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who have heretofore been regarded as the owners thereof, whether those owners be the state or persons claiming through the state, and transfer all of the benefits of such ownership to the United States Government without payment to anyone.

1. 332 U. S. 19, 67 Sup. Ct. 1658, 91 L. Ed. 1889 (1947).
2. *Id.* at 22.
3. 18 Wall 57, 21 L. Ed. 798 (1873).
4. 3 How. 212, 11 L. Ed. 565 (1845).
5. 18 How. 71, 15 L. Ed. 269 (1855).
6. 94 U. S. 391, 24 L. Ed. 248 (1876).
7. 140 U. S. 371, 11 Sup. Ct. 808, 35 L. Ed. 428 (1891).
8. 41 Stat. 437 (1920), 30 U. S. C. A. Sec. 181.
9. 332 U. S. at 29.
10. *Id.* at 35.
11. *Ibid.*
12. *Id.* at 38.

INTERNATIONAL ORDER AND JUSTICE UNDER LAW

ORIE L. PHILLIPS*

We live today in a troubled world. The balance between peace and war is so delicate that no one can forecast the future with certainty. Yet, if we strive to the utmost to bring about and maintain peace in the world, I believe there is basis for reasonable hope of attaining those objectives.

International wrongs can be redressed and international rights enforced through force by a nation powerful enough to compel by force.

International wrongs can be redressed and international rights vindicated through peaceful processes if the nations of the world will, in good faith, commit themselves to the principle of international justice and ordered liberty under law, made effective by conciliation, arbitration, and adjudication.

The first of these alternatives means war with all its tragedy, destruction, and misery; it means the sacrifice on the altar of war of the flower of our young manhood and womanhood; it means the useless exhaustion and destruction of material resources; it means the economic, social, physical, mental and moral repercussions that follow in the wake of war; it means a struggle of might with the most destructive agencies that the ingenuity of man can devise, the cumulative effect of which we do not yet fully understand; it means death and destruction and misery in both combatant and noncombatant areas; it *may* mean the end of the American way of life, the loss of our free institutions and our precious liberties.

The other alternative means international justice and ordered liberty under law for all the nations of the world. It assures respect

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for the rights of the weak as well as the strong nation; it means the preservation of individual liberty and free institutions, the recognition of the dignity of man and his right to hope, to aspire, to achieve, and to pursue happiness; it means that liberty-loving and law-abiding peoples may continue to enjoy free institutions and individual liberties; it means a fair opportunity for the individual to attain his highest hopes and aspirations; it means a moral, intellectual, social, and cultural renaissance throughout the world; it means the fulfillment of the words of the Prophet: "He * * * shall rebuke many people and they shall beat their swords into plowshares and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more."

Can we venture to hope that the latter alternative can be attained? My answer is, we can and we must!

It will be my purpose to support that thesis.

In an address at the Annual Meeting of the American Bar Association in 1944, on the subject, "Ordered Justice Under Law Among Nations," I said:

"Our goal will not be quickly attained. It will take years, perhaps decades, of patient effort.

"In my thinking on these problems I have tried to be realistic and practical. I do not hope to prevent controversies and conflicts. Competition is a necessary stimulant to advancement and progress. Neither do I envision a world entirely free from disorder. I would not want to live in a civilization where men would not fight, if need be, for great principles and for their freedom and independence. We know that men will defend their lives, their families, and their homes, and we recognize the right of self-defense and even justifiable homicide. Nevertheless, we provide laws against assault and murder, and courts to adjudge and inflict penalties for wrongs, and means to enforce such judgments and penalties. And it does seem to me we can provide a system of law for nations, means to redress international wrongs and enforce international rights by peaceful processes, bring about ordered international freedom and justice under law, and in a substantial degree prevent aggression and armed conflict."

I have an abiding conviction that those objectives can and should be accomplished within the framework of the United Nations. I am not unmindful that many persons have lost faith in the United Nations and that it has been characterized as impotent. But, as I shall presently undertake to show, that loss of faith and characterization is not justified by the record.

I recognize the danger that the cold war between the United States and the Union of Soviet Socialist Republics, which for brevity I shall hereafter refer to as Russia, may develop into a shooting war. Neither am I unmindful that Marxian communism is atheistic and

materialistic; that it rejects the concepts of moral law and eternal justice; that it adheres to the doctrine that man has no God-given rights; that man is the subject, not the master, of the state; and that expediency, rather than principle, has dictated Russia's foreign policy in the past. We should not forget Russia's alliance with Hitler; her share in the rape of Poland; her unprovoked attack on little Finland; the agreement between Stalin and Hitler to divide eastern Europe and shut Britain and the United States out of Europe, Asia, and Africa; and the fact the alliance broke up only because the two villains disagreed on the division of the spoils.

I have no patience with those who say we should try to understand Russia in the sense we use that phrase.

We should firmly adhere to a policy that is right and just, but we should exercise patience and reasonable forbearance.

It is my opinion that Russia will go to any end to attain her objectives, short of war. I do not think she will intentionally provoke or bring about war because she is not yet prepared for war, and no reason exists which would make her regard war as expedient.

Of course, the United Nations cannot compel a peaceful solution of the conflicts between Russia and the Western Powers. But it can and is exercising a mighty influence in that direction.

The organs of the United Nations, except for the recent negotiations in Moscow, are the only places where regular contact and discussion have been maintained between the Western Powers and Russia. The United Nations has acted as a restraining and a conciliating influence upon the parties to the conflict. Around the tables of council chamber and committee room, the pressure is always in the direction of agreement and the peaceful processes of settlement. It provides an atmosphere favorable to peace, not to objects of conspiracy. Its growing influence is unceasingly in the direction of peace and away from war. The meetings of the Assembly are a sort of world town meeting. The airing of grievances and the debate of proposals bring issues and contentions into the open. The world knows about them. No iron curtain keeps secret the proceedings of the Assembly.

Before it a nation's policies are tested by the requirements of the Charter and are submitted to the public judgment of world opinion. The moral suasion which will be engendered by a righteous judgment expressed by a great majority of the members of the Assembly may be more compelling than military force. It is a public judgment manifesting the conscience of the world.

I doubt that any nation, however powerful, will dare long to continue a course of conduct condemned by the considered judgment of a great majority of the members of the General Assembly. No nation will lightly take the risk of being placed in the role of a world outcast.

There are other reasons for hope. All is not well behind the iron curtain. Tito has dared open defiance. He has refused to collectivize the peasant farms. There is much evidence of disillusionment and unrest among the peoples of the satellite states. Acute shortages of consumers' goods exists. Russia cannot help. She cannot yet supply her own needs, and takes, rather than gives. Rationing, instead of being relaxed, is becoming more stringent. The peasants have no desire to produce more food for money that lacks purchasing power in terms of real goods. Hence, Russia's insistent demand for collectivization of agriculture. That it will succeed with the liberty-loving, individualistic and courageous peasants may be doubted. Guns can subdue but they cannot grow food. If Tito is not brought to book, Soviet power in the satellite states which rest on a weak economic foundation, may well face defiance elsewhere.

History teaches that dictatorships are comparatively short-lived.

The rehabilitation of western Europe goes forward under E. R. P. The Russian menace is a stimulus to economic, and, to some degree, political union in western Europe.

In the past, world wars at their inception were not between great powers, they developed from incidents. The United Nations, from time to time, has quenched many local fires which might have well spread into world conflagrations.

In July, 1947, large forces of the Netherlands attacked the forces of the Indonesian Republic which was challenging Dutch authority and asserting its right to independence. Shortly thereafter, the Security Council established a Committee of Good Offices.

After months of patient effort to secure full observance of a cease fire order, that Committee brought about a truce last January which has since avoided a renewal of the civil war between the Netherlands and Indonesia that threatened to involve seventy million people. At the same time, the Committee secured an agreement on political principles as a basis for final settlement. Such principles include the establishment of a sovereign United States of Indonesia linked with other parts of the United Kingdom of Netherlands. Through the Committee on the basis of the agreed principles negotiations have since continued for a permanent settlement.

In the latter part of 1947, there was grave danger that the entire sub-continent of India with its 400 million people would be plunged into a bloody religious and communal war. The Kashmir dispute was aired through debate in the Security Council. Hope of settlement through peaceful channels increased. The United Nations sent a commission to India. The issues between India and Pakistan are being discussed in a calmer atmosphere and plans are being worked out for a plebiscite in the disputed area.

When Greece charged that Yugoslavia, Bulgaria, and Albania were actively aiding the Guerrillas, defying the Greek government, the Security Council sent a commission which interviewed many witnesses. It found the evidence supported the charge and made recommendations. An adverse vote of Russia prevented acceptance of the recommendations. The matter then passed to the General Assembly which requested such border nations to keep out of Grecian affairs and appointed a commission to go to Greece and watch for border violations. As a result, outside aid to the Guerrillas has been greatly diminished and their ultimate defeat in the near future seems certain.

In Korea, a portion of which is occupied by American, and the other by Russian troops, the diplomats of both countries were in violent disagreement. With Russia protesting every inch of the way, the General Assembly established a commission to go to Korea and supervise a free and democratic election. Russia prevented the commission from entering the northern zone but the commission successfully supervised a free election in the southern zone.

The 30-year old Palestine problem was brought to the United Nations by the United Kingdom which announced the intention of giving up its mandate. The General Assembly adopted a resolution for the partition of Palestine into Jewish and Arab states with an economic union and the internationalization of Jerusalem. A commission was appointed to supervise the implementation of the plan. The Arab states rejected the plan and declared they would oppose it by force. The United States opposed the use of force to compel partition. War between the Jews and the Arabs ensued. After four weeks, a mediator appointed by the United Nations brought about a truce of indefinite duration. The mediator, aided by United Nation guards and teams of military observers equipped with jeeps, airplanes, and coastal vessels, is supervising the truce and is proceeding with the difficult work of reconciling the conflicting interests and claims of Arabs and Jews and effecting a permanent settlement.

In April, 1946, Iran protested that Russian troops were interfering in its domestic affairs. Notwithstanding a walk-out by Gromyko, the Russian representative who claimed the matter should not be on the Security Council agenda, the discussion took place focusing public attention on the situation. The troops were then withdrawn.

Protests by Lebanon of the presence of British troops and by Syria of the presence of French troop, followed by discussion in the Security Council, resulted in the withdrawal of such troops.

The tense dispute between the United Kingdom and Albania, growing out of mine explosions in the Corfu Channel, came before the United Nations. It recommended that they refer the case to the International Court of Justice. Reference was made. The Court, by

a unanimous opinion, sustained its jurisdiction. The parties concluded a special agreement which forms the basis for further proceedings before the Court.

Doctor Herbert Vere Evatt, Australia's Minister of External Affairs, said in an article published early this year in Life Magazine:

"Personally I shudder to think what might have happened in 1947 if there had not been a U. N., and I believe that if the organization can be kept alive two or three more years, it may become virtually impossible for another 'shooting war' to break out within our lifetime."

When the United Nations Charter was signed, China was the only fully independent member state in eastern Asia. In three years India and the Philippines, original members, and Burma and Pakistan, since admitted, have become independent states. Siam has been admitted. Ceylon's application was vetoed by Russia. The Mongolian Peoples Republic has applied for admission.

Cambodia, Ceylon, Hong Kong, Laos and Malayan Union sit as associate members.

In western Asia, Afghanistan and Yemen are members and Transjordan has applied for membership.

Thus, in three years these rising nations of Asia, with a combined population greater than the total population of Europe and the Western Hemisphere, have manifest confidence in the United Nations and are making their influence felt in its work.

The Inter-American Treaty of Reciprocal Assistance now in effect between 19 American republics, constituting more than one-third of the member states of the United Nations, entered into in accordance with Articles 51, 52, 53, and 54 of the Charter is a splendid example and a concrete demonstration of what can be accomplished within the framework of the Charter by nations willing to submit themselves to a rule of law, to bind themselves to submit every controversy which may arise between them to settlement through peaceful processes, and to afford mutual assistance and defense against defined aggression.

The treaty "affirms as manifest truth that juridical organization is a necessary prerequisite of security and peace and is founded on justice and moral order. * * *"

It provides that the high contracting parties "undertake to submit every controversy which may arise between them to methods of peaceful settlement."

It defines aggression.

It provides that "the organ of consultation shall take its decisions by a two-thirds vote," and that "in the case of a situation or dispute between American states the parties directly interested shall be excluded from the voting."

Thus, what shall constitute an act of aggression is not left to ex-post facto debate on political levels, as under the Charter, and action by the organ of consultation, to stop aggression or remove threats of aggression, is not subject to a minority veto, as is action by the Security Council under the Charter.

Under the Treaty, no signatory may veto or block action under the defined procedure for pacific settlement of controversies within the Americas, or prevent united action in the exercise of the inherent right of united self-defense against an aggression from any source, anywhere within the Continental American Zone defined in the Treaty. The sole limitation is that no nation "shall be required to use armed force without its consent."

This Treaty outlaws war and aggression; it affords practical means for the settlement of disputes by juridical or other peaceful processes; and it provides for the common defense against attack. By it, the principles and purposes of the Charter of the United Nations are practically assured among the nations in the Western Hemisphere.

Why has the United Nations not accomplished more?

Perhaps the greatest impediment to constructive accomplishment by the Security Council has been the obstructionist attitude of Russia, made effective by its unbridled use of the veto power, a power originally regarded as a necessary safeguard, but intended to be resorted to only in an extreme emergency.

There were indications at Yalta that Russia wished to restrict the positive functions of the United Nations in maintaining peace. This was made more evident at San Francisco, on June 1, 1945, when the representatives of Russia demanded that the veto be applied at the very start of the Security Council procedure for settling disputes. Following instructions from Moscow, Andrei Gromyko demanded that the Security Council should be deprived of the right even to discuss and consider a complaint from an aggrieved or threatened state without the unanimous agreement of all of the five permanent members. This radical departure from what had been agreed to at Yalta was rejected by Secretary of State Stettinius. Moreover, the American delegation inserted into a joint interpretative statement, issued by the Big Five on June 8, 1945, a sentence to the effect that they were not expected to "use their veto power willfully to obstruct the operation of the Council."

It must be admitted that the British, French, and American representatives felt that, since the great powers were to bear the major responsibility for giving effect to any Security Council decision, more especially one involving military operation, they should be afforded the protection of the veto. However, the American conception of the veto was that it would be used only for major purposes and in extreme

emergencies. It was the hope of the American delegation that the interpretative statement accepted by Russia, along with the other great powers, would lessen the likelihood of the veto being used to obtain tactical advantages or to block ordinary decisions concurred in by a majority of the Council. That hope was a vain one. The veto has not been restricted to that interpretation. In the three years of the Security Council's existence, Russia has resorted to the veto 26 times. In addition, the veto has been used once by Russia and France together, and once by France alone. As a result, effective action by the Security Council in matters of grave importance has been obstructed.

A partial solution of the veto problem may result from work of the Interim Committee or the Little Assembly which was set up by the General Assembly in the fall of 1947. That Committee considered 98 possible types of decisions which the Security Council can make. The Charter provides that decisions on procedural matters shall be made by an affirmative vote of seven members. The Committee concluded that the following 36 categories should be regarded as procedural:

- (a) The nine categories which appear in the Charter under the heading "Procedure";
- (b) decisions which concern the relationship between the Security Council and the other organs of the United Nations embracing 13 categories;
- (c) decisions which relate to the internal functioning of the Security Council and the conduct of its business embracing six categories;
- (d) decisions which bear a close analogy to decisions under (a), (b), (c);
- (e) decisions which are instrumental in arriving at or following up procedural decisions embracing six categories.

In addition, without deciding that decisions belonging to the following group are actually procedural, the Committee recommended that 19 categories of decisions should be taken by a procedural vote of the Security Council in order to improve the functioning of that body and permit it, promptly and effectively, to fulfil its responsibilities under the Charter:

- (a) Recommendations on the admission to membership in the United Nations;
- (b) decisions whether a matter is or is not procedural (double veto);
- (c) decision whether a permanent member of the Security Council is "a party to a dispute" and should abstain from voting;
- (d) decision whether a question is "situation" or a "dispute";
- (e) all decisions with respect to the pacific settlement of disputes under Chapter VI of the Charter.

What will result from the report of the Interim Committee cannot be definitely forecast.

It is of transcendent importance that some way be found to curb the use of the veto. On procedural matters, on the admission of new states, as to peaceful measures for the settlement of disputes and the prevention of aggression or threats of aggression, there should be no right of veto.

We can no longer countenance the blighting effect of the unbridled use of the veto on the growth and development of the United Nations.

It must be made a strong and workable peace organization.

Some will, no doubt, assert that what I suggest involves some surrender of national sovereignty. But the surrender is one of form rather than of substance.

We have seen twice in the last 30 years that it is impossible for America to remain aloof or avoid being brought into these recurring world conflicts. It is an act of sovereignty, not a surrender thereof, to engage in war. It is an act of sovereignty, not a surrender thereof, to enter into an international arrangement to provide a substitute of peaceful processes for war, to create a world order based on law and justice as a substitute for world anarchy. It is a question of how we shall exercise, not a surrender of, our sovereignty if we face the facts and view the alternatives objectively.

Liberty is not the exercise of unbridled will. It implies the existence of an organized society maintaining public order without which liberty would be lost in the exercise of unrestrained abuses. To agree to adhere to the principles of right and justice among nations, maintained through an international association maintaining international order, is not a surrender of our national freedom. It is a substitution of ordered liberty among nations for international anarchy.

Of course, we cannot be required to use armed force without our consent and we are protected by the requirements of our constitutional processes.

In this critical period what should be America's course?

We should faithfully live up to our obligations under the Charter. We should see to it that our public acts, whether carried out through the United Nations, or otherwise, are consistent with its Charter. We should make it abundantly clear that aggression against either the territorial integrity or political independence of any nation will be resisted by every force available to the United Nations. We should lead the way in insisting that the United Nations be made an effective and workable peace organization, and that the nations of the world submit to a rule of law based on morals, reason, and justice. We should exercise patience, but firmness. We should insist that the weak

shall be free to choose their own way of life and their own political system. We should not seek to impose our economic or political system on any people, except as the manifestation of the merits of those systems in America may impel their adoption. We should extend aid upon wise, reasonable, and proper conditions in the rehabilitation of western Europe, but not to the extent that will impoverish us or endanger our domestic economy. We must make our own economic and political systems work efficiently and competently. We must keep America strong and virile.

A strong and virile America, seeking neither political nor economic advantage and unselfishly leading the way in bringing to bear the force of the moral judgment of the law-abiding nations of the world, the force of a world conscience, that aggression against territorial or political integrity of any nation shall not be tolerated; that international controversies must be settled by peaceful processes in accordance with law, justice, and right, and that the United Nations must be made a strong, effective, and workable peace organization, is the world's best hope of peace. It is all we have. We dare not let it fail.

AMERICAN-CANADIAN RELATIONS; ECONOMIC AND POLITICAL UNION

C. C. McLAURIN*

It is a privilege to be with you at this gathering. It is hardly necessary to assure you that I am thoroughly at home. I anticipated that before I left Alberta. I am no stranger to the State of Wyoming. I have visited Yellowstone and Jackson Hole three or four times. On one special trip I spent several days surveying your coal mines at Sheridan and Rock Springs, and motor trips have found me spending hospitable nights at Riverton, Rawlins, Laramie, Cheyenne and Casper. This is my first trip to Cody, and I have already expressed to many of your members my happiness in visiting this thriving and pleasant little community.

It is always nice to be in our own fraternity. We can speak our minds and not worry about the adverse things that are said of us. I think one of the worst references occurred in one of our courts with a new and uncouth orderly, who, when asked to clear the court room, shouted, "All you blackguards that isn't lawyers must leave the court."

My subject this evening might be entitled "Union of Canada and the United States".

In January last the Washington Post in a prominent editorial advocated a customs union between the two countries. Then, on March

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