

ARTÍCULOS

A new life for Uniting for Peace?¹

¿Nueva vida para la Unión Pro-Paz?

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ABSTRACT The United Nations' "Uniting for Peace" resolution is a mechanism that enables the General Assembly to discuss issues vetoed by the Security Council. This resolution was constantly employed during the Cold War and, after decades of disuse, it was reactivated in 2022 against the Russian veto on the invasion of Ukraine. The Assembly has recommended various measures for Uniting for Peace in the exercise of its powers under the Charter of the United Nations. While the Assembly cannot adopt binding measures or authorize the use of force, Uniting for Peace is a relevant political tool in the maintenance of peace and security in the 21st century as well as in offering possibilities for the control and accountability of the Security Council and the use of veto power by permanent members.

KEYWORDS Security Council, General Assembly, peace and security, international organizations.

RESUMEN La resolución «Unión Pro-Paz» de las Naciones Unidas es un mecanismo que habilita a la Asamblea General la discusión de asuntos vetados en el Consejo de Seguridad. Esta resolución fue empleada reiteradamente durante la Guerra Fría y, tras décadas de desuso, fue reactivada en 2022 contra el veto de Rusia a la invasión de Ucrania. La asamblea ha recomendado distintas medidas bajo Unión Pro-Paz en ejercicio de sus poderes establecidos en la Carta de las Naciones Unidas. Si bien la asamblea no puede adoptar medidas vinculantes ni autorizar el uso de la fuerza, Unión Pro-Paz es una herramienta política relevante en el mantenimiento de la paz y seguridad en el siglo XXI, así como ofrece posibilidades para el control y rendición de cuentas del Consejo de Seguridad y el uso de poder de veto por parte de los miembros permanentes.

1. This article is based on the author's LLM thesis (unpublished) at Leiden University: "Uniting for Peace' Resolution: Possible grounds for application in a post-Cold War world", supervised by Professor Niels Blokker and presented in June 2022. This article includes resolutions passed by the General Assembly in its 11th emergency special session up until February 2023.

PALABRAS CLAVE Consejo de Seguridad, Asamblea General, paz y seguridad, organizaciones internacionales.

Introduction

On 24 February 2022, Russia launched a full-scale invasion into the territory of Ukraine. The United Nations Security Council met to discuss the issue the next day, and a draft resolution condemning the aggression was put forward by the United States and Albania.² As expected, Russia vetoed the resolution in the exercise of its veto powers as a permanent member of the Council under article 27.3 of the UN Charter.

The affair did not end there, however. On 27 February 2022, the Council adopted resolution 2623 with 10 votes in favor, 1 against (Russia), and 3 abstentions (China, India, and the UAE). By this resolution, the Council acknowledged its “lack of unanimity” that prevented the exercise of its “primary responsibility” to maintain international peace and security.³ Accordingly, the Council convened an emergency special session of the General Assembly to discuss the question of Ukraine. The following day, on February 28th, 2022, the 11th Emergency Special Session of the General Assembly began.

The Council triggered the procedure contemplated in General Assembly resolution 377 (V), known as “Uniting for Peace”. This resolution had been activated for the last time in 1997 when requested by the majority of the Assembly in 1982 at the initiative of the Council. Despite not being expressly included in the UN Charter, interpretation of its provisions and practice of states since the founding of the organization has legitimized the powers of the Assembly when discussing matters vetoed by the Council.

Uniting for Peace was a mechanism primarily used during the Cold War, given the paralysis of the Council by the vetoes of the rival superpowers. Particularly, the continued use of the veto by the Soviet Union in the early years of the UN motivated the US and its allies to devise a procedure to transfer the discussion of threats and breaches of peace and acts of aggression from the Security Council to the General Assembly, so that the latter body could make the relevant recommendations to the situation.

Between 1950 and 2022 Uniting for Peace was activated 13 times, with 11 of them consisting of emergency special sessions of the Assembly. After the end of the Cold War, new conflicts and exercises of veto power seem to renew the relevance of resolution 377, seven decades after its creation.

2. UN Doc S/2022/155 (25 February 2022).

3. UNSC resolution 2623 (27 February 2022) UN Doc S/RES/2623.

Creation of Uniting for Peace

The Charter of the United Nations adopted, at the 1945 San Francisco Conference provided in article 1, that the first and main purpose of the organization was to “maintain international security”. To this end, the UN would have powers to “take effective collective measures to prevent and remove threats to the peace, and to suppress acts of aggression or other breaches of the peace”.

The UN’s collective security system would be based on the Security Council, whose “primary responsibility” would be the maintenance of international peace and security under article 24 of the Charter. The Council’s powers included the peaceful settlement of disputes under chapter VI and especially the adoption of coercive measures to maintain peace and security under chapter VII of the Charter. The Council would consist of 11 members (15 since 1965), of whom 5 were permanent members with veto power. These were the five victorious allied powers of World War II: the United States, the United Kingdom, France, the Soviet Union, and the Republic of China.

On the other hand, the General Assembly was created as the body representing all UN member states. The Assembly would have general powers to discuss “any matters or questions” relating to the Charter or UN organs and make relevant recommendations to the Council or the organization’s members (article 10). Unlike Council decisions, Assembly resolutions would be non-binding recommendations.

Regarding international peace and security, the Charter assigned certain powers to the Assembly in article 11, including “discussing any questions relating” to these matters and making recommendations on those questions to member states, the Security Council, or both. The Assembly should also refer to the Council any situation requiring action before a discussion by the former.

The onset of the Cold War and the subsequent division of the world into spheres of influence between the US and the USSR would impact the functioning of the organization in its early years. Between 1945 and 1970, the USSR would exercise 107 vetoes in the Security Council, as opposed to 4 from the United Kingdom, 3 from France, 1 from Nationalist China and the UK, and none from the US (Blokker, 2020: 54). The lack of unanimity due to the constant Soviet vetoes paralyzed discussions and decision-making in the Council, preventing it from fulfilling the functions assigned to it by the Charter.

Tensions reached a high point in June of 1950 when North Korean troops supported by the USSR and the People’s Republic of China invaded South Korea, starting the Korean War. At that time, the USSR had withdrawn from the Council in January of 1950 in protest at the non-recognition of the communist government in Beijing as China’s legal representative. In virtue of this absence, the Council adopted a series of resolutions ordering the use of military force to restore peace and security on

the peninsula and assist South Korea against aggression.⁴ The USSR returned to the Council in August 1950 and continued to block any proposal for the resolution of the armed conflict in Korea.

Faced with this deadlock, the US and its allies decided to take the initiative in the Assembly where they were the majority of the member states. On November 3RD, 1950, the General Assembly adopted resolution 377 (V) by 52 votes against 5, with 2 abstentions.

The preamble of Uniting for Peace recognized the UN's essential mission of maintaining international peace and security and the primary responsibility of the Security Council, as well as the "duty" for its permanent members to "seek unanimity and to exercise restraint in the use of the veto". It also acknowledged that a failure in the Council's action did not prevent the Assembly from exercising its rights and duties regarding the preservation of international peace and security. In other words, the resolution suggested that *mala fide* use of the veto prevented the UN from fulfilling its mission and thus requested a legal solution to fulfill it (Carswell, 2013: 463).

Turning to the operative part of Uniting for Peace, the Assembly was clear:

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 to make 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 an 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 (UN General Assembly, 1950, paragraph 1).

The importance of Uniting for Peace laid in the convening of an emergency special session of the Assembly to discuss matters vetoed by the Council provided that the following requirements were met: i) lack of unanimity of the members of the Council, ii) caused by the exercise of the veto power of one or more of the permanent members, iii) in any of the situations described in article 39 of the Charter: a threat to the peace, a breach of the peace or an act of aggression.

These conditions were confirmed by the International Court of Justice (ICJ) half a century later in the "Construction of a Wall" advisory opinion:

4. UNSC resolution 82 (25 June 1950) UN Doc S/RES/82; UNSC resolution 83 (27 June 1950) UN Doc S/RES/82; UNSC resolution 84 (7 July 1950) UN Doc S/RES/84.

The procedure provided for by that resolution is premised on two conditions, namely that the Council has failed to exercise its primary responsibility for the maintenance of international peace and security as a result of a negative vote of one or more permanent members, and that the situation is one in which there appears to be a threat to the peace, breach of the peace, or act of aggression (ICJ, 2004: 18-19, paragraph 30).

As to the transfer of matters to the Assembly by the Council, authors argue that it is a procedural matter under article 27.2 of the Charter which requires the affirmative vote of the majority of the Council (7 votes in 1950, 9 since 1965) and is not subject to veto (Carswell, 2013: 472; Woolsey, 1951: 134). The subsequent practice of the Council of convening emergency special sessions of the Assembly despite votes made against the respective resolution by permanent members was indeed recognized as procedural under article 27.2, as well as not in contravention of article 20 (Eick, 2012: 668).⁵

In the case of the Assembly invoking Uniting for Peace through the majority of its members, commentators suggest the Assembly is the master of its agenda and thus has the power to determine whether the Council has failed to discharge its responsibilities (Andrassy, 1956: 578). On the other hand, Uniting for Peace provides an opportunity for the Council to “certify” its failure via a procedural vote as stated above (Ramsden, 2016: 7).

Scholars also point out that Uniting for Peace is based on a “broad” or “creative” reading of the UN Charter concerning the Assembly’s powers of discussion and recommendation in matters of international peace and security (Blokker, 2020: 53; Carswell, 2013: 458). Therefore, resolution 377 did not create new prerogatives for the Assembly but revealed the potential of the Charter and re-legitimized such powers (Reicher, 1981: 48).

Cases of application of Uniting for Peace

Throughout its existence, Uniting for Peace has been activated on the following occasions:

As we can see, the practical application of Uniting for Peace has been inconsistent over time, being activated most of the time during the Cold War. Only two emergency special sessions have been convened since 1990. In the case of the 10th emergency special session on the Israeli-Palestinian conflict, it has met annually until 2018.

Most of the cases have been transferred from the Council to the Assembly through a resolution of the former. Except for 1956 (Suez) and 1982, this mechanism was activated by Western countries in the face of Soviet and Russian vetoes.

5. Article 20 of the Charter provides for regular and special sessions of the Assembly, the latter of which can be convened at the request of either the Council or the majority of the members of the Assembly.

Table 1. Uniting for Peace resolution cases of application.

Year	Emergency special session	Activation	Veto	Issue
1951	—	Security Council (Resolution 90) ¹	USSR	Korean War
1956	1 st	Security Council (Resolution 119)	UK/France	Suez Crisis
1956	2 nd	Security Council (Resolution 120)	USSR	Soviet invasion of Hungary
1958	3 rd	Security Council (Resolution 129)	USSR	Lebanon Crisis
1960	4 th	Security Council (Resolution 157)	USSR	Congo Crisis
1967	5 th	General Assembly	— ²	Six-Day War
1971	— ³	Security Council (Resolution 303)	USSR	East Pakistan refugee crisis
1980	6 th	Security Council (Resolution 462)	USSR	Soviet invasion of Afghanistan
1980	7 th	General Assembly	USA	Palestine
1981	8 th	General Assembly	US/UK/France	Question of Namibia
1982	9 th	Security Council (Resolution 500)	US	Golan Heights
1997	10 th	General Assembly	US	Israeli-Palestinian conflict
2022	11 th	SC (Resolution 2623)	Russia	Russian invasion of Ukraine

1. By this resolution, the Council withdrew the question of Korea from its agenda, allowing the Assembly to include it in its own to be discussed in its 5th regular session.

2. In this case there was no veto in the Council, but the USSR requested the convening of the 5th Emergency Special Session of the Assembly because its resolution proposal did not reach the 9 votes necessary to be adopted in the Council.

3. An emergency special session of the Assembly was not convened in this case since the 26th regular session was meeting at the time of the referral, meaning the Council transferred the matter to the Assembly for inclusion in its agenda.

Source: Author's elaboration from Security Council Report (2013).

On the other hand, only on four occasions the Assembly, through the majority of its members, requested the activation of Uniting for Peace. In these four cases, it was either the USSR (1967) or non-aligned countries (Senegal in 1980, Zimbabwe in 1981, and Qatar in 1997) who requested the convening of emergency special sessions against vetoes of the US and its allies (Zaum, 2008: 160-161).

If we analyze the geographic regions of the application of Uniting for Peace, 6 of its 13 activations were related to conflicts in the Middle East. From the remainder, 2 were in Eastern Europe (1956 and 2022), 2 in Africa (1960 and 1981), 2 in South Asia

(1971 and 1980), and 1 in East Asia (1951). It has never been activated for situations in areas such as Western Europe, the Americas, Oceania, or Southeast Asia involving the use of the veto in the Council.

Finally, Uniting for Peace has been applied mostly to armed conflicts of an interstate nature, but also to civil wars (Congo in 1960, for example), issues related to decolonization (Namibia in 1981), or the Israeli occupation of Palestinian territories (in 1980 and 1997).

What can the Assembly do under Uniting for Peace?

The Assembly's practice has demonstrated a diverse catalogue of measures and recommendations when it has acted under Uniting for Peace. These can be divided into those that involved the use of force and those that did not.

Measures involving the use of force

The first applications of Uniting for Peace were concerning the use of force for the restoration of international peace and security given the Council's deadlock. This aspect has proven controversial since the Charter in article 2.4, which provides a general prohibition of threat and use of force as one of the first and foremost principles of the UN system. Exceptions are expressly recognized in the right of individual and collective self-defense of article 51 and actions authorized by the Security Council under chapter VII.

In the initial case of the Korean War, the Council removed this item from its agenda (resolution 90) so the Assembly could debate it. The Assembly then adopted resolution 498 (V) in February 1951, which did not expressly refer to Uniting for Peace, but stated:

The General Assembly,

Noting that owing to the lack of unanimity of its permanent members, the Security Council has been unable to exercise its primary responsibility for the maintenance of international peace and security concerning the Chinese communist intervention in Korea, [...]

3. Affirms the determination of the UN to continue its action in Korea to confront the aggression.

4. Calls upon all States and authorities to continue to cooperate fully with the United Nation's action in Korea (UN General Assembly, 1951).

The Assembly's recommendations in this particular case have divided commentators. For some, it did not authorize anything new, since the Council had already authorized forceful actions before the USSR returned to the Council to exercise veto

powers (Zaum, 2008: 169). Others believe the Assembly merely reaffirmed South Korea's legitimate defense against foreign aggression (Johnson, 2014: 111-112). In Tomuschat's (2008) view, resolution 498 is the only case in which the Assembly has recommended the use of force against the opposition of a permanent member of the Council.

At the 1st emergency special session convened under Uniting for Peace, for the Suez Crisis of 1956, the Assembly answered with the creation of the first peacekeeping mission in UN history: the United Nations Emergency Force (UNEF I) established by resolution 1001.

In subsequent emergency special sessions, the Assembly would revert to the issue of peace missions previously created by the Council, such as extending the mandate of the United Nations Observer Group in Lebanon (UNOGIL, resolution 1237) or confirming the one of the United Nations Operation in the Congo (ONUC, resolution 1474).

However, because of Cold War tensions, some states refused to pay the expenses assigned by the Assembly to some peacekeeping missions, most notably France over UNEF (which was created by the Assembly and not the Council, where permanent members had veto powers) and the USSR over ONUC. The impartiality of the latter was questioned, given Soviet support for the Lumumba government and American-Belgian assistance to separatist forces in the Katanga region.

It was in this context that the ICJ made an important pronouncement in the *Certain Expenses* advisory opinion. The Court held about the responsibility of the Council and the role of the Assembly in the field of international peace and security:

The responsibility conferred is "primary", not exclusive. This primary responsibility is conferred upon the Security Council, as stated in article 24, "in order to ensure prompt and effective action [...]"

The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. Article 14 authorizes the General Assembly to: recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations (ICJ, 1962: 163).

Furthermore, concerning the "action" that the Council may take at the request of the Assembly:

The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not merely to general questions relating to peace and security, but also to specific cases brought before

the General Assembly by a State under Article 35, in its first sentence empowers the General Assembly, using recommendations to States or the Security Council, or to both, to organize peacekeeping operations, at the request, or with the consent, of the States concerned [...].

The word “action” must mean such action as is solely within the province of the Security Council. It cannot refer to recommendations that the Security Council might make, for instance under Article 38, because the General Assembly under Article 11 has a comparable power. The “action” which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely “action concerning threats to the peace, breaches of the peace, and acts of aggression” (ICJ, 1962: 164-165).

It has been pointed out that this advisory opinion implicitly legitimized the constitutionality of Uniting for Peace, having this authority to recommend measures that do not contemplate “coercive action” against states (Sands and Klein, 2009: 32), thus validating its capacity to establish and finance peacekeeping missions. Despite the ICJ’s favorable view, all subsequent operations of this kind were created by the Council and not the Assembly, with the latter retaining powers on the apportionment of expenses of such missions (Bothe, 2016: paragraphs 35-36).

Other measures

Among the measures falling short of the use of force, the Assembly may recommend as one of the most important concerns the issuing of sanctions.

In 1951, the Assembly called for an arms and oil embargo against the People’s Republic of China for its invasion of Korea (resolution 500), and in 1956 for an arms embargo on the zone of the Suez conflict (resolution 997). In 1960 it went even further and urged all states to refrain from providing military assistance to any of the parties to the conflict in the Congo (resolution 1474), which included both the Kinshasa government and armed groups. Three decades later it would again call for military sanctions against South Africa (resolution ES-8/2) and Israel (resolution ES-9/1) for their respective occupations of Namibia and the Golan Heights.

In the last two cases, the Assembly would also recommend political, economic, and cultural sanctions: concerning South Africa, it called on states to cease “individually and collectively, all dealings” with this nation “in order to isolate it politically, economically, militarily and culturally”. It further urged the Council to impose “broad and mandatory sanctions” against Pretoria.⁶ In the case of Israel, it called to sever “diplomatic, trade and cultural ties” with that state to “isolate it in all fields”.⁷

6. UNGA resolution ES-8/2 (14 September 1981) UN Doc A/RES/ES-8/2.

7. UNGA resolution ES-9/1 (15 February 1982) UN Doc A/RES/ES-9/1.

It should be remembered that sanctions recommended by the Assembly are entirely voluntary since only the Council can impose mandatory sanctions under article 41 of the Charter. Each state will accordingly determine the application of unilateral sanctions and for how long they will apply.

Another interesting application of Uniting for Peace was the recommendation of “increased and sustained” support for the South West Africa People’s Organization in its struggle for Namibian independence, as well as providing military assistance to the “frontline states” (for example, Angola, Mozambique, Zimbabwe) in order to enable them to defend themselves against “renewed acts of aggression by South Africa”.⁸

It is necessary to recall that the 8th emergency special session was convened at the request of the Assembly and not by Council, with the latter not having ordered military action against South Africa for its actions in Namibia, unlike its decisions in 1950 and 1951 in the Korean War.

Likewise, the practice of the Assembly both with and without Uniting for Peace has been to go against the use of force rather than recommend it. The practice under resolution 377 has also gone in that direction, deploring acts of aggression against the political independence and integrity of states and calling for the cessation of hostilities and the withdrawal of foreign troops (Barber, 2020: 150).

Another common measure under Uniting for Peace (and outside it) is the urging of the Assembly to the Council in order to enable it to properly fulfill its functions. Since the 1990s, it has been observed the Council has engaged in consultations with all members to decide on enforcement actions due to the constant pressure and influence of the Assembly (Barber, 2020: 154).

Other concrete measures of the Assembly under Uniting for Peace have been the establishment of a Commission of Inquiry in Hungary (resolution 1004), assisting refugees from the Indo-Pakistani War (resolution 2790), and requesting an advisory opinion from the ICJ on the legality of the wall built by Israel in the West Bank (resolution ES-10/14).

The General Assembly’s resolutions in the 11th emergency special session

Since February 2022, the General Assembly has adopted a series of resolutions at its 11th emergency special session regarding the invasion of Ukraine.

The first of these (resolution ES-11/1, “Aggression against Ukraine”) was adopted on 2 March 2022 by a large majority of 141 votes in favor, 5 against, and 35 abstentions. The Assembly strongly deplored the aggression and demanded Russia immediately cease the use of force against Ukraine and withdraw all its forces from Ukrainian ter-

8. UNGA resolution ES-8/2.

ritory. It also condemned all violations of international humanitarian law and human rights and urged a peaceful settlement of the conflict.⁹

The sessions have been resumed through 2022 and new resolutions were adopted in each of them. Resolution ES-11/2 (140 votes against 5, with 38 abstentions) of 24 March on “Humanitarian consequences of the aggression against Ukraine” called for the protection of civilians and non-combatants in the war.¹⁰

On 7 April 2022, resolution ES-11/3 (93 votes against 24, with 58 abstentions) suspended Russia from the United Nations Human Rights Council following allegations of “serious and systematic violations and abuses of human rights” during the war.¹¹ This is the second time that a member of the Human Rights Council has been expelled from this body, following Libya’s expulsion from the Council in 2011 for atrocities committed during the Civil War in this country (resolution 65/265) following the resolution that created the Human Rights Council in 2006 (resolution 60/251).¹²

The next resolution was resolution ES-11/4 of 13 October 2022 with 143 votes in favor, 5 against, and 35 abstentions; being the one that has attracted the most support in the Assembly since the beginning of the invasion. The resolution condemned the annexation referendums organized by Russia in the Ukrainian regions of Donetsk, Kherson, Luhansk, and Zaporizhzhia, and called upon all states and organizations to refrain from recognizing such acts of annexation.¹³

A month later, on resolution ES-11/5, adopted on November 14th, 2022 (94 votes against 14, with 73 abstentions), the Assembly declared Russia’s responsibility for the damage caused to Ukraine in the invasion and established an “international register of damage” to collect evidence and information concerning such damages.¹⁴

The last resolution to date was adopted on February 23, 2023, on the eve of the first anniversary of the invasion of Ukraine. Resolution ES-11/6, entitled “Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine”, the Assembly reiterated its condemnation of the war and called for increased efforts to reach a peaceful settlement of the conflict, as well as for “ensuring accountability for the most serious crimes under international law committed on the territory of Ukraine” through investigations and prosecutions both at national and international level.¹⁵

9. UNGA resolution ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1.

10. UNGA resolution ES-11/2 (24 March 2022) UN Doc A/RES/ES-11/2.

11. UNGA resolution ES-11/3 (7 April 2022) UN Doc A/RES/ES-11/3.

12. Resolution 60/251 provides that a two-thirds majority of the members of the Assembly can suspend the rights of a member of the Human Rights Committee that commits “gross and systematic” violations of human rights. See UN Doc A/RES/60/251.

13. UNGA resolution ES-11/4 (13 October 2022) UN Doc A/RES/ES-11/4.

14. UNGA resolution ES-11/5 (14 November 2022) UN Doc A/RES/ES-11/5.

15. UNGA resolution ES-11/6 (23 February 2023) UN Doc A/RES-11/6.

Challenges, criticisms, and defense of Uniting for Peace

The revival of Uniting for Peace in the face of the war in Ukraine has meant a new impetus in the maintenance of international peace and security in the post-Cold War period. Only two applications of this resolution after 1990 reflect the trends and functioning of the UN over the decades.

Uniting for Peace is first and foremost a political mechanism and as such its application over time has been selective: not all vetoes in the Council have resulted in emergency special sessions in the Assembly, but only in a handful of limited situations. As we saw before, there were more invocations of Uniting for Peace in the 1950s and early 1980s, activating sporadically in other periods.

After the end of the Soviet Union, the use of the veto seemed to be moderated in the Security Council, at least between 1990 and 2000 when the veto was used only nine times and more than a thousand resolutions were adopted. Among the measures adopted under this new consensus is the authorization of armed interventions such as the one in Kuwait, as well as the creation of international criminal tribunals for the conflicts in Yugoslavia and Rwanda.

However, the origins of Uniting for Peace cannot be forgotten. In the opinion of certain authors, it reflected the intention of the US and its allies to create an alternative collective security system based not on the consensus of the Council but on the majority present in the Assembly (White, 2018: 309). Since the 1960s, the mass admission into the UN of decolonized countries not aligned with the superpowers (the so-called “Third World”) to form the current 193 member states organization has given space to volatile majorities and unpredictability in the Assembly.

As a result, the West has less influence than it had in the first decades of the organization. We saw Third-World countries activated Uniting for Peace from the Assembly and adopted resolutions critical of allies of Western powers. An example of this was the aforementioned resolution ES-9/1 on the Golan Heights, which declared that Israel was not a “peace-loving state” and thus implicitly suggested its expulsion from the UN (Zaum, 2008: 161).¹⁶

We can also find a concrete example of selectivity in the use of Uniting for Peace and tensions in the Assembly in the Kosovo War of 1998 through 1999. Western powers suggested the activation of Uniting for Peace in the face of the impossibility of reaching agreements on the matter in the Council. However, they could not ensure that most developing countries in the Assembly would stand with Yugoslavia in the event of Western actions in Belgrade, thus defeating the purpose of the resolution. Faced with the ineffectiveness of the UN, NATO launched a military campaign in

16. Article 4 of the UN Charter opens membership of organization to “all other peace-loving states which accept the obligations” of the Charter.

the Balkans relying on “humanitarian intervention”. Therefore, Uniting for Peace was “conveniently forgotten” in the case in question (White, 2018: 312; Zaum, 2008: 165-166).

The Assembly’s reluctance to challenge the permanent members of the Council and fear to fall out of favor with them, both during and after the Cold War, has been proposed as another reason for the fading use of Uniting for Peace . The instability and unpredictability of the majorities have meant Council power no longer has clear majorities in the Assembly to defend their interests, with Uniting for Peace becoming a “double-edged sword” for its original creators (Carswell, 2013: 477-479).

These questions, among others, have led certain authors to reject the usefulness of Uniting for Peace nowadays. Johnson (2014: 166 and ss.) bases his argument on the fact that the Assembly meets all year long without the need to convene emergency sessions and the body can make recommendations in the field of international peace and security. It may also recommend measures such as embargoes without reference to Uniting for Peace during regular sessions and, additionally, it cannot recommend the use of force outside the right of collective or individual self-defense of article 51.

In this sense, the Assembly has acted without previously activating Uniting for Peace against situations vetoed in the Council. In recent years, it has adopted resolutions condemning human rights violations in the Syrian Civil War (resolution 66/253 B) and creating a mechanism to investigate atrocities committed in that conflict (resolution 71/284), as well as rejecting Russian annexation of Crimea in 2014 (resolution 68/262).

Other authors have defended the current validity of Uniting for Peace. Barber points out that, while not a prerequisite for action, the Assembly may showcase the gravity of the issue by convening an emergency special session and thus demonstrate the Council’s failure to fulfill its mission. The Assembly’s recommendations would enjoy greater political legitimacy and pressure the Council to take appropriate action (Barber, 2021: 15) The same author believes that the transfer from the Council to the Assembly has the political advantage of exerting pressure on the permanent member who exercised the veto and reaffirming the Council’s primary responsibility in peace and security matters.¹⁷

Responding to Johnson’s criticisms cited above, Richardson is of the view that resolution 377 is an “established narrative” of the Assembly and that it is implicitly present in some resolutions such as the aforementioned resolution 66/253 B of 2012: albeit adopted during regular sessions and without explicit reference to Uniting for Peace the Assembly deplored the failure of the Council to ensure compliance with its decisions to end the conflict and protect civilians, criticizing the vetoes of Russia and China on the matter (Richardson, 2014: 139).

17. Rebecca Barber, “What can the UN General Assembly do about Russian Aggression in Ukraine?”. *EJIL Talk*, 26 February 2022. Available at <https://bit.ly/3Qztzt8>.

Back to the invasion of Ukraine, its activation in the conflict has not been without criticism: although six different resolutions have been adopted during the 11th emergency special session, none of them contain concrete measures in the field of collective security to confront aggression or in the coordination of unilateral sanctions against Russia (Arcari, 2022: 10-11, 17-18). Scholars have proposed the Assembly could act as a forum to certify if such unilateral sanctions are valid under international law in order to prevent illegal measures and contribute to the obligation of states to cooperate to end violations of international law (Barber, 2022; Ramsden, 2022). However, this has not occurred to date.

In this context, the International Court of Justice has recently confirmed the current value of Uniting for Peace. Shortly after the invasion began, Ukraine filed a lawsuit against Russia at the ICJ under the 1948 Genocide Convention alleged by Moscow as justification for its actions in Ukraine. The Court issued a Provisional Measures Order calling Russia to suspend the invasion, giving as a basis resolution ES-11/1, which condemned the aggression and expressed grave concern for its humanitarian consequences.¹⁸ Consequently, the Court concluded Ukraine has a plausible right to be protected before a judgment is handed.

Uniting for Peace 2.0?: The Standing mandate resolution

The veto of the permanent members of the Security Council has been one of the most controversial aspects of the UN since its creation. Kelsen, writing in 1946, predicted that:

A permanent member of the Security Council may exercise its veto right not only in its affairs but also in the interest of another state. Hence the members who have no such right may be induced to secure for themselves the friendship and protection of one of the five great powers. [...] The veto right of the five permanent members of the Security Council may lead to a political system of more or less open clientage, that is to say, to a dismemberment of the Organization into five groups of states, each of them taking advantage of the privilege of its patron (Kelsen, 1946: 1119-1120).

The permanent members of the Council and their use of the veto changed over the decades. France and the United Kingdom are no longer the colonial powers of the past and have not vetoed any resolution since 1989.¹⁹ The USSR was dissolved in 1991 and succeeded by the Russian Federation. China is no longer represented by Taiwan's nationalist government, but by the communist People's Republic of China since 1971. The US, for its part, began using the veto in 1970.

18. International Court of Justice, *Ukraine v. Russian Federation*, Provisional Measures Order of 16 March 2022, paragraphs 76-77. Available at <https://bit.ly/3OLJK50>.

19. The last time they did was alongside the US in order to block a draft resolution condemning the 1989 US invasion of Panama. See UN Doc S/21048.

Since the 2000s the use of the veto began to increase, especially after the 2001 September 11 attacks in the US. From 2000 to September 2022, the US has exercised 14 vetoes mainly to the Israeli-Palestinian conflict. China has vetoed 14 resolutions, all together with Russia, on issues such as Venezuela, Syria, Myanmar, and North Korea. Russia has vetoed 30 resolutions in such cases, and in Yemen, Georgia, and Ukraine.²⁰

The Charter gives veto power to the permanent members of the Council but does not require them to explain or justify the reasons leading to block a proposal. This is particularly critical in situations of serious human rights abuses or international crimes resulting from threats or breaches of the peace.

The Assembly took an important step on 26 April 2022 when it adopted by consensus resolution 76/262, entitled “Standing mandate for a General Assembly debate a veto is cast in the Security Council”. This resolution was adopted at the 76th ordinary session (not at the 11th emergency special session) on the initiative of Liechtenstein and has as its explicit basis the powers of discussion and recommendation of the Assembly of articles 10 and 12 of the Charter.

The main provisions of the Standing mandate are the following:

1. Decides that the President of the General Assembly shall convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation.
2. Also decides, on an exceptional basis, to accord precedence in the list of speakers to the permanent member or permanent members of the Security Council having cast a veto.
3. Invites the Security Council, per Article 24 (3) of the Charter of the United Nations, to submit a special report on the use of the veto in question to the General Assembly at least 72 hours before the relevant discussion in the Assembly (UN General Assembly, 2022).

This is a decisive step taken by the Assembly to ensure a certain degree of accountability from the Council concerning veto use. What does the Standing mandate mean for Uniting for Peace present and future?

First, the Standing mandate seems to respect the existence and functioning of Uniting for Peace, since it will not apply to situations the Assembly is discussing under emergency special sessions convened under the latter mechanism.

Next, both resolutions pursue different goals: Uniting for Peace was created when the Assembly did not meet all year round and an emergency procedure was necessary

20. “Vetoes – UN Security Council Meetings & Outcomes Tables”, Dag Hammarskjöld Library. Available at <https://bit.ly/3Ov46OQ>.

to discuss matters vetoed in the Council. Under resolution 377, the Assembly meets in emergency special sessions to discuss such matters and make the appropriate recommendations to restore international peace and security. It has even been suggested that the convening of emergency sessions by the Council under Uniting for Peace is a challenge to the legitimacy of the veto in question (Carswell, 2013: 472). But we already know that Uniting for Peace has only been activated in some cases and not in all episodes of vetoes in the Council.

On another hand, resolution 76/262 aims for transparency in the Council regarding the use of the veto. Each time a proposal is vetoed, the Assembly must meet within 10 working days (not in 24 hours as stated in Uniting for Peace) following the respective veto to proceed to a debate on its use in the particular case, especially the reasons for the permanent member who exercised this prerogative.

Both Uniting for Peace and Standing mandate are based on the aforementioned powers of the Assembly, as well as on the “primary responsibility” of the Council under article 24 of the Charter, its performance on behalf of all UN members, and the mandate to discharge its functions following the purposes and principles of the organization. The Charter also mandates the Council to submit annual and special reports to the Assembly for its consideration, opening space to political and legal accountability of the decisions of the Council (Peters, 2012: 780).

It remains to be seen how the interaction between the two resolutions will be, but it is likely that in situations that the Council deems urgent, it will decide to transfer the matter to the Assembly under Uniting for Peace rather than wait for the Assembly to convene a debate under the Standing mandate.

Conclusions

Uniting for Peace was a product of Cold War tensions. The pro-Western majority of the General Assembly devised a mechanism to confront the constant vetoes of the USSR in the Security Council in the context of the Korean War. Over time, resolution 377 gained wide acceptance by the international community as a political tool framed within the UN’s collective security system.

The Assembly soon took advantage of the Uniting for Peace’s potential to recommend forceful actions in Korea, as well as arms embargoes and the creation of peacekeeping missions. However, the original enthusiasm of Uniting for Peace faded over time and nine out of the eleven emergency special sessions convened under this resolution were during the Cold War.

2022 seemed to return us to the starting point of Uniting for Peace. Once again, a Russian veto on a large-scale invasion of another sovereign state motivated the US and its allies to transfer the matter from the Council to the Assembly for discussion and recommendation of measures to restore international peace and security. This

symbolic renewal of Uniting for Peace grants it a new life within the international law of the 21st Century.

The current 11th Emergency Special Session has adopted different resolutions and is expected to resume meetings as long as the war continues in Ukraine. Not all resolutions have met the same level of support, but concrete steps have been taken against Russia by declaring its responsibility for damages and expelling it from the Human Rights Council. This adds to other past measures taken by the Assembly that fall short of the use of force, such as requesting an advisory opinion to the International Court of Justice on the Wall issue. The impact of the Assembly's practice in emergency special sessions may result in future invocations of Uniting for Peace for other situations where vetoes have been cast in the Security Council.

In any case, Uniting for Peace respects the separation of powers between the Council and the Assembly. Their respective powers are determined by the Charter and not by resolution 377. The Assembly cannot adopt binding decisions like the Council, nor can it undo a veto issued in the Council. Veto power remains the prerogative of the five permanent members of the Council, and reform in this regard seems unlikely in the short term. Also, the use of force remains the uncontested monopoly of the Council always exposed to the veto.

The fact that the Assembly is the body that brings together all the member states of the UN offers the possibility for the international community to express its opinion on the use of the veto in situations of article 39 of the Charter and thus send a political signal. This is striking when a large majority of the Assembly passes a resolution condemning massive atrocities and wars of aggression in which a veto was used involving the Council. Resolution 377 is a monitoring mechanism to increase the Council's accountability to the Assembly, in addition to the recent Standing mandate adopted by the Assembly in April 2022. In this way, Uniting for Peace and its recent activation in the face of the war in Ukraine confirms the role of the Assembly in the maintenance of international peace and security.

References

- ANDRASSY, Juraj (1956). "Uniting for Peace". *American Journal of International Law*, 50 (3): 563-582. DOI: [10.2307/2195507](https://doi.org/10.2307/2195507).
- ARCARI, Maurizio (2022). "The conflict in Ukraine and the hurdles of collective action". *Questions of International Law*, 93: 7-25.
- BARBER, Rebecca (2020). "A survey of the General Assembly's competence in matters of international peace and security: In law and practice". *Journal on the Use of Force in International Law*, 8 (1): 115-156. DOI: [10.1080/20531702.2020.1776505](https://doi.org/10.1080/20531702.2020.1776505).
- . (2021). *The powers of the General Assembly to prevent and respond to atrocity crimes: a guidance document*. Brisbane: Asia-Pacific Centre for R2P.

- BLOKKER, Niels (2020). *Saving Succeeding Generations from the Scourge of War: The United Nations Security Council at 75*. Leiden: Brill Nijhoff.
- BOTHE, Michael (2016). "Peacekeeping Forces". In *Max Planck Encyclopedia Public of International Law* (online edition). Available at <https://bit.ly/449fLbQ>.
- CARSWELL, Andrew (2013). "Unlocking the UN Security Council: The *Uniting for Peace* Resolution". *Journal of Conflict and Security Law*, 18 (3): 453-480. DOI: 10.1093/jcsl/krto16.
- EICK, Christophe (2012). "Article 20". In Bruno Simma, Daniel Erasmus-Kahn, Georg Nolte and Andreas Paulus (editors), *The Charter of the United Nations: A Commentary*, volume I, 3RD edition (pp. 659-687). Oxford: Oxford University Press.
- INTERNATIONAL COURT OF JUSTICE (1962). "Certain Expenses of the United Nations (article 17, paragraph 2 of the Charter)". *Reports of Judgements, Advisory Opinions and Others*, 262: 151-181.
- . (2004). "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". *Reports of Judgements, Advisory Opinions and Others*, 883: 136-203.
- JOHNSON, Larry (2014). "'Uniting for Peace': Does it serve any useful purpose?". *AJIL Unbound*, 108: 106-115. DOI: 10.1017/S2398772300001975.
- KELSEN, Hans (1946). "Organization and Procedure of the Security Council of the United Nations". *Harvard Law Review*, 59 (7): 1087-1121. DOI: 10.2307/1335164.
- PETERS, Anne (2012). "Article 24". In Bruno Simma, Daniel Erasmus-Kahn, Georg Nolte and Andreas Paulus (editors), *The Charter of the United Nations: A Commentary*, Volume I, 3RD edition (pp. 761-786). Oxford: Oxford University Press.
- RAMSDEN, Michael (2016). "Uniting for Peace in the Age of International Justice". *Yale Journal of International Law*, 42: 1-23.
- . (2022). "Uniting for Peace: The Emergency Special Session on Ukraine". *Harvard International Law Journal*, [online]. Available at <https://bit.ly/3Kz8YBl>.
- REICHER, Harry (1981). "The Uniting for Peace Resolution on the Thirtieth Anniversary of its Passage". *Columbia Journal of Transnational Law*, 20: 1-49.
- RICHARDSON, Henry (2014). "Comment on Larry Johnson: 'Uniting for Peace'". *AJIL Unbound*, 108: 135-140. DOI: 10.1017/S2398772300002026.
- SANDS, Philippe and Pierre Klein (2009). *Bowett's Law of International Institutions*, 6th edition. London: Sweet & Maxwell.
- SECURITY COUNCIL REPORT (2013) "Security Council Deadlocks and Uniting for Peace: An Abridged History" [report online]. Available at <https://bit.ly/3DP7386>.
- TOMUSCHAT, Christian (2008). "Uniting for Peace". In *United Nations Audiovisual Library of International Law*, [online]. Available at <https://bit.ly/43W1BuR>.
- UNITED NATIONS GENERAL ASSEMBLY (1950). *Uniting for Peace*, UN General Assembly Resolution 377 (V) UN Doc A/1775.

- . (1951). *Intervention of the Central People's Government of the People's Republic of China in Korea*, UN General Assembly Resolution 498 (V) UN Doc A/RES/498(V).
- . (2022). *Standing mandate for a General Assembly debate when a veto is cast in the Security Council*, UN General Assembly Resolution 76/262 UN Doc A/RES/76/262.
- WHITE, Nigel (2015). "The Relationship between the UN Security Council and the General Assembly in Matters of International Peace and Security". In Marc Weller (editor), *The Oxford Handbook on the Use of Force in International Law* (pp. 293-313). Oxford: Oxford University Press.
- WOOLSEY, Lester (1951). "The 'Uniting for Peace' Resolution and the United Nations". *American Journal of International Law*, 45: 129-137. DOI: [10.2307/2194786](https://doi.org/10.2307/2194786).
- ZAUM, Dominik (2008). "The Security Council, the General Assembly, and War: The Uniting for Peace Resolution". In Vaughan Lowe, Adam Roberts, Jennifer Welsh and Dominik Zaum (editors), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (pp.154-174). Oxford: Oxford University Press.

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