

The "Bar" Treaty of 1947



AMERICAN BAR ASSOCIATION

(Organized at Saratoga Springs New York, August 21, 1878)

Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation and of judicial decision throughout the Nation, uphold the honor of the profession of the law, encourage cordial intercourse among the members of the American Bar and to correlate the activities of the Bar organizations of the respective States on a representative basis, in the interest of the legal profession and of the public throughout the United States. (ABA Constitution, Article 1)

REPORT OF THE SPECIAL COMMITTEE FOR PEACE AND LAW THROUGH UNITED NATIONS (relative to the Bar Treaty of 1947)

RECOMMENDATIONS*

Resolved, That the American Bar Association notes with approval the further progress made, within the structure and Charter of the United Nations, at the recent Inter-American Conference for the Maintenance of Continental Peace and Security, held at Quitindinia in Brazil, in implementing the Act of Chapultepec and strengthening further the spirit of friendly consultations and of submission to law-governed procedures, as well as the means of united self-defense, throughout the Americas, against aggressions from outside and for the prevention of the causes of disputes and misunderstandings among the nations of this hemisphere. The Association hails with particular satisfaction the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro on September 2 by the representatives of nineteen American republics, as a concrete demonstration of what can be accomplished within the framework of the United Nations, by nations which are willing to submit themselves to the rule of law and to agree to act together for mutual assistance and defense against aggression clearly defined.

The Association commends this Treaty to the consideration of the Delegation of the United States in the General Assembly of the United Nations and to like-minded peoples because of its clear and specific statement and limitation of its scope and purposes and especially its acceptance of the principles of decision by a vote of two-thirds of the member nations on major questions (a majority vote on some others), with a party to a dispute between members excluded from voting on it, no nation required to use armed force without its consent, and no right or power on the part of any nation to "veto or block the defined procedures for pacific settlement of controversies

within the Americas and for united action in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter, against aggression from any source, anywhere within a Continental American zone defined in the treaty.

Resolved Further, That the American Bar Association hails with especial satisfaction the progress made at Quitindinia and Rio de Janeiro because it has been fostered actively and substantially by lawyers of the Americas, through their respective bar associations and learned academies of the law; and that this Association pledges its continued support, through its own activities and its participation in the Inter-American Bar Association, in behalf of the objectives of the treaty and in behalf of peace, understanding, mutual assistance and self-defense, and the prevalence of the rule of law, throughout the Americas.

Resolved Further, That the American Bar Association favors and urges the earliest practicable ratification of the Inter-American Treaty of Reciprocal Assistance by the Senate of the United States.

*** These recommendations were adopted by the House of Delegates**

II

Resolved, That the American Bar Association expresses its gratification that the General Assembly of the United Nations has before it for consideration and action a notable report by its distinguished committee, which submits definitive plans for the progressive development and the eventual statement or codification of the rules and principles of international law.

Resolved Further, That if the International Law Commission proposed by the report is authorized by the General Assembly and elected by the United Nations, this Association as an accredited organization long at work in the field shall tender and render to the Commission and the Secretariat such assistance as they desire that this Association shall undertake, through its constituted committees and sections as hitherto voted by the House of Delegates and in close cooperation with The Canadian Bar Association, to the continuance of which this Association pledges its best efforts.

III

Resolved, That the American Bar Association expresses again its considered opinion to be that the interests of peace, justice and law throughout the world will best be advanced through the continuance of united, outspoken support of the United Nations by the American people, and that efforts to strengthen and extend international organization, cooperation and control of matters which are international in their scope should be undertaken within the framework of the United Nations and on the basis of undivided support of that organization.

Resolved Further, That the American Bar Association urges that lawyers and other citizens shall do all they can in their home communities to maintain an informed public opinion in favor of working through the United Nations for accomplishing the great objectives of the Charter and the Statute of the International Court of Justice.

IV

Resolved, That while the American Bar Association has recognized and urged, at the time of the adoption and ratification of the Charter in 1945 and since, that strengthening amendments in several respects will be needed and should be considered in the light of experience, the Association respectfully submits to the Delegation of the United States in the General Assembly of the United Nations the Association's opinion that at the present juncture there is an especial need that, through agreed-on interpretations of the Charter in the procedural rules or through the formulation and adoption of specific amendments of the Charter if need be, it shall be assured that two-thirds or other substantial majority of the nations which wish to submit themselves to the rule of law and accomplish the pacific settlement of international disputes can take effective action against aggression and do so within the procedures of the United Nations, beyond the power of a minority to "veto" and prevent the action of such a majority in these respects.

Resolved Further, That although the American Bar Association hopes that all members of the United Nations will accede to the principles of effective action by substantial majorities, such as have lately been accepted by nineteen republics of this hemisphere, all of which are members of the United Nations, the Association respectfully submits to the Delegation of the United States in the General Assembly the Association's considered opinion that any such amendments, if proceeded with, should be specific and sufficient to accomplish the above-stated purpose, and that consideration should be given to so conditioning their submission for ratification as to make clear the intention of the ratifying members to put them into effect between themselves if and when they are ratified by at least two-thirds of the member States.

V

Resolved, That the American Bar Association expresses the keen interest of its members in the proposed International Trade Organization and its proposed Charter, to be given final form and approval at a conference to convene in Havana, Cuba, on November 21; and the Association recommends that when copies of the proposed Organization and Charter become available, the same should be studied carefully and thoroughly by the Congress and the people of the United States, and also reported on to the House of Delegates by the Section of International and Comparative Law, the committee on Commerce, and the Committee for Peace and Law Through United Nations, as hitherto directed by the House.

Resolved Further, That the American Bar Association is of the opinion that if the final form of the Organization and Charter would place binding obligations on its members, the membership of the United States in the Organization and Charter should become effective only when the same are submitted by the President and ratified by the Senate as a treaty; and in view of the effect of prospective provisions upon American tariffs, reciprocal arrangements, and financial obligations, only when approved also by the House of Representatives of the United States.

VI

Resolved, That the American Bar Association is of the opinion that the foreign policy of the United States should continue to be in all respects developed, decided and unitedly supported,

without division on party lines or regard for differences on other issues; and that the members of the Association should to that end cooperate in bringing about in their respective communities informative public discussions of all questions entering into the foreign policy of our country, and should take the lead in behalf of an informed and united support of that policy.

Resolved Further, That the American Bar Association endorses and supports the action of the Government of the United States in giving assistance to the Government of Greece, in the exercise of the right of the United States under Article 51 of the Charter to take individual and collective action in defending against an armed attack upon a member of the united Nations.

Resolved Further, That the American Bar Association endorses and supports in principle the proposal of the Government of the United States that the nations of Europe which need financial and other assistance from the United States in the restoration of their economy and the maintenance of their governments against aggressions and infiltrations shall first mobilize their own resources in helping themselves and each other and shall establish their own organized means of cooperating with each other for the removal of trade barriers and for the maintenance of united action by themselves against aggression and propaganda from outside their border; and that the extent of the financial needs of such nations and the extent of their cooperation in such a policy shall be ascertained and made known, before the United States undertakes commitments.

VII

Resolved, That officers of the American Bar Association are authorized to transmit copies of the above resolutions when adopted or of such of them as may be appropriate, to officials and committees of the United Nations, to officers of the Government of the United States, to members of the Senate and House of Representatives, and to other associations and organizations with which this Association is cooperating, including all organizations represented in the House of Delegates.

REPORT

The matters covered by our recommendations have been so closely followed by American lawyers that this report will be brief. Their background has been from time to time reported to the members of our Association through its Journal.

The matters dealt with are of the utmost importance to all the people of our country and of the world. The General Assembly of the United Nations re-convened in New York City on September 16, for sessions which seem likely to be decisive as to the future of the existing international organization. The present prospect is that the Congress of the United States will be called in special session in November or December to make decisions on new and urgent phases of the foreign policy of our country and authorize action to effectuate that policy.

Under the conditions existing in the world today, your committee is of the opinion that its recommendations, and the action of our Association through the House of Delegates should be

only such as will support and assist those who, in our Government and in the United Nations, are working earnestly for peace and law, and will help to unite, not divide, American public opinion.

Against the background of a troubled and troubling world, two heartening events of the present month are first noted:

1. At Rio de Janeiro, Brazil, on September 2, the representatives of the Governments of all the American republics, who constitute more than one-third of all of the members of the United Nations, agreed upon, and nineteen of them signed and the two others will sign, the Inter-American Treaty of Reciprocal Assistance, significant provisions of which are referred to in our recommendations Nos. 1 and 4 and are hereinafter briefly discussed.

2. The General Assembly of the United Nations has on its calendar for action during its current sessions, the comprehensive report and recommendations of the distinguished committee which it created last December to formulate and submit definitive plans for the progressive development, and the eventual codification, of the rules and principles of international law, in a form and content adapted to the needs of the post war world. For members of our Association who long have worked earnestly for such an objective, this further progress toward the definitive formulation of international law under the authority of the United Nations is an encouraging step at a time when many other advances seem to be stalled.

Law Abiding Nations and Submission to the Rule of Law

Your committee has felt the need for a phrase of characterization that can be used in place of "peace-loving Nations," to denote those governments and peoples which are willing to submit themselves to the rule of law in international affairs and conform to it. Secretary Hull's "peace loving nations" of the 1943 Moscow Conference and Declaration will not do. All nations claim to be "peace loving," and all or most of them are- some of them only on their own terms. "Law-abiding nations" may be the best phrase. Its appropriation from internal, community life is apt. What is meant by a law-abiding citizen of a city or town is well known. The individual who breaks the peace or considers himself above the law is readily found out. To "abide" the law and legal procedures and not to take the law and one's claimed rights into one's own hands is a good English phrase and a recognized test.. In world affairs, the law-abiding nations are:

1. Those which believe that peace, freedom and security can be secured best (and probably only) through the rule of law.
2. Those which wish and intend, in a cooperative spirit and through their chosen representatives, to formulate, establish and support the supremacy of rules and principles of law, orderly adjudication, and impartial enforcement.
3. Those that by their agreements and their acts stand pledged to abide by and conform to the laws which majorities have duly established after the views of majorities and minorities have been democratically expressed and duly considered.

The law-abiding citizen of a community does not insist or expect that his disputes or rights shall be settled by "negotiations" or by political support from the powerful or by discussions at the political level. He instinctively and by habit obeys the law as he understands it to be : if disagreement or dispute as to it arises, he goes to court and abides the decision.

The policeman who finds a bully beating up a little man does not ask for debate: "Is his aggression justified?" He asks only: "Is there a law against it?" If he thinks there is, he stops the attack, hauls the aggressor or both parties to court, and lets the law and the judge decide.

So it should be with nations. The international community should become law-abiding. The chairman of your committee has made some check as to whether "law-abiding" has similar connotation in the community life of Canada and Great Britain. Like understanding seems to prevail.

The Charter of the nations entrusts the development and codification of international law to the General Assembly. That body is at work on that task. Progress in the Assembly cannot be blocked by any "veto." For an authoritative body of juriconsults to state and declare international and world law will give it great weight and force, will make it a standard to which law-abiding nations will repair. To give it binding force in the sense that domestic legislation is law will be a second step, but hardly difficult on the part of nations that are minded to pledge themselves to abide the rule of law.

Your committee submits the following brief comment on its principal recommendations:

RECOMMENDATION No. 1:

AS TO THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

Nineteen American republics, (1) constituting more than one-third of the status in the British Commonwealth of Nations, the Dominion of Canada did not take part in the Conference or sign the Treaty, but provision was made for its accession or cooperation, if Canada so desires and decides. In any event, Canada and the United States have for many months been taking practical steps for the defense of North America against attack, and have long resorted to friendly and peaceful means of settling whatever disputes or problems arise between them.

Of far reaching importance is the fact that the Treaty of Rio de Janeiro contains a clear definition of elementary acts of aggression which are outlawed in advance and are not left to ex post facto debate and political action subject to the "veto," as is the case in the Charter of the United Nations. A further gain is the recognition and specific and basic averment that "the American regional community affirms as manifest truth that juridical organization is a necessary prerequisite of security and peace and is founded on justice and moral order" (Preamble).

In this and other respects, the significance of what has been accomplished by the nations of the Americas may well be commended at this time to the American Delegation in the United Nations and to the world. The principles, purposes, and practical effectiveness of the Charter have been

assured as to the Western Hemisphere. What has been amicably agreed on and done here to outlaw war of aggression, assure the settlement of disputes by juridical or other peaceful means, and provide for the common defense against attack, exemplifies what can be done under the Charter. That more than one-third of the members of the United Nations bind themselves to accept decisions by a two-thirds vote on actions within that specific and limited field, with out a "veto" power on the part of any nation, 'may be also a hopeful augury as well as example. The sole limitation on collective action so determined is that no nation "shall be required to use armed force without its consent" (Treaty, Article 20), by its vote or otherwise.

The Treaty may thus offer an opportunity, in that it denotes the support of the United States and other members of the United Nations, in this hemisphere, for principles which might solve some of the major difficulties under the Charter. No nation will be obligated to participate in sanctions of a military character unless it has voted for that or otherwise consented. One of the reasons urged for granting and retaining the "veto," for the five principal powers, has been that the United States should not put itself in a position where it might be called on to furnish and use, without its own consent, its armed forces to enforce non-unanimous decisions.

Your committee recommends that the Association favor the speedy ratification of the Treaty. [\(3\)](#)

RECOMMENDATION No. 2: AS TO THE INTERNATIONAL LAW COMMISSION AND THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

The report of the General Assembly's committee, as submitted to the members of the United Nations and now pending before the General Assembly at Flushing Meadows, as summarized in the July JOURNAL (33 A.B.A.J. 727-730 (1947) and published in full in the August JOURNAL (33 A.B.A. J. 831-835 (1947)

The recommended task is to be entrusted in the first instance, as our Association recommended in 1945, before the San Francisco Conference (31 A.B.A.J. 227-228; May, 1945) and again to the State Department in May of 1947 (33 A.B.A.J. 728; July, 1947), to an International Law Commission of fifteen specially qualified jurists and jurisconsults who will be nominated by the member nations on a basis which will tend to assure that none will name only its own nationals. [\(4\)](#) They will be elected by the General Assembly and the Security Council, in the same manner as judges of the International Court of Justice are elected [\(4\)](#) this also as recommended by our Association (31A.B.A.J. 227-228; May, 1945).

A statement or codification of the principles and rules of present-day international law, prepared and issued under the auspices of a body elected in a manner similar to that in which the members of the World Court are elected, would have great authority and influence among states which were willing to submit themselves to the rule of law in the international sphere, irrespective of its adoption and promulgation as a unilateral agreement having a binding legal force.

Your committees' recommendation extends an assurance of our Association's cooperation with the International Law Commission and the Secretariat, if the International Law Commission is created. In assistance to that work and in order that submissions by our Association in

cooperation with The Canadian Bar Association shall reflect the considered opinion of lawyers in all parts of the two countries, it is expected that the regional group conferences under the auspices of the two bar associations will be resumed before the year ends. Eight such conferences in the series were held in March through May (33 A.B.A.J. 562(1947).

RECOMMENDATION No.3:

AS TO UNITED AMERICAN SUPPORT FOR THE UNITED NATIONS AND FOR WORKING THROUGH THE UNITED NATIONS TO STRENGTHEN IT

Our Association has repeatedly declared for united, undivided support of the United Nations and its Charter by the American people. Such a declaration is opportune and well justified at this juncture. "Fidelity to the United Nations" was declared by President Truman at Rio de Janeiro to be the cornerstone of American policy. It has profoundly affected and changed that policy, in that organized cooperation with other nations has become a primary objective.

Up to the present time, the United Nations has been in more than a few respects less effective than had been fondly hoped when the Charter was signed. Perhaps too much was expected of it too soon, by some; the machinery and procedures for consultations and organized cooperation cannot of themselves make all nations law-abiding or instill immediately a purpose to get along together amicably despite conflicting ideologies.

Memories may be short-lived. Probably good-will and a spirit of understanding and cooperation are more manifest today among more nations than was the case during the first ten or more years after World War I. Even in the conspicuous and highly provocative controversies in which the United Nations has appeared to make little or no headway in the absence of its General Assembly, many observers have felt that the aggravations were less acute because the disputants were face to face and around a table, and had to state and argue their claims in as friendly an atmosphere as could be created.

Beyond a doubt, the rift between the East and the West has thus far created serious obstructions, which existing procedures and powers have not overcome, But the United Nations provides the only forum in which the spokesmen for the two "spheres" are continually brought together; for discussion which is amicable in spirit although animated and at times divisive. Especially in view of what has recently been accomplished under the Charter and within the framework of the United Nations, your committee is of the opinion that efforts to strengthen the Charter and extend the effectiveness of international organization and cooperation should in any event go forward on the basis of supporting the United Nations rather than of abandoning or rejecting the existing international organization.

RECOMMENDATION NO. 4:

AS TO AMENDMENTS OF THE CHARTER OF THE UNITED NATIONS

The General Assembly is in session in New York City. Before its present convocation ends, the proposal of amendments of the Charter seems certain to receive the consideration of leaders and delegates in that "town meeting of the world."

Ever since the signing and ratification of the Charter in 1945, our Association has been of the opinion that strengthening amendments will be needed and should be sought as experience made it advisable. At the appropriate time, if the United States Delegation in the Assembly indicates that the judgment and recommendations of our Association are desired or will be considered, your committee will be prepared to submit specific suggestions.

At the present time, your committee is of the opinion that action by our Association will not advisably go beyond the recommendations which accompany this report. The Treaty between the American republics which comprise more than one-third of the members may open or point way to interpretations or amendments which will enable prompt and effective action by a two-thirds vote or other substantial majority. The Charter's requirement of unanimity of action among the five nations having permanent representation in the Security Council has given to serious problems. (5) More than a third of the members of the United Nations, including the United States have agreed that no such "veto" is needed among any of the nations of this hemisphere, in fulfilling the paramount purposes of the Charter.

It should of course be recognized that the "vetoes" interposed have been within the rights of the principal powers under the Charter. No claim that they violated the provisions of the Charter could be made. On the other hand, many of them are regarded as violating both the spirit and the letter of the assurances which the five principal powers gave at the San Francisco Conference, as to the extent and purposes for which they would use the veto. (6)

Certainly the San Francisco Conference determined and declared that if a "veto" was interposed as an amendment of the Charter desired by the great majority of the member nations, that majority was not to be without remedy. (7)

The expressed attitude of the United States, before, and during the first days of the meeting of the General Assembly, is that (8) "We are not unalterably opposed to every proposal for a revision of the Charter although we believe that there is at the present time no need for major revisions of the Charter or for a change in the general character of the United Nations.

"Many articles of the Charter have not yet been brought into play and given life and meaning by practical application. None of the principal organs have as yet fully exerted the authority and influence which are possible under the existing Charter. The members themselves as represented in the General Assembly have by no means exhausted the potentialities of the Charter in finding ways and means of overcoming obstruction and of meeting their common problems While we might be willing to accept certain amendments to the Charter, we believe that rapid progress can be made in the immediate future within the general framework which we now have and we shall ourselves make proposals for utilizing more fully existing machinery."

The nature and scope of the proposals by the United States to fulfill "the potentialities of the Charter," to find "ways and means of overcoming obstruction," and to accomplish "rapid progress". . . in the immediate future within the general framework which we now have," have not been made public at this writing. (9) Basically, they seek the strengthening of the General Assembly to an extent that its present session "may begin a new phase in the life of the United Nations." Said Secretary Marshall:

"The General Assembly is the forum in which this skepticism must be forestalled and the forum in which our disagreements must be resolved. The great moral and political forces of the world must somehow be brought to bear with full effect through the General Assembly."

The American proposals will doubtless include all or most of those which Delegate Herschel V. Johnson informally submitted to the Security Council on August 27, to show the extent to which agreed-on clarifications and amendments of the Council's procedural rules could remove obstacles to effective action, without amendment of the Charter. [\(10\)](#) If these changes had been in effect, they would not have barred the "vetoes" which have been interposed.

Another proposal favored by some nations is that, through agreement or through amendment of the Charter if need be, the "veto" shall apply only to sanctions and enforcement measures by the Security Council and shall not apply to steps for fact-finding and the peaceful settlement of disputes. This change would have barred all or most of the "vetoes" which have been blocking action for investigations and efforts to settle disputes.

If amendments of the Charter are not proceeded with and the law-abiding nations have to consider and decide as to what individual and collective action they can agree on and take, within the framework of the Charter and pursuant to its Article 51, a considered suggestion has been made for a supplementary agreement or protocol for mutual defense against defined aggression, to be effective among the ratifying nations when two-thirds of them have ratified. [\(11\)](#)

All but one of the members of your committee are of the present opinion that such amendments as may be developed and decided on by the General Assembly shall be submitted under Article 108 of the Charter for ratification and that a General Conference under Article 109 should not be called at this time, for the drafting of amendments. A possible alternative or compromise, in the event that the General Assembly is of the opinion that the formulation of amendments should be considered but that its calendar for its present regular session is too heavy and congested, has been suggested, to the effect that the General Assembly vote to meet in special session early in 1948 to consider amendments, any proposals for amendment to be filed with the Secretary-General in advance and by him circulated among the member nations. This would be in lieu of the calling of a Conference under Article 109, which would as a practical matter be made up of substantially the same persons as are delegates to the General Assembly.

Your committee does not at this time pass upon any of these proposals as such. The amendments previously recommended by the House of Delegates are along lines which appear to be worthy of consideration now. There is every prospect that the whole subject will be spiritedly and thoroughly considered in conferences of the delegations and on the floor of the General Assembly. An important objective is that the power of the great majority of the member nations to act together to outlaw war, prevent and punish aggression, and provide for the peaceful settlement of pro-vocative disputes, shall be assured beyond doubt. In the opinion of many observers, the present critical issues among the nations go much deeper than anything that could at present be coped with through amendments of the Charter.

**RECOMMENDATION No. 5:
AS TO THE PROPOSED INTERNATIONAL TRADE ORGANIZATION AND
ITS CHARTER**

Because rehabilitation of the world's shattered economy and the relief of peoples from hunger, want, unemployment and despair are essential to the restoration of lasting peace and the rule of law, American lawyers are naturally interested in proposals to deal with international economic problems and those of international trade and commerce through cooperative action under the auspices of an agency of the United Nations. The provisions of a Charter creating and implementing such an international Trade Organization may also have important effects on industry and commerce, in respects which are of interest and concern to lawyers. [\(12\)](#)

Considerable preparatory work as to the Charter of the proposed International Trade Organization has been done at a conference in session in Geneva, Switzerland, since April; but the Charter will be given its final form in a Conference to be convened in Havana, Cuba, on November 21. The form in which the draft Charter will emanate from the Geneva Conference is not yet available for study by your committee, It is known that the document has been largely changed from the form in which it was taken to Geneva, after a few hearings in this country.

The House of Delegates asked your committee, along with the Committee on Commerce and the Section of International and Comparative Law, to study and report to the House concerning the International Trade Organization and its proposed Charter.

Under these circumstances, your committee is of the opinion that it would plainly be premature for the committee or the House at this time to pass upon any phases of the International Trade Organization or its proposed Charter. Present action by the House of Delegates may appropriately, in the opinion of your committee, call the attention of the profession and the public to the importance of the subject, recommend a careful study of the Charter when copies of it are available, and declare in favor of its being submitted for ratification by the Senate as a treaty, and for action upon it also by the House of Representatives, for reasons indicated in our submitted resolution.

Because of their large relationships to tariffs, revenues, and other fiscal matters, as well as their probable legislative consequences, the projected provisions of the Charter appear to be such as to come within the intent and practice under the Constitution that the House of Representatives shall act as to such matters.

**RECOMMENDATION No. 6:
AS TO THE FOREIGN POLICY OF THE UNITED STATES**

Our first resolution is for a re-affirmance of our Association's stand that the foreign policy of the United States should be developed, decided on, supported and carried forward, by a United country, without division on party lines. [\(13\)](#)

Our second resolution proposes support of the action of our Government in giving assistance to the Government and people of Greece, under Article 51 of the Charter; Your committee believes

that this basic feature of our country's policy should have the endorsement of our Association and the support of the American people. [\(14\)](#)

Our final resolution as to foreign policy proposes to declare support for stated basic principles which are believed to be fundamental for a soundly-conceived plan for the economic rehabilitation of the shattered economy of Europe, for our own protection against aggressions and infiltrations which might otherwise come so near our shores and "region" as to menace all nations of the America. The basic principle underlying American assistance in money, food, farm equipment, fertilizer, and other essentials of a free economy, shall be that the free nations of Europe shall first organize and cooperate to help themselves and each other, on the hard road back to stability, independence, solvency and peace.

In the opinion of a majority of your committee, the "Marshall Plan" has not yet at this writing been given sufficiently definite and particularized form to enable or warrant a declaration approving it as such and by name. But it seems to be highly essential that the organized bar, and individual lawyers throughout our country, shall do all they can to bring it about that the principles and reasons underlying the American policy toward Europe shall be understood and approved by the people. Resolutions which declare and endorse the vital principles may serve this purpose better than an endorsement by name of a plan which has not yet been published in a definitive form.

THE SECOND REPORT BY THE COMMISSION AS TO INTERNATIONAL CONTROL OF ATOMIC ENERGY

Action by the United Nations for effective international control of the production and use of atomic energy for war purposes is still "stalled" by the attitude of the Soviet Union. The second report of the United Nations Atomic Energy Commission, created by the General Assembly at its organizational session in London in February of 1946, was filed this month. A definitive plan supported by the Nations, including the United Kingdom, France, China and the United States, was approved by the votes of ten members of the Commission and transmitted to the Security Council.

Russia voted against it and gave notice on September 6 that it would not waive the "veto" when the report comes before the Security Council.

Poland protested the report but "abstained" from voting against it in the Commission. The "sticking-point" is that the Soviet Union insists that only the Security Council shall decide all questions of sanctions, enforcement, etc., as to violators of the proposed convention for prohibition or control of atomic weapons in war, and insists further that there be no waiver or modification of its "veto" power in the council as to action against violators. [\(15\)](#)

This all-important issue will thus be blocked in the Security Council, but will receive spirited consideration at some stage of the crucial session of the Assembly.

Proposals have been made that the nations which are willing to submit themselves to international control and to international and world law on the subject shall proceed with their convention and give all ratifying nations its benefit and protection.

Your committee reports that in view of the pressure of urgent business before the Senate of the United States at the short session of the Congress which adjourned on July 26, no efforts were made by your committee to obtain the introduction and passage of a Senate resolution for an amended or superseding American Declaration. to eliminate the Connally reservation as to American acceptance of the "optional" jurisdiction of the World Court. Such action by the Senate was recommended by the House of Delegates at its February session on the recommendation of your committee. (see 33 A.B.A.J. 249, 400-401, 430 (1947).

Several members of the Senate expressed their interest in the subject and their attention to initiate corrective action at an opportune time.

In conclusion, your committee calls special attention to the declarations in several of its resolutions, as to the need that lawyers everywhere shall do all they can to aid the development of public understanding of the issues involved and an informed public opinion in support of our country's policy in foreign affairs.

Respectfully Submitted
WILLIAM L. RANSOM
Chairman

FREDERIC M. MILLER
Vice-Chairman

REGINALD HEBER SMITH
Secretary

GEORGE A. FINCH
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FRANK E. HOLMAN
WILLIAM LOGAN MARTIN
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CHARLES W. TILLET
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APPENDIX

THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

PREAMBLE

In the name of their peoples, the Governments represented at the Inter-American Conference for the Maintenance of Continental Peace and Security, inspired by the desire for consolidating and strengthening their relations of friendship and good neighborliness and

Considering:

That Resolution 8 of the Inter-American Conference on the Problems of War and Peace, which met at Mexico City, recommended the conclusion of a treaty to prevent and repel threats and acts of aggression against any of the countries of America;

That the high contracting parties reiterate their will to remain united in the inter-American system, consistent with the purposes and principles of the United Nations, and reaffirm the existence of the agreement which they concluded concerning matters relating to maintenance of international peace and security which are appropriate for regional action;

That the high contracting parties reaffirm adherence to the principles of inter-American solidarity and cooperation and especially to those set forth in the preamble and declarations of the Act of Chapultepec, all of which should be understood to be accepted as standards of their mutual relations and as the juridical basis of the inter-American system; That American states propose in order to improve the procedures for pacific settlement of their controversies to conclude the treaty concerning the "inter-American peace system" envisaged in Resolution 39 of the Inter-American Conference on Problems of War and Peace;

That the obligation of mutual assistance and common defense of the American republics is essentially related to their democratic ideals and their will to cooperate permanently in fulfillment of the principle and of a policy of peace;

That the American regional community affirms as manifest truth that juridical organization is a necessary prerequisite of security and peace and is founded on justice and moral order on international recognition and protection of human rights and freedoms, on the indispensable well being of the people and on the effectiveness of democracy for international realization of justice and security;

In conformity with the objectives stated above and in order to assure peace through adequate means, to provide for effective reciprocal assistance to meet armed attacks against any American state and in order to deal with threats of aggression against any of them, have resolved to conclude the following treaty:

ARTICLE 1

The high contracting parties formally condemn war and undertake in their international relations not to resort to threat or use force in any manner inconsistent with the provisions of the Charter of the United Nations or of this treaty.

ARTICLE 2

As a consequence of the principle set forth in the preceding article, the high contracting parties undertake to submit every controversy which may arise between them to methods of peaceful settlement and endeavor to settle such controversies among themselves by means of procedures in force in the inter-American system before referring them to the General Assembly or the Security Council of the United Nations.

ARTICLE 3

1. The high contracting parties agree that an armed attack by any states against an American state shall be considered as an attack against all the American states and consequently each one of the said contracting parties undertakes to assist in meeting the attack in exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.

2. On the request of the state or states directly attacked and until the "decision of the organ of consultation of the inter-American system, each one of the contracting parties may determine immediate measures which it may individually adopt in fulfillment of the obligation contained in the preceding paragraph and in accordance with the principle on continental solidarity. The organ of consultation shall meet without delay for the purpose of examining these measures and agreeing upon measures of a collective character that should be adopted.

3. The provisions of this article shall be applied in case of any armed attack which takes place within the region described in Article 4 or within the territory of an American state. When an attack takes place outside the said areas the provisions of Article 6 shall be applied.

4. The measures of self-defense provided under this article may be taken until the Security Council of the United Nations has taken measures necessary to maintain international peace and security.

ARTICLE 4

The region to which this treaty refers is bounded as follows: Beginning at the North Pole; Thence due south to a point 74 degrees north latitude 10 degrees west longitude; Thence by a rhumb line to a point 47 degrees 30 minutes north latitude 50 degrees west longitude; Thence by a rhumb line to a point 35 degrees north latitude 60 degrees west longitude; Thence due south to a point in 20 degrees north latitude; Thence by a rhumb line to a point 5 degrees north latitude 24 degrees west longitude; Thence due south to the South Pole; Thence due north to a point 30 degrees south latitude 90 degrees longitude; Thence by a rhumb line to a point on the Equator at 97 degrees west longitude; Thence by a rhumb line to a point 15 degrees north latitude 120 degrees west longitude; Thence by a rhumb line to a point 50 degrees north latitude 170 degrees east longitude; Thence due north to a point 54 degrees north latitude; Thence by a rhumb line to a point 65 degrees 30 minutes north latitude 168 degrees 58 minutes 5 seconds west longitude; Thence due north to the North Pole.

ARTICLE 5

The high contracting parties shall immediately send to the Security Council of the United Nations in conformity with Article 51 and 54 of the Charter of the United Nations complete information concerning the activities undertaken or in contemplation in the exercise of the of right of self-defense or for the purpose of maintaining inter-American peace and security.

ARTICLE 6

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American state should be affected by an aggression which is not an armed attack or by an intra-continental or extra-continental conflict, or by any other fact or situation that might endanger the peace of America, the organ of consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the continent.

ARTICLE 7

In the case of a conflict between two or more American states, without prejudice to the right of self defense in conformity with Article 51 of the Charter of the United Nations, the high contracting parties, meeting in consultation, shall call upon the contending states to suspend hostilities and restore matters to the status quo ante bellum, and shall take in addition all other necessary measures to reestablish or maintain. inter-American peace and security and for the solution of the conflict by peaceful means. The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon.

ARTICLE 8

For the purposes of this treaty, the measures on which the organ of consultation may agree will comprise one or more of the following:

Recall of chiefs of diplomatic missions, breaking of diplomatic relations, breaking of consular relations, complete or partial interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic and radio-telephonic or radio-telegraphic communications and the use of armed force.

ARTICLE 9

In addition to other acts which the organ of consultation may characterize as aggression, the following shall be considered as such:

- (A) Unprovoked armed attack by a state against the territory, the people or the land, sea or air forces of another state;
- (B) Invasion by the armed forces of a state or the territory of an American state through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision or arbitral

award or, in the absence of frontiers thus demarcated, an invasion affecting a region which is under the effective jurisdiction of another state.

ARTICLE 10

None of the provisions of this treaty shall be construed as impairing the rights and obligations of the high contracting parties under the Charter of the United Nations.

ARTICLE 11

The organ of consultation referred to in this treaty shall be, until a different decision is taken, the meeting of the Ministers of Foreign Affairs of the signatory states which have ratified the treaty.

ARTICLE 12

The Governing Board of the Pan American Union may act provisionally as an organ of consultation until the meeting of the organ of consultation referred to in the preceding article takes place.

ARTICLE 13

The consultations shall be initiated on the request addressed to the Governing Board of the Pan American Union by any of the signatory states which has ratified the treaty.

ARTICLE 14

In the voting referred to in this treaty only the representatives of the signatory states which have ratified the treaty may take part.

ARTICLE 15

The Governing Board of the Pan American Union shall act in all matters concerning this treaty as an organ of liaison among the signatory states which have ratified this treaty and between these states and the United Nations.

ARTICLE 16

The decisions of the Governing Board of the Pan American Union referred to in Articles 13 and 15 above shall be taken by an absolute majority of the members entitled to vote.

ARTICLE 17

The organ of consultation shall take its decisions by a vote of two-thirds of the signatory states, which have ratified the treaty.

ARTICLE 18 In the case of a situation or dispute between American states the parties directly interested shall be excluded from the voting referred to in the two preceding articles.

ARTICLE 19

To constitute a quorum in all the meetings referred to in the previous articles it shall be necessary that the number of states represented, shall be at least equal to the number of votes necessary for the adoption of the decision.

ARTICLE 20

Decisions which require the application of the measures specified in Article 8 shall be binding upon all the signatory states which have ratified this treaty except that no state shall be required to use armed force without its consent.

ARTICLE 21

The measures agreed upon by the organ of consultation shall be executed through the procedures and agencies now existing or those which may in future be established.

ARTICLE 22

This treaty shall enter into effect between the states which ratify it as soon as the ratifications of two-thirds of the signatory states have been deposited.

ARTICLE 23

This treaty is open for signature by the American states at the City of Rio de Janeiro and shall be ratified by the signatory states as soon as possible in accordance with their respective constitutional processes. The ratifications shall be deposited with the Pan American Union, which shall notify the signatory states of each deposit. Such notification shall be considered as an exchange of ratifications.

ARTICLE 24

The present treaty shall be registered with the secretariat of the United Nations through the Pan American Union when two-thirds of the signatory states have deposited their ratification.

ARTICLE 25

This treaty shall remain in force indefinitely but may be denounced by any high contracting party by a notification in writing to the Pan American Union, which shall inform all the other high contracting parties of each notification of denunciation received. After the expiration of two years from the date of the receipt by the Pan American Union of a notification of denunciation

by any high contracting party, the present treaty shall cease to be in force with respect to such state but shall remain in full force and effect with respect to all the other high contracting parties.

ARTICLE 26

The principles and fundamental provisions of this treaty shall be incorporated in the organic pact of the inter-American system. In witness whereof, the undersigned plenipotentiaries, having deposited their full powers found to be in due and proper form, sign this treaty on behalf of their respective governments on the dates appearing opposite their signatures.

RESERVATION OF HONDURAS

The delegation of Honduras, in signing the present treaty and in connection with Article 9, Section (b) does so with the reservation that the boundary between Honduras and Nicaragua is definitely demarcated by the Joint Boundary Commission of 1900 and 1901, starting from a point in the Gulf of Fonsca, in the Pacific Ocean, to Portillo de Teotecacinte and from this point to the Atlantic, by the line that His Majesty, the King of Spain's arbitral award established on December 23, 1906.

Footnotes

(1): Ecuador and Nicaragua, by reason of events within their Governments during the Conference at Quitindinia, did not sign on September 2. Provision was made for their adherence to the Treaty later, which is expected. They also are Members of The United Nations. Because of its membership of the United Nations, signed at Rio de Janeiro on September 2 the treaty which is an outstanding demonstration of what law-abiding nations of good-will can do, within the framework of the United Nations Charter and to effectuate its purposes. (2)

(2): In his joint broadcast with Senator Vandenberg on September 4, Secretary of State Marshall said, in part:

"The results of the conference demonstrate I think beyond doubt that where nations are sincerely desirous of promoting the peace and well-being of the world it can be done, and it can be done without frustrating delays and without much of confusing and disturbing propaganda that has attended our efforts of the past two years."

Chairman Vandenberg of the Senate Committee on Foreign Relations, in his broadcast with Secretary Marshall on September 4, said, significantly, as to the agreed-on omission of "a paralyzing veto" from this Treaty under the Charter:

"We have re-knit the effective solidarity of North, Central and South America against all aggressors, foreign or domestic. We have sealed a pact of peace which possesses teeth. **We have not deserted or impaired one syllable of our over riding obligations to the United Nations.**

"This pact is not a substitute for the United Nations. It is a supplement to the United Nations and part of its machinery. The signers of this treaty have fulfilled the United Nations Charter by

creating what is officially called "a regional arrangement" which adds new and effective obligations and protections for peace and security within the area of our Western Hemisphere.

"In all but the latter-namely, the use of armed forces-all treaty states will be bound by a two-thirds vote. And, my friends, this 'is a tremendous statement: There is no paralyzing veto upon any of these peaceful sanctions. One recalcitrant nation-one non-cooperator- cannot nullify the loyalties of the others. It cannot even stop the others from using collective force."

(3): In conformance to the rules of the House and in order that members of the House may have before them a specific demonstration of what has been pursuant to the Charter of the United Nations, the Inter-American Treaty of Reciprocal Assistance is appended to this report, in the form published in the New York Times for August 31. It was also printed in full at page 1058 of the October (1947) issue of the AMERICAN BAR JOURNAL.

(4): See A.B.A.J. 831, 832 (August 1947) for the recommended provision, held in March through May. 33 A.B.A.J. 562 (1947)

(5): To date nineteen "vetoes" have been interposed by the Soviet Union singly; one by the Soviet and France together; and one by France alone.

(6): Hamilton Fish Armstrong, Editor of Foreign Affairs and Adviser to the U.S. Delegation in San Francisco, wrote in the New York Times Magazine on September 14 that:

It was seen at Yalta that the Soviet Union already wished to restrict the positive functions of U. N. in maintaining peace. But the real evidence can be seen at San Francisco the evening of June 1, 1945, when there fell a Soviet bombshell in the form of a demand that the veto be applicable at the very start of the Security Council procedure for settling disputes. On 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 five permanent members. This radical modification of the Yalta understanding was rejected by Secretary of State Stettinius. He won his point, however, only after making a blunt statement to Marshal Stalin. (through Harry Hopkins, who happened to be in Moscow at the moment) that continued insistence by the Soviet on its interpretation would disrupt the conference.

The American delegation tried further to turn the tide against broadening the use of the veto by inserting into a joint interpretative statement issued by the "Big Five" on June 8 a sentence to the effect that they were not expected to use their veto power willfully to obstruct the operation of the Council.

Like their British and French colleagues, the Americans (including Senators of both parties) felt that the Great Powers which were to bear the major responsibility for giving effect to any Security Council decision, especially one involving military operations, must have the veto as protection against possible irresponsible action by the smaller states.

But the American conception of the veto was that it would be used for major purposes alone; and the American delegation hoped that the sentence quoted above, accepted by the Soviet Union along with the other Great Powers, would lessen the likelihood of the veto's being used to obtain tactical advantages or block ordinary decisions of the Council majority.

In practice, however, the veto has not been used in accordance with that interpretation. The result has been that, whether by "willful" design or not, the operation of the Security Council has certainly been "obstructed."

(7): See "If Two Worlds What Can United Nations Do for Majority Action?" AUGUST JOURNAL, A.B.A.J. 756-759. See, also, the Report of Commission I, adopted by the San Francisco Conference; quoted in 33 AJB.A.J. 758.,

(8): Radio Statement by Secretary of State Marshall on September 14.

(9): Secretary Marshall said on September 14 that "Within a few days time the United States Delegation will be making a number of proposals to the General Assembly which we believe will help to resolve some of the issues which are now disturbing good relations among nations. You will appreciate that presentation of these proposals must await the meeting of the Assembly."

(10): On August 27, the Security Council took up a request by the General Assembly last December that something be done about the "veto" power. After stormy debate, a seven-nation vote referred the matter to the Council's Committee of Experts. The United States representative, Herschel V. Johnson, submitted a 1200 word memorandum-which he repeatedly characterized as in no sense a "proposal"-outlining the substance of three possible rules of "procedure" for the Council, to detail questions agreed on as not subject to "veto" and to confirm the understanding already accepted without written sanction that abstention from voting, by one of the five principal powers, does not constitute a "veto." The American Delegate's proposals thus related to matters on which he urged that the way could be cleared for majority action without amending the Charter; they did not propose amendments to cover actions such as those which, under the Treaty of Rio de Janeiro, could be carried by a two-thirds vote. In summary, the American Delegate's proposals of August 27 were:

1. "Procedural" matters- therefore not subject to "veto"-would be listed as those dealing with meetings, the call for a Conference to amend the Charter under Article 109, determination of the agenda, credentials, Council presidency, filings and order of vote, invitations to states to participate in discussions, requests to individuals for information, procedures on membership applications, relations with other organs of the United Nations, elections to the international Court of Justice, opening of the Court to non-members of the United Nations, Council requests for advisory opinions by the court and the creation of subsidiary organs. At the end was an omnibus item to deem procedural "all other decisions of the Security Council not involving its taking direct measures in connection with settlement of disputes, adjustments of situations likely to lead to disputes, determination of threats to peace, removal of threats to the peace; and suppression of breaches of the peace."

2. Parties to a dispute would be barred from vote on peaceful settlements, and so would "a party involved in a situation." Any division on defining such a party would be decided by any seven votes.

3. Any member may abstain from any decision. If a permanent member abstains from a substantive vote, the decision "shall be made by an affirmative vote of seven members including the affirmative votes of the permanent member not abstaining."

(11): Mr. Gromyko of the Soviet Union declared that the American proposals " at a glance appear directed toward a revision of important provisions of the Charter." Any such attempt to revise the Charter, particularly as to the voting rights, he said was "doomed to failure." "Let us not remain in the clouds; let us come back to earth," he was quoted as declaring (New York Times, August 28, 1947). On last December 13, when only eight vetoes had been interposed (four of them as to the Spanish case) thirty-six Member Nations voted an appeal to the five principal powers to consult with each other as to the "veto." This consultation has not taken place. An examination has indicated that Mr. Johnson's suggestions, if adopted in full, would not have barred any veto that has been interposed to date.

Hamilton Fish Armstrong, Editor of Foreign Affairs and adviser to the U. S. delegation in San Francisco, has written (New York Times Magazine for September 14, 1947):

"But there is nothing in either the letter or spirit of the Charter to forbid members of the United Nations from agreeing, among themselves, in more explicit terms than those used in the Charter, to carry out the organization's principles and purposes, by more efficient methods than those that the Charter itself provides. Indeed, Article 51 of the Charter expressly reserves to members the inherent right of individual or collective self-defense in the event of armed attack against a member."

"In making preparations to do this they would not be planning anything which they said they would not do; they would be planning only what they had said they might have to do, and arranging to do it in spite of difficulties and dangers which they had hoped would not arise."

"The United States Government has announced its willingness to relinquish the right to veto collective action against a nation violating the projected atomic energy controls. Is it now willing to modify its right to veto collective action against a member of the United Nations that makes an armed attack against another member?"

"If so, it might propose that a group of United Nations members enter into a brief supplementary agreement ---a sort of protocol, or "optional clause," open to all---- binding themselves to carry out the Charter obligation to resist armed attack."

"This agreement would come into operation if two-thirds of the signatories decided that collective action had become necessary under the Charter and if the Security Council failed to act. The two-thirds majority is the same as that required under the Rio treaty for hemispheric action."

"Incidentally, we have a sort of precedent for the suggested procedure in what happened in February, 1946, when seven members of the Security Council voted to permit direct negotiations on the part of Britain and France with Syria and Lebanon for the withdrawal of Anglo-French troops. Russia vetoed the proposal. But Britain and France nevertheless complied with the will of the majority of their colleagues."

[\(12\)](#): See: "International Trade Organization: Does Its Charter Offer Hope, Illusion or Menace?" By Benjamin Wham, Chairman of the Association's Committee on Commerce (June Journal; 33 A.B.A.J. 599).

[\(13\)](#): Senator Vandenberg said, on September 4, in his joint broadcast with Secretary of State Marshall:

"I am glad to cooperate again with Secretary of State Marshall on this radio program as I did at the recent historic Inter-American Conference at Rio de Janeiro, which has just terminated its labor. Without thought of partisan politics, Republicans and Democrats upon the delegation of the United States worked in unison, under Secretary Marshall's wise leadership, for the indispensable cause of international peace and security. We practiced the unity we preached. As a result, we got the unity we sought. I pay my warmest respects to all of my colleagues on our delegation."

[\(14\)](#): Senator Vandenberg said, in part, on September 4:

"But that is not all. The framers of this treaty were not satisfied to rest content with mutual and cooperative protection against armed attack at our "regional" gates. They took the broader view, consistent with bitter history and repeated experience, that an aggression far beyond our "region" even on other continents ---may potentially threaten our own "regional" peace."

"They lifted their sights to the horizons of the earth. They meant what they said in that fundamental obligation which I quoted---namely, that any armed attack against an American state shall be considered as an attack against all of them; and they proceeded to spell it out."

"They said that---and I am quoting from the new treaty---they said that 'if the inviolability or the integrity or the sovereignty or the independence of any American state should be affected by an aggression, even though it not be an armed attack, or if it should be affected by an intra-continental or extra-continental conflict, or by any other fact or situation that might endanger the peace of America, they will consult immediately in respect to common action.'"

"This is all-inclusive. There could not be more complete comprehension."

"I may say, in passing, that the delegation of the United States was particularly earnest in urging this idea, that crimes against peace and justices cannot be confined within latitudes and longitudes. We were anxious that the creation of our "region" should imply no lack of interest in world peace outside the "region," or condone war-crimes against humanity wherever they occur."

[\(15\)](#): See the letter of Andrei A. Gromyko, representative of the Soviet Union, to Sir Alexander Cadogan, British delegate, on September 5 (New York Times, September 5, 1947).