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THE UNITING FOR PEACE RESOLUTION ON THE THIRTIETH ANNIVERSARY OF ITS PASSAGE

HARRY REICHER*

I. INTRODUCTION

November 3, 1980 marked the thirtieth anniversary of the passage by the United Nations General Assembly of the Uniting for Peace Resolution,¹ which has been described by one commentator² as "a great constitutional landmark in the development of the Charter comparable to Marshall's decision in *McCullough v. Maryland*."³

Despite the passage of three decades, the Resolution has been invoked on only a handful of occasions,⁴ the most recent being in 1980 in relation to the Afghanistan and Middle East questions.⁵ The recent anniversary, coupled with the latest instances of use of

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The ideas expressed herein were first developed at a faculty seminar at the Chicago-Kent College of Law, and the author is grateful to Dean Lewis Collens and Professor Stuart L. Deutsch for their kind invitation.

1. G.A. Res. 377, 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950). For a summary of the deliberations leading up to its passage, see 1950 U.N.Y.B. 181-95, and for relevant extracts from all debates in the First Committee of the General Assembly and at Plenary Meetings, see L. SOHN, CASES ON UNITED NATIONS LAW 491-509 (1967). The debates themselves are recorded in 5 U.N. GAOR, C.1 (354th-371st mtgs.) 63-174, U.N. Doc. A/C.1/SR. 354 (1950), and 5 U.N. GAOR (299th-302d plen. mtgs.) 291-347, U.N. Doc. A/PV. 299 (1950).

2. B. COHEN, THE UNITED NATIONS: CONSTITUTIONAL DEVELOPMENTS, GROWTH, AND POSSIBILITIES 18 (1961). Mr. Cohen was in fact an Alternative Representative of the United States at the Fifth Session of the General Assembly at which the Resolution was passed. 5 U.N. GAOR (plen. mtgs.) xxviii, U.N. Doc. A/1293 (1950).

3. 17 U.S. (4 Wheat.) 316 (1819).

4. The Resolution was invoked in relation to the following international situations: Korea, 1950; Suez, 1956; Hungary, 1956; Lebanon, 1958; Congo, 1960; Bangladesh, 1971; and Afghanistan and the Middle East, 1980.

5. The Afghanistan case is discussed *infra*.

the Resolution—particularly in the Afghanistan case, which generated so much controversy—makes this an appropriate occasion to reexamine the Uniting for Peace Resolution and to raise some fundamental questions concerning its constitutional bases. Is it really a milestone in the constitutional law of the United Nations? If so, in what sense? And what was the true effect of the Resolution on the role of the General Assembly in matters of peacekeeping?

II. THE ROLE OF THE UNITED NATIONS IN THE AFGHANISTAN QUESTION

The Afghanistan case is a convenient focal point for developing the discussion. Initially, it is of interest simply because it is one of the most recent and freshest examples of resort to the Uniting for Peace Resolution. For the present purpose, however, its significance goes deeper because the manner in which the Resolution was invoked represents a very clear confirmation of the virtually unanimous⁶ view of members of the United Nations that the Resolution is valid and that the General Assembly is bound to honor its terms, substantive preconditions, and procedural guidelines. Implicitly, the General Assembly thereby asserted its acceptance of the premise upon which the Uniting for Peace Resolution is based—a premise from which significant inferences will be drawn.

During the debates on the Afghanistan question, agreement quickly emerged on one central fact, namely, that the Soviet Union had sent a contingent of troops⁷ into Afghanistan beginning on December 24, 1979.⁸ On the motives for the move, however, opinion divided sharply into two camps. The majority of United Nations members deplored the action, describing it as a “massive military invasion,”⁹ “foreign intervention,”¹⁰ an “act of aggression against a small country,”¹¹ “flagrant . . . intervention against . . .

6. Mongolia questioned the validity of the Uniting for Peace Resolution, terming it “dubious.” U.N. GAOR, 6th Emergency Spec. Sess. (1st plen. mtg.) 11, U.N. Doc. A/ES-6/PV. 1 (1980). France, while lodging “formal reservations” in regard to the Resolution, nevertheless voted affirmatively on the General Assembly’s Afghanistan resolution. UN MONTHLY CHRONICLE, March, 1980, at 8.

7. Estimates of the number varied. Senegal, for instance, put the number at “some 85,000 soliders.” U.N. GAOR, 6th Emergency Spec. Sess. (2d plen. mtg.) 66, U.N. Doc. A/ES-6/PV. 2 (1980). The Soviet Union itself referred to “limited military contingents.” Remarks of Mr. Troyanovsky, *id.* at 32.

8. See U.N. GAOR, 6th Emergency Spec. Sess. (1st plen. mtg.) 56, U.N. Doc. A/ES-6/PV. 1 (1980).

9. Remarks of Mr. Nisibori (Japan), *id.* at 24-25.

10. Remarks of Mr. Kane (Senegal), *id.* at 31.

11. Remarks of Mr. Lievano (Colombia), *id.* at 42.

an independent, sovereign State,"¹² and with other phrases of similar import.¹³

On the other hand, a small number of states,¹⁴ led by the Soviet Union¹⁵ and Afghanistan¹⁶ defended the Soviet action, terming it "the provision of aid to repel armed intervention from outside."¹⁷ The "aid," it was said, was justified on the basis of Article 51 of the United Nations Charter, which provides for an "inherent right of individual or collective self-defense if an armed attack occurs,"¹⁸ and also on the basis of the Treaty of Friendship, Good-Neighbourliness and Cooperation of December 5, 1978 between Afghanistan and the Soviet Union.¹⁹ Afghanistan, it was contended, had in fact requested the dispatch of the troops.²⁰

The matter came before the United Nations in the form of a letter from fifty-two states to the Secretary-General requesting an urgent meeting of the Security Council to consider "the situation in Afghanistan and its implications for international peace and security."²¹ After debating the matter for three days²² (January 5-7, 1980), the Council voted on a draft resolution²³ which was in-

12. Remarks of Mr. Chen Chu (China), *id.* at 52.

13. For a full transcript of the debates, *see* the United Nations documents cited at notes 22 and 30 *infra*. The Colombia delegate provided a vivid description, which was fairly representative of the feeling of the great majority of United Nations members of what transpired:

Over the past few days, armed divisions equipped with the most modern instruments of destruction have invaded the territory of a small country. The governmental authorities were brutally eliminated and the defenceless inhabitants have today been overrun by the lightning offensive of the tanks of the invaders . . .

Id. at 38.

14. *See, e.g.*, speeches of Mr. Dolguchits (Byelorussian Soviet Socialist Republic), *id.* at 7-10 (1980), Mr. Dashtseren (Mongolia), *id.* at 11, Mr. Jaroszek (Poland), *id.* at 42-52, and Mr. Florin (German Democratic Republic), U.N. GAOR, 6th Emergency Spec. Sess. (2d plen. mtg.) 43-52, U.N. Doc. A/ES-6/PV. 2 (1980).

15. *See* remarks of Mr. Troyanovsky (U.S.S.R.), U.N. GAOR, 6th Emergency Spec. Sess. (2d plen. mtg.) 23-41, U.N. Doc. A/ES-6/PV. 2 (1980).

16. *See* remarks of Mr. Dost (Afghanistan), U.N. GAOR, 6th Emergency Spec. Sess. (1st plen. mtg.) 6-7, 16-23, U.N. Doc. A/ES-6/PV. 1 (1980).

17. Mr. Troyanovsky (U.S.S.R.), U.N. GAOR, 6th Emergency Spec. Sess. (2d plen. mtg.) 32, U.N. Doc. A/ES-6/PV. 2 (1980). *See also generally* the speeches referred to in note 14 *supra*.

18. *See, e.g.*, remarks of Mr. Dost (Afghanistan), U.N. GAOR, 6th Emergency Spec. Sess. (1st plen. mtg.) 18, U.N. Doc. A/ES-6/PV. 1 (1980), referring to U.N. CHARTER, art. 51.

19. *Id.*

20. *Id.*

21. U.N. Doc. S/13724 (1980) and Adds. 1 and 2.

22. The Security Council's debates are recorded in 35 U.N. SCOR (1285-2190th plen. mtgs.) (forthcoming), U.N. Doc. S/PV. 2185 - S/PV. 2190, Add. 1 (1980).

23. The draft resolution was sponsored by Bangladesh, Jamaica, the Niger, the Philippines, and Zambia. U.N. Doc. S/13729 (1980).

tended, in particular, to "deeply deplore" the "armed intervention" in Afghanistan, and to call for "the immediate and unconditional withdrawal of all foreign troops" from that country. The vote on the draft resolution was thirteen in favor and only two against.²⁴ Despite the overwhelming majority for the draft resolution, however, it failed to pass by virtue of the operation of Article 27(3) of the Charter, which requires that for a resolution on a non-procedural matter to be passed, there must be nine affirmative votes, including the concurring votes of all permanent members. Although China, France, the United Kingdom and the U.S.A. concurred, the Soviet Union voted against the draft resolution, thereby effectively vetoing it.

Two days later, on January 9, 1980, a further draft resolution was moved in the Security Council calling for an emergency session of the General Assembly to examine the situation. This time the draft resolution was passed²⁵ by a vote of twelve in favor and two against,²⁶ with one abstention.²⁷

The basis for the requested convening of the General Assembly, as expressed in the Security Council resolution itself, was the "lack of unanimity of [the Security Council's] permanent members" which had "prevented it from exercising its primary responsibility for the maintenance of international peace and security."²⁸ As will be seen below, the request to convene the General Assembly was predicated upon a direct allusion to the Uniting for Peace Resolution.

Although the Soviet Union also voted against this resolution, its negative vote did not have the effect of a veto in this case because of the application of Article 27(2). This Article provides that decisions on procedural matters, while requiring nine affirmative votes, do not require the unanimity of the Council's permanent members. Requesting a meeting of the General Assembly is a procedural matter.²⁹

24. The Soviet Union and the German Democratic Republic voted against. *Id.*

25. S.C. Res. 462, 35 U.N. SCOR, Supp. (Jan.- March) (forthcoming), U.N. Doc. S/462 (1980).

26. The Soviet Union and the German Democratic Republic voted against. *Id.*

27. Zambia abstained. *Id.*

28. *Id.*

29. See, e.g., Andrassy, *Uniting for Peace*, 50 AM. J. INT'L L. 563 (1956) for a discussion of the point. He concludes: "[i]t cannot be denied that the calling of a session of the General Assembly is a procedural matter." *Id.* at 576. Whatever the arguments against this conclusion—and these are neatly summarized by Professor Andrassy from General Assembly debates on the Uniting for Peace Resolution itself—the best evidence that convening the General Assembly is a procedural matter is the absence of any claim by the Soviet Union

The final step in the process was the convening of the General Assembly in emergency session,³⁰ and four days of debate in the Assembly (January 10-12 and 14, 1980) culminated in the passage of a resolution,³¹ the essence of which was the same as the one defeated in the Security Council on the Soviet Union's veto.³² The principal variations had the effect of strengthening the wording introduced in the Council by "strongly" deploring the armed intervention and calling for the "immediate, unconditional and total" withdrawal of all foreign troops in Afghanistan.

The vote on this resolution was 104 in favor and eighteen against, with eighteen abstentions.³³ The Soviet Union cast a negative vote, but of course there is no veto in the General Assembly.³⁴

III. THE JURIDICAL BASES FOR THE GENERAL ASSEMBLY'S ACTION ON THE AFGHANISTAN QUESTION

The preamble to the General Assembly's Afghanistan resolution set out, among other things, to assert three constitutional/juridical foundations upon which not only the Assembly's resolution but, more generally, the whole procedure sketched above, was based. The first two of these referred in an amorphous way to the "purposes and principles of the Charter" and the Assembly's responsibilities thereunder.³⁵ The third, by contrast, cited in specific terms the Uniting for Peace Resolution: "Mindful of the . . . responsibility of the General Assembly under . . . Assembly resolution 377A(V) of 3 November 1950 . . ."³⁶ This was the clearest and most tangible of the three bases cited in the Afghanistan resolution.

that Security Council Resolution 462 (1980) had in fact been vetoed by virtue of its own negative vote.

30. The General Assembly debates are recorded in U.N. GAOR, 6th Emergency Spec. Sess. (1st-7th plen. mtgs.), U.N. Docs. A/ES-6/PV. 1 - A/ES-6/PV. 7 (1980).

31. G.A. Res. 2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. A/ES-6/2 (1980).

32. See note 23 *supra*.

33. The recorded vote is set out in U.N. GAOR, 6th Emergency Spec. Sess. (7th plen. mtg.) 77-78, U.N. Doc. A/ES-6/PV. 7 (1980).

34. Voting in the General Assembly is governed by U.N. CHARTER, art. 18. Para. 2 of that article provides that "[d]ecisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting." The paragraph goes on to define "important questions" to include "recommendations with respect to the maintenance of international peace and security." Thus votes under the Uniting for Peace Resolution require a two-thirds majority for passage.

35. See the ninth and last paragraph of the preamble: G.A. Res. 2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. A/ES-6/2 (1980).

36. *Id.*

By advertizing in this way to what became known as the Uniting for Peace Resolution, the General Assembly asserted that it regarded Resolution 377A(V) as authorizing the Afghanistan resolution and, impliedly, the whole process by which the question was brought before the Assembly. Moreover, the quoted excerpt from the preamble also suggests that the Assembly regarded Resolution 377A(V) as actually conferring upon it a certain *responsibility* to act in such a case.

IV. BACKGROUND TO THE UNITING FOR PEACE RESOLUTION

To understand Resolution 377A(V), it is necessary to go back to the middle of 1950, when forces from North Korea invaded the Republic of Korea.³⁷ Korea, as a whole, had been annexed by Japan in 1910³⁸ following a period of approximately five years as a Japanese protectorate.³⁹ The victorious allies in the Second World War, however, agreed among themselves to pursue the goal of Korean independence.⁴⁰ At the end of the War, the Soviet Union was authorized to accept the surrender of Japanese forces north of the 38th parallel and the United States was empowered to do likewise south of that parallel.⁴¹ Efforts over the next few years to unify the country and hold free elections failed because of lack of cooperation by the Soviet Union, particularly over the question of elections.⁴² Nevertheless, elections were held in the south⁴³ and the Republic of Korea was duly recognized as an independent state by a General Assembly resolution in December 1948.⁴⁴ However, in June 1950, forces from the north crossed the 38th parallel and en-

37. For historical background to the events of 1950 in Korea, see Bailey, *The Korean Crisis* (National Peace Council, Peace Aims Pamphlets, no. 49, London); Everett, *The United Nations and the Korean Situation, 1947-1950: A Study of International Techniques of Pacific Settlement* (unpublished thesis, University of Cincinnati) (University Microfilms, Ann Arbor, Michigan, 1967); G. McCUNE, *KOREA TODAY* (1950); SOHN, *supra* note 1, at 474-75; U.N. DEPT. OF PUBLIC INFORMATION, *A KOREA CHRONOLOGY* (1950) [hereinafter cited as *CHRONOLOGY*].

38. Bailey, *supra* note 37, at 1-2; Everett, *supra* note 37, at 5; McCUNE, *supra* note 37, at 22; SOHN, *supra* note 1, at 474; *CHRONOLOGY*, *supra* note 37, at 3.

39. Bailey, *supra* note 37, at 2; McCUNE, *supra* note 37, at 22; SOHN, *supra* note 1, at 474.

40. Bailey, *supra* note 37, at 4-5 (and see generally *id.* at 4-8); Everett, *supra* note 37, at 7-10; SOHN, *supra* note 1, at 474.

41. Everett, *supra* note 37, at 10-17; SOHN, *supra* note 1, at 474.

42. Everett, *supra* note 37, at 21-33; McCUNE, *supra* note 37, at 60-71; SOHN, *supra* note 1, at 475.

43. SOHN, *supra* note 1, at 477.

44. G.A. Res. 195, U.N. Doc. A/810, at 25 (1948), reprinted in SOHN, *supra* note 1, at 478.

tered the Republic.⁴⁵

The Security Council was notified of the invasion and, within the space of a two-week period, passed three important resolutions which, in particular, called on the North Korean forces to leave the Republic of Korea (June 25),⁴⁶ recommended that members of the United Nations assist the Republic of Korea to repel the attack (June 27),⁴⁷ and established a unified command under the United States to fight the invaders (July 7).⁴⁸

That the Security Council could act so swiftly and decisively was a result of the Soviet Union's boycott of the Council during June and July of 1950⁴⁹—and, in fact, for almost all the first seven months of that year—over the question of Chinese representation in the United Nations. When the Soviet delegate, Mr. Malik, eventually resumed his seat in the Council to take up its Presidency in August 1950, he successfully prevented a vote on any further draft resolutions on the Korean question during that month.⁵⁰ On September 5, when a vote finally was taken on a draft resolution which was condemnatory of the North Koreans, he vetoed it.⁵¹

That same month, however, the General Assembly met for its annual session, during which the United States submitted proposals that resulted in the adoption of Resolution 377A(V). The United States' proposal was initially submitted in the form of a request to include in the agenda of the Fifth Session of the General Assembly an item entitled "United Action for Peace."⁵² An explanatory memorandum accompanying the request summarized the main thrust of the item in these terms:

1. The Charter gives the General Assembly important functions to perform in the field of international peace and security, including the right to discuss any question relating to this field and the right to make recommendations. The experience of the United Nations in the five years since the Charter came into force has demonstrated

45. The invasion was reported to the United Nations by the Commission on Korea which had been set up under G.A. Res. 195, U.N. Doc. A/810, at 25 (1948). *See* SOHN, *supra* note 1, at 479; CHRONOLOGY, *supra* note 36, at 5.

46. S.C. Res. 82 (Resolutions and Decisions 1950) 4-5, U.N. Doc. S/1501 (1950).

47. S.C. Res. 83 (Resolutions and Decisions 1950) 5, U.N. Doc. S/1511 (1950).

48. S.C. Res. 84 (Resolutions and Decisions 1950) 5-6, U.N. Doc. S/1588 (1950).

49. *See, e.g.*, L. GOODRICH, *THE UNITED NATIONS IN A CHANGING WORLD*, 115-16 (1974).

50. *Id.* at 116.

51. 5 U.N. SCOR (496th mtg.) 18-19 (1950).

52. *See* letter from the head of the United States delegation to the Secretary-General (Sept. 20, 1950), 5 U.N. GAOR, Annexes (Agenda Item 68) 2, U.N. Doc. A/1373 (1950).

the value of the Assembly's role. In the view of the United States, the Assembly's contribution can be enhanced both with respect to the avoidance of conflicts and with respect to the restoration of peace if need arises.

2. The General Assembly should be enabled to meet on very short notice, in case of any breach of international peace or act of aggression, if the Security Council, because of lack of unanimity of the permanent members, is unable to discharge its primary responsibility for the maintenance of peace and security. To this end, the United States proposes that the Assembly should make provision for emergency special sessions to be convoked in twenty-four hours⁵³

In his statement during the general debate on the opening of the Fifth Session of the General Assembly,⁵⁴ the United States Secretary of State, Mr. Acheson, raised the question of why the United Nations had been "unable to achieve peace and security"⁵⁵ in the five years since the end of the Second World War and apportioned a large measure of the blame to the Soviet Union: "We have been confronted with many and complex problems, but the main obstacle to peace is easy to identify, and there should be no mistake in anyone's mind about it. That obstacle has been created by the policies of the Soviet Union."⁵⁶

The matters raised by Mr. Acheson were taken up by Mr. Dulles for the American delegation in the deliberations in the First Committee of the General Assembly.⁵⁷ Mr. Dulles noted the success of the United Nations in acting quickly and effectively in the Korean case,⁵⁸ "which had proved that the Organization could be an effective instrument for suppressing aggression."⁵⁹

"Nevertheless", he was reported as stating, "if aggressors were to be deterred by fear of the United Nations, certain organizational

53. Note from the head of the United States delegation to the Secretary-General (Sept. 20, 1950), 5 U.N. GAOR, Annexes (Agenda Item 68) 2-3, U.N. Doc. A/1377 (1950).

54. Statement of Mr. Acheson (Sept. 20, 1950), 5 U.N. GAOR (279th plen. mtg.) 23-27, U.N. Doc. A/PV. 279 (1950).

55. *Id.* at 23, para. 28.

56. *Id.* para. 29.

57. Statement of Mr. Dulles, 5 U.N. GAOR, C.1 (354th mtg.) 63-65, U.N. Doc. A/C.1/354 (1950).

58. *Id.* at 63, para. 1.

59. *Id.*

weaknesses would have to be remedied.”⁶⁰

Mr. Dulles stressed that success in relation to Korea had been the result of a fortuitous concatenation of circumstances,⁶¹ principally the absence of the Soviet Union from the Security Council during the critical period,⁶² an absence which ensured that the crucial resolutions⁶³ were not vetoed. In future, it was argued, the serious matters of peacekeeping could not be left to chance.⁶⁴ Rather, it was important to set up an effective mechanism for dealing with threats to international peace and security even in situations where the Council was paralyzed by reason of the exercise of the veto.

In the ensuing discussions, a draft⁶⁵ seven-power⁶⁶ resolution emerged and was eventually passed, subject to amendments,⁶⁷ on November 3, 1950 as Resolution 377A(V).⁶⁸

V. THE UNITING FOR PEACE RESOLUTION EXAMINED

The Resolution itself consists of a lengthy preamble and five substantive parts. For the present purpose, it suffices to focus primarily on the first substantive part—Part A—because it sets out the most significant of the powers contained in the Resolution.

Part A begins with what may be referred to as the “essential pre-conditions”—the conditions which must be fulfilled before the Assembly may take any steps under the provisions which follow: “[I]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise 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”⁶⁹

Thus, four essential preconditions must be met before the General Assembly may proceed:

1. The Security Council must have failed “to exercise its pri-

60. *Id.*

61. *Id.* para. 2.

62. *Id.*

63. *See* notes 46-48 *supra*.

64. *See* 5 U.N. GAOR, C.1 (354th mtg.) 63, para. 3, U.N. Doc. A/C.1/354 (1950).

65. 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 1-6, U.N. Doc. A/C.1/576 (1950).

66. The co-sponsors of the draft resolution were Canada, France, Philippines, Turkey, United Kingdom, United States of America and Uruguay.

67. For text of all amendments proposed *see* 5 U.N. GAOR, Annexes (Agenda Item 68) 6-12, U.N. Docs. A/C.1/576/Rev. 1, A/C.1/578, A/C.1/581, A/C.1/582, A/C.1/583, A/C.1/584, A/C.1/585, A/C.1/585/Rev. 1, A/C.1/586/Rev. 1 (1950).

68. 5 U.N. GAOR, Supp. (No. 20) 10-12, U.N. Doc. A/1775 (1950).

69. *Id.* at 10.

mary responsibility for the maintenance of international peace and security." This primary responsibility is conferred on the Council by Article 24 of the Charter⁷⁰ and detailed⁷¹ principally in Chapters VI⁷² and VII,⁷³ which set out explicit peacekeeping powers to be exercised by the Council. Part A does not make clear precisely what the Council must do in order to be said to have "exercised" its peacekeeping responsibility, or, more precisely, what constitutes a "failure" to exercise the responsibility.⁷⁴ It may be argued that complete inaction constitutes a "failure" to exercise responsibility. On the other hand, it is true that non-interference may, on occasion, amount to the most responsible "action,"⁷⁵ while in other circumstances even positive action may be considered inadequate or inappropriate to warrant being regarded as a discharge of the primary responsibility.⁷⁶

The crucial question, it is suggested, is not so much what constitutes a "failure," but which organ of the United Nations is to decide this question.⁷⁷ In cases where the Security Council itself refers the matter to the General Assembly, no problem arises—the implication is clear. However, the answer suggested by Professor Andrassy⁷⁸ provides what is probably the most practical solution of a general nature: "It is the right and duty of the Assembly to examine and state that the condition laid down for its [assumption of

70. Art. 24, para. 1, provides: "In order to ensure 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" U.N. CHARTER, art. 24, para. 1.

71. Art. 24, para. 2 lays the basis for this: "In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII." U.N. CHARTER, art. 24, para. 2.

72. *Id.* arts. 33-38, headed "Pacific Settlement of Disputes."

73. *Id.* arts. 39-51, headed "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."

74. Woolsey, *The 'Uniting for Peace' Resolution of the United Nations*, 45 AM. J. INT'L L. 129, 132 (1951) raises this problem and poses the example of the Security Council having merely issued a warning to the People's Republic of China to desist and withdraw from Korea in late 1950 while the General Assembly believed that stronger action was required. He asks whether the General Assembly could in those circumstances have recommended action by United Nations forces under the command of General MacArthur.

75. Cf. R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS*, 206, n.82 (1963). She takes the view that if the Security Council transfers a problem to the General Assembly which then passes a resolution, the Council has in fact discharged its responsibility or, in the words of art. 51, "taken the measures necessary to maintain international peace and security." U.N. CHARTER, art. 51.

76. See note 74 *supra*.

77. Cf. Woolsey, *supra* note 74.

78. Andrassy, *supra* note 29, at 557-58.

responsibilities] has been fulfilled.”⁷⁹

The basis for this view is that the Assembly is master of its own agenda,⁸⁰ and to argue otherwise would be to subordinate the Assembly to the Council.⁸¹ Thus, the Assembly is not bound by the Council’s decision one way or the other. Yet this does not alter the fact that the first essential precondition remains to be addressed and met before the Assembly may proceed.

2. The Security Council’s failure to exercise its primary responsibility must have been occasioned by one reason and one reason alone—the lack of unanimity of its permanent members. This amounts to a significant constraint on the Assembly. If, for instance, the permanent members agree unanimously that the best course to follow is one of non-interference—inaction—this precondition will not have been fulfilled and the Assembly will have no recourse under Resolution 377A(V), even if inaction is presumed to amount to “failure.” The same would apply if the permanent members found themselves to be in unanimous agreement in opposing a resolution proposing concrete action. The Uniting for Peace Resolution, having been framed with the veto power in mind, only applies in cases of *lack* of unanimity.

3. There must appear to be “a threat to the peace, breach of the peace or act of aggression.” To whom it must appear is left unspecified, but the argument set out above in paragraph 1 applies equally here. In fact, Professor Andrassy’s solution is largely directed to this specific issue.⁸²

The words “threat to the peace,” “breach of the peace” or “act of aggression” are catch phrases in the constitutional law of the United Nations. They are taken from the opening Article of Chapter VII (Article 39)⁸³ and establish the circumstances in which the

79. *Id.* at 578.

80. *Id.*

81. *Id.* at 577. This view is also consistent with the opinion expressed in the Report of Committee IV/2 of the United Nations Conference on International Organization, San Francisco, 12 June 1945 (Doc. 933, IV/2/42(2), 7; 13 U.N.C.I.O. Docs. 703, 709-10). In discussing interpretation of the Charter of the United Nations, the Report said that “in the course of the operation from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable in its particular functions.” It seems logical that the same should also apply to those functions of an organ which do not emanate from the Charter.

82. See Andrassy, *supra* note 29, at 578.

83. Art. 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.” U.N. CHARTER, art. 39.

Council may, when attempting to give effect to its decision, take the strong measures contemplated by that Chapter, particularly in Articles 41⁸⁴ and 42.⁸⁵ By contrast, however, Chapter VI also confers peacekeeping powers on the Security Council, albeit in considerably milder terms.⁸⁶ At the same time, though, those powers are predicated upon the existence of a far less serious cause for concern. Article 34, in particular, speaks of a "dispute, or any situation which might lead to international friction or give rise to a dispute," particularly one which "is likely to endanger the maintenance of international peace and security."⁸⁷

The phrases "threat to the peace," "breach of the peace," or "act of aggression," when analyzed in the context of Chapters VI and VII, take a situation out of the former and place it squarely within the latter. When applied to the Uniting for Peace Resolution, therefore, these phrases create a definite limitation of a substantive nature, inasmuch as it is only when a problem reaches the level of gravity contemplated in Chapter VII that the General Assembly may act under Part A of the Resolution. A mere Chapter VI situation is insufficient.

There still remains the problem of who is to define the level of gravity under the Uniting for Peace Resolution. If it is the Assembly itself, it may be possible for it to overcome the Chapter VI/Chapter VII dichotomy simply by waving a definitional "magic wand" and classifying a matter as a Chapter VII case.

The context of the relevant phrases in paragraph 1 of Part A of Resolution 377A(V) suggests that it is the Security Council which is to make the classification⁸⁸—i.e., if the Security Council has failed to exercise its primary peacekeeping responsibility in a case which *it* has defined to fall within Chapter VII,⁸⁹ then the

84. Art. 41 contemplates "measures not involving the use of armed forces," such as "interruption of economic relations" and means of communication, and the severance of diplomatic relations. U.N. CHARTER, art. 41.

85. Art. 42 provides for the taking of action by armed forces should measures under art. 41 be considered inadequate or prove to be so. "Such action may include demonstration, blockade, and other operations by air, sea, or land forces of Members of the United Nations." U.N. CHARTER, art. 42.

86. Art. 36, for example, speaks of the power to "recommend appropriate procedures or methods of adjustment." U.N. CHARTER, art. 36. Cf. the powers in arts. 41 and 42 summarized in notes 84 and 85 *supra*.

87. U.N. CHARTER, art. 34.

88. "[I]f the Security Council . . . fails to exercise its primary responsibility . . . in any case where there appears to be a threat to the peace . . ." 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950) (emphasis added).

89. The inference to be drawn from the passage from Part A, quoted in note 88 *supra*,

General Assembly may act. However, this interpretation raises two difficulties: a) Such classification would itself be subject to the veto, thereby defeating the whole purpose of the Uniting for Peace Resolution. Indeed, such a defeat would invariably occur in any case which the Council actually brands as falling within Chapter VII,⁹⁰ but on which a resolution is vetoed. The classification would normally take the form of a preamble to the substantive part of the resolution, with the former automatically falling with the latter when the veto is cast. The splitting of the classification from the substantive part and their presentation as two separate resolutions⁹¹ would not advance the matter; it would merely require the casting of two vetoes rather than one—at worst a minor irritant for the permanent member concerned. Thus, if the Security Council holds the power of definition under Part A, one permanent member could, without any difficulty, thwart the Assembly from ever acting under that Part. b) Serious problems could arise in the event of a disagreement between the Council and the Assembly over the classification of a problem. One could, for instance, envisage the Council regarding a situation as falling within Chapter VI, while the Assembly views it as a Chapter VII case, the aim being then to invoke Resolution 377A(V).

To date, this particular problem has not arisen, and in all but two⁹² instances of use of the Uniting for Peace Resolution so far, it has been the Security Council itself which has instigated a meeting of the General Assembly.⁹³ The very fact of reference of a matter by the Security Council to the General Assembly pursuant to Resolution 377A(V) clearly indicates a belief by the Security Council that the substantive definitional qualification has been fulfilled.

is that the failure has taken place in a case which has already been classified, but not which may subsequently be classified by the Assembly.

90. Of course, the Council is under no obligation to label a problem in this way. See discussion in text accompanying notes 103-116 *infra*.

91. One of the two resolutions would contain no more than a simple declaration that there is a threat to the peace or a breach of the peace, or that an act of aggression has taken place.

92. The exceptions were the Korean and 1980 Middle East cases.

93. See, e.g., in the Hungarian case, S.C. Res. 120, 11 U.N. SCOR, Supp. (Oct.-Dec. 1956) 127, U.N. Doc. S/3733 (1956). In relation to the Suez Crisis, see S.C. Res. 119, 11 U.N. SCOR, Supp. (Oct.-Dec. 1956) 116, U.N. Doc. S/3721 (1956). In the case of Lebanon, see S.C. Res. 129, 13 U.N. SCOR, Supp. (July-Sept. 1958) 126, U.N. Doc. S/4083 (1958). Concerning the Congo, see S.C. Res. 157, 15 U.N. SCOR, Supp. (July-Sept. 1960) 174, U.N. Doc. S/4526 (1960). With regard to Bangladesh, see S.C. Res. 303, 26 U.N. SCOR, Supp. 10, U.N. Doc. S/INF/27 (1971). On Afghanistan, see S.C. Res. 462, 35 U.N. SCOR, Supp. (Jan.-March) (forthcoming), U.N. Doc. S/462 (1980). (See, e.g., U.N. MONTHLY CHRONICLE, March, 1980, at 9).

Such was the case in the resolutions relating to the Suez Crisis, Hungary, the Congo, Bangladesh and Afghanistan.⁹⁴ In the Lebanese case, on the other hand, while the relevant Security Council resolution did not expressly incorporate reference to Resolution 377A(V),⁹⁵ its allusion to the "lack of unanimity of its permanent members"⁹⁶ which had "prevented the Council from exercising its primary responsibility for the maintenance of international peace and security,"⁹⁷ coupled with the fact that the Council decided to call an "emergency"⁹⁸ session of the General Assembly, indicated that the action taken was pursuant to the Uniting for Peace Resolution and, accordingly, by strong implication, that the Council believed that the substantive requirements had been met.

In the Korean case, in which the matter was referred to the Assembly not directly at the request of the Security Council, but on an application⁹⁹ by the six co-sponsors¹⁰⁰ of the draft resolution which had been vetoed in the Council,¹⁰¹ the Security Council had previously defined the situation in explicit terms as constituting "a breach of the peace."¹⁰² Similarly, the 1980 Middle East case hardly required a fresh branding to place the situation within Chapter VII. In both these cases, therefore, there was clearly no suggestion that the Council would have challenged, or disagreed with, the Assembly.

In the event of a difference of opinion between the Council and Assembly as to whether a matter has reached Chapter VII gravity, it is suggested that the Assembly would have few qualms about following its own perception of the issue. In the Korean case, for instance, the Assembly had no hesitation in referring to the situation as a case of "aggression,"¹⁰³ although no previous Secur-

94. See note 93 *supra* for citations to these resolutions.

95. See S.C. Res. 129, 13 U.N. SCOR, Supp. (July-Sept.) 116, U.N. Doc. S/4083 (1958).

96. *Id.*

97. *Id.*

98. *Id.*

99. See 5 U.N. GAOR, Annexes (Agenda Item 76) 2, U.N. Docs. A/1618, A/1621 (1950).

100. The co-sponsors were Cuba, Ecuador, France, Norway, the U.K. and the U.S.A. The majority of Members of the United Nations referred to in Part A of the Uniting for Peace Resolution was not required as the Assembly was in session at the time. Part A lays down a special procedure to be employed when this is not the case.

101. 5 U.N. SCOR, (496th mtg.) 22-23 (1950).

102. See the first substantive paragraph of Security Council Resolution 82, S.C. Res. 82, (Resolutions and Decisions 1950) 4, U.N. Doc. S/1501 (1950). This finding was later expressly incorporated into S.C. Res. 83, (Resolutions and Decisions 1950) 5, U.N. Doc. S/1511 (1950), and S.C. Res. 84, (Resolutions and Decisions 1950) 5, U.N. Doc. S/1588 (1950).

103. See G.A. Res. 498, 5 U.N. GAOR, Supp. (No. 20A) 1, U.N. Doc. A/1775/Add.1

ity Council resolution had referred to any aspect of the Korean case in these terms.¹⁰⁴ Similarly, in the Suez,¹⁰⁵ Hungarian,¹⁰⁶ Bangladesh,¹⁰⁷ Afghanistan¹⁰⁸ and 1980 Middle East¹⁰⁹ cases, the Assembly was not reticent about making its own assessment of the facts.¹¹⁰ On other occasions, including the Lebanese¹¹¹ and Congo¹¹² situations, the Assembly avoided making any references of a definitional nature while proceeding nevertheless to pass resolutions on the subjects.¹¹³

What this indicates, it is suggested, is that the General Assembly has never been reluctant to pursue an independent course, and there is no reason to believe it would be hesitant in the future. This conclusion substantiates the view of Professor Andrassy¹¹⁴ that the Assembly is ultimately master of its own agenda and may decide for itself whether the requisite conditions for exercise of its jurisdiction have been fulfilled. In the absence of a formal challenge by the Security Council, perhaps in the form of a request for an advisory opinion from the International Court of Justice,¹¹⁵ the Assembly's own perception would stand.¹¹⁶ Nonetheless, even if the

(1950).

104. The three resolutions of 25 and 27 June and 7 July had all referred to a lower level of gravity, namely a "breach of the peace." Resolutions cited at notes 46-48 *supra*.

105. G.A. Res. 997, U.N. GAOR, 1st Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. A/3354 (1956).

106. G.A. Res. 1004, U.N. GAOR, 2d Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. A/3355 (1956).

107. G.A. Res. 2793, 26 U.N. GAOR, Supp. (No. 29) 3, U.N. Doc. A/8429 (1971).

108. G.A. Res. 2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. A/ES-6/2 (1980).

109. G.A. Res. 2, U.N. GAOR, 7th Emergency Spec. Sess., Supp. (No. 1), U.N. Doc. A/ES-7/2 (1980), reprinted in U.N. MONTHLY CHRONICLE, Sept.-Oct., 1980, at 12-13.

110. See the preambles to the resolutions cited at notes 104, 105, 107 and 109 *supra*, and paragraph 2 of the resolution cited at note 106 *supra*.

111. G.A. Res. 1237, U.N. GAOR, 3d Emergency Spec. Sess., Supp. (No. 1) 1, U.N. Doc. A/3905 (1958).

112. G.A. Res. 1474, U.N. GAOR, 4th Emergency Spec. Sess., Supp. (No. 1) 1, U.N. Doc. A/4510 (1960).

113. In the case of the Congo, it may be argued that a reference in G.A. Res. 1474, *id.* to S.C. Res. 143, 15 U.N. SCOR, Supp. (July-Sept.) 16, U.N. Doc. S/4387 (1960) amounted to an indirect, and tenuous, finding of aggression, or at least a breach of the peace, inasmuch as paragraph 1 of the latter resolution called for a withdrawal of Belgian troops.

114. See Andrassy, *supra* note 29, at 577-78.

115. U.N. CHARTER, art. 96, para. 1 allows the Security Council as well as the General Assembly to request an advisory opinion from the Court on "any legal question." The interpretation of the Uniting for Peace Resolution to determine whether its terms apply to a fact situation and whether the General Assembly has therefore acted within its powers is a "legal question," albeit one which is obviously tainted by "politics."

116. If the International Court of Justice found that the substantive conditions in the Uniting for Peace Resolution did not exist, and that the General Assembly had in fact acted

matter is ultimately in the hands of the Assembly, the third essential precondition, like the first, must be addressed and satisfied before the Assembly may proceed.

4. The first two essential preconditions set out above¹¹⁷ do themselves imply yet a fourth precondition—the Security Council must first have dealt with the issue before the General Assembly may take any action whatsoever. It cannot be said that the Council has failed to exercise its primary peacekeeping function by virtue of a lack of unanimity among the permanent members unless the matter has at the very least been discussed in the Council. In fact, one may go further and suggest that for the preconditions in Part A to be fulfilled, the deliberations in the Council must be brought to a vote; how else can a lack of unanimity be established? On the other hand, if the Council refuses to discuss a question or, having discussed it, decides not to take a vote, the Assembly cannot take the initiative of its own accord under Resolution 377A(V).

What emerges from an examination of the essential preconditions is that in one sense Part A of the Uniting for Peace Resolution lays down guidelines for the circumstances in which it may properly be invoked. Yet in fact, as has been shown, the essential preconditions actually impose significant limitations of both a substantive as well as procedural nature on the capacity of the General Assembly to take hold of a matter involving peacekeeping and take such action as it believes appropriate. The limitations thus imposed render the Assembly inferior to the Security Council in this area in two respects: first, the Council itself is not subject to the same or similar restrictions, and secondly, the restrictions themselves subordinate the Assembly to the Council by compelling it to wait until the latter has first dealt with a matter in a particular way. Even then, it is only permitted to act with respect to part of the Council's area of competence. In due course, the question of whether the Assembly is in fact bound by these constraints will be considered.

In the meantime, having established the constricting nature of the essential preconditions in Part A of the Resolution, it is now opportune to consider what powers Resolution 377A(V) is expected

beyond its powers under the Resolution, such opinion would still be no more than "advisory" and the Assembly would be free to accept or reject it.

117. These are the failure of the Security Council to exercise its primary responsibility, and that failure being due to the lack of unanimity of the permanent Members. See text accompanying notes 70-81 *supra*.

to confer on the Assembly if the essential preconditions are fulfilled. Part A continues:

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.¹¹⁸

The first point to note about this passage is that it imposes a positive obligation on the Assembly to at least consider the matter. When it does consider the matter, it is empowered to act but only by "making appropriate recommendations," as opposed to formulating binding decisions. A "recommendation" is no more than what it purports to be—a suggestion of what the General Assembly as a body believes is a worthwhile course of action. It is then within the discretion of each individual member to accept or reject the recommendation and act accordingly.¹¹⁹

Undoubtedly the most significant power in Part A of the Unit-
ing for Peace Resolution is that of making recommendations which, "in the case of a breach of the peace or act of aggression," may include "the use of armed force when necessary, to maintain or restore international peace and security." Clearly the authority to recommend the use of armed force is a very serious one, constituting as it does a major exception to one of the fundamental principles upon which the United Nations is based, a principle expressed particularly in Article 2(4) of the Charter.¹²⁰ The matter assumes a further dimension of gravity when one reflects on the implications of the notion of "collective measures" as expressed in Part A of the Resolution. As the Soviet Union has pointed out (perceptively and correctly, it is suggested) in another context,¹²¹

118. 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950).

119. See text accompanying notes 182-187 *infra*.

120. Art. 2 sets out a series of principles pursuant to which Members of the United Nations obligate themselves to act in pursuit of the Purposes of the Organization which are set out in art. 1. Art. 2, para. 4 provides: "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.

121. This other context is in relation to certain of the provisions in Chapter VIII of the Charter, which deals with "Regional Arrangements." Art. 53 instructs the Security Council "where appropriate" to use regional arrangements or agencies in enforcement action taken under the Council's auspices. The article goes on, however, to provide that (subject to limited exceptions) no "enforcement action" shall be undertaken by any regional organiza-

when a group of states coalesce under the banner of an organization to take action, the very nature of the act is transformed when compared with the same steps when taken in isolation by one state against another.¹²² It hardly requires further explication to demonstrate that a provision which authorizes collective armed force is a very serious matter. While it is true that the recommendations must be "appropriate,"¹²³ and that the use of armed force may be called for only "when necessary, to maintain or restore international peace and security,"¹²⁴ nevertheless these phrases are sufficiently nebulous to allow wide scope for the Assembly in deciding these questions for itself.

tion, for example, without the authorization of the Security Council. The question therefore arises as to what constitutes "enforcement action" and thus requires the Council's prior imprimatur. One view, propounded by the United Kingdom in the Security Council debate on Cuba's exclusion from the Organization of American States, is that the term refers only to those actions which could not lawfully be undertaken by states acting individually and without United Nations sanction. See remarks of Sir Patrick Dean, 17 U.N. SCOR (995th plen. mtg.) 5, para. 16, U.N. Doc. S/PV. 995 (1962):

When Article 53 refers to 'enforcement action' it must be contemplating the exercise of force in a manner which would not normally be legitimate for any State or group of States except under the authority of a Security Council resolution. Other pacifying actions under regional arrangements as envisaged in Chapter VIII of the Charter which do not come into this category have simply to be brought to the attention of the Security Council under Article 54.

Id. [Quoting another United Kingdom ambassador speaking in a previous debate on Chapter VIII.] On this view, concerted action by the Organization of American States to break diplomatic relations with a state would not amount to "enforcement action" under art. 53 because any individual state could do it unilaterally. The Soviet Union's reply to this argument is summarized in note 122 and accompanying text *infra*.

122. See 17 U.N. SCOR (998th plen. mtg.) 9-10, para. 38, U.N. Doc. S/PV. 998 (1962). According to the Soviet representative (Mr. Morozov), the United Kingdom's view:

is an entirely fallacious position because—although the action mentioned can indeed be taken by one State against another—when similar action, the same measures, are taken as the result of a decision adopted by an organization of which a number of States are members, their nature is thereby changed. Such actions, taken collectively become enforcement measures against another State within the meaning of the United Nations Charter, because they constitute political action the scope and consequently the significance of which are completely different from those of actions which may be performed in isolation by one State in regard to another State. It is perfectly clear that one State cannot blockade all the other States. The same can be said of the severance of diplomatic relations. One State may break off diplomatic relations with another State, but it is not in a position to create a political vacuum around that State. It is a different matter if the same action is taken by a group of States, particularly a group organized in a regional or some other organization. This can of course, lead to quite other and far more serious consequences.

Id. For the United Kingdom's view, see note 116 *supra*.

123. Part A, paragraph 1 of the Uniting for Peace Resolution, 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950).

124. *Id.*

However significant and wide the power in Part A may be, though, it has built into it an important limitation arising from the fact that the authority to recommend the use of armed force is confined to situations involving "a breach of the peace or act of aggression."¹²⁵ As noted above, in relation to the Security Council's powers in the area of international peacekeeping, Chapters VI and VII distinguish between relatively less and more serious cases, with the stronger powers in Chapter VII reserved for the latter. The threshold of applicability of Chapter VII is found in the phrases "threat to the peace," "breach of the peace," or "act of aggression."¹²⁶ Only in these circumstances may the Security Council itself invoke its more serious powers, including the use of force. But Part A of Resolution 377A(V) only authorizes recommendations involving armed force in cases falling within the latter two of the three gradations of seriousness delineated in Article 39. In this sense, then, Part A contains important limitations in two respects: it does not permit the use of armed force in Chapter VI situations (in this respect the Assembly's power is no weaker than that of the Security Council); and, even in Chapter VII situations, a mere "threat to the peace," which would allow the Security Council to decide on the use of force, would not suffice for the General Assembly, which would have to wait for an actual breach of the peace or act of aggression before recommending a resort to armed force. Thus, the scope for the Assembly to invoke force is more limited than, and therefore inferior to, that of the Council. This limitation is a further substantive constraint on the Assembly under the Uniting for Peace Resolution beyond those already discussed.¹²⁷

The final aspect of significance in Part A of Resolution 377A(V) relates to the timetable for the Uniting for Peace procedure. Initially, the obligation under the Resolution is on the General Assembly to consider a matter "immediately."¹²⁸ That is all very well as long as the Assembly happens to be in session at the relevant time. If, on the other hand, it is not in session—as was the case when the Afghanistan question arose—it "may meet in an emergency special session within twenty-four hours of the request

125. *Id.*

126. All three phrases are found in U.N. CHARTER, art. 39.

127. *I.e.*, the fact that Part A omits any reference to Chapter VI situations altogether, thereby precluding the Assembly from any involvement whatsoever in them under this Part.

128. See Part A, paragraph 1 of the Resolution, 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950).

therefore."¹²⁹ Paragraph 1 of Part A concludes with two alternative procedures for convening an emergency session: "Such emergency 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."¹³⁰

In practice, all but one¹³¹ of the emergency sessions held to date¹³² under the Part A procedure (including the recent one on Afghanistan)¹³³ have been requested under the former of the two alternatives,¹³⁴ namely by the Security Council.¹³⁵

129. *Id.*

130. *Id.*

131. The exception was the 1980 Middle East case which came before the General Assembly under the second alternative in paragraph 1 of Part A of the Uniting for Peace Resolution, a majority of United Nations Members having requested it. *See* U.N. MONTHLY CHRONICLE, Sept.-Oct., 1980, at 8-9.

132. Such sessions were convened in the cases of Hungary, Suez, Lebanon, the Congo and Afghanistan. *See* Security Council Resolutions 120 (1956), 119 (1956), 129 (1958), 157 (1960) and 462 (1980) respectively, cited at note 93 *supra*.

133. *See* note 126 *supra*.

134. The Korean case arose in the General Assembly on the request of six member States. *See* note 100 *supra*.

135. Interestingly, an emergency session may—on the surface at least—result from a request by a minority of the members of the Security Council. When the Uniting for Peace Resolution was passed in 1950, the Security Council was comprised of eleven members (*see* the 1945 text of U.N. CHARTER, art. 23, para. 1) and passage of a procedural resolution required merely the affirmative votes of seven members (*see* the 1945 text of U.N. CHARTER, art. 27, para. 2). The first alternative in paragraph 1 of Part A of the Uniting for Peace Resolution therefore conformed to this scheme. But in 1963 the size of the Council was increased to fifteen members (*see* present text of U.N. CHARTER, art. 23, para. 1), and the number required for passage of a procedural resolution raised to nine (*see* the 1963 text of U.N. CHARTER, art. 27, para. 2). Despite this change the relevant part of the Uniting for Peace Resolution was left unaltered; it requires only seven votes on the fifteen-member Council to convene the Assembly.

In practice, however, it is difficult to imagine that the Security Council would permit convocation of the Assembly by only seven Council members in the face of U.N. CHARTER, art. 27, para. 2 itself. That paragraph is quite explicit about the requirements for passage of a procedural resolution, and it would be presumptuous for the General Assembly to attempt to vary, by a resolution of its own, the voting procedure in the Council from that laid down in the Charter itself. U.N. CHARTER, art. 20, which concerns the convening of regular as well as special sessions of the General Assembly, states that "special sessions shall be convoked by the Secretary-General at the request of the Security Council . . ." This passage incorporated, by implication, the voting procedures of U.N. CHARTER, art. 27.

There is a strong basis for the view that, irrespective of the provisions of the Uniting for Peace Resolution on voting in the Security Council, the general consensus of states is against the Council bowing to the Assembly. The original seven-power draft of the Uniting for Peace Resolution proposed by the United States and others provided that an "emergency special session shall be called if requested by seven members of the Security Council." 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 4, at 5, U.N. Doc. A/C.1/576 (1950). This information would have obviated the need for a formal Security Council meeting, but the opposition to a proposal which contradicted U.N. CHARTER, arts. 20, 27 in this fashion was

Having thus summarized the salient features of the Uniting for Peace Resolution, it may readily be seen that the United Nations in the Afghanistan case conformed to the pattern contemplated by the Resolution. The original request for a consideration of the matter came not to the General Assembly but to the President of the Security Council,¹³⁶ despite the fact that it could reasonably have been expected that the Soviet Union would veto any resolution which was in any way critical of its actions, whether directly or indirectly. It was only after the Soviet Union had actually vetoed the draft resolution¹³⁷ that the Uniting for Peace Resolution was invoked.¹³⁸ The Security Council had in fact considered the Afghanistan question,¹³⁹ but the non-passage of the draft resolution "ha[d] prevented it from exercising its primary responsibility for the maintenance of international peace and security."¹⁴⁰ Moreover, that failure had been brought about by "the lack of unanimity of its permanent members."¹⁴¹ Finally, the substantive precondition in the Uniting for Peace Resolution¹⁴² had, in the Council's view, been fulfilled—a fact to be inferred from the transmission of the case to the General Assembly pursuant to that

so strong that it was varied in subsequent drafts. See the revised version of the seven-power draft resolution itself, 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 6-7, U.N. Doc. A/C.1/576/Rev. 1 (1950). See also, para. 3 of the Israeli amendments to the original seven-power draft, 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 10, U.N. Doc. A/C.1/584 (1950); para. 7 of the Soviet Union's suggested amendments, 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 11, U.N. Doc. A/C.1/586/Rev. 1 (1950); and also the draft resolution recommended by the First Committee in its report to the General Assembly, 5 U.N. GAOR, C.1 Annexes (Agenda Item 68) 19, U.N. Doc. A/1456 (1950). For examples of doubts raised concerning the original formulation in the light of art. 20, see remarks of Mr. Van Heuven Goedhart (Netherlands), made at the First Committee deliberations, 5 U.N. GAOR, C.1 (357th mtg.) 80, para. 12, U.N. Doc. A/C.1/SR. 357 (1950), Mr. Vyshinsky (U.S.S.R.), *id.* at 85, para. 42, and Mr. Eban (Israel), 5 U.N. GAOR, C.1 (362d mtg.) 116, para. 9, U.N. Doc. A/C.1/SR. 362 (1950). But see remarks of Mr. Quevedo (Ecuador), 5 U.N. GAOR, C.1 (358th mtg.) 87, para. 2, U.N. Doc. A/C.1/SR. 358 (1950). In any event, Rule 8 of the General Assembly's Rules of Procedure provides that emergency special sessions "shall be convened within 24 hours of the receipt by the Secretary-General of a request for such a session from the Security Council on the vote of any nine members thereof . . ."

136. U.N. Doc. S/13724 (1980) and Adds. 1 and 2.

137. U.N. Doc. S/13729 (1980).

138. See S.C. Res. 462, 35 U.N. SCOR, Supp. (Jan.-March) (forthcoming), U.N. Doc. S/462 (1980).

139. See the record of the debates in 35 U.N. SCOR, (2185-2190th plen. mtgs.) (forthcoming), U.N. Docs. S/PV. 2185 - S/PV. 2190, Add. 1.

140. S.C. Res. 462, 35 U.N. SCOR, Supp. (Jan.-March) (forthcoming), U.N. Doc. S/462 (1980).

141. *Id.*

142. The Resolution requires that there be "a threat to the peace, breach of the peace or act of aggression." 5 U.N. GAOR, Supp. (No. 20) 10, U.N. Doc. A/1775 (1950).

Resolution.¹⁴³

The General Assembly, for its part, linked its own consideration of the case to the Security Council's delegation of responsibility in Resolution 462 (1980).¹⁴⁴ This linkage, together with the explicit citation of Resolution 377A(V),¹⁴⁵ affirmed that the Assembly believed itself bound to follow—and in fact *did* follow—the Uniting for Peace procedure in both form and substance.

The same attitude of acceptance emerges from each of the other cases in which the Uniting for Peace procedure has been invoked.

In the Korean case, the Security Council did not refer the matter to the General Assembly.¹⁴⁶ Nevertheless, it was clear from the Explanatory Memorandum accompanying the request for consideration of the question that the General Assembly's involvement was predicated on the veto of the relevant draft Security Council resolution.¹⁴⁷ Both the United States, one of the proponents of inclusion of the item on the Assembly's agenda, and the Soviet Union, which had vetoed the resolution, accepted the fact that the discussion in the General Assembly was pursuant to the Uniting for Peace Resolution.¹⁴⁸ Finally, the resolution which eventually emerged and was passed in the General Assembly¹⁴⁹ con-

143. That this was the view of thirteen members of the Council is also evident from the text of the draft resolution for which they voted, which referred to "armed intervention" and the need for "withdrawal of all foreign troops from Afghanistan." U.N. Doc. S/13729 (1980).

144. The first preamble to G.A. Res. 2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. ES-6/2 (1980) made this link clear: "Taking note of Security Council resolution 462 (1980) of 9 January 1980, calling for an emergency special session of the General Assembly" *Id.*

145. See the final preamble in G.A. Res. 2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 2, U.N. Doc. ES-6/2 (1980).

146. It was raised on the request of six states (Cuba, Ecuador, France, Norway, U.K. and U.S.A.) in a telegram to the Secretary-General, 5 U.N. GAOR, Annexes (Agenda Item 76) 2, U.N. Doc. A/1618 (1950).

147. 5 U.N. SCOR (Agenda Item 72) 22-23, U.N. Doc. S/1894 (1950).

148. In the General Committee, see report of remarks of Mr. Austin (U.S.A.), 5 U.N. GAOR, General C. (74th mtg.) 21, para. 4, U.N. Doc. A/BUR/SR. 74 (1950):

On 30 November 1950 the Security Council had voted on the joint draft resolution which was not adopted owing to the negative vote of one of the permanent members, the Union of Soviet Socialist Republics. As a result of the lack of unanimity among its permanent members, the Security Council had been unable to exercise its primary responsibility for the maintenance of international peace and security. *Id.* The contributions of Mr. Vyshinsky (U.S.S.R.) were largely directed to demonstrating that the preconditions required by the Uniting for Peace Resolution had not been fulfilled inasmuch as the precise item being submitted to the Assembly had not been considered by the Council. See, e.g., *id.* at 23, para. 22 and at 24, para. 41.

149. G.A. Res. 498, 5 U.N. GAOR, Supp. (No. 20A) 1, U.N. Doc. A/1775/Add.1 (1950).

tained an opening preamble which was clearly based on the Uniting for Peace Resolution.¹⁵⁰

Similar considerations apply to the 1980 Middle East case, in which the General Assembly's Resolution ES-7/2 drew heavily on Resolution 377A(V).¹⁵¹

The cases of Suez,¹⁵² Hungary,¹⁵³ the Congo,¹⁵⁴ Bangladesh¹⁵⁵ and Afghanistan¹⁵⁶ were considerably clearer in this respect, as in each case the Security Council itself passed the matter to the General Assembly by resolution. In all but the resolutions on the Congo and Bangladesh, (which omitted the substantive precondition) the Council recited the existence of the necessary preconditions under the Uniting for Peace Resolution and then cited that Resolution itself as the basis for the transfer.¹⁵⁷

In the Lebanese case, while the Security Council did not refer to the Uniting for Peace Resolution in its Resolution 129 (1958),¹⁵⁸ which passed the matter to the Assembly, it did nevertheless recite three of the four preconditions discussed above as emerging from the Uniting for Peace Resolution¹⁵⁹ and resolved to call "an emergency special session"¹⁶⁰ of the Assembly.

150. "Noting that the Security Council, because of lack of unanimity of the permanent members, has failed to exercise its primary responsibility for peace and security . . ." *Id.*

151. Among the paragraphs in the preamble to the Resolution were the following: *Convinced* that the failure to solve [the question of Palestine] poses a grave threat to international peace and security, and

Noting with regret and concern that the Security Council, at its 2220th meeting on 30 April 1980, failed to take a decision, as a result of the negative vote of the United States of America

G.A. Res. 2, 7th Emergency Spec. Sess., Supp. (No. 1), U.N. Doc. ES-7/2 (1980).

152. S.C. Res. 119, 11 U.N. SCOR, Supp. (Oct.-Dec. 1956) 116, U.N. Doc. S/3721 (1956).

153. *See* S.C. Res. 120, 11 U.N. SCOR, Supp. (Oct.-Dec. 1956) 127, U.N. Doc. S/3733 (1956).

154. *See* S.C. Res. 157, 15 U.N. SCOR, Supp. (July-Sept. 1960) 174, U.N. Doc. S/4526 (1960).

155. *See* S.C. Res. 303, 26 U.N. SCOR, Supp. 10, U.N. Doc. S/INF/27 (1971).

156. *See* S.C. Res. 462, 35 U.N. SCOR, Supp. (Jan.-March) (forthcoming), U.N. Doc. S/462 (1980).

157. *See* notes 152, 153 and 156 *supra*.

158. *See* S.C. Res. 129, 13 U.N. SCOR, Supp. (July-Sept.) 126, U.N. Doc. S/4083 (1958).

159. The three preconditions mentioned were that the Security Council had discussed the issue, that it had failed to exercise its primary responsibility for the maintenance of international peace and security, and that this had been caused by a lack of unanimity among its permanent members. No reference—direct or indirect—was made to the substantive precondition. *See id.*

160. *Id.*

The General Assembly's consideration of the Afghanistan question contains one other interesting example of the strong commitment to the Uniting for Peace Resolution and its constituent elements, namely the title of the item on the Assembly's agenda: "Question considered by the Security Council at its 2185th to 2190th meetings, from 5 to 9 January 1980."¹⁶¹

In the first matter considered by the General Assembly under the Uniting for Peace Resolution, the Korean case, the title given to the item was "Intervention of the Central People's Government of China in Korea."¹⁶² Speaking in the First Committee, the U.S.S.R. representative, Mr. Vyshinsky, argued that the General Assembly could not discuss that particular item as it had not been discussed by the Security Council.¹⁶³ This fact was evidenced, for example, by the observation that the agenda of the Council meeting at which the relevant vote had taken place made no reference to the Central People's Government of the People's Republic of China.¹⁶⁴ Although the Korean matter was placed on the General Assembly's agenda¹⁶⁵ despite the objections from the Soviet Union,¹⁶⁶ the Assembly in the Suez case, the second Uniting for Peace case, adopted a "neutral" title for the item on its agenda: "Question considered by the Security Council at its 749th and 750th meetings, held on 30 October 1956."¹⁶⁷

No doubt this was intended to forestall the type of argument advanced by the Soviet Union in the Korean case by cloaking the matter with sufficient generality to be certain of covering all possibilities. In any event, the fact that the practice of composing amorphous titles of agenda items was still being used in 1980 is, it is suggested, an indication of the seriousness with which the General Assembly even today regards the requirements set out in the Uniting for Peace Resolution.

161. U.N. GAOR, 6th Emergency Spec. Sess., Supp. (No. 1) 1, U.N. Doc. A/ES-6/7 (1980).

162. See 5 U.N. GAOR, General C. (74th mtg.) 21, U.N. Doc. A/BUR/SR. 74 (1950).

163. *Id.* at 22-23, paras. 16-22.

164. *Id.* at 22, para. 17.

165. *Id.* at 27, para. 63.

166. The answer to the Soviet Union was that the *general* subject-matter of the item *had* been discussed by the Council: see, e.g., comment by Mr. Urdaneta Arbelaes (Colombia), *id.* at 24, para. 32.

167. U.N. GAOR, 1st Emergency Spec. Sess., (561st plen. mtg.) 2, U.N. Doc. A/ES-1/PV. 561 (1956).

VI. THE CONSTITUTIONAL AUTHORITY FOR THE UNITING FOR PEACE RESOLUTION

Before turning to the main question of whether the General Assembly is in fact obliged to accord the Uniting for Peace Resolution the deference which—in the light of the Afghanistan case—it obviously still does, it is first necessary to turn to its constitutional underpinnings and to inquire as to which provisions in the Charter authorized the General Assembly to pass the Resolution and assume the not insignificant peacekeeping role which it appears to have conferred.

Indeed, the Soviet Union in particular denied from the outset that the Assembly had any such power to assume the role which it did.¹⁶⁸ In this context, the Soviet Union pointed to Article 24 of the Charter which provides that the Security Council has “primary responsibility for the maintenance of international peace and security.”¹⁶⁹ That general statement of principle, it was argued, is worked out in detail particularly in Chapters VI and VII¹⁷⁰ which confer very specific and, at times, as has been seen above in connection with the Korean case, very wide and strong powers on the Council to enable it to fulfill its peacekeeping role. Thus the whole scheme of the Charter is to make the Security Council responsible for peacekeeping, and the effect of Resolution 377A(V), in the Soviet view, was to weaken the Council by reducing, certainly in a relative sense, its role in this area. The Resolution would virtually make the General Assembly an equal, or almost equal, partner in the field of peacekeeping, a result which had never been contemplated by the framers of the Charter. In short, it would be tantamount to an amendment to the Charter using a procedure not prescribed by Articles 108¹⁷¹ and 109.¹⁷² Mr. Vyshinsky was reported as stating:

168. See speech of Mr. Vyshinsky (U.S.S.R.), 5 U.N. GAOR, C.1 (357th mtg.) 80-86, U.N. Doc. A/C.1/SR. 357 (1950).

169. U.N. CHARTER, art. 24, para. 1 provides that the members of the Organization confer this responsibility on the Security Council “to ensure prompt and effective action.”

170. See para. 2 of art. 24 which says, *inter alia*, that “[t]he specific powers granted to the Security Council for the discharge of [the responsibility set out in para. 1] are laid down in Chapters VI, VII, VIII and XII.” U.N. CHARTER, art. 24, para. 2.

171. U.N. CHARTER, art. 108 requires adoption of amendments to the Charter by means of a two-thirds majority vote by members of the General Assembly, followed by ratification by two-thirds of the members, including all the permanent members of the Security Council.

172. U.N. CHARTER, art. 109 provides for amendment of the Charter through a General Conference.

The purpose of [the joint draft resolution which became Resolution 377A(V)] was to relieve the Security Council of its primary responsibility, the maintenance of peace and security as stipulated in Article 24 of the Charter. There could be no strengthening of the United Nations if the cornerstone of the Organization, the organ which under the Charter had the exclusive right and power to fight against aggression, to forestall the threat of aggression, and to call upon forces not available to the other organs under the Charter, was to be weakened. The proclaimed purpose of the sponsors of the joint draft resolution—the strengthening of the United Nations—could thus inevitably have a contrary result, through the implementation of measures which would weaken the Security Council.¹⁷³

The answer to the argument based on Article 24 had both a negative side and a positive side to it. The negative side concentrated on pointing up the fallacy in the Soviet view of Article 24, and it was developed through a careful analysis of the Article itself. It is true that Article 24 confers a peacekeeping responsibility on the Security Council, but that very responsibility is described as being no more than a “primary” one and not a “sole” responsibility. Close scrutiny of Article 24 reveals an intention not to confer on the Council a monopolistic position in the field of peacekeeping.¹⁷⁴ In fact, it is suggested that the point may be taken one step further. One may question the need for any qualification to the term “responsibility” in Article 24(1). In other words, had the intention been to invest the Council with the exclusive peacekeeping function, this could quite easily have been achieved by providing that the members of the United Nations “confer on the Security Council responsibility for the maintenance of international peace and security” The fact that the framers went out of their way to qualify what would otherwise have been an unqualified re-

173. Remarks of Mr. Vyshinsky (U.S.S.R.), 5 U.N. GAOR, C.1 (357th mtg.) 81-82, para. 22, U.N. Doc. A/C.1/SR. 357 (1950). *See also* similar sentiments expressed by Mr. Wierblowski (Poland), 5 U.N. GAOR, C.1 (363d mtg.) 126, para. 38, U.N. Doc. A/C.1/SR. 363 (1950).

174. *See, e.g.*, statements by Mr. Acheson (U.S.A.), 5 U.N. GAOR (279th plen. mtg.) 24, para. 43, U.N. Doc. A/PV. 279 (1950); Mr. Dulles (U.S.A.), 5 U.N. GAOR, C.1 (354th mtg.) 64, paras. 12-13, U.N. Doc. A/C.1/SR. 354 (1950); Mr. Maurice Schumann (France), *id.* at 70-71, para. 19; General Romulo (Philippines), *id.* at 71, para. 20; Mr. Belaunde (Peru), *id.* at 76, para. 37; Mr. Younger (U.K.), *id.* at 101, para. 4; Mr. Padilla Nervo (Mexico), *id.* at 104, para. 36, and Sir Mohammad Zafrulla Kahn (Pakistan), *id.* at 127, para. 43.

sponsibility and then proceeded to describe it as merely "primary" clearly indicates that a secondary responsibility was contemplated.

An examination of Mr. Vyshinsky's statement¹⁷⁵ on Article 24 reveals the flaw in the argument; in fact, he used the word "exclusive" in describing the Security Council's responsibility under Article 24.¹⁷⁶ The provision is, however, quite clear in this respect, and the interpretation advanced here is supported by Professor Kelsen¹⁷⁷: "[T]he Charter speaks in Article 24 of a 'primary', not of an exclusive, responsibility of the Security Council, and hence does not prevent the assumption of a secondary responsibility."¹⁷⁸

To show that a secondary responsibility was left open by Article 24(1) is not yet sufficient. It is necessary to go one step further and demonstrate not only that there is some positive basis for asserting that it is the General Assembly which is the repository of whatever residual peacekeeping role remains, but also the precise nature of that residual role. Moreover, in searching for a constitutional foundation for the Assembly's role in this area, it is important not to lose sight of a subtle but significant distinction between two types of secondary authority of the Assembly—that of passing a quasi-constitutional resolution such as *Uniting for Peace*, on the one hand, and that of taking some form of action in individual situations on the other.¹⁷⁹

In looking for evidence of a peacekeeping role conferred on the Assembly by the Charter, proponents of Resolution 377A(V) could point in particular to three express provisions which seem to do precisely this—Articles 10, 11 and 14.

Article 10 gives the General Assembly the power to

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 both on any such questions or matters.¹⁸⁰

175. See note 173 and accompanying text *supra*.

176. 5 U.N. GAOR, C.1 (357th mtg.) 81-82, para. 22, U.N. Doc. A/C.1/SR. 357 (1950).

177. H. Kelsen, *RECENT TRENDS IN THE LAW OF THE UNITED NATIONS* 974-75 (1964) (supplement to *THE LAW OF THE UNITED NATIONS* (1950)). See also Andrassy, *supra* note 29, at 564.

178. Kelsen, *supra* note 177, at 174-75. Cf. H. Kelsen, *THE LAW OF THE UNITED NATIONS* 279-93 (1950).

179. See text accompanying notes 203-06 *infra*.

180. U.N. CHARTER, art. 10.

This Article confers on the Assembly an extremely wide power to discuss any matter within the scope of the Charter. Obviously, questions of peacekeeping fall within that formulation. As Mr. Belaunde (Peru) put it:

Article 10 states categorically that the Assembly may discuss any questions or any matters within the scope of the Charter, or relating to the powers and functions of any organs provided for in the Charter Article 1 of the Charter . . . should be considered in connexion with Article 10. Article 1 is quite specific and states that one of the purposes of the United Nations is to take effective measures to ensure peace, which means that not only the Council but also the Assembly may effectively take or recommend such measures.¹⁸¹

Thus, subject to one exception which is built into Article 10 itself and which will be dealt with shortly, the Assembly may make "recommendations" on any matters or questions which come within its competence pursuant to the first limb of Article 10.

The fact that the General Assembly may do no more than "recommend" indicates that there is no binding force to what the Assembly does under Article 10. No obligation is thereby imposed on individual members.¹⁸² This approach is in marked contrast to the status of "decisions" of the Security Council under Chapters VI and VII in the exercise of its peacekeeping functions. These decisions are invested with a binding quality by virtue of the operation of Article 25, which provides that "[t]he Members of the

181. 5 U.N. GAOR, (279th plen. mtg.) 32, para. 148, U.N. Doc. A/PV. 279 (1950). *See also, e.g.*, statements by Mr. Acheson (U.S.A.), *id.* at 24, para. 43; Mr. Dulles (U.S.A.), 5 U.N. GAOR, C.1 (354th mtg.) 64, para. 8, U.N. Doc. A/C.1/SR. 354 (1950); Mr. Santa Cruz (Chile), *id.* at 67, para. 52; Mr. Armand Ugon (Uruguay), 5 U.N. GAOR, C.1 (355th mtg.) 70, para. 8, U.N. Doc. A/C.1/SR. 355 (1950); Mr. Belaunde (Peru), 5 U.N. GAOR, C.1 (356th mtg.) 75, para. 28, U.N. Doc. A/C.1/SR. 356 (1950); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 79-80, para. 5, U.N. Doc. A/C.1/SR. 357 (1950); and Mr. Padilla Nervo (Mexico), 5 U.N. GAOR, C.1 (360th mtg.) 104, para. 35, U.N. Doc. A/C.1/SR. 360 (1950). Even the Soviet Union conceded the width of art. 10 on its face; but it emphasized the exceptions to it found in arts. 11 and 12 which are discussed below. *See* speech of Mr. Vyshinsky, 5 U.N. GAOR, C.1 (362d mtg.) 119-20, para. 45, U.N. Doc. A/C.1/SR. 362 (1952). *Cf.* the Polish view propounded by Mr. Wierblowski, 5 U.N. GAOR, C.1 (363d mtg.) 126, paras. 35-36, U.N. Doc. A/C.1/SR. 363 (1950).

182. This was generally conceded by the proponents of the Uniting for Peace Resolution. *See, e.g.*, remarks by Mr. Dulles (U.S.A.), 5 U.N. GAOR, C.1 (354th mtg.) 64, para. 10, U.N. Doc. A/C.1/SR. 354 (1950) ("Obviously, a recommendation by the General Assembly had not the force of a decision of the Security Council"); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 80, para. 6, U.N. Doc. A/C.1/SR. 357 (1950).

United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."¹⁸³

The effect of Article 25 on decisions of the Security Council is to make them "binding on all States Members of the United Nations, which are thus under obligation to accept and carry them out."¹⁸⁴ Under Article 10, on the other hand, it is within the discretion of individual members to decide for themselves whether or not to accept and carry out recommendations.

Yet the merely recommendatory character of what the General Assembly does under Article 10 need not of itself be an obstacle. The general wisdom usually invoked in debates concerning the Uniting for Peace Resolution is that Assembly recommendations, although not binding, carry "great moral force."¹⁸⁵ In reality, though, history has shown that when the great (and sometimes not so great) powers believe that their vital interests (real or imagined) are involved, nothing carries *any* sort of force, moral or otherwise.¹⁸⁶

183. U.N. CHARTER, art. 25.

184. Advisory Opinion on Namibia (South West Africa), [1971] I.C.J. 16, at 53.

185. Sentiments to that effect have been expressed by representatives of a large number of nations, e.g., Mr. Younger (U.K.), 5 U.N. GAOR, C.1 (354th mtg.) 66, para. 44, U.N. Doc. A/C.1/SR. 354 (1950) (a recommendation backed by a large majority would naturally carry "considerable weight"); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 80, para. 6, U.N. Doc. A/C.1/SR. 357 (1950) ("decisions not backed by public opinion were less likely to be carried out than suggestions or recommendations which interpreted a conscientious feeling"); Mr. Quevedo (Ecuador), 5 U.N. GAOR, C.1 (358th mtg.) 87, para. 3, U.N. Doc. A/C.1/SR. 358 (1950) (the "moral force" of General Assembly recommendations "was such that Member States would hesitate to disregard them"); Mr. Al-Jamali (Iraq), *id.* at 89, para. 22 (recommendations "had a moral influence on world opinion, which was not less effective than a definite command."); Mr. Pearson (Canada), *id.* at 90, para. 43 (General Assembly recommendations "could have great force when they were based on right and justice"); Sir Frank Soskice (U.K.), 5 U.N. GAOR, C.1 (364th mtg.) 130, para. 15, U.N. Doc. A/C.1/SR. 364 (1950) ("experience has shown that the recommendation of the General Assembly carried great force.") Cf. the theory propounded by Mr. Belaunde (Peru) in his statement of Jan. 9, 1957, that recommendations "dealing with peace and based on the principles of the Charter" are legally binding, being restatements of the terms of a multilateral treaty. 11 U.N. GAOR, (634th plen. mtg.) 836, at 836-37, paras. 39-40, U.N. Doc. A/PV. 634 (1957).

186. One of the most blatant examples of this occurred in 1956 when, during the General Assembly's deliberations over the Hungarian question under the Uniting for Peace Resolution itself, the Soviet Union exhibited an attitude of "open defiance publicly announced from [the General Assembly's] rostrum." See statement of Mr. Belaunde (Peru), 11 U.N. GAOR, (634th plen. mtg.) 836, para. 31, U.N. Doc. A/PV. 634 (1957). This defiance came in the face of unequivocal findings of fact adverse to the Soviet Union by a United Nations Special Committee. See Report of the Special Committee on the Problem of Hungary, 11 U.N. GAOR, Supp. (No. 18), U.N. Doc. A/3592 (1957).

Similar approaches have, from time to time, been taken by other states, in varying degrees, e.g., the United Kingdom and France during the Suez Crisis, and South Africa in relation to Security Council resolutions on Namibia, to name but two instances.

On the other hand, if states *do* view Assembly recommendations seriously and take steps to implement them, there is no reason why they cannot be fully effective.¹⁸⁷ All that is required is a sufficient number of states, although "sufficiency" will vary from case to case as will the type of states required to render any action effective.

The limitation built into Article 10 is that the power to make recommendations is subject to Article 12,¹⁸⁸ which provides, as long as the Security Council is dealing with a matter, the Assembly must refrain from making recommendations. Interestingly, however, the prohibition does not extend to mere discussion.

The Article 12 limitation need not be seen as a real obstacle since, to avoid its application, it is necessary only that the issue be removed from the agenda of the Security Council.¹⁸⁹ Since that removal is a procedural matter,¹⁹⁰ it is not subject to the veto and requires no more than nine affirmative votes from among Council members.¹⁹¹ It is reasonable to suggest that, if a proponent cannot muster the required number of votes on this sort of procedural question, it is unlikely that it will be able to organize a coalition which is sufficiently broadly based to obtain the two-thirds majority required by Article 18(2) on votes pursuant to the Uniting for Peace Resolution.

Thus, Article 10 gives the General Assembly a wide and general power to discuss matters which fall within the ambit of the Charter and to make recommendations, including: (a) the adoption of a quasi-constitutional provision along the lines of Resolution

187. In his speech to the First Committee on the Uniting for Peace Resolution, Mr. Dulles (U.S.A.) noted that, "the history of the Korean question had shown that a 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, fifty-three Members were carrying out its recommendation." 5 U.N. GAOR, C.1 (354th mtg.) 64, para. 10, U.N. Doc. A/C.1/SR. 354. *See also id.* at para. 16.

188. U.N. CHARTER, art. 12, para. 1 states that while the Security Council is exercising its functions in respect of a dispute or situation, the General Assembly may not make any recommendation on it unless the Security Council requests it to.

189. For example, when the Korean case was transferred from the Security Council to the General Assembly, the Council first removed the relevant item from its own agenda. 6 U.N. SCOR, (531st plen. mtg.) 11-12, U.N. Doc. S/PV. 531 (1951).

190. *See, e.g.,* remarks of Mr. Schumann (France), 5 U.N. GAOR, C.1 (355th mtg.) 70, para. 18, U.N. Doc. A/C.1/SR. 355 (1950); Mr. Rao (Brazil), 5 U.N. GAOR, C.1 (356th mtg.) 77, para. 54, U.N. Doc. A/C.1/SR. 356 (1950). In the example cited in note 79 *supra*, the Soviet Union did not dispute the procedural nature of the resolution. *See also, e.g.,* the vote to remove the Greek Question from the Security Council's agenda, 2 U.N. SCOR, (202d mtg.) 2401-2405 (1947).

191. *See* U.N. CHARTER, art. 27, para. 1.

377A(V), and (b) proposals, in specific instances, of concrete action.

At the same time, Article 11 operates as a more specific version of Article 10, focussing expressly on the peacekeeping function itself: "The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security . . . and may make recommendations with regard to such principles to the Members or the Security Council or both."¹⁹²

While paragraph (1) of Article 11 is limited to general principles, paragraph (2) covers questions of more immediate import: "The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it . . . and . . . may make recommendations with regard to any such question to the state or states concerned or to the Security Council or both."¹⁹³

Close scrutiny of Article 11(2) suggests that it is directed at specific instances of problems in the peacekeeping area rather than to more general matters such as the Uniting for Peace Resolution. This interpretation may be inferred from two aspects of the paragraph:

(a) The fact that recommendations may be made to "the state or states concerned" suggests that what is at issue is a problem involving particular states at a particular point in time.

(b) The fact that discussions may be instigated by "any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2."¹⁹⁴ It is hardly likely that a non-member of the Organization would be accorded the right to raise in the Assembly anything but a pressing and serious matter of immediate significance. This point is strongly supported by the thrust of Article 35(2)¹⁹⁵ which allows a state that is not a member only to bring a "dispute to which it is a party" before either the General Assembly or the Security Council.

Accordingly, if a general quasi-constitutional resolution such as 377A(V) is to be authorized by Article 11 at all, it must be authorized pursuant to paragraph 1 rather than 2. That being the

192. *Id.* art. 11, para. 1.

193. *Id.* para. 2.

194. *Id.* (emphasis added).

195. Art. 35 sets out a number of ways in which a peacekeeping matter may be raised before the Security Council or the General Assembly. Art. 35, para. 1 deals with cases where members wish to raise matters, and para. 2 with cases where non-members wish to do so.

case, two difficulties raised by paragraph 2 in the present context—one relatively minor, the other potentially significant—can be quickly disposed of.

The first is that, like Article 10, Article 11(2) is subject to the operations of Article 12. The same limitation does not apply to recommendations under Article 11(1), which is silent on the matter. Paragraph 2, by contrast, expressly incorporates Article 12. In any event, as has already been noted above, Article 12 is far from an insuperable obstacle.

The second and more serious problem posed by Article 11(2) stems from its last sentence: "Any such question [i.e., relating to the maintenance of international peace and security which is discussed in the General Assembly] on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

It has been argued that the Uniting for Peace Resolution clearly contemplates "action"¹⁹⁶—or at least the possibility of action—and, since the Assembly could not itself take action, neither could it recommend action without the imprimatur of the Security Council.¹⁹⁷

The point which must be made is that the conclusion sought to be extracted by Mr. Vyshinsky simply does not follow. There is no logical reason why an organization which is debarred from doing something itself cannot, for that reason alone, suggest action to someone else. Moreover, as Professor Kelsen has noted, Part A of the Uniting for Peace Resolution itself does not recommend anything, but instead instructs the General Assembly to "consider" a matter with a view to determining whether certain action ought to be recommended.¹⁹⁸ Thus, even if the Soviet view were correct, it would apply only in relation to particular recommendations in specific situations, but not to a quasi-constitutional resolution such as Uniting for Peace.¹⁹⁹ Thus the last sentence of Article 11(2) would not be a bar to its constitutional validity; it would at most be necessary to look elsewhere in the Charter to validate individual

196. For a definition of "action," see, e.g., remarks of Sir Frank Soskice (U.K.), 5 U.N. GAOR, C.1 (364th mtg.) 129-30, para. 8, U.N. Doc. A/C.1/SR. 364 (1950). The definition is not overly important in view of the arguments which follow.

197. See remarks of Mr. Vyshinsky (U.S.S.R.), 5 U.N. GAOR, C.1 (357th mtg.) 84, para. 39, U.N. Doc. A/C.1/SR. 357 (1950).

198. KELSEN, *supra* note 177, at 959.

199. The distinction between the two objects of validation was in fact recognized by Mr. Belaunde (Peru). See 5 U.N. GAOR, C.1 (356th mtg.) 75, para. 30, U.N. Doc. A/C.1/SR. 356 (1950).

recommendations.²⁰⁰

In view of the conclusion that a general resolution such as Uniting for Peace must be founded on paragraph 1 of Article 11 and not paragraph 2, the discussion of this point in the context of Article 11(2) becomes moot. Yet it is important in relation to Article 10, for the Soviet Union argued that the restriction in the last sentence of Article 11(2) applies also to Article 10.²⁰¹ In the light of what has been suggested here, even if the limitation in Article 11(2) does apply to Article 10, it could not limit Article 10 as a basis for a resolution such as Uniting for Peace which does not actually recommend action. It would therefore be possible to found the Resolution on Article 10. That Article 11(2) does not so limit Article 10 is suggested by Article 11(4) which stresses that "[t]he powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10."²⁰²

Whatever the role of the limitation in Article 11(2), then, Article 10 continues to provide a constitutional foundation for the Uniting for Peace Resolution. In light of the effect of Article 11(4) on the Soviet argument concerning the relationship of Article 11(2) to Article 10, it may provide a basis for specific action as well.

The omission of the "action" limitation from Article 10 is repeated in Article 14, the last of the trio of major Charter provisions providing a positive mandate for the General Assembly to assume the secondary peacekeeping role. Once again, as is the case with Article 11(2), this provision appears to be directed towards the resolution of specific problems, rather than the passage of a more general, quasi-constitutional provision such as Resolution 377A(V):

[T]he General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.²⁰³

Since it is directed at individual "situations," though, Article

200. See, e.g., U.N. CHARTER, art. 10.

201. 5 U.N. GAOR, C.1 (357th mtg.) 84-85, para. 41, U.N. Doc. A/C.1/SR. 357 (1950).

202. U.N. CHARTER, art. 11, para. 4. See remarks of Mr. Quevedo (Ecuador), 5 U.N. GAOR, C.1 (358th mtg.) 87, para. 2, U.N. Doc. A/C.1/SR. 358 (1950). Cf. Kelsen, *supra* note 170, at 965-67.

203. U.N. CHARTER, art. 14.

14 certainly reinforces the case for a secondary peacekeeping role for the General Assembly. At first glance, the express reference to "situation" would seem to limit the Assembly's role under Article 14 to Chapter VI cases inasmuch as that Chapter is replete with references to that term.²⁰⁴ In fact, the categorization accomplished by Article 39 appears sufficiently broad to encompass "situations."²⁰⁵ To put it more precisely, the categorization in Article 39 proceeds on a completely different basis, namely the three "catch phrases" discussed above. Article 39 is therefore no obstacle to General Assembly recommendations under Article 14 in Chapter VII cases as well. The only remaining limitation is the Article 14 statement that any measures recommended by the Assembly must be conducive to a "peaceful adjustment" of the situation, thereby eliminating the use of force as an option.²⁰⁶

The net result of this discussion is that, in Articles 10 and 11(1), there is to be found a constitutional mandate for the passage of a resolution such as *Uniting for Peace*, and the creation by it of a peacekeeping procedure to be implemented by the General Assembly. Moreover, in Articles 10, 11(2) and 14 there exists the further authority for the Assembly to make recommendations in specific cases involving questions of international peace and security.

Thus, as the Australian delegate put it in the First Committee in 1950, the *Uniting for Peace* Resolution "did not confer upon the General Assembly a competence which it did not have under the Charter."²⁰⁷

The premise underlying all arguments in favor of the Resolution was that the Charter contemplates a peacekeeping function for the Assembly.

It is suggested that this premise is correct, not solely for both the "negative" and "positive" reasons outlined earlier but also based on the history of the drafting of the relevant Charter provisions, inferences of a general nature to be drawn from other provisions scattered throughout the Charter, and, finally, on philosophical grounds as well.

One of the themes at the San Francisco Conference at which

204. See, e.g., arts. 34, 35, para. 1 and 36, para. 1.

205. U.N. CHARTER, art. 14. Art. 39 also encompasses problems which would warrant the title "dispute." See, e.g., art. 34, which creates the distinction.

206. In relation to art. 14 as a basis for General Assembly involvement, see speech of Mr. Belaunde, 5 U.N. GAOR, C.1 (356th mtg.) 75, para. 31, U.N. Doc. A/C.1/SR. 356 (1950).

207. Remarks of Mr. Spender (Australia), 5 U.N. GAOR, C.1 (364th mtg.) 134, para. 63, U.N. Doc. A/C.1/SR. 364 (1950).

the United Nations was founded was the tension between the great powers, who sought to centralize power, particularly peacekeeping power in the Security Council where they would hold the power of veto, on the one hand, and the smaller powers who sought to strengthen the role of the General Assembly and thus decentralize power, on the other. As a result of this struggle, a compromise was struck in which the small powers agreed to the veto power and in return the big powers agreed to granting the Assembly power to "recommend"—even in matters within the ambit of Chapters VI and VII.

The history of Article 10, in particular, was summarized by Mr. Dulles as follows:

[A]t San Francisco the small Powers had only agreed to power of the 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 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 10.²⁰⁸

One of the unfortunate consequences of compromises is that they often result in ambivalent provisions which allow scope for each side in a debate to see in them meanings convenient to its own position. The United Nations Charter has several instances of

208. 5 U.N. GAOR, C.1 (354th mtg.) 64, para. 9, U.N. Doc. A/C.1/SR. 354 (1950). This account was confirmed by Mr. Maurice Schumann (France), 5 U.N. GAOR, C.1 (355th mtg.) 70, para. 17, U.N. Doc. A/C.1/SR. 355 (1950), and Mr. Belaunde (Peru), 5 U.N. GAOR, C.1 (356th mtg.) 75, para. 34, U.N. Doc. A/C.1/SR. 356 (1950). Instances of the use of the General Assembly's power of recommending action were cited by Mr. Van Langenhove (Belgium), 5 U.N. GAOR, C.1 (355th mtg.) 71, para. 25, U.N. Doc. A/C.1/SR. 355 (1950) (concerning Korea and Greece). Mr. Dulles (U.S.A.) cited instances of attempts by both Poland and the Byelorussian S.S.R. (each with the support of the Soviet Union) to do likewise, 5 U.N. GAOR, C.1 (362d mtg.) 117, paras. 18-19, U.N. Doc. A/C.1/SR. 362 (1950).

this ambiguity,²⁰⁹ and the area of the General Assembly's peacekeeping powers is one of them. But the history of Article 10, in particular,²¹⁰ does reinforce the argument that the Assembly was intended to have a peacekeeping role.

In terms of the Charter provisions themselves, one may go beyond Articles 10, 11 and 14 and see, scattered throughout the Charter, references which suggest that the General Assembly has almost a "supervisory" function vis-a-vis the Security Council, and that the real base of power in the United Nations is the General Assembly. Under Article 24(1), in fact, the members of the Assembly "confer" on the Security Council the primary peacekeeping responsibility. That paragraph concludes with the statement that the members "agree that in carrying out its duties under this responsibility the Security Council acts *on their behalf*."²¹¹

Paragraph 3 of the same Article requires the Security Council to report annually to the General Assembly on its activities, and the Assembly may require it to furnish more frequent reports. Article 15 empowers the Assembly to "receive and consider" reports from the Council, which reports "shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security."²¹²

Ultimately, of course, it is the Assembly which elects the Security Council's ten non-permanent members pursuant to Article 23(1),²¹³ and, certainly in this general sense, two-thirds of the Council is responsible to the Assembly. Provisions in Article 35 of the Charter, which deals with the notification of disputes and threatening situations, expressly provide for both members and non-members of the United Nations to bring problems of this nature to the attention of *either* the Security Council or the General Assembly. The inference to be drawn from this is particularly strong, for Article 35 clearly places the Assembly on an equal foot-

209. See, e.g., some of the provisions of Chapter VIII, which create a tension between the role of the Security Council and the role of regional organizations in peacekeeping matters. See also speech of Mr. Belaunde (Peru), who characterized this as an area in which the smaller powers had fought for, and won, concessions derogating from the exclusivity of the Security Council's role, 5 U.N. GAOR, (279th plen. mtg.) 31, para. 141, U.N. Doc. A/PV. 279 (1950).

210. Something along similar lines happened in relation to art. 14. See remarks of Mr. Belaunde (Peru), *id.* at 32, para. 153.

211. U.N. CHARTER, art. 24, para. 1 (emphasis added). See, e.g., remarks of Mr. Sarper (Turkey), 5 U.N. GAOR, C.1 (355th mtg.) 69, para. 4, U.N. Doc. A/C.1/SR. 355 (1950).

212. U.N. CHARTER, art 15, para. 1. Art. 15, para. 2 sets out the same power in relation to reports from other organs of the Organization.

213. Under art. 18, para. 2, election requires a two-thirds majority.

ing with the Council in the context of specific peacekeeping functions. The power to make peacekeeping recommendations is clearly contemplated also in Article 18(2).

These various references support the residual power argument by collectively creating an image of an organ with a general supervisory function²¹⁴ ready to assume, at the very least, the role of peacekeeping "backstop" should the need arise.

On a philosophical level, people such as Ambassador Belaunde of Peru, in particular, have developed the conception of the United Nations as an organic whole with the different parts complementing each other in advancing the goal of peace. Thus if one vital part—in this case the Security Council—is temporarily paralyzed, for whatever reason, there occurs a temporary transfer of power to the other, namely the General Assembly.²¹⁵

One aspect of this approach was developed recently by Ambassador Salim, the President of the General Assembly during the Afghanistan debate, who advanced what is at once a theoretical as well as pragmatic underpinning to the Belaunde view. He noted that all states have a deeply vested interest in the maintenance of international peace and security, not just the great powers, nor those who happen to be members of the Security Council at any given time. As a result, he added, the General Assembly is entitled, and indeed obliged, to act under Resolution 377A(V) as the organ best suited to represent the aspirations of all.²¹⁶

Quite apart from the weighty arguments which support the premise upon which the Uniting for Peace Resolution is based, in a purely positivist sense, there is no question that today, some three decades since it was passed, virtually no member of the United Nations seriously questions its validity. That aspect of it is truly a non-issue. One has only to reflect on the overwhelming votes in the Afghanistan case, both in the Security Council as well as the Gen-

214. See, e.g., remarks of Mr. Belaunde (Peru), 5 U.N. GAOR, C.1 (356th mtg.) 75, para. 29, U.N. Doc. A/C.1/SR. 356 (1950).

215. See Mr. Belaunde's speech before a plenary session of the General Assembly, 11 U.N. GAOR, (634th plen. mtg.) 836-39, U.N. Doc. A/PV. 634 (1957). See in particular *id.* at 836, para. 37.

216. U.N. GAOR, 6th Emergency Spec. Sess., (1st plen. mtg.), U.N. Doc. A/ES-6/PV. 1 (1950). A thought along similar lines was expressed by Mr. Dulles (U.S.A.) in arguing for the Uniting for Peace Resolution, when he said that "an informed world opinion was the factor most likely to affect the course of events," and the General Assembly was in the best position to "reflect world opinion on the question of what was right, in other words, the supremacy of law." 5 U.N. GAOR, C.1 (354th mtg.) 64, para. 12, U.N. Doc. A/C.1/SR. 354 (1950). See also Mr. Belaunde's remarks, 5 U.N. GAOR, C.1 (356th mtg.) 75, paras. 25-26, U.N. Doc. A/C.1/SR. 356 (1950).

eral Assembly, to confirm the Resolution's validity. Obviously a vote in favor of the resolutions indicated a belief in the validity of the whole process, although it is only partly a question of numbers. At a deeper level, the significance of the course of events in the Afghanistan case lies in the large number of affirmative votes from states which did not exist when Resolution 377A(V) was passed in 1950.²¹⁷ One of the recurring themes emanating from many of the newly-emerged states is a reluctance, born of cynicism and skepticism, to accept rules of international law which were formulated prior to their nascence by old established states whose interests do not necessarily coincide with their own.²¹⁸ In this light, the fact that so many of these states have adopted the validity of the Uniting for Peace procedure, and with it the premise upon which it is based, gains added significance. The Security Council as well as the General Assembly felt themselves bound to follow, and in fact did follow, the procedure required by the Resolution, and were careful to define the existence of its substantive preconditions as well.

In the Council and the Assembly on the Afghanistan question, even the representatives of the Soviet Union and Afghanistan made no attempt to impugn the validity of Resolution 377A(V). The thrust of their arguments was directed at demonstrating that an essential substantive precondition to its operation had not been fulfilled—the requirement that there exist a threat to international peace.

What emerges from the foregoing analysis is the conclusion that the Uniting for Peace Resolution was not a means of amending the Charter by stealth, as was feared by the Soviet Union.²¹⁹ It did not have the effect of diminishing the power or role of the Security Council, either in an absolute sense by circumscribing its functions, or in a relative sense by granting additional powers to the General Assembly.²²⁰ The latter form of diminution could only have occurred as a consequence of the creation of new powers over and above those vested in the Assembly by the Charter itself. Since both the Uniting for Peace Resolution and any potential ac-

217. The vote then was fifty-two in favor and five against with two abstentions, 5 U.N. GAOR, (302d plen. mtg.) 347, para. 73, U.N. Doc. A/PV. 302 (1950).

218. There was actually an historical irony in the affirmative votes of the People's Republic of China in the Afghanistan case, as it was in part as an outgrowth of that state's own actions that the Uniting for Peace Resolution was originally conceived.

219. Remarks of Mr. Vyshinsky, 5 U.N. GAOR, C.1 (357th mtg.) 82, paras. 23-24, U.N. Doc. A/C.1/SR. 357 (1950).

220. See *id.* at 82-86 for elaboration of the Soviet Union's view.

tion under its provisions are authorized by specific Articles in the Charter, no new Powers were created. Several of the speakers in the 1950 debates in the First Committee were adamant that the Security Council's role would not be diminished²²¹ but some, it appears, took this view for the wrong reason, seeing the Security Council's powers remaining "static" and the General Assembly's increasing in some fashion.²²² If this were the case, Mr. Vyshinsky would have been correct in that the Security Council's powers would thereby have been diminished in a relative sense. But a resolution which is based squarely on Charter provisions cannot be said to have this effect. The United Kingdom Ambassador correctly characterized the effect of the Uniting for Peace Resolution when he said that it involved nothing new; it merely gave prominence to resources which were always available.²²³

VII. IMPLICATIONS OF THE PREMISE UPON WHICH THE UNITING FOR PEACE RESOLUTION IS BASED

The first and central outcome of the foregoing analysis is that if the premise upon which the Uniting for Peace Resolution is based—namely, that the General Assembly also has a peacekeeping function—is correct, the Resolution itself is unnecessary, at least in a juridical sense. Put another way, if the power to discuss and make recommendations in matters involving peacekeeping is found in the Charter itself, there is no need for an Assembly resolution which in essence takes the matter no further and which is ephemeral in that the same majority necessary to approve the resolution is also capable of undoing it.²²⁴ What better constitutional foundation can there be for General Assembly involvement than explicit provisions in the Charter? On the contrary, it has been

221. See, e.g., Mr. Rao (Brazil), 5 U.N. GAOR, C.1 (356th mtg.) 77, para. 52, U.N. Doc. A/C.1/SR. 356 (1950); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 79, para. 4, U.N. Doc. A/C.1/SR. 357 (1950); Mr. Pearson (Canada), 5 U.N. GAOR, C.1 (358th mtg.) 90, para. 43, U.N. Doc. A/C.1/SR. 358 (1950); Sir Mohammad Zafrulla Khan (Pakistan), 5 U.N. GAOR, C.1 (359th mtg.) 96, para. 9, U.N. Doc. A/C.1/SR. 359 (1950); Mr. Lange (Norway), *id.* at 97, para. 2; Mr. Younger (U.K.), 5 U.N. GAOR, C.1 (360th mtg.) 101, para. 4, U.N. Doc. A/C.1/SR. 360 (1950); and Mr. Escobar Serrane (El Salvador), *id.* at 110, para. 26.

222. See, e.g., remarks of Mr. Rao (Brazil), 5 U.N. GAOR, C.1 (356th mtg.) 77, para. 52, U.N. Doc. A/C.1/SR. 356 (1950); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 79, para. 4, U.N. Doc. A/C.1/SR. 357 (1950); Mr. Pearson (Canada), 5 U.N. GAOR, C.1 (358th mtg.) 90, para. 43, U.N. Doc. A/C.1/SR. 358 (1950); and Mr. Escobar Serrane (El Salvador), 5 U.N. GAOR, C.1 (361st mtg.) 110, para. 26, U.N. Doc. A/C.1/SR. 361 (1950).

223. 5 U.N. GAOR, C.1 (360th mtg.) 101, para. 4, U.N. Doc. A/C.1/SR. 360 (1950).

224. This is in contrast with the procedures for amendment of the Charter found in arts. 108 and 109.

shown that Resolution 377A(V) is actually a constricting element, in the sense that while it lays out a blueprint for action, it also contains both procedural and substantive limits on when that action may be taken. The constraints in the Uniting for Peace Resolution assume a greater significance at this point of the discussion when it is appreciated that they in fact appear to derogate from the General Assembly's freedom of action.²²⁵

The immediate significance of the Uniting for Peace Resolution lies in the realm of politics, not law. It is easier, when seeking to involve the General Assembly in peacekeeping activities, to be able to point to a formal resolution which sets out explicitly and in tangible form clearly-defined powers to meet different circumstances and a step-by-step procedure to be followed in each case. By comparison, the relevant powers in the Charter itself seem relatively nebulous, and not conducive to quick action. At the very least, each attempt to invoke the Charter would be far more likely to provoke a fresh debate on the extent of the powers in Articles 10, 11 and 14, and whether they were appropriate in those particular circumstances. The history of debates under the Uniting for Peace Resolution, on the other hand, demonstrates that over a period of time controversy over the validity of the Resolution has faded and the focus has instead been on the Resolution itself and whether or not its preconditions have been fulfilled.

Resolution 377A(V) thus serves an important function in formalizing the Assembly's inherent powers, creating an added aura of legitimacy around them. In this sense, the Resolution is quasi-constitutional but its real value is political. Of course, while serving this "political" function, the Resolution also carries with it important procedural guidelines which ensure the orderly transaction of business. The value of the "procedural due process" thereby created should not be underestimated.

Looking at the General Assembly's peacekeeping role, the net result of the above conclusions is that the Assembly may, if it chooses, sidestep the Uniting for Peace Resolution and "reach" back to the Charter itself for the source of its power. In practical terms, it may, if it wishes, regard both the procedural and substantive constraints in the Resolution as nugatory.

On the procedural side, several results follow:

1. For the General Assembly to act, the Security Council need not have first considered a matter. That requirement, to be in-

225. See text accompanying notes 128-29 *infra*.

ferred from the provisions of Part A of Resolution 377A(V), finds no mention in Articles 10, 11 and 14. If there is any difficulty with this conclusion, it emanates not from those provisions which confer power on the Assembly, but from those which confer power on the Security Council, describing that power as "primary" in the area of peacekeeping. However, Article 24(1) is only a problem in this context if it is read to mean *chronological* primacy; in other words, that the Security Council must act first *in point of time* before the General Assembly may take any action. Yet this is not the only meaning which may be ascribed to Article 24(1). It may equally be read to signify the intention that the Security Council *should*, under the general scheme of the Charter, be the first to assume the conduct of any action relating to peacekeeping and that if it *does* act first, no other organ may play a role while it is before the Council. The section may not mean that the Security Council *must* take hold of an issue before any other organ may act. This construction is supported by Article 12, which gives tangible content to the principle of primacy in Article 24(1), as here interpreted, by limiting the Assembly's power to recommend (but not, it is emphasized, the power to discuss) until after the Council has completed its own consideration of a matter involving questions of peacekeeping *which are actually before it*. It is only at this point that the Assembly's authority is temporarily suspended, but not if the Council has taken no steps to consider the matter. Articles 10, 11 and 14 themselves add force to this view of Article 24(1) inasmuch as the powers which they confer are plenary and are subject to the Article 12 limitation *only* when the Security Council is actually seized of a question.²²⁶

Pursuant to this conception of the relative positions of the Security Council and General Assembly, the role of Article 24(1) is twofold. On the one hand, it expresses a normative hope that the Security Council *will* take primary responsibility in peacekeeping matters; and, at the same time, it accords the Council a primacy in principle—a primacy the content of which is defined by Article 12. What it does not do, it is suggested, is shackle the General Assembly in the sense of preventing it from dealing with a question (certainly from the point of view of making recommendations) even in

226. This view of the notion of primacy in art. 24 found some expression in the statements of Mr. Armand Ugon (Uruguay), 5 U.N. GAOR, C.1 (355th mtg.) 70, para. 8, U.N. Doc. A/C.1/SR. 355 (1950); Mr. Gutierrez (Cuba), 5 U.N. GAOR, C.1 (357th mtg.) 80, para. 5, U.N. Doc. A/C.1/SR. 357 (1950); and Mr. Padilla Nervo (Mexico), 5 U.N. GAOR, C.1 (360th mtg.) 104, para. 36, U.N. Doc. A/C.1/SR. 360 (1950).

the face of complete inaction by the Council. On the other hand, if the Security Council *does* deal with an issue, the General Assembly may also deal with it and make recommendations once the Council is no longer seized of it, even if the Council *has* taken action.

2. The Uniting for Peace Resolution imposes the precondition that the Council shall have "fail[ed] to exercise its primary responsibility for the maintenance of international peace and security." There is room for debate as to what constitutes "exercise of primary responsibility," and what will amount to a "failure" to exercise it. As suggested earlier, it may, for instance, be argued that inaction is, on occasions, the most appropriate and responsible course to take. In any event, one can readily envisage differences of opinion between the Security Council and General Assembly as to the proper response in a given situation. The main point is that the limitation is one which is superimposed by the Uniting for Peace Resolution on the Charter provisions which authorize it. As such, if the Assembly may circumvent the Resolution altogether, it is *a fortiori* not bound by the limitation. The discussion as to what constitutes a "failure" to act then becomes academic.

3. The same considerations apply to the requirement that the failure of the Security Council to act must be the result of a lack of unanimity among the permanent members. Thus, if the Council considers a matter and resolves not to act as a result of a unanimous negative vote by the permanent members, the Assembly cannot act under the Resolution, but may under the Charter.

4. Finally, as regards the procedural aspects of Part A of Resolution 377A(V), the time elements as well as the procedure for convening the General Assembly under the Resolution also fall away. One effect of this might be to make it more difficult, in certain circumstances, to convene a special session of the Assembly. Under the Resolution, it could be argued²²⁷ that it would require only seven members of the Security Council to request an "emergency special session," but under Articles 20 and 27(2) it would certainly require nine affirmative votes.

More generally, non-applicability of the "technical" elements in the Resolution would leave peacekeeping problems subject to the provisions relating to special sessions generally. Thus, under Article 20, convening a special session would be at the request of the Security Council, under its normal rules of voting in Article 27,

227. This argument is based, rather tenuously, on an unamended Part A of the Uniting for Peace Resolution. See note 135 *supra*.

or of a majority of the members of the Organization. A significant difference could arise from Rule 8 of the Rules of Procedure of the General Assembly, which, as far as time is concerned, requires only that special sessions be held within fifteen days of a request under Article 20. This requirement is of course far more lax than the Resolution 377A(V) provision for meetings on twenty-four hours' notice.

The substantive ramifications of the arguments presented here are very significant. As has been shown above, the Uniting for Peace Resolution limits the General Assembly's power to recommend the use of armed force to Chapter VII situations, and even then to only some Chapter VII cases, namely those sufficiently serious to warrant the appellations "breach of the peace" or "act of aggression." If, however, Resolution 377A(V) is sidestepped, there are no restrictions in the relevant Articles of the Charter on the nature of the matters which may be discussed by the General Assembly, nor on the type of action which may be recommended in relation to those matters. Most importantly, the Chapter VI/Chapter VII dichotomy receives no recognition in Articles 10, 11 and 14. There is therefore no requirement on the Assembly to confine itself to Chapter VII remedies in Chapter VII cases. Thus, there is no reason why a Chapter VII remedy—including the use of armed force—cannot be recommended in a Chapter VI situation. In this respect, the Assembly's powers in matters of peacekeeping actually exceed those of the Security Council itself, which is bound by the strict separation of Chapters VI and VII.

The true import of this analysis may be assessed in a wider context. Article 2(4) of the Charter lays down the general principle of non-use of force: "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 manner inconsistent with the Purposes of the United Nations."²²⁸

However, the Charter itself sets out a number of exceptions to the general rule; notably, Article 51 which deals with matters of self defense, Chapter VIII (especially Article 53(1) which deals with enforcement action through regional arrangements or agencies), and of course Chapter VII itself. The effect of creating exceptions to the central principle in Article 2(4) is that they make permissible what would otherwise be unlawful under the Charter. Each of the exceptions enumerated here has two major characteris-

228. U.N. CHARTER, art. 2, para. 4.

tics: it is explicit in the Charter, and, the situations in which it may be invoked are clearly circumscribed by the Charter itself.

The foregoing analysis leads to the conclusion that the General Assembly has been given very strong powers by the Charter, to the point of allowing it to recommend the use of force even in situations where the Security Council could not employ force in the exercise of its "primary responsibility." This effectively amounts to a further major exception to the central principle in Article 2(4). The difference is that both of the characteristics common to the other three exceptions are missing: the power to use force in this case is relatively latent rather than explicit, and, far from being carefully circumscribed, it is extremely wide.

One way to avoid this conclusion is to imply into Articles 10, 11 and 14 the Chapter VI/Chapter VII dichotomy, particularly insofar as it relates to the correlation between certain remedies and certain types of problems. Presumably, the argument would be that the Charter, in Chapters VI and VII, evinces a clear scheme of graduated responses commensurate with the gravity of the problems they are designed to help solve. It would be inconsistent with this scheme to interpret Articles 10, 11 and 14 in a manner which controverts the clear dichotomy, particularly if it results in reading more power into what is *not* spelt out in the case of the General Assembly than into what *is* spelt out in the case of the Security Council. Moreover, it is more consistent with the general principle in Article 2(4) to interpret the power to resort to force in such a way as to restrict rather than broaden it.

Attractive though these arguments may be to some, they are too tenuous in the face of the broad wording of Articles 10, 11 and 14 themselves, and in the light of the drafting history of Article 10 in particular. It is not unreasonable to suggest that the great powers at San Francisco simply did not foresee the full consequences²²⁹ of their efforts in this area.

In concluding that the General Assembly has peacekeeping powers which may exceed those of the Security Council, it is important not to lose sight of three limitations which may or may not be significant in individual circumstances:

1. The first of these is the applicability of Article 12. As has been noted earlier, however, this is a mere formality if a majority of nine members of the Security Council are prepared to vote for

229. In particular, the subsequent breakdown of the Chapter VI/Chapter VII dichotomy in respect to the General Assembly.

the removal of the relevant item from the agenda.

2. Resolutions pursuant to Articles 10, 11 and 14, insofar as they contain "recommendations with respect to the maintenance of international peace and security," require a two-thirds majority for passage in the General Assembly.

3. The General Assembly may only "recommend." As has been pointed out above, though, if a sufficient number of states are interested and willing to lend their support in carrying out a recommendation, there is no reason why it cannot be as effective as a binding decision.

An important and instructive example of the practical ramifications of the argument presented here is provided by the Middle East case of 1967, in which the General Assembly convened in what was termed an "Emergency Special Session."²³⁰

The impetus for the Session came from the Soviet Union which noted that it

considers it essential that the United Nations General Assembly, in accordance with Article 11 of the United Nations Charter, should consider the situation which has arisen [in the Middle East] and should adopt a decision designed to bring about the liquidation of the consequences of aggression and the immediate withdrawal of Israel forces behind the armistice line.

The Soviet Government calls for the immediate convening of an emergency special session of the United Nations General Assembly for these purposes. The Soviet Government proposes that an emergency special session should be convened within twenty-four hours.²³¹

Although the Session was termed an "Emergency Special Session,"²³² and in fact the "Fifth" such Session, thereby suggesting a twofold continuity with previous sessions which had been convened pursuant to the Uniting for Peace Resolution,²³³ it may be

230. For the debates at the session, which took place from 17 June to 18 September 1967, see U.N. GAOR, 5th Emergency Spec. Sess., (1525-1559th plen. mtgs.), U.N. Docs. A/ES-5/PV. 1525 - A/ES-5/PV. 1559 (1967).

231. Letter dated 13 June 1967, from the Minister for Foreign Affairs of the U.S.S.R. to the Secretary-General, U.N. GAOR, 5th Emergency Spec. Sess., Annexes (Agenda Item 5) 2, U.N. Doc. A/6717 (1967).

232. This term does not appear in U.N. CHARTER, art. 11, but is found in Part A of the Uniting for Peace Resolution.

233. The 1967 Middle East case has consistently, and incorrectly, been linked with the Uniting for Peace cases. See, e.g., U.N. MONTHLY CHRONICLE, March, 1980, at 7.

seen from the letter of request that the Session was not a product of the Resolution. In addition, the Security Council had passed a series of resolutions²³⁴ concerning the Middle East situation over a period of more than a week.²³⁵ Thus there was no question of all the procedural preconditions in the Uniting for Peace Resolution having been fulfilled, nor was it suggested by the Soviet Union that they had been.²³⁶

It is also useful to examine the terms of the draft resolution²³⁷ proposed by the Soviet Union during the Session. Despite the fact that Article 11 expressly limits the Assembly to making recommendations, the draft resolution was couched in terms of "demands" directed at Israel.²³⁸ Although this draft resolution was rejected²³⁹ a series of resolutions was passed²⁴⁰ which made a number of recommendations and requests concerning humanitarian assistance²⁴¹ and the status of Jerusalem.²⁴² These resolutions reflected the extent of the consensus on the issues at the time—certainly the consensus required for at least a two-thirds majority. The significant point, for the present purpose, is that the General Assembly considered, and made recommendations in relation to, a subject concerning "international peace and security,"²⁴³ and it did so outside the framework of the Uniting for Peace Resolution. The relative

234. S.C. Res. 233, (Resolutions and Decisions 1967) 2-3, U.N. Doc. S/7935 (1967); S.C. Res. 234, (Resolutions and Decisions 1967) 3, U.N. Doc. S/7940 (1967); S.C. Res. 235, (Resolutions and Decisions 1967) 3, U.N. Doc. S/7960 (1967); S.C. Res. 236, (Resolutions and Decisions 1967) 4; S.C. Res. 237, (Resolutions and Decisions 1967) 5, U.N. Doc. S/7968/Rev. 3 (1967).

235. The resolutions were passed from June 6-14, 1967.

236. Thus, even if one takes the view that, notwithstanding the passage of the resolutions cited in note 234 *supra*, the Security Council had failed to exercise its primary responsibility, the sponsor of the Emergency Special Session made no attempt to base its request on this argument in order to help bring the matter within the framework of the Uniting for Peace Resolution.

237. U.N. GAOR, 5th Emergency Spec. Sess., (1526th plen. mtg.) 6, U.N. Doc. A/ES-5/PV. 1526 (1967); U.N. GAOR, 5th Emergency Spec. Sess., Annexes (Agenda Item 5) 39, U.N. Doc. A/L.519 (1967).

238. Cf. some of the other draft resolutions submitted which used milder language such as "suggests" or "recommends." U.N. GAOR, 5th Emergency Spec. Sess., Annexes (Agenda Item 5) 39-44, U.N. Docs. A/L.519 - A/L.529 (1967).

239. U.N. GAOR, 5th Emergency Spec. Sess., (1548th plen. mtg.) 15-16, U.N. Doc. A/ES-5/PV. 1548 (1967).

240. U.N. GAOR, 5th Emergency Spec. Sess., Supp. (No. 1) 3-4, U.N. Doc. A/6798 (1967).

241. G.A. Res. 2252, U.N. GAOR, 5th Emergency Spec. Sess., Supp. (No. 1) 3-4, U.N. Doc. A/6798 (1967).

242. G.A. Res. 2253-54, U.N. GAOR, 5th Emergency Spec. Sess., Supp. (No. 1) 4, U.N. Doc. A/6798 (1967).

243. U.N. CHARTER, art. 11.

innocuousness of the resolutions themselves should not obscure the fact of what the Assembly could have done had the political realities of the time allowed a consensus behind a stronger recommendation, including a recommendation for an Article 41 or 42 measure. The "door" pointed out in the discussion above has been pushed slightly ajar, and it remains to be seen who will open it wide and in what circumstances. A glimpse of the possibilities which are open is provided by the Spanish case, in which the General Assembly recommended, among other things, "that all members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there."²⁴⁴

Although the case was referred to the United Nations as a Chapter VI situation,²⁴⁵ when the General Assembly passed Resolution 39(I),²⁴⁶ it recommended a sanction which was drawn directly from Article 41,²⁴⁷ the resolution being passed by a large majority.²⁴⁸ All this took place some four years before the passage of the Uniting for Peace Resolution, but the Assembly's action was based upon and justified by reference to Articles 10 and 14²⁴⁹ over the objections of those who noted the seemingly exclusive role accorded the Security Council in connection with Article 41

244. See G.A. Res. 39 (I), U.N. Doc. A/64/Add. 1, at 63 (1946).

245. See letters dated 8th and 9th April 1946 from the Polish Ambassador to the Secretary-General, 1 U.N. SCOR, Supp. (No. 2) 54-55, U.N. Docs. S/32 and S/34 (1946). In the first of the two letters, the problem was described as "a situation of the nature referred to in Article 34 of the Charter." Art. 34 deals with "situations" of a particular sort, *i.e.*, those "which might lead to international friction or give rise to a dispute." Accordingly, any matter raised under this provision is *ipso facto* not of Chapter VII gravity. In fact, this was a general reason for the reluctance of the Security Council to pass a Polish-sponsored draft resolution calling on all members of the United Nations to immediately sever diplomatic relations with the Franco Government. That call was declared to be pursuant to arts. 39 and 41. See the draft resolution proposed by Mr. Lange, 1 U.N. SCOR, (34th mtg.) 167 (1946). See also, *e.g.*, the speech of Sir Alexander Cadogan (U.K.), who articulated the inappropriateness of a Chapter VII remedy for a problem which, on the admission of the proponent of the draft resolution himself, fell within Chapter VI. 1 U.N. SCOR, (34th mtg.) 180-85 (1946).

246. See note 230 *supra*.

247. "The Security Council may decide what measures not involving the use of force are to be employed to give effect to its decisions These [measures] may include . . . the severance of diplomatic relations." U.N. CHARTER, art. 41.

248. The vote was thirty-four in favor and six against, with thirteen abstentions, 1 U.N. GAOR, (59th plen. mtg.) 1222 (1946).

249. See, *e.g.*, remarks of Mr. Stolk (Venezuela), 1 U.N. GAOR, (58th plen. mtg.) 1181; Mr. Mora (Uruguay), 1 U.N. GAOR, (59th plen. mtg.) 1211-12; and Mr. Wold (Norway), 1 U.N. GAOR, C.1 (36th mtg.) 238, U.N. Doc. A/C.1/111 (1946). Art. 13, para. 1(b) was also cited as a basis for Resolution 39(I). See, *e.g.*, remarks of Mr. Mora (Uruguay), 1 U.N. GAOR, C.1 (35th mtg.) 234, U.N. Doc. A/C.1/110 (1946) and 1 U.N. GAOR, (59th plen. mtg.) 1210-11 (1946).

measures.²⁵⁰

VIII. SUMMARY AND CONCLUSIONS

The Uniting for Peace Resolution was a constitutional landmark in the history of the Charter—*not* in the sense of creating *new* powers, but in the sense of revealing a latent potential in the Charter itself, and setting it on a firm foundation. In this sense, it “re-legitimized” what was already there, and in doing so the Resolution had the effect of moving the debate away from the first level—from a discussion of the nature of the Assembly’s powers in the Charter—to a second level, namely the terms of the Uniting for Peace Resolution itself. Even its strongest critics in the United Nations came to accept the validity of the Resolution and, in instances of its use, have centered their attack, not on that basic issue, but on the question of the existence of the essential preconditions enumerated in the Resolution.

This shift has exposed and left intact the underlying bases for the Resolution and created a potential for reversion to them while side-stepping the procedural and substantive preconditions in the Uniting for Peace Resolution. These preconditions, as has been shown, are really constraints when compared to the powers in the Charter upon which they are founded.

The proposal of the Uniting for Peace Resolution, and the original debate on its validity, took place within the context of what was regarded by many nations at the time as a “paralysis” of the Security Council through persistent use of the veto. Thus, many participants in the various General Assembly debates, and ultimately the Uniting for Peace Resolution itself, stressed that what was contemplated was no more than a “backup” mechanism after due deference had first been paid to the Council and it had failed in its task. This debate does not alter the fact that the powers which the Resolution exposed in fact go far beyond deference. The extrapolated powers may not have been intended, but they do follow.

It may therefore be concluded that, thirty years after its passage, the Uniting for Peace Resolution stands on a very firm footing, inasmuch as it is almost universally accepted, and is acted upon from time to time. But in a deeper sense its significance goes

250. See, e.g., remarks of Mr. De Paula Gutierrez (Costa Rica), 1 U.N. GAOR, (48th plen. mtg.) 1184 (1946); Mr. Castro (El Salvador), *id.* at 1190.

much further than its proponents envisaged as a consequence of the added dimension which has been developed here.

