



September 30, 2019

Hon. Antonio Guterres
Secretary-General
The United Nations
New York, New York

Re: Seeking the Position of the UN Secretary-General on the Use of the UN Flag by the “United Nations Command” in Korea and Japan

Dear Secretary-General Guterres:

The International Association of Democratic Lawyers, (IADL) a non-governmental organization with consultative status with ECOSOC, is writing on behalf of itself and other civil society groups that are supporting this letter (the list of these groups is at p. 3). We are seeking your opinion on the above issue because the UN General Assembly adopted a resolution beginning in its early history to protect the name of the United Nations and Secretary-General had been authorized by the General Assembly to adopt a UN flag code and protect its dignity.¹

1. The U.S. military is still using the UN flag at certain military bases in Korea and Japan, in claiming to be the “United Nations Command,” which was unilaterally created by the U.S. in July 1950. The U.S. uses Security Council Resolution 84 of 7 July 1950 to justify its use of the UN flag. However, there are some serious problems with such use. For instance, the Security Council made a grave mistake in authorizing the use of the UN flag for a non-UN, multi-national military command that was only recommended in SCR 84. Perhaps, some members of the Security Council at the time may have believed that the Security Council had such power. However, according to Prof. Hans Kelsen, the leading legal scholar on the Charter and Law of the United Nations at the time, such opinion had “no basis neither in the Charter nor in the Resolution 167(II) of the General Assembly.”² Moreover, SCR 84 authorized the “Unified Command” to use the UN flag in the “course of operations against North Korean forces,” but the U.S. military has used the UN flag in the name of the “UN Command” in its military operations in Korea from the beginning.

2. The first UN Flag Code was issued on 19 December 1947, and Pt. 8 of the Code stated that “the flag shall not be used except in accordance with this Flag Code.” However, the Code did not contain a provision authorizing the use of the flag in military operations. On 28 July, 1950, Secretary-General Trygve Lie added to the Code a new paragraph under Pt. 6 which stipulated that

1) A/RES/92 (I), Official Seal and Emblem of the UN, 7 December, 1946; A/RES/167 (II), United Nations Flag, 20 October 1947.

2) Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (New York: Frederick A. Praeger, 1950), p. 938.

“the flag may be used in military operations only upon express authorization to that effect by a competent organ of the United Nations.”³ Prof. Kelsen criticized this new provision as “an ex post facto justification” of the SCR 84.⁴

3. In a joint letter sent to the Secretary-General by 28 Member States on 15 September 1972, requesting to add to the agenda of the 27th session of the General Assembly a draft resolution with the title of “Creation of Favorable Conditions to Accelerate the Independent and Peaceful Reunification of Korea,” the second clause of the resolution stated that the General Assembly “Considers that the right to use the United Nations flag...in South Korea, should be annulled.”⁵ Thereafter, the U.S. wrote a letter to the Security Council which informed the Council that it will “undertake measures to reduce manifestations of the ‘United Nations Command,’ including restricted use of the flag...”⁶ About three months later, the U.S. sent another letter to the Security Council, informing the Council that “from 25 August 1975, the United Nations flag” will no longer fly over military installations in the Republic of Korea “except at facilities directly associated with the implementation of the Armistice Agreement of 27 July 1953.”⁷ The U.S. has taken the step of continually using the UN Flag unilaterally, in opposition to the growing demand of Member States that the U.S. stop using the UN flag in Korea. Such action was also taken in disregard of the Secretary- General’s authority and opinion.

4. On 24 December 1993, while crossing the South-North dividing line in the DMZ, the UN Secretary-General Boutros Boutros-Ghali stated that he did not authorize flying the UN flag at Panmunjom.⁸ His remark was true and just since the Secretary-General was also a scholar of international law. In June 1994, the Secretary-General further clarified that SCR 84 “did not establish the unified command as a subsidiary organ under its control...”⁹ In other words, the “Unified Command” was not under the control of the UN Security Council. Thus, it cannot be called as a “United Nations Command.”

5. In regard to this issue, we would like to ask the Secretary-General the following four questions:

- 1) Did the SCR 84 violate the UN Charter and the UN Flag Code when it authorized the “Unified Command,” which was a non-UN entity, to use the UN flag in the course of operations against North Korean forces?
- 2) Did the U.S. violate the SCR 84 by creating the so-called the “UN Command” on its own initiative and then using the UN flag in the name of the “UN Command”?

3) ST/AFS/SGB/89, The United Nations Flag Code (as amended), 28 July 1950.

4) Kelsen, p. 939.

5) A/8752/Add. 9.

6) S/11737 (27 June 1975).

7) S/11830 (22 September 1975).

8) Shawn P. Creamer (U.S. Army Colonel), “The United Nations Command and the Sending States,” *International Journal of Korean Studies*, Volume XXI, Number 2, Fall-Winter 2017, p. 2.

9) UN Secretary-General Boutros Boutros-Ghali letter to the DPRK’s Foreign Minister, New York, NY, June 24, 1994.

- 3) Did the U.S. violate the SCR 84 by continuing the use of the UN flag in the name of the “UN Command” even today, although active fighting in Korea ended on 27 July 1953 and the main goal of the SCR 84 was achieved?
- 4) If the U.S. violated the UN Charter, the UN Flag Code, or the SCR 84, then what measures would the Secretary-General take to stop the abuse of the UN flag in Korea and Japan?

We would appreciate your attention to this matter and kind response as soon as possible.

Respectfully yours,

Jeanne Mirer

Jeanne Mirer, Esq.

President

International Association of Democratic Lawyers

Endorsed by the following civil society groups:

Confederation of Lawyers of Asia and the Pacific-COLAP

Lawyers for a Democratic Society-Research Committee on USFK Affairs (ROK)

Citizen's Solidarity for Peace & Unification (ROK)

Peace Mothers of Korea (ROK)

Korean Confederation of Trade Unions (ROK)

Eurasia Peace Way (ROK)

Korea Youth Solidarity (ROK)

The Tomorrow (ROK)

National Federation of Peasant Society (ROK)

Korean Women Peasant Association (ROK)

National Women's Solidarity (ROK)

Korea International Peace Forum (ROK)

Action One Korea (ROK)

Democratic Workers' National Conference (ROK)

National Democratic Movement Families Association (ROK)

National Unification National Unity South Korea Headquarters (ROK)

Progressive College Student Network (ROK)

Unification Square (ROK)

Support Committee for Prisoners of Conscience for Justice, Peace and Human Rights (ROK)

Korea Progressive Solidarity (ROK)

National Poverty Alliance (ROK)

Democratization Practice Family Movement Council (ROK)

Citizen's Coalition for Resurrection of Chang Jun Ha, the Patriot of Korea (ROK)

Progress Union of Korea University Students (ROK)

World BEYOND War (U.S.)

Environmentalists Against War (U.S.)

Columban Mission Society
Des Moines Catholic Worker (U.S.)
Peace Action Maine (U.S.)
Peaceworkers (U.S.)
Veterans For Peace (U.S.)
Presbyterian Peace Network for Korea (U.S.)
National Association of Korean Americans (U.S.)
The Olympia, Washington Fellowship of Reconciliation (U.S.)
Citizens Opposing Active Sonar Threats (U.S.)
Popai Liem Education Foundation (U.S.)
Global Network against Weapons and Nuclear Power in Space
Australian Anti-Bases Campaign Coalition (Australia)
6.15 Komitee of South-North-Overseas Korean, Section Europe (Germany)
International Network of Engineers and Scientists for Global Responsibility (Germany)
Peace Philosophy Centre, Vancouver, BC (Canada)
Peace Women Partners International
Swedish Peace Council (Sweden)
Trident Ploughshares, XR Peace (UK)
SOAS University of London Social Justice Korea (Student Union Society) (UK)
Policy Research for Development Alternative (Bangladesh)

