

Note: Convening an Emergency Session of the General Assembly Under the ‘Uniting for Peace’ Resolution 377(A)(V)

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INTRODUCTION

On 24 February 2003, the United States and United Kingdom, with the support of Spain, introduced a draft of further Security Council Resolution, the operative part of which provides that the Security Council, “acting under Chapter VII of the Charter of the United Nations, decides that Iraq has failed to take the final opportunity afforded it in resolution 1441 (2002) [and] decides to remain seized of the matter.” However France, with the support of Russia, has introduced a Memorandum emphasizing that the unity of the Security Council must be preserved and that pressure on Iraq must be increased. The Memorandum suggests that “[t]he combination of a clear program of action, reinforced inspections, a clear timeline and the military build-up provide a realistic means to reunite the Security Council and to exert maximum pressure on Iraq.” France thus strongly hints that it would veto the proposed Resolution, and that the unity of the Security Council would be damaged. Against this background, there are strong indications that at least three Member States, the United States, United Kingdom and Australia, are likely to launch military action against Iraq even absent any empowering Security Council Resolution.

This situation, dangerous as it is, has been foreshadowed, and provided for, in a mechanism to convene the General Assembly at 24 hours notice.

Shortly after the start of the Korean War, following Russia’s use of the veto in the Security Council, the United States America proposed the ‘Uniting For Peace,’ Resolution which was passed in 1950. The idea behind the resolution was that if the Security Council could not act as a member State, at that time the USSR, vetoed initiatives that were important for maintaining peace, the General Assembly should take over to keep going the impetus for peace.

The Uniting for Peace resolution procedure has been used ten times since 1950. After Egypt nationalized the Suez Canal in 1956, Britain and France attacked and occupied parts of the canal. Cease-fire resolutions in the Security Council were vetoed by Britain

and France. The United States went to the General Assembly and called for a cease-fire and a withdrawal of forces. An emergency session was held under the "Uniting for Peace" resolution, and in the face of strong resolutions from the General Assembly, it took less than a week for Britain and France to withdraw. Uniting for Peace was again used by the United States to pressure the Soviet Union to cease its intervention in Hungary in 1956, after the Soviet Union had used its veto to prevent the passage of an anti-intervention resolution in the Security Council. Again, an emergency session of the General Assembly was held and the Soviet Union was ordered to stop its intervention in Hungary.

INVOKING UNITING FOR PEACE

The operative part of the Uniting for Peace Resolution provides that the General Assembly:

1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations;

2. Adopts for this purpose the amendments to its rules of procedure set forth in the annex to the present resolution;

Preconditions

There are thus essentially three preconditions for the operation of the resolution:

- (1) There appears to be a threat to the peace, breach of the peace, or act of aggression, and
- (2) There is a lack of unanimity of the permanent members of the Security Council,
- (3) because of this, the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security.

While the resolution would clearly operate if one of the permanent members has exercised its veto, the resolution refers to the duty of the permanent members to seek unanimity as well as to exercise restraint in the use of the veto. Thus it will also apply if a permanent member abstains, provided that the failure to seek unanimity and/or abstention means that the Security Council has failed to exercise its primary responsibility for the

maintenance of international peace and security because of a lack of unanimity of the permanent members.

Next Steps

If these preconditions exist then the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.

Whether the Preconditions Exist for Invoking the Uniting for Peace Resolution

The conditions for invoking the Uniting for Peace resolution are now present.

(1) There is no doubt that there appears to be a threat to the peace, breach of the peace, or act of aggression, in the situation in Iraq, whether one characterizes the threat to the peace, breach of the peace or act of aggression as the imminent invasion of Iraq by the United States, United Kingdom and Australian forces or whether one characterizes it as Iraq's noncompliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles as recognized by the Security Council in Resolution 1441.

(2) The impasse in the Security Council, whereby the United States, United Kingdom and Spain on the one hand, France and Russia on the other, are proposing different solutions, and whereby it is clear that France will veto any resolution to use force in Iraq at the moment, means there is a lack of unanimity of the permanent members, and

(3) The absence of any further resolution of the Security Council following Resolution 1441, in light of the declared intentions of the United States and United Kingdom to be prepared to proceed with the use of force without a further resolution means the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security.

Thus it does appear that the preconditions to invoke the Uniting for Peace resolution do exist.

Procedure:

Only one Member needs to make a request to the Secretary-General for an emergency special session under the resolution 377(A)(V). The Secretary-General shall then communicate the request to the other General Assembly Members.¹ The Secretary-General shall communicate with the other Members "by the most expeditious means of communications available"² and inquire whether the Members concur in the request.³

¹ Rule 9A of the Procedures of the General Assembly provide that "This rule shall apply also to a request by any Member for an emergency special session pursuant to resolution 377 A (V). In such a case the Secretary-General shall communicate with other Members by the most expeditious means of communication available."

² Rule 9(b) of the Procedures of the General Assembly

The emergency special shall be convened within twenty-four hours of the receipt by the Secretary-General of a request from a majority of the Members of the United Nations, or of the concurrence of a majority of Members, or of a request for such a session on the vote of any seven members from the Security Council.⁴

The Secretary-General shall then notify the Members of the United Nations at least twelve hours in advance of the opening of the session,⁵ together with the provisional agenda.⁶

Additional items concerning the matters dealt with in resolution 377 A (V) may be added to the agenda by a two-thirds majority of the Members present and voting.⁷ It is thus important to get all necessary items on the first circulated provisional agenda.

The Assembly proceeds directly to plenary session without previous reference to any committee.⁸ The President and Vice-Presidents for the sessions shall be, respectively, the Chairman of those delegations from which were elected the President and Vice-Presidents of the previous session.⁹

WHAT COULD THE GENERAL ASSEMBLY ACHIEVE?

The General Assembly may then make recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. In practice, it is likely to make a recommendation to:

- Supports the intentions and strategies approved by the Security Council in Resolution 1441
- Endorse an increase in size of UNMOVIC weapons inspectors and their equipment and facilities
- Set timelines for UNMOVIC inspectors to report progress
- Call upon Iraq to comply fully with the UNMOVIC weapons inspections regime;
- Urge all Member States to refrain from the threat or use of force against the territorial integrity or political independence of any state;
- Declare that the use of force against Iraq would be a violation of the Article 2(4) of the United Nations Charter
- Condemn the use of force by any State against Iraq

³ Rule 9(a) of the Procedures of the General Assembly

⁴ Rule 8(b)

⁵ Rule 10 of the Procedures of the General Assembly

⁶ Rule 16 of the Procedures of the General Assembly

⁷ Rule 19 of the Procedures of the General Assembly

⁸ Rule 65 of the Procedures of the General Assembly

⁹ Rule 65 of the Procedures of the General Assembly

Invoking the 'Uniting for Peace' Resolution

- Call upon all States to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;
- Request the Secretary-General to keep Member States informed as to the progress of the implementation of this resolution.

CONCLUSION

While the deadlock between the United States, the United Kingdom and Spain on the one hand and France and Russia on the other results in an effective deadlock, this situation has been anticipated and dealt with in previous crises by calling the General Assembly into emergency session under the Uniting for Peace Resolution. The preconditions of the resolution appear to be satisfied and if a Member State were to make a request to the Secretary General, he would be required to communicate that request to the other Member States and assess whether a majority of members concur. If such a majority do concur, then the meeting would be called and provisional agenda would be circulated.