and carry out decisions of the Security Council. When such decisions pertain to

35. Each member of the League retained authority to decide for itself whether a breach of the Covenant had occurred. This is substantially lesser than the obligation contained in Article 25 of the Charter which states that:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

It is also more effective than the provisions of the General Treaty For the Renunciation of War of 1928 (the Pact of Paris or the Kellogg-Briand Pact) which condemned recourse to war for the solution of international controversies but established no positive means of enforcement of this principle. MCDUGAL AND FELICIANO, *supra* note 13, at 140-43.

36. As Lauterpacht has observed in this connection, while the Charter is based on the sovereignty principle, this principle is in fact contradicted by many crucial provisions of the Charter. L. OPPENHEIM, *INTERNATIONAL LAW* 405, 412-20 (H. LAUTERPACHT 8th ed., 1952) [hereinafter 1 OPPENHEIM].

37. As Article 2, para. 4, states:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

U.N. Charter art. 2, para. 4 [hereinafter Charter].

38. Article 24, para. 1, states:

In order to insure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Charter, *supra* note 37.

matters affecting world peace, it would appear that all states whether or not member states are equally obliged to comply.<sup>39</sup> In sharp contrast to the binding effect of Security Council decisions, the functions and powers of the General Assembly with respect to the maintenance of international peace and security are only recommendatory in nature.<sup>40</sup> Nowhere in the Charter are Members legally bound to comply with resolutions passed by the General Assembly. In many cases, such resolutions have not been accorded binding effect by states that disagree with Assembly pronouncements. This inability, or unwillingness, of the Charter to bind the Member states by Assembly resolutions seems to be a kind of obeisance to the principle of sovereign prerogatives of individual states. The effect has been to convert the World Organization into what some have termed a "debating society" not too dissimilar from its ineffective predecessors.

Given the veto power of the permanent members of the Security Council, it appears that in the Korean crisis, the Security Council was able to act as it did only because Mr. Malik, the Soviet permanent member, was absent.<sup>41</sup> The Soviets, of course, soon realized the grave consequences of Mr. Malik's absence and attempted to annul the three Council resolutions on the ground that they had been enacted without the required affirmative and concurring vote of their representative as a permanent member. Responding to the Soviet argument, the United States delegation stated that the provision in point, Article 27,<sup>42</sup> required only the concurrence of "the" permanent members, not of "all" permanent members. The issue cannot be said to be entirely settled and has been the subject of considerable scholarly dispute.<sup>43</sup>

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39. See *supra* note 30. 2 L. OPPENHEIM, INTERNATIONAL LAW 166 (H. LAUTERPACHT 7th ed. 1955) [hereinafter 2 OPPENHEIM].

40. Article 10, UN Charter states in part:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and . . . may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Charter, *supra* note 37. Contrast this article with Article 25, set forth *supra* note 35.

41. The Soviet representative had "walked out" from the 461st Council meeting on January 13, 1950, after the Council had refused to adopt a Soviet draft resolution to exclude the Kuomintang group from the Council. He was absent from all subsequent meetings until the 480th meeting on August 1, 1950. See WHITEMAN, *Digest of Int'l Law*, Dept. of State Publication 8424, at 410 (1968) [hereinafter WHITEMAN].

42. Article 27, para. 3, UN Charter (1963 text) states in part, as follows:

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members . . . ."

Charter, *supra* note 37.

It should be noted that, in 1950, only seven affirmative votes were required on important issues rather than nine.

43. The problems of abstentions and the exercise of the veto power remains a "Pandora's

The procedure followed by the Security Council in the July 7, 1950 resolution "recommending" that the member states contribute their armed forces to a command under United States leadership rather than more directly ordering such a command into being, has raised the question whether the UNC was a mere joint venture of the contributing states,<sup>44</sup> rather than an agency of the Security Council. Authorities have differed on this point. The UNC itself has no self doubts on this point and it is also clear that the states contributing to the UNC considered, as Secretary of State Acheson indicated in 1951, that the operation was a United Nations effort and not a "series of nations acting independently . . . ."<sup>45</sup>

The plan to enforce international law in serious cases of aggression, as outlined by the drafters of the United Nations Charter, called for an international standing armed force to be readily available to the Council for its use in appropriate cases.<sup>46</sup> In view of the fact that such a force was not available in 1950, the Council was forced to create an ad hoc substitute. The rationale followed, specifically outlined by the United Kingdom's representative in the Council, was as follows:

Had the Charter come fully into force and had the agreements provided for in Article 43 of the Charter been concluded, we should, of course have proceeded differently, and the action to be taken by the Security Council to repel the armed attack would no doubt have been founded on Article 42. As it is, however, the Council can naturally act only under Article 39, which enables the Security Council to recommend what measures should be taken to restore international peace and security. 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 Nations

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Box." See GROSS, *Voting in the Security Council: Abstention from Voting and Absence from Meetings*, 60 YALE L.J. 209 (1951); see further BISHOP, *supra* note 1, at 231, n. 20-1.

44. Lauterpacht, for example, considered the UNC to be merely a grouping of national contingents placed under international direction for a specified purpose. 2 OPPENHEIM 170, *supra* note 39. For a contrary view, see HALDERMAN, *Legal Basis for United Nations Command Forces*, 56 AM. J. INT'L L. 971, 979 (1962).

45. Military Situation in the Far East, Hearings before the Senate Committee on Armed Services and Foreign Relations, 82nd Cong., 1st Sess., (1951), Part 3, p. 1937; WEISSBERG, *supra* note 32, at 81-8.

46. Para. 1, Article 43, of the UN Charter states that:

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

Charter, *supra* note 37.

47. WHITEMAN, *supra* note 41.

The procedure followed by the Council in the Korean case is supported by a 1962 International Court of Justice opinion that holds that the Council may act even in the absence of armed forces furnished to it and may utilize other means and articles to accomplish its purposes.<sup>48</sup> This opinion fully supports the view that the Security Council's action was in accord with its power when it created the UNC as an ad hoc force under the provisions of Articles 39 and 42.<sup>49</sup>

As an exercise of power under articles 39 and 42 of the Charter, the hostilities in Korea could not legally be termed "war" in the de jure sense, although there can be no doubt that they did constitute war in the de facto sense. Such terms have been employed as "United Nations action", "Korean affairs", "police action", and equivalent terms. The distinction is legally significant.<sup>50</sup> The UNC was engaged in the real sense in an "enforcement" of the principles of the United Nations Charter in substantially the same manner as police act in carrying out internal state law.

Apart from the Korean affair, the Security Council has proven quite unable to perform its chief function of maintaining or restoring international peace and security in the face of major aggression. The Uniting for Peace Resolution<sup>51</sup> that constitutes the General Assembly's well known attempt to plug the gap, has not met with success. A number of scholarly proposals have offered alternate theories or means to enforce international law against international tortfeasors.<sup>52</sup> However, as a practical matter, it is to the long established and inherent right of collective self defense, the mother of the system of multinational defense alliances and regional defense parts, that the chief burden of maintaining a semblance of peace and order

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48. "Certain Expenses of the United Nations, an Advisory Opinion," 1962 I.C.J. Rep. 157, reprinted in 56 AM. J. INT'L L. 1053 (1962); see also BISHOP, *supra* note 1, at 262-270; WHITEMAN, *supra* note 41, at 439.

49. Article 39 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.

Charter, *supra* note 37. And Article 42 states in part:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security . . . .

*Id.*

50. See MCDUGAL & FELICIANO, *supra* note 13, at 20, 539; 1951 Resolution, *supra* note 1; ODA, *supra* note 17. Also Proceedings for 1968, Annual Volume of AM. J. INT'L L. at 58-83 inclusive.

51. G.A. Res. 377, 5 U.N. GAOR Supp. (No. 20) at 10-12. U.N. Doc. A/1775 (1950).

52. See, in this connection, the Reisman-Schachter Exchange in Editorial Comments, 78 AM. J. INT'L L. 642-50.

in the international community has fallen.<sup>53</sup> It can perhaps be said that the UNC shines brighter under existing circumstances than it could in a world where collective security existed as an established norm.

As a concluding remark on the relationship of the UNC to the United Nations Charter, it is appropriate to stress that the fact that the UNC is not a "peacekeeping force" as these forces have generally been established.<sup>54</sup> United Nations Secretary General U. Thant once explained the distinction: peacekeeping forces were "peace, and not fighting forces . . . of a very different kind and with little in common with [conventional] forces . . . they operated only with the *consent* of the parties directly concerned."<sup>55</sup> Indubitably, the UNC has never enjoyed the "consent" of any of its opponents, either on the field of battle or in the halls of the General Assembly.

#### IV. The UNC and the Armistice

The General Assembly . . . notes with approval the Armistice Agreement . . . and that a major step has thus been taken towards the . . . restoration of international peace . . . in the area . . . .<sup>56</sup>

The World Organization, as the above indicates, was wholeheartedly in favor of the Armistice. The United Nations Secretary General in 1951 also had given prior approval to the UNC for the conduct of the armistice negotiations, as follows:

[T]he Unified Command is authorized under the resolutions of the Security Council to conduct . . . military negotiations on behalf of the United Nations, leaving political questions to be negotiated later in, or under, the authority of the appropriate organs of the United Nations.<sup>57</sup>

The Agreement called for a political conference to be convened within three months after signature to arrive at a solution to the Korean problem. However, the Conference could not be convened for almost one year. This delay was caused in part by the General Assembly that, despite the fact that the Soviet Union had not been a

53. viz. the North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

54. Examples of such forces are: the United Nations Emergency Forces (UNEF) in the Mid-East; the United Nations Force in the Congo (UNUC); and the United Nations Cyprus Force. As many as fifteen such forces have been established since 1945. R. HIGGINS, UNITED NATIONS PEACEKEEPING. DOCUMENTS AND COMMENTARY (1981).

55. Address by Mr. U. Thant, Harvard Alumni Association (June 13, 1963); BISHOP, *supra* note 1, at 260-65 (emphasis added).

56. G.A. Res. 711, 7 U.N. GAOR Supp. (No. 20B) at 1, U.N. Doc. A/2361/Add.2 (1953). State 5609, *supra* note 9, at 32-3; WEISSBERG, *supra* note 32, at 94.

57. 11 UN Bulletin 47 (1951); WEISSBERG, *supra* note 32, at 91.

participant in the hostilities, had recommended Soviet admission to the Conference.<sup>58</sup> As history records, the intransigence of the Soviet, North Korean and Chinese Representatives on the issues of free elections, the choice of government for Korea, United Nations competence and jurisdiction in Korea, and classification of the Korean affair as an international or merely an internal problem caused the Conference to fail. It adjourned in June, 1954 and has never been reconvened.

The Agreement, intended to be of a purely military nature, has thus been forced by circumstances to serve in the absence of a final peace accord.<sup>59</sup> Consequently, the Agreement has developed certain political and diplomatic aspects. Its chief political effect has been to establish the DMZ as the de facto and internationally recognized boundary between the two states on the Peninsula. Should Korean reunification prove impossible, the chances are that the agreement will devolve into or be generally accepted as the peace Agreement that the Geneva Conference failed to achieve. The UNC similarly has achieved a more than military status. It has made a status of forces agreement with the Government of Japan to regulate rights and responsibilities of UNC personnel stationed in or visiting that country.<sup>60</sup> Another Agreement with the ROK was made in 1952 by the United States acting as the Unified Command to furnish UNC personnel in Korea with privileges and immunities as necessary to fulfill their function.<sup>61</sup> A number of miscellaneous international agreements have also been made by the United States acting on behalf of the UNC to clarify rights and responsibilities of foreign forces joining the UNC.<sup>62</sup>

The more than military nature of the Agreement and the UNC is also evidence in certain provisions giving the UNC Commander

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58. State 5609. *supra* note 9, at 4. The Soviet representative was Mr. Molotov. (*Id.* at 91.)

59. The Preamble to the Armistice states in part that "its conditions and terms are intended to be purely military in character and to pertain solely to the belligerents in Korea." Agreement, *supra* note 3.

60. Agreement on the Status of United States Forces in Japan, Feb. 19, 1954, 5 U.S.T. 1123, T.I.A.S. No. 2995, 214 U.N.T.S. 51.

61. Agreement on Economic Coordination between the Unified Command and the Republic of Korea, May 24, 1952, 3 U.S.T. 4420, T.I.A.S. No. 2593. Much of this Agreement, as relates to United States personnel in the Republic of Korea serving with the United States armed forces, has been superseded by the United States-Republic of Korea Status of Forces Agreement, July 9, 1966, 17 U.S.T. 1677, T.I.A.S. No. 6127. However, under Art. 29(4), non-USUNC personnel are still entitled to its protections. Charter, *supra* note 37.

62. These include Agreement on Participation in United Nations Participation in Korea, May 15, 1952, United States-Netherlands, 3 U.S.T. 3987, T.I.A.S. No. 2534; Agreement on Participation of Red Cross in Korea, June 27, 1951, United States-Sweden, 2 U.S.T. 1209, T.I.A.S. No. 2268; Agreement on Mobile Surgical Hospital in Korea, Sept. 17, 1951, United States-Norway, 2 U.S.T. 1903, T.I.A.S. No. 2325 and Agreement Concerning Participation of Belgium Forces in Korea, July 15, 1955, United States-Belgium, 6 U.S.T. 2829, T.I.A.S. No. 3325.



full control and jurisdiction over half of the DMZ area and over certain islands.<sup>63</sup> The same Commander bears the responsibility to carry out the Agreement in the entire territory of the Republic of Korea.<sup>64</sup> To the extent that the defense of the territory of the Republic of Korea is also a political concern, the UNC Commander, prior to 1979, exercised plenary operational control over the Republic of Korea's armed forces. In 1979, however, this function was largely transferred to a new United States-Republic of Korea Combined Forces Command (CFC). The present sole function of the UNC Commander is to carry out the Agreement.

The problems encountered by the UNC in the implementation of the Agreement have largely been caused by the many thousands of North Korean violations.<sup>65</sup> In some cases, the violations have been extremely serious. Despite this, there has never been any serious consideration of abrogation. The procedure followed instead has been to guard against violations by vigilance. In such cases where violations by the North Koreans have so vitiated relevant features of the Agreement as to form a basis under international law for appropriate counter-measures, the UNC has taken such action as deemed necessary to redress the military balance.<sup>66</sup>

In practice, action taken to redress the military balance has often resulted in nullifying significant parts of the Agreement, particularly those sections relating to the introduction of new weapons

63. Para. 10, Art. 1 of the Agreement gives to the Commander in Chief, UNC (CINCUNC) the sole responsibility for civil administration and relief in the entire southern portion of the DMZ, i.e., the two kilometer wide part south of the Military Demarcation Line that cuts the Peninsula in half. Agreement, *supra* note 4. The present CINCUNC is General Louis C. Monetrey.

64. Article II, para. 17 of the Agreement states, in part, that "the Commanders of the opposing sides establish within their respective sides all measures and procedures necessary to insure complete compliance with all the provisions hereof." Viewed from the Agreement, the entire area of the Republic of Korea is under the "control" of CINCUNC. Of course, as a practical matter, the Republic of Korea is under local governmental control and full coordination is necessary for any UNC actions within the Republic of Korea. *Id.*

65. See *supra* note 7.

66. This principle, which serves to explain much of what takes place today in Korea, was originally announced in a letter by the UNC to the United Nations Secretary-General, dated August 9, 1957, which, in part, stated as follows:

The maintenance of the stability of the situation in Korea requires preservation of the balance in relative effectiveness of the type of material in the hands of the two sides. And this is quite true independently of the proposition that violations of the other side are considered to entitle the Unified Command to be relieved of its corresponding obligations to the extent that will enable it to take appropriate defensive counter-measures . . . .

Accordingly, on 21 June, 1957, the United Nations Command announced to the Communist side in the Military Armistice Commission that 'in view of these facts and your gross violations of the provisions of subparagraph 13(d), the United Nations Command considers that it is entitled to be relieved of corresponding obligations under the provisions of this sub-paragraph until such time as the relative military balance has been restored and your side, by its actions, has demonstrated its willingness to comply.'

See BISHOP, *supra* note 1, at 210.

and personnel into Korea.<sup>67</sup> The UNC, although legally warranted in its retaliatory actions, has striven to obtain the cooperation of the DPRK to return to a strict compliance with the Agreement, in an effort to reduce tension on the Peninsula, and contribute towards an eventful peaceful solution.

These efforts have usually taken place at the formal and informal meetings of the Military Armistice Commission (MAC) at Panmunjom. MAC is the body established by the Agreement to supervise its implementation.<sup>68</sup> In the thirty-four years since the Agreement was signed, there have been 440 formal MAC meetings. Presently, discussions at the MAC concern several matters. Of primary current interest is the fact that the North Koreans have admitted to being in possession of the remains of fallen or missing UNC personnel but have refused to return these remains, except in direct negotiations with the United States, not with the UNC. Other current subjects of discussion — pertain to such matters as reducing the number of armed guards in the Panmunjom area, demilitarizing the DMZ and the conducting of military exercises by the UNC in the ROK. In all of these topics, the North Koreans have proven difficult and stubborn negotiators.

Despite constant frustration, the MAC meetings at Panmunjom serve a useful purpose. They do establish a means of communication with opponents who would otherwise be completely incommunicable. Panmunjom has also served in the past, with UNC cooperation, as the site for talks between the two Korean States.<sup>69</sup>

The World Organization itself also has had occasion to utilize the UNC in its efforts to promote relaxation of tensions in Asia. In September 1979, United Nations Secretary General, Kurt Waldheim, came to Seoul to hold discussion with the UNC Commander, and in July 1984, United Nations Secretary Diego Cordovez visited the UNC Headquarters on a fact finding and peace seeking mission.

Despite some hopeful signs, there is as yet no reason for undue optimism. The number of North Korean armed forces is reportedly almost one million strong, including a special purpose force of

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67. Art. II, para. 13, c and d of the Agreement prohibits the introduction into Korea of "reinforcing military personnel and military equipment." Agreement, *supra* note 3.

68. Para. 24 of the Agreement states as follows:

The general mission of the Military Armistice Commission shall be to supervise the implementation of this Armistice Agreement and to settle through negotiations any violations of this Armistice Agreement.

*Id.*

69. These talks, holding perhaps the best hope for a peaceful solution, have been recently broken off by the North Koreans on the pretext that annual UNC military exercises are a violation of the Agreement. However, efforts are continually under way to resume the talks and to obtain DPRK cooperation and help in making the 1988 Olympic Games a joint north-south enterprise.

100,000 North Koreans. These latter troops form the world's largest unconventional warfare force. The DPRK has considerably more tanks and assault guns than the Republic of Korea. Accordingly, it would seem foolhardy to rely too much on the possibility of a peaceful solution to the situation in Korea. Prudence advises authorities to plan and be prepared for the possibility of a recurrence of hostilities on the Peninsula. Should further hostilities occur, the UNC would prove a valuable legal and political asset. In particular, the UNC would seek the support of Japan as an essential element to any military action in Korea.<sup>70</sup>

Apart from the growing power of the Third World and the Soviet Union in the General Assembly, it is logically difficult to explain the drumfire of criticism and opposition against the UNC. It is equally difficult to understand why, in 1975, the U.S. prepared to accept the idea of doing away with the UNC. At that time, the U.S. proposed a resolution in the General Assembly providing that if satisfactory alternate measures to carry out the Armistice Agreement could be found, it would agree to disband the UNC. The Soviets counterproposed that the UNC should be unconditionally dissolved and that all "foreign" troops should be withdrawn. It appears that both resolutions simply died with no action taken.<sup>71</sup>

The removal of the UNC presence from Korea would result in more than the removal of a symbolic flag and a relatively small group of officers and men. Removal of the UNC would constitute a major step towards the withdrawal of United States troops from Korea. Absent the UNC and U.S. troops, the present-day Korea distinguish it from that existing in 1950. The great lesson of practical experience in Korea teaches the necessity of caution. The established military balance should not be changed for mere promises or hopes.

## V. Concluding Remarks

As in many fields, glistening legal ideals and principles can become tarnished by experience. The U.N. Charter is no exception. The Security Council remains paralyzed by veto power. The World

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70. Japan is obligated to give to the United Nations "every assistance" in actions taken under the Charter as well as to "permit and facilitate the support in and about Japan" by the members of the forces engaged in such United Nations action. Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169, T.I.A.S. No. 2490, 136 U.N.T.S. 45. These commitments are also reflected in the Agreement on the Status of United Nations Forces in Japan, Feb. 19, 1954, 5 U.S.T. 1123, T.I.A.S. No. 2995, 214 U.N.T.S. 51.

71. In this strange episode, the first committee of the General Assembly forwarded for approval a United States resolution proposing to terminate the UNC, provided alternative arrangements to maintain the Armistice could be achieved. G.A. Res. 3390(a), 30 U.N. GAOR Supp. (No. 34) at 16-17, U.N. Doc. A/10034 (1975). Contemporaneously, a Soviet sponsored resolution was introduced calling simply for UNC dissolution and withdrawal of all UNC "foreign troops." G.A. Res. 3390(B), 30 U.N. GAOR Supp. (No. 34) at 17, U.N. Doc. A/10034 (1975).

Organization and its principle of collective security have failed to overcome the problem of aggressive warfare. Instead, the right of collective self defense, reflected in the existence of regional arrangements as recognized by the U.N. Charter, has proven far more effective in maintaining world security. The Charter has thus shown that a principle rooted in tradition may sometimes prove of more practical value than one created in the glow of victory.

Many questions have been raised concerning the legal nature of resolutions issued by the World Organization. Are these merely expressions of political and economic interests of those states that voted for them, or do they constitute valid evidence of world law?<sup>72</sup> If these resolutions are not in any way legal in nature, then the UNC becomes just another ordinary international armed force, rather than a true collective security army.

The temptation to reject the UNC on categorical grounds should be resisted. The UNC was not simply, or even primarily, an army raised to fulfill ordinary national or sovereign purposes. It was a true exercise of the power and purpose of the U.N. Charter. The pertinent fact remains that in 1950 the existence of the ROK had not been considered to be a vital United States or Western interest. When the crisis arose, however, the U.S. and a number of other states sent their troops to fight for the major principle of non-aggression embodied in the United Nations Charter. If this be true, then the meaning of Korea is that the ideal of collective security is not dead but merely dormant.

Now a mere shadow of its former self, consisting of only small groups of military personnel from the United Nations, plus representative groups from other member states, the UNC still tries to carry out its function in Seoul, in Panmunjom, and in Japan. One of its former members, Ethiopia, now belongs to the Communist camp. In a sort of balance, China no longer remains in opposition to the West.

As a legitimate United Nations agency, properly performing its assigned mission, the UNC should continue to be supported by the Organization that created it and sent it out to fight. To disown its own creation would be to sway to the variable political breezes of the decades rather than to steer by the stars of the centuries. The more steadfast choice may yet prove, in time, to be the politically better one. Even if history judges otherwise, the multitude of men who fell fighting for the "United Nations action in Korea" deserve better

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72. See FRANCK, "Of Gnats and Camels: Is There a Double Standard at the United Nations?" 78 AM. J. INT'L L. 811, 831 (1984). "These components of the UN system deliberate, vote and act in accordance with the members' perceived national self-interest. The outcome may be a 'UN' resolution, but it is, in fact, no more than an expression of the political will of a multitude of sovereign states." *Id.*

than to be casually “dissociated” by the Organization under whose flag they died.

## APPENDIX

## RESOLUTION OF THE U.N. SECURITY COUNCIL

CALLING FOR A CEASE-FIRE AND WITHDRAWAL OF  
TROOPS

TO THE 38TH PARALLEL. JUNE 25, 1950

## The Security Council

Recalling the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government "having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; and 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;"

Mindful of the concern expressed by the General Assembly in its resolutions of 12 December 1948 and 21 October 1949 of the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well being of the Republic of Korea and of the people of Korea and might lead to open military conflict there;

Noting with grave concern the armed attack upon the Republic of Korea by forces from North Korea.

Determines that this action constitutes a breach of the peace,

I. Calls for the immediate cessation of hostilities; and Calls upon the authorities of North Korea to withdraw forthwith their armed forces to the thirty-eight parallel;

II. Requests the United Nations Commission on Korea

(a) To communicate its fully considered recommendations on the situation with the least possible delay;

(b) To observe the withdrawal of the North Korean forces to the thirty-eighth parallel; and

(c) To keep the Security Council informed on the execution of this resolution;

III. Calls 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.

RESOLUTION OF THE U.N. SECURITY COUNCIL  
CALLING FOR ASSISTANCE TO THE REPUBLIC OF  
KOREA

TO REPEL THE ATTACK. June 27, 1950

The Security Council

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace;

Having called for an immediate cessation of hostilities; and

Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel; and

Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel, and that urgent military measures are required to restore international peace and security; and

Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,

Recommends 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.



RESOLUTION OF THE U.N. SECURITY COUNCIL  
CALLING FOR THE ESTABLISHMENT OF A UNIFIED  
COMMAND

FOR U.N. FORCES IN KOREA. July 7, 1950

Resolution of the U.N. Security Council Calling for the Establishment of a Unified Command for U.N. Forces in Korea. July 7, 1950

The Security Council

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having recommended that 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. Welcomes the prompt and vigorous support which governments and peoples of the United Nations have given to its Resolutions of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;

2. Notes that Members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;

3. Recommends that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States;

4. Requests the United States to designate the commander of such forces;

5. Authorizes the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating;

6. Requests the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.