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The United States Constitution As a Pattern for a World Charter to Outlaw War

Albert H. Angstman*

Perhaps at no other time in the World's history was there such universal condemnation by the rank and file of mankind everywhere of the use of force as a means of either extending national boundary lines or attempting to settle international disputes as at present. The adults of today have twice in their lifetime witnessed the scourge to mankind of two world wars. Future generations are certain to sharply criticise the peace loving people of the world of today who have had the horrors of world wars brought directly home to them twice if the best means known to man is not now adopted to prevent world war III.

It is often assumed that wars are commenced as a means of attempting to settle some dispute. Students of history are about ready to admit, however, that the real cause of wars is the desire of some ambitious leader or leaders to extend the boundaries of his or their country. The existence of some dispute, real or fanciful, is usually put forward as the reason in order to generate enthusiasm on the part of those who must do the fighting, endure the suffering and otherwise bear the burdens.

The uselessness and futility of wars are quite generally conceded. That some means should be found to prevent them is everywhere desired, but the means of preventing them is a question upon which people entertain divergent views and in fact some believe there is no way by which they may be avoid-

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ed. It is quite generally believed that the world must be organized for law and order applicable to nations if wars are to be avoided.

The human family was slow to learn that in a crowded and complex society, life, liberty and property of individuals are better protected by a system of law and order backed by a collective police system than by the force of each individual. Having learned that this is so our present system of administering justice between individuals was slowly developed and perfected. That it is not perfect in any country may be conceded. No one would contend that our system of administering justice under the fundamental law proclaimed by our Constitution has worked perfectly in all cases. It does, however, secure to individual citizens protection in life, liberty and property by a system based upon law and order rather than upon force, and viewed as a whole has worked satisfactorily for more than 150 years.

The conduct of individuals is restrained by enforceable laws prescribing what is right and prohibiting what is wrong. Individuals are thus held responsible to the state or nation for their conduct. Thus far in the evolution of society, nations are not made responsible to any other authority than to themselves. They are not made subject to any enforceable laws prescribing what is right or prohibiting what is wrong. Thus far civilization as a whole has not been organized to deal effectively with an aggressor nation. The nation attacked by an aggressor nation has been forced to go it alone or attempt to induce others to come to its aid.

If the aggressor nation is victorious, its leaders are heroes. They become criminals only if the nation is unsuccessful. That there is widespread demand for casting aside this barbarous method of acquiring property or attempting to settle international disputes is evidenced by the fact that approximately fifty nations or countries participated in the San Francisco Conference which adopted a Charter for the United Nations.

The first purpose of the Charter was stated to be:

"1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; • • •"
This purpose was again definitely declared by unmistakable terms in the preamble of the Charter as will appear from the following extracts therefrom:

"We the peoples of the United Nations determined to save succeeding generations from the scourge of war, * * * and FOR THESE ENDS * * * to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, * * * HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS."

This in some respects bears similarity to the preamble to our Constitution. It was appropriate that the two documents should be strikingly similar, at least in the attempt to preserve peace. The purpose of the World Organization to the several nations so far as it seeks peace and security is exactly the same as that which prompted the union of the states among themselves and the adoption of a constitution to regulate the conduct of those states one toward the other in order to insure domestic tranquility. In other words, the Constitution of the United States stands as a living pattern for a world charter to outlaw wars among nations.

Our Constitution stands as a stalwart example of 48 separate and independent sovereigns controlled in a limited way by another separate and independent sovereign. Each sovereign is supreme within its own sphere. The single sovereignty (the United States) is one of limited jurisdiction, having only such powers as are specifically or by necessary implication delegated to it, and all other powers are reserved to the States or to the people. (Amendment 10). In other words, under the Constitution the United States can do those things only which the Constitution says it may do. The separate states were each retained as independent sovereigns and each possesses unlimited power to regulate and control its own internal affairs.

In dealing with the vital questions of insuring domestic tranquility and providing for the common defense the Constitution of the United States goes directly to the point. Section 9 of Article I provides:

"No state shall, without the consent of congress, * * * keep troops, or ships of war in time of peace, * * * or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."
The single sovereignty, the United States, assumes the responsibility of protecting each of the separate sovereigns against invasion. This responsibility is assumed by Section 4 of Article IV, reading:

"4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."

Thus it will be seen that the invasion of one state by another amounts to an invasion of all the 48 states. An act of aggression by one state against another is an act of aggression against the union as a whole.

It must, of course, be conceded that the perfection of a world organization involves difficulties not present in the union of the states. Pent up hatreds, jealousies, suspicions, and national ambitions must be reckoned with in a world organization. These factors should, however, present no insuperable obstacle to a world organization with limited powers. There were those too who severely condemned the union of the states. During the debates for the adoption of our Constitution it was declared to be "a league with death and a covenant with hell." But no one would so characterize it after surveying the result of its operation for more than 150 years.

In the world of tomorrow we must assume that there will be many international disputes, rivalries, jealousies and ambitions of leaders, but if we are to profit by the two world wars which we have witnessed, we must start out with the assumption that there is no such thing as a legitimate cause as distinguished from a plausible excuse for aggressive warfare. There may and doubtless will be ample causes for disputes but resort to war has been demonstrated to the rank and file of mankind and particularly to those who must bear the burdens of war as futile in attempting to settle those disputes. The common folks have learned through bitter experience that might does not make right.

Since our Constitution is or should be a pattern for a world charter to outlaw war, let us examine the San Francisco Charter to see whether it followed that pattern in any particular, outside of certain features of the preamble. Criticisms of the Charter are not be be taken as criticism of any particular na-
tion or nations. It probably was the best document that then would be accepted by those representing the several nations. Lest it be assumed that the Charter has accomplished and will accomplish the wholesome purposes set out in the preamble, and lest this assumption should lull the peace loving peoples of the world into a false sense of security, let us examine some of its provisions. This will be done not to criticise for the mere sake of criticising but with the hope that a full understanding of what little has been accomplished will serve to stimulate action that may result in achieving at least some of the lofty purposes announced in the preamble of the San Francisco Charter.

Be it understood too that criticisms hereinafter made are not being made by one opposed to world organization nor by one who thinks that wars may not be outlawed effectively. Wars, it should be remembered, do not just "break out." In respect to their origin they are not like earthquakes, tornadoes or epidemics. They are planned, prepared for and conducted by human beings. That which is set in motion by the contriving of men may be controlled and averted by effective organization.

Since the object and purpose of world organization was to prevent acts of aggression, one would suppose that one of the first provisions to be found in the Charter would have been a paragraph forbidding any nation from arming itself and from engaging in a war of aggression. This you will find was not overlooked by the framers of our Constitution. (Sec. 9, Art. I, above quoted.)

Then, again, one would naturally look for a square and unequivocal declaration on the part of the World Organization to protect every nation in the world (or at least every member nation) against invasion by another. This was what our Constitution did with respect to the states. (Sec. 4, Art. I, above quoted.)

Instead of these salutary provisions squarely meeting the point, what do we find in the Charter?

It does not even encourage the peoples of the world to "beat their swords into ploughshares and their spears into pruning hooks," neither does it proclaim that "nation shall not lift up sword against nation." (Isaiah II, 4.) On the contrary, the doors are wide open for each nation to build, maintain and control a military machine without limitation in any way, shape or form. History has proven that the most effec-
tive way of assuring wars is to permit and encourage the building of war machines.

Not only does the Charter fail to irrevocably commit the World Organization to the duty and responsibility of protecting every other nation or even its members against invasion, but the organization does not even have for its unqualified use an international force to protect the individual nations against aggression.

The World Organization functions in this manner; to begin with, it is not a world organization but an organization of only a part of the world. The organization does not embrace all peace-loving people. Membership is confined to "peace-loving states" providing it is the judgment of the organization that they are able and willing to carry out the obligations of the Charter. No method is prescribed by which the states may prove that they are "peace-loving." A new member to be admitted must in any event secure the recommendation of the "Security Council" and obtain a favorable decision of the General Assembly.

The General Assembly consists of representatives from all the member nations.

The General Assembly has no power to make decisions.

It is but a debating society with power to "discuss any questions or any matters within the scope of the present charter * * * and make recommendations to the members of the United Nations or to the Security Council or to both." (Art. 10, Ch. IV.)

It may also consider principles of cooperation in the maintenance of international peace and security including "the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the members or to the Security Council."

In general its authority is confined to two things—it may discuss issues and make recommendations. But note this: the Charter vests the power to act in the Security Council only.

The Security Council consists of eleven members of the United Nations. China, France, Russia, Great Britain and the United States, which will hereafter be referred to as the "big five" are permanent members of the Council.

The other six members are selected by the General Assembly for a two-year term, with a prohibition against the holding of two successive terms.

Each member of the Security Council is entitled to one
vote. On all but procedural matters decisions shall be by an affirmative vote of seven members, including the concurring votes of the permanent members, and providing that a party to a dispute shall abstain from voting. In other words, any one of the big five nations can block any or all decisions of the Security Council.

Any one of the big five holds the veto power over any action proposed by the others.

Thus, by Article 34, the Council is given power to investigate any dispute which might lead to international friction, but if one of the big five votes “no,” any investigation carried on by the others would not be an investigation by the Council.

Again, the Council may under certain prescribed conditions, take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. (Art. 42, Ch. VII.) The force that is placed at the command of the Council is to be created when the emergency arises and is made up by contributions from the member nations upon the call of the Council and in accordance with agreements hereafter to be made. (Art. 43.) But if one of the big five thinks the conditions do not justify action by the Council, it is powerless to act.

Imagine, if you can, the confusion and futility of an attempted American union of the states with any one of a selected few of the states having the veto power over all contemplated united action. And, would any of the 48 states feel secure in the promise of the United States to protect it against invasion if action of the United States could be blocked by the vote of any one of a selected few of the states?

It is certain from an inspection of the Charter that the unity which won the war is not being preserved and continued to perpetuate the peace. The cooperation and pooling of the resources and coordination of the efforts of the United Nations which were so effective in winning the war and suppressing aggression have already shown signs of disintegrating as a collective force to prevent future aggression. The mutual trust and confidence that existed between the United Nations while repelling a common foe has seemingly been displaced by distrust and suspicion when it comes to the point of providing collective security against future aggression.

Of course, the Charter, like our Constitution, provides a method for its own amendment. But here again, unlike our Constitution, a negative vote by any one of the big five prevents action. All proposed amendments to the Charter must
be ratified by two-thirds of the members of the United Nations, including all the permanent members of the Security Council, which as above pointed out includes all of the big five.

Any provision in our Constitution which would have granted the veto power on any amendment to one of a selected few of the states would have spelled its doom. To the extent that the Charter of the United Nations departed from the Constitution of the United States as a pattern, to that extent its provisions are impotent to perfect a world organization that will avert wars.

It is illogical to think of a united world organization where any one of five nations has the power and the right to interfere with contemplated action by all except the one, or even by a two-thirds majority of the whole number of nations which constitute such organization.

The sum total of the present Charter is that it probably will serve to preserve peace so long as all of the big five are able to agree on major issues and so long as their combined strength exceeds that of any combination of nations which may be arrayed against them. But this result would have obtained without the Charter. If on the other hand one or more of the big five chooses to join with the non-members we are in exactly the same situation as heretofore. In case of disagreement among the big five the Charter becomes full of "sound and fury signifying nothing." That this nation realizes this is shown by the fact that it is seriously contemplating compulsory military training during peacetime.

The Charter as it stands can do no harm. That is probably the principal reason why it has been so universally accepted. That it may do some good may also be conceded. So long as nations meet and discuss international problems the chance of war is lessened. It would seem that the meeting of nations, like individuals, would be more effective if they could and would meet unarmed. A meeting when armed to the teeth would seem to promote distrust rather than trust and confidence. Of course, there should be no thought of this nation disarming unless all nations do so.

To accomplish the purposes set out in the preamble of the Charter will require many vital amendments to the Charter itself.

By patient, courageous and earnest effort it is to be hoped that a plan may eventually be devised and an organization perfected which will carry out the purposes declared in the preamble of the United Nations Charter in which the different
nations, large and small, shall have faith that hereafter the conduct of nations toward each other shall be governed by law and order; that might has been supplanted by right and that force will no longer be resorted to as a substitute for the amicable settlement of disputes real or imaginary, or as a means of acquiring territory.

One hopeful outlook for permanent peace is that unquestionably those who must do the suffering, bleeding and dying in case of war—their mothers, fathers, and wives all over the world—would have no difficulty in agreeing to lay aside the implements of warfare and live together in peace and harmony. They are becoming more and more articulate in their desire for peace. Eventually the leaders of the nations will be able to hear the voices of the mass of mankind everywhere and when they do a world organization can and will be perfected that will be effective in avoiding wars.

Reason commands that now is the time to yield to the voice of the common people everywhere and perfect a workable world organization to avert wars. Any other course in the light of modern methods of destruction invites disaster to the human race. There seems no point or justification for the human family to commit itself to self-destruction for lack of capacity to organize and live together, under a system of law and order applicable to all nations large and small. The discovery of atomic energy since the San Francisco Conference is not the reason why the Charter is abortive as a means of averting wars. The organization then perfected was ineffective either with or without the discovery of atomic energy. The only effect of that discovery was to accentuate the need which had previously been recognized for a workable world organization.

Problems of international trade, finance and economics; issues tending to promote social and racial equality; plans designed to assure freedoms to all peoples; and the like may well be subjects of debate by representatives of the world organization and may require years before much of benefit is actually achieved. But these facts should not deter action now to outlaw war by an effective organization limited for the time being to that one issue with the privilege of course of extending the scope of the powers of the world organization as it may later determine with the concurrence of the respective nations.

The duty of the United Nations organization to outlaw war should not be postponed until such time as there may be created a new world order based upon the universal accept-
ance of the doctrine of the brotherhood of man. The latter may and, according to history and the available signs, will take time. The former should be done at once if the leaders of the world are really in earnest in desiring to prevent future wars. The duty to outlaw wars effectively should not await even the re-establishment of a world court to hear and decide international controversies. No controversy justifies the beginning of a war, any more so than does a controversy between my neighbor and me justify my family and me in starting to shoot my neighbor and his family.

When wars are effectively outlawed as in our Constitution between the states, and not until then, can it be said of the boys who lie buried on foreign soil as Woodrow Wilson said on Memorial Day in France in 1919 of the boys who lost their lives in the first world war:

"I like to think that the dust of those sons of America who were privileged to be buried in their Mother country will mingle with the dust of the men who fought for the preservation of the Union; and that as those men gave their lives in order that America might be united, these men have given their lives in order that the world might be united. Those men gave their lives in order to secure the freedom of a nation. These men have given theirs in order to secure the freedom of mankind; and I look forward to an age when it will be just as impossible to regret the results of their labors as it is now impossible to regret the result of the labor of those men who fought for the union of the States."