PART II

ORAL STATEMENTS

PUBLIC HEARINGS

held at the Peace Palace, The Hague,
from 14 to 21 May and on 20 July 1962,
the President, M. Winiarski, presiding

DEUXIÈME PARTIE

EXPOSÉS ORAUX

AUDIENCES PUBLIQUES

tenues au Palais de la Paix, La Haye,
du 14 au 21 mai et le 20 juillet 1962,
sous la présidence de M. Winiarski, Président

MINUTES OF THE HEARINGS HELD FROM 14 TO 21 MAY, AND ON 20 JULY 1962

TWENTY-SIXTH PUBLIC HEARING (14 v 62, 10.30 *a.m.*)

Present: President WINIARSKI, *Vice-President* ALFARO, Judges BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, SIR Percy SPENDER, SIR Gerald FITZMAURICE, KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, JESSUP, MORELLI; M. GARNIER-COIGNET, *Registrar.*

The States participating in the oral proceedings were represented as follows:

Australia	Sir Kenneth BAILEY, C.B.E., Solicitor-General
Canada	Mr. Marcel CADIEUX, Deputy Under-Secretary and Legal Adviser for the Department of External Affairs
	Mr. H. C. KINGSTONE, Solicitor to the Department of External Affairs
Ireland	Mr. Aindrias Ó CAOIMH, S.C., Attorney-General
	Mr. Sean MORRISSEY, B.L., Legal Adviser of the Department of External Affairs
Italy	Professor Riccardo MONACO, Professor at the University of Rome, Head of Department for Contentious Diplomatic Questions, Ministry of Foreign Affairs
Netherlands	Professor W. RIPHAGEN, Legal Adviser to the Ministry of Foreign Affairs
Norway	Mr. Jens EVENSEN, Director-General, Norwegian Ministry of Foreign Affairs
Union of Soviet Socialist Republics	Mr. G. I. TUNKIN, Professor, Director of the Juridical-Treaty Department of the Ministry of Foreign Affairs
	Mr. A. F. SOKIRKIN, Counsel

PROCÈS-VERBAUX DES AUDIENCES TENUES DU 14 AU 21 MAI ET LE 20 JUILLET 1962

VINGT-SIXIÈME AUDIENCE PUBLIQUE (14 v 62, 10 *h.* 30)

Présents : MM. WINIARSKI, *Président ;* ALFARO, *Vice-Président ;* BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, sir Percy SPENDER, sir Gerald FITZMAURICE, MM. KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, JESSUP, MORELLI, *juges ;* M. GARNIER-COIGNET, *Greffier.*

Les États prenant part à la procédure orale sont représentés comme suit :

Australie	Sir Kenneth BAILEY, C. B. E., *Solicitor-General*
Canada	M. Marcel CADIEUX, Sous-secrétaire adjoint et conseiller juridique au département des Affaires étrangères
	M. H. C. KINGSTONE, *Solicitor* au département des Affaires étrangères
Irlande	M. Aindrias Ó CAOIMH, S. C., *Attorney-General*
	M. Seán MORRISSEY, B. L., Conseiller juridique au ministère des Affaires étrangères
Italie	Professeur Riccardo MONACO, Professeur à l'Université de Rome, Chef du contentieux diplomatique au ministère des Affaires étrangères
Pays-Bas	Professeur W. RIPHAGEN, Conseiller juridique au ministère des Affaires étrangères
Norvège	M. Jens EVENSEN, Directeur général, ministère des Affaires étrangères
Union des Républiques socialistes soviétiques	M. G. I. TUNKIN, Professeur, Directeur du Département juridique et des traités au ministère des Affaires étrangères
	M. A. F. SOKIRKIN, Conseiller

United Kingdom of Great Britain and Northern Ireland	The Rt. Hon. Sir Reginald MANNINGHAM-BULLER, Q.C., M.P., Attorney-General
	Mr. Geoffrey LAWRENCE, Q.C.
	Mr. F. A. VALLAT, C.M.G., Q.C., Foreign Office Legal Adviser
United States of America	The Honorable Abram CHAYES, Legal Adviser, Department of State
	Mr. Stephen M. SCHWEBEL, Assistant Legal Adviser for United Nations Affairs at the Department of State.

The PRESIDENT opened the hearing and stated that the Court was sitting today to hear oral statements in connection with a request for an Advisory Opinion submitted to it by the General Assembly of the United Nations. He regretted to say that Judge Córdova, who was prevented by the state of his health from being present at The Hague, would be unable to sit in the present proceedings.

The request of the General Assembly, made pursuant to a Resolution of 20 December 1961, asked the opinion of the Court on the question which was read by the Registrar.

The REGISTRAR:

"Do the expenditures authorized in General Assembly resolutions 1583 (XV) and 1590 (XV) of 20 December 1960, 1595 (XV) of 3 April 1961, 1619 (XV) of 21 April 1961 and 1633 (XVI) of 30 October 1961 relating to the United Nations operations in the Congo undertaken in pursuance of the Security Council resolutions of 14 July, 22 July and 9 August 1960 and 21 February and 24 November 1961, and General Assembly resolutions 1474 (ES-IV) of 20 September 1960 and 1599 (XV), 1600 (XV) and 1601 (XV) of 15 April 1961, and the expenditures authorized in General Assembly resolutions 1122 (XI) of 26 November 1956, 1089 (XI) of 21 December 1956, 1090 (XI) of 27 February 1957, 1151 (XII) of 22 November 1957, 1204 (XII) of 13 December 1957, 1337 (XIII) of 13 December 1958, 1441 (XIV) of 5 December 1959 and 1575 (XV) of 20 December 1960 relating to the operations of the United Nations Emergency Force undertaken in pursuance of General Assembly resolutions 997 (ES-I) of 2 November 1956, 998 (ES-I) and 999 (ES-I) of 4 November 1956, 1000 (ES-I) of 5 November 1956, 1001 (ES-I) of 7 November 1956, 1121 (XI) of 24 November 1956 and 1263 (XIII) of 14 November 1958, constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations?"

Royaume-Uni de Grande-Bretagne et d'Irlande du Nord	Le très honorable sir Reginald MANNINGHAM-BULLER, Q. C., M. P., *Attorney-General*
	M. Geoffrey LAWRENCE, Q. C.
	M. F. A. VALLAT, C. M. G., Q. C., Conseiller juridique, département d'État
États-Unis d'Amérique	L'honorable Abram CHAYES, Conseiller juridique, département d'État
	M. Stephen M. SCHWEBEL, Conseiller juridique adjoint du département d'État pour les affaires des Nations Unies.

Le PRÉSIDENT ouvre l'audience et annonce que la Cour est réunie pour entendre les exposés oraux relatifs à la demande d'avis consultatif qui lui a été présentée par l'Assemblée générale des Nations Unies. Il a le regret d'annoncer que M. Córdova, empêché par son état de santé de venir à La Haye, ne siégera pas en la présente affaire.

La demande de l'Assemblée générale, présentée en exécution d'une résolution du 20 décembre 1961, sollicite l'avis de la Cour sur la question dont, à la demande du Président, le Greffier donne lecture.

Le GREFFIER:

« Les dépenses autorisées par les résolutions de l'Assemblée générale 1583 (XV) et 1590 (XV) du 20 décembre 1960, 1595 (XV) du 3 avril 1961, 1619 (XV) du 21 avril 1961 et 1633 (XVI) du 30 octobre 1961, relatives aux opérations des Nations Unies au Congo entreprises en exécution des résolutions du Conseil de Sécurité en date des 14 juillet, 22 juillet et 9 août 1960 et des 21 février et 24 novembre 1961 ainsi que des résolutions de l'Assemblée générale 1474 (ES-IV) du 20 septembre 1960, 1599 (XV), 1600 (XV) et 1601 (XV) du 15 avril 1961, et des dépenses autorisées par les résolutions de l'Assemblée générale: 1122 (XI) du 26 novembre 1956, 1089 (XI) du 21 décembre 1956, 1090 (XI) du 27 février 1957, 1151 (XII) du 22 novembre 1957, 1204 (XII) du 13 décembre 1957, 1337 (XIII) du 13 décembre 1958, 1441 (XIV) du 5 décembre 1959 et 1575 (XV) du 20 décembre 1960, relatives aux opérations de la Force d'urgence des Nations Unies entreprises en exécution des résolutions de l'Assemblée générale: 997 (ES-I) du 2 novembre 1956, 998 (ES-I) et 999 (ES-I) du 4 novembre 1956, 1000 (ES-I) du 5 novembre 1956, 1001 (ES-I) du 7 novembre 1956, 1121 (XI) du 24 novembre 1956 et 1263 (XIII) du 14 novembre 1958, constituent-elles « des dépenses de l'Organisation » au sens du paragraphe 2 de l'article 17 de la Charte des Nations Unies? »

The PRESIDENT stated that notice of the request had been given to all States entitled to appear before the Court, and the Court had received from the Secretary-General of the United Nations a dossier of documents likely to throw light upon the question. Furthermore, pursuant to Article 66, paragraph 2, of the Statute of the Court, the States Members of the United Nations were notified that they were considered as likely to be able to furnish information on the question and that the Court was prepared to receive written statements from them within a time-limit fixed for that purpose. The following States, indicated in English alphabetical order, exercised the right thus made available to them by transmitting to the Court written statements or letters, namely, Australia, Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Denmark, France, Greece, Ireland, Italy, Japan, Netherlands, Portugal, Republic of South Africa, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta.

The Governments of Mexico and Poland had referred to the points of view expressed by their respective representatives in the course of the debates within the United Nations.

The desire to be heard in the course of the present proceedings had been expressed by the Governments of Australia, Canada, Ireland, Italy, Netherlands, Norway, Union of Soviet Socialist Republics, United Kingdom, and the United States of America.

The Representative of the Union of Soviet Socialist Republics, having been unable to be present at The Hague before the opening of the hearings, no general agreement could be reached as to the order in which the representatives would speak.

This being so, the President had been informed that the speakers who, according to alphabetical order, would first address the Court had for reasons of personal convenience agreed in requesting that the Representative of Canada should first be heard.

The President called upon the Representative of Canada.

Mr. CADIEUX, Representative of Canada, began the speech reproduced in the annex [1].

The PRESIDENT announced that the next hearing would take place on Tuesday at 10.30 a.m.

(The Court rose at 12.53 p.m.)

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

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[1] See pp. 289-301.

Le PRÉSIDENT expose que la demande d'avis consultatif a été notifiée à tous les États admis à ester en justice devant la Cour, et que la Cour a reçu du Secrétaire général des Nations Unies un dossier de documents pouvant servir à élucider la question. D'autre part, conformément à l'article 66, paragraphe 2, du Statut de la Cour, les États Membres des Nations Unies ont été informés qu'ils étaient jugés susceptibles de fournir des renseignements sur la question et que la Cour était disposée à recevoir d'eux des exposés écrits dans un délai fixé à cet effet. Les États dont les noms suivent, rangés dans l'ordre alphabétique anglais, ont fait usage de cette faculté en adressant à la Cour des exposés écrits ou des lettres: Australie, République socialiste soviétique de Biélorussie, Canada, Tchécoslovaquie, Danemark, France, Grèce, Irlande, Italie, Japon, Pays-Bas, Portugal, République sud-africaine, Espagne, Union des Républiques socialistes soviétiques, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, États-Unis d'Amérique, Haute-Volta.

Les Gouvernements du Mexique et de la Pologne se sont référés aux points de vue exprimés par leurs représentants respectifs au cours des débats qui ont eu lieu aux Nations Unies.

Les Gouvernements d'Australie, du Canada, d'Irlande, d'Italie, des Pays-Bas, de Norvège, de l'Union des Républiques socialistes soviétiques, du Royaume-Uni et des États-Unis d'Amérique ont exprimé le désir de présenter des exposés oraux.

Le représentant de l'Union des Républiques socialistes soviétiques n'ayant pu être présent à La Haye avant l'ouverture des audiences, il n'a pu intervenir d'entente générale touchant l'ordre dans lequel les représentants parleront.

Le Président a été avisé que les premiers orateurs qui, selon l'ordre alphabétique, auraient la parole, ont, pour des raisons de convenance personnelle, été d'accord pour souhaiter que le représentant du Canada soit entendu en premier lieu.

Le Président donne donc la parole au représentant du Canada.

M. CADIEUX, représentant du Canada, commence l'exposé reproduit en annexe [1].

Le PRÉSIDENT annonce que la prochaine audience aura lieu le lendemain à 10 heures 30.

(L'audience est levée à 12 heures 53.)

Le Président,
(Signé) B. WINIARSKI.

Le Greffier,
(Signé) GARNIER-COIGNET.

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[1] Voir pp. 289-301.

TWENTY-SEVENTH PUBLIC HEARING (15 v 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 v 62.]

The PRESIDENT opened the hearing and called upon the Representative of Canada.

Mr. CADIEUX concluded the speech reproduced in the annex [1].

The PRESIDENT called upon the Representative of the Netherlands.

Mr. RIPHAGEN began the speech reproduced in the annex [2].

(The Court rose at 1 p.m.)

[Signatures.]

TWENTY-EIGHTH PUBLIC HEARING (16 v 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 v 62.]

The PRESIDENT opened the hearing and called upon the Representative of the Netherlands.

Mr. RIPHAGEN concluded the speech reproduced in the annex [3].

The PRESIDENT called upon the Representative of Italy.

M. MONACO began the speech reproduced in the annex [4].

(The Court rose at 1.04 p.m.)

[Signatures.]

TWENTY-NINTH PUBLIC HEARING (17 v 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 v 62.]

The PRESIDENT opened the hearing and called upon the Representative of Italy.

M. MONACO concluded the speech reproduced in the annex [5].

The PRESIDENT called upon the Representative of the United Kingdom.

Sir Reginald MANNINGHAM-BULLER began the speech reproduced in the annex [6].

(The hearing was adjourned from 1 p.m. to 4 p.m.)

The PRESIDENT called upon the Representative of the United Kingdom.

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[1] See pp. 301-309.
[2] „ „ 310-314.
[3] „ „ 314-321.
[4] „ „ 322-329.
[5] „ „ 329-334.
[6] „ „ 335-343.

VINGT-SEPTIÈME AUDIENCE PUBLIQUE (15 v 62, 10 *h.* 30)

Présents : [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant du Canada.

M. CADIEUX termine l'exposé reproduit en annexe [1].

Le PRÉSIDENT donne la parole au représentant des Pays-Bas.

M. RIPHAGEN commence l'exposé reproduit en annexe [2].

(L'audience est levée à 13 heures.)

[Signatures.]

VINGT-HUITIÈME AUDIENCE PUBLIQUE (16 v 62, 10 *h.* 30)

Présents : [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant des Pays-Bas.

M. RIPHAGEN termine l'exposé reproduit en annexe [3].

Le PRÉSIDENT donne la parole au représentant de l'Italie.

M. MONACO commence l'exposé reproduit en annexe [4].

(L'audience est levée à 13 heures 04.)

[Signatures.]

VINGT-NEUVIÈME AUDIENCE PUBLIQUE (17 v 62, 10 *h.* 30)

Présents : [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant de l'Italie.

M. MONACO termine l'exposé reproduit en annexe [5].

Le PRÉSIDENT donne la parole au représentant du Royaume-Uni.

Sir Reginald MANNINGHAM-BULLER commence l'exposé reproduit en annexe [6].

(L'audience, suspendue à 13 heures, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole au représentant du Royaume-Uni.

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[1] Voir pp. 301-309.
[2] » » 310-314.
[3] » » 314-321.
[4] » » 322-329.
[5] » » 329-334.
[6] » » 335 343.

Sir Reginald MANNINGHAM-BULLER concluded the speech reproduced in the annex [1].

The PRESIDENT called upon the Representative of Norway.

Mr. EVENSEN began the speech reproduced in the annex [2].

(The Court rose at 5.55 p.m.)

[Signatures.]

THIRTIETH PUBLIC HEARING (18 v 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 v 62.]

The PRESIDENT opened the hearing and called upon the Representative of Norway.

Mr. EVENSEN continued the speech reproduced in the annex [3].

(The hearing was adjourned from 12.55 p.m. to 4 p.m.)

The PRESIDENT called upon the Representative of Norway.

Mr. EVENSEN concluded the speech reproduced in the annex [4].

The PRESIDENT called upon the Representative of Australia.

Sir Kenneth BAILEY began the speech reproduced in the annex [5].

(The Court rose at 6 p.m.)

[Signatures.]

THIRTY-FIRST PUBLIC HEARING (19 v 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 v 62.]

The PRESIDENT opened the hearing and called upon the Representative of Australia.

Sir Kenneth BAILEY concluded the speech reproduced in the annex [6].

The PRESIDENT called upon the Representative of Ireland.

Mr. Ó CAOIMH made the speech reproduced in the annex [7].

(The Court rose at 1 p.m.)

[Signatures.]

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[1] See pp. 343-350.
[2] " " 351-354.
[3] " " 354-368.
[4] " " 368-371.
[5] " " 372-380.
[6] " " 380-386.
[7] " " 387-396.

Sir Reginald MANNINGHAM-BULLER termine l'exposé reproduit en annexe [1].

Le PRÉSIDENT donne la parole au représentant de Norvège.

M. EVENSEN commence l'exposé reproduit en annexe [2].

(L'audience est levée à 17 heures 55.)

[Signatures.]

TRENTIÈME AUDIENCE PUBLIQUE (18 v 62, 10 *h.* 30)

Présents : [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant de Norvège.

M. EVENSEN continue l'exposé reproduit en annexe [3].

(L'audience, suspendue à 12 heures 55, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole au représentant de Norvège.

M. EVENSEN termine l'exposé reproduit en annexe [4].

Le PRÉSIDENT donne la parole au représentant de l'Australie.

Sir Kenneth BAILEY commence l'exposé reproduit en annexe [5].

(L'audience est levée à 18 heures.)

[Signatures.]

TRENTE-ET-UNIÈME AUDIENCE PUBLIQUE (19 v 62, 10 *h.* 30)

Présents : [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant de l'Australie.

Sir Kenneth BAILEY termine l'exposé reproduit en annexe [6].

Le PRÉSIDENT donne la parole au représentant de l'Irlande.

M. Ó CAOIMH présente l'exposé reproduit en annexe [7].

(L'audience est levée à 13 heures.)

[Signatures.]

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[1] Voir pp. 343-350.
[2] » » 351-354.
[3] » » 354-368.
[4] » » 368-371.
[5] » » 372-380.
[6] » » 380-386.
[7] » » 387-396.

THIRTY-SECOND PUBLIC HEARING (21 V 62, 10.30 *a.m.*)

Present: [As listed for hearing of 14 V 62.]

The PRESIDENT opened the hearing and called upon the Representative of the Union of Soviet Socialist Republics.

Mr. TUNKIN made the speech reproduced in the annex [1].

(The hearing was adjourned from 1.02 p.m. to 4 p.m.)

The PRESIDENT called upon the Representative of the United States.

The Honorable Abram CHAYES made the speech reproduced in the annex [2].

The PRESIDENT thanked the Representatives of the various States for the oral statements they had been good enough to present before the Court and declared closed the oral proceedings.

(The Court rose at 6.16 p.m.)

[Signatures.]

THIRTY-FOURTH PUBLIC HEARING (20 VII 62, 15 *p.m.*)

Present: President WINIARSKI; *Vice-President* ALFARO; *Judges* BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER, Sir Gerald FITZMAURICE, KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, JESSUP, MORELLI; M. GARNIER-COIGNET, *Registrar.*

The PRESIDENT opened the sitting and declared that the Court was sitting today to deliver the Advisory Opinion, requested in accordance with the resolution of the General Assembly of the United Nations of 20 December 1961, in the matter of Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter).

The President read the Advisory Opinion in the French text [3] and asked the Registrar to read the operative provision of the Opinion in English.

The REGISTRAR read the English text of the operative provision.

The PRESIDENT declared that Judge Spiropoulos had appended a declaration to the Opinion. Judges Sir Percy Spender, Sir Gerald Fitzmaurice and Morelli had appended to the Opinion statements of their separate opinions [4]. The President and Judges Basdevant, Moreno Quintana, Koretsky and Bustamante y Rivero had appended to the Opinion statements of their dissenting opinions [5].

(The Court rose at 4.45 p.m.)

[Signatures.]

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[1] See pp. 397-412.
[2] „ „ 413-427.
[3] See *I.C.J. Reports 1962*, pp. 151-308.
[4] *Ibid.*, pp. 182-226.
[5] *Ibid.*, pp. 227-308.

TRENTE-DEUXIÈME AUDIENCE PUBLIQUE (21 v 62, 10 *h.* 30)

Présents: [Voir audience du 14 v 62.]

Le PRÉSIDENT ouvre l'audience et donne la parole au représentant de l'Union des Républiques socialistes soviétiques.

M. TUNKIN présente l'exposé reproduit en annexe [1].

(L'audience, suspendue à 13 heures 02, est reprise à 16 heures.)

Le PRÉSIDENT donne la parole au représentant des États-Unis.

L'honorable Abram CHAYES présente l'exposé reproduit en annexe [2].

Le PRÉSIDENT remercie MM. les représentants des États pour les exposés oraux qu'ils ont bien voulu présenter devant la Cour et déclare close la procédure orale.

(L'audience est levée à 18 heures 16.)

[Signatures.]

TRENTE-QUATRIÈME AUDIENCE PUBLIQUE (20 VII 62, 15 *h.*)

Présents: MM. WINIARSKI, *Président;* ALFARO, *Vice-Président;* BASDEVANT, BADAWI, MORENO QUINTANA, WELLINGTON KOO, SPIROPOULOS, sir Percy SPENDER, sir Gerald FITZMAURICE, MM. KORETSKY, TANAKA, BUSTAMANTE Y RIVERO, JESSUP, MORELLI, *juges;* M. GARNIER-COIGNET, *Greffier.*

Le PRÉSIDENT ouvre l'audience et annonce que la Cour se réunit aujourd'hui pour prononcer l'avis consultatif en l'affaire de certaines dépenses des Nations Unies (article 17, paragraphe 2, de la Charte), avis consultatif qui lui a été demandé en vertu de la résolution du 20 décembre 1961 de l'Assemblée générale des Nations Unies.

Il donne lecture du texte français de l'avis [3], puis invite le Greffier à donner lecture du dispositif de l'avis en langue anglaise.

Le GREFFIER lit le dispositif en anglais.

Le PRÉSIDENT annonce que M. Spiropoulos, juge, a joint à l'avis une déclaration. Sir Percy Spender, sir Gerald Fitzmaurice et M. Morelli, juges, ont joint à l'avis les exposés de leur opinion individuelle [4]. Le Président, MM. Basdevant, Moreno Quintana, Koretsky et Bustamante y Rivero, juges, ont joint à l'avis les exposés de leur opinion dissidente [5].

(L'audience est levée à 16 heures 45.)

[Signatures.]

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[1] Voir pp. 397-412.
[2] » » 413-427.
[3] Voir *C. I. J. Recueil 1962*, pp. 151-308.
[4] *Ibid.*, pp. 182-226.
[5] *Ibid.*, pp. 227-308.

ANNEX TO THE MINUTES
ANNEXE AUX PROCÈS-VERBAUX

1. EXPOSÉ ORAL DE M. CADIEUX

(REPRÉSENTANT DU GOUVERNEMENT CANADIEN)
AUX AUDIENCES PUBLIQUES DES 14 ET 15 MAI 1962

[Audience publique du 14 mai 1962, matin]

Monsieur le Président, Messieurs les Membres de la Cour.

Après avoir étudié les déclarations des autres États à la Cour internationale, nous nous proposons d'élaborer le mémoire canadien tout d'abord par un exposé de certains faits qui se rattachent au fondement juridique de l'activité de la Force d'urgence des Nations Unies et de la Force de l'Organisation des Nations Unies au Congo; en second lieu, par une analyse plus détaillée des conséquences juridiques de ces faits; et finalement par un exposé supplémentaire des méthodes de l'ONU en matière budgétaire, du point de vue du rapport entre ces méthodes et les comptes spéciaux de la Force d'urgence des Nations Unies et de la Force des Nations Unies au Congo, qui sont partie intégrante du budget de l'ONU.

Et d'abord pour ce qui est des faits: la Force d'urgence des Nations Unies entra en Égypte et y tint garnison avec le consentement écrit des autorités du pays. Les forces dont fait partie la Force de l'Organisation des Nations Unies au Congo sont entrées au Congo et y ont établi garnison à la demande et avec le consentement écrit du Gouvernement congolais, et dans des circonstances qui seront exposées plus loin.

Les fonctions de la Force d'urgence des Nations Unies ont été définies succinctement dans le rapport en date du 5 novembre 1956, par lequel le Secrétaire général soumettait à l'Assemblée générale son projet d'une Force d'urgence internationale (il s'agit du document A/3302). Ce texte est cité dans le mémoire du Royaume du Danemark (p. 157 du cahier des déclarations écrites). Il en est aussi fait mention dans le mémoire du Gouvernement des États-Unis (p. 183 du même document). Essentiellement, le rôle de la Force d'urgence des Nations Unies était de se rendre en territoire égyptien avec le consentement du Gouvernement et de s'y acquitter d'une double fonction: surveiller la trêve et l'évacuation des forces armées étrangères, et assurer la paix en se déployant le long de la ligne d'armistice et de la frontière.

Les fonctions de la Force de l'Organisation des Nations Unies au Congo étaient et continuent d'être exécutées non seulement avec le consentement explicite et écrit du Gouvernement de la République du Congo — comme nous l'avons dit plus haut — mais en outre à la demande expresse de ce Gouvernement.

Cette demande expresse, le président et le premier ministre de la République du Congo l'ont formulée dans un télégramme au Secrétaire général, en date du 12 juillet 1960. (On en trouve le texte dans le document des Nations Unies S/4382.) En voici un extrait:

> « Gouvernement de la République du Congo sollicite envoi urgent par Organisation des Nations Unies d'une aide militaire. Notre

requête est justifiée par envoi aü Congo de troupes métropolitaines belges en violation traité amitié signé entre Belgique et République du Congo le 29 juin 1960. »

Le télégramme précise ensuite qu'aux termes de ce traité les troupes belges ne peuvent intervenir que sur la demande expresse du Gouvernement congolais et que cette demande n'a jamais été formulée. Et il se termine comme suit:

« Aide militaire sollicitée a pour but essentiel protection du territoire national congolais contre actuelle agression extérieure qui menace paix internationale. Insistons vivement sur extrême urgence envoi troupes ONU au Congo. »

Par la suite, le Secrétaire général a fait distribuer aux États Membres le texte d'un accord de base avec le Gouvernement de la République du Congo, aux termes duquel celui-ci consentait à l'entrée des forces de l'ONU au Congo et à leur mission (voir le document S/4389, add. 5, daté du 29 juin 1960). Cet accord stipule:

« Le Gouvernement de la République du Congo déclare que, lorsqu'il exercera ses droits souverains à propos de toute question concernant la présence et le fonctionnement de la Force des Nations Unies au Congo, il se guidera de bonne foi sur le fait qu'il a demandé à l'Organisation des Nations Unies une assistance militaire et sur *son acceptation des résolutions du Conseil de Sécurité des 14 et* 22 juillet 1960; il déclare également qu'il assurera la liberté de mouvement à l'intérieur du pays pour la Force et accordera les privilèges et immunités nécessaires à tout le personnel associé aux activités de la Force... »

Dans les deux cas, on a confié au Secrétaire général le soin d'appliquer les résolutions pertinentes de l'Assemblée générale et du Conseil de Sécurité. Pour ce qui est de la Force d'urgence des Nations Unies, l'Assemblée générale a créé, aux termes de la résolution 1000 en date du 5 novembre 1956, le commandement de l'ONU, qui a été placé sous l'autorité du chef d'état-major de l'Organisation pour la surveillance de la trêve, le major-général E. L. M. Burns. Toutefois, il ressortait clairement de ce texte que, pour sa mission, cette Force relevait du Secrétaire général, assisté en la matière d'une Commission consultative, où siégerait un représentant de chacun des pays ci-après: le Brésil, le Canada, Ceylan, la Colombie, l'Inde, la Norvège et le Pakistan. La situation est encore plus nette dans le cas de la Force de l'ONU au Congo. Par une résolution en date du 14 juillet 1960 (S/4387), le Conseil de Sécurité a autorisé le Secrétaire général

« à prendre, en consultation avec le Gouvernement de la République du Congo, les mesures nécessaires en vue de fournir à ce Gouvernement l'assistance militaire dont il a besoin, et ce jusqu'au moment où les forces nationales de sécurité, grâce aux efforts du Gouvernement congolais et avec l'assistance technique de l'Organisation des Nations Unies, seront à même, de l'opinion de ce Gouvernement, de remplir entièrement leur tâche ».

Dans toutes les opérations relatives au Congo, les forces de l'ONU qui s'y trouvaient sont demeurées sous les ordres du Secrétaire général.

Quant aux résolutions touchant les opérations de la Force d'urgence des Nations Unies et de l'Organisation des Nations Unies au Congo, les passages qui comportent des décisions attribuent au Secrétaire général les fonctions exécutives et administratives prévues; dans le cas de la Force d'urgence des Nations Unies, il est assisté d'un Comité consultatif et du commandant en chef. La partie des résolutions qui porte sur le recrutement des effectifs prévoyait un recrutement libre auprès des États Membres; c'est là l'unique façon dont on a procédé. (Voir à ce sujet le par. 16, rapport final du Secrétaire général touchant la mise en œuvre de la résolution du Conseil S/4387, en date du 14 juillet 1960, document S/4389 approuvé par la résolution du Conseil de Sécurité en date du 22 juillet 1960 — première clause du préambule, par. 3.)

L'opération de l'Organisation des Nations Unies au Congo ayant fait l'objet d'une attention toute spéciale, il nous semble utile de l'examiner de façon encore plus détaillée. La crise congolaise s'étant déclarée au cours de l'été de 1960, après que le pays eut acquis son indépendance de la Belgique, le Conseil de Sécurité s'est réuni pour étudier la situation. La séance commença à 8 heures 30 du soir le 13 juillet 1960 et ne se termina qu'à 3 heures 25 le matin suivant. C'est à cette séance que remonte la résolution du 14 juillet 1960 portant création de la Force de l'ONU et énonçant le rôle qu'on attendait d'elle.

La résolution, était-il précisé, était adoptée à la suite d'une demande d'assistance militaire émanant du président et du premier ministre de la République du Congo et adressée au Secrétaire général.

Le Gouvernement belge y était ensuite invité à retirer ses troupes du territoire de la République congolaise. Et enfin, comme nous l'avons rappelé, le texte autorisait le Secrétaire général à fournir une assistance militaire au Gouvernement congolais,

> « et ce jusqu'au moment où les forces nationales de sécurité, grâce aux efforts du Gouvernement congolais et avec l'assistance technique de l'Organisation des Nations Unies, seront à même, de l'opinion de ce Gouvernement, de remplir entièrement leur tâche ».

A propos du rôle imparti aux forces de l'Organisation des Nations Unies à l'occasion de la séance que le Conseil de Sécurité a tenue dans la nuit du 13 au 14 juillet 1960, le Secrétaire général (voir pp. 3 et 4, par. 20 et subséquents des procès-verbaux officiels de la 873^{me} séance) a fait observer que l'intervention que l'on demandait à l'ONU consistait, premièrement, en une assistance technique immédiate dans le domaine administratif et, deuxièmement, en une assistance militaire.

Plus loin, dans le même discours, le Secrétaire général a déclaré (p. 5, par. 28):

> « Si le Conseil de Sécurité donnait suite à ma recommandation, je fonderais mes actes sur les principes énoncés dans le rapport que j'ai présenté à l'Assemblée générale au sujet des conclusions tirées de l'expérience dans ce domaine. » (V. Ass. gén. D. O., treizième sess., Annexes, point 65 de l'ordre du jour, doc. A/3943.)

Le Secrétaire général poursuit:

> « Il s'ensuit que la Force des Nations Unies ne serait autorisée à agir qu'en cas de légitime défense. Il s'ensuit aussi qu'elle ne pourrait rien faire qui fasse d'elle une partie à des conflits internes... »

Entre le 14 et le 22 juillet 1960, date à laquelle le Conseil de Sécurité a adopté sa deuxième résolution à ce sujet, le Secrétaire général a rendu son premier rapport (doc. S/4389, add. 1 à 6) sur la mise en œuvre de la résolution du 14 juillet. Développant ses idées sur le rôle de la Force de l'ONU au Congo, le Secrétaire général y déclare qu'elle représentait un expédient d'urgence en attendant que, selon les termes de la résolution du Conseil de Sécurité du 14 juillet,

> « les forces nationales de sécurité seront à même de remplir entièrement leur tâche ».

On lit, plus loin, dans le rapport:

> « La Force envoyée au Congo doit donc être considérée comme une force de sécurité qui demeurera temporairement sur le territoire de la République du Congo avec le consentement de son Gouvernement pour la durée et aux fins ci-dessus indiquées.
>
> Bien qu'aux termes de la résolution la Force des Nations Unies soit envoyée au Congo à la demande du Gouvernement et qu'elle soit appelée à y demeurer avec le consentement de ce Gouvernement, et bien qu'on puisse la considérer comme un organe mis à la disposition du Gouvernement pour le maintien de l'ordre et la protection des vies humaines — tâche qui incombe naturellement aux autorités nationales et qui leur reviendra dès que, de l'avis du Gouvernement, leur pouvoir aura été suffisamment établi —, la Force est placée nécessairement sous le commandement exclusif de l'Organisation des Nations Unies en la personne du Secrétaire général, sous le contrôle du Conseil de Sécurité... »

Grâce à la résolution adoptée par le Conseil de Sécurité le 22 juillet 1960, le rôle de la Force de sécurité des Nations Unies a été accru pour lui permettre de surveiller le retrait des troupes belges. A cet égard, le premier paragraphe de la résolution adoptée par le Conseil le 22 juillet 1960

> « invite le Gouvernement belge à mettre rapidement en application la résolution du Conseil de Sécurité en date du 14 juillet 1960, touchant le retrait de ses troupes, et autorise le Secrétaire général à prendre à cet effet toutes les mesures nécessaires ».

En vertu de la résolution du Conseil de Sécurité en date du 9 août 1960, les attributions des forces de l'Organisation des Nations Unies au Congo ont de nouveau été étendues pour permettre de faire face à la situation critique survenue au Katanga. Par cette résolution, il est signalé que les Nations Unies ont été empêchées de mettre en œuvre dans le Katanga les résolutions du Conseil de Sécurité, et il y est reconnu (voir la sixième clause du préambule de la résolution) que le retrait des troupes belges de la province du Katanga serait

> « une contribution positive et essentielle à la mise en œuvre appropriée des résolutions du Conseil ».

Et la résolution poursuit (par. 3):

> « L'entrée de la Force des Nations Unies dans la province du Katanga est nécessaire à la pleine mise en application de la présente résolution. »

La résolution réaffirme le caractère général du rôle des forces de l'ONU au Congo et on trouve, au paragraphe 4, le passage suivant:

> « La Force des Nations Unies au Congo ne sera partie à aucun conflit interne, constitutionnel ou autre, elle n'interviendra en aucune façon dans un tel conflit ou ne sera pas utilisée pour en influencer l'issue. »

Ce fut seulement à sa 942me réunion, les 20 et 21 février 1961, que le Conseil de Sécurité a repris l'examen de l'affaire congolaise et adopté une résolution élargissant les fonctions des forces onusiennes au Congo, afin de les préparer à combattre au besoin les dangers d'une guerre civile. En effet, l'article A, paragraphe 1, de la résolution du Conseil

> « recommande instamment que les Nations Unies prennent immédiatement toutes mesures appropriées pour empêcher le déclenchement d'une guerre civile au Congo, notamment des dispositions concernant des cessez-le-feu, la cessation de toutes opérations militaires, la prévention de combats et le recours à la force, si besoin est, en dernier ressort ».

Par ailleurs, le Conseil de Sécurité a renforcé la position des forces de l'ONU en ce qui concerne le retrait des troupes étrangères. On lit, au paragraphe 2 de l'article A,

> « que des mesures soient prises pour le retrait et l'évacuation immédiate du Congo de tous les personnels militaire et paramilitaire et conseillers politiques belges et d'autres nationalités ne relevant pas du commandement des Nations Unies, ainsi que des mercenaires ».

Dans sa résolution du 24 novembre 1961, le Conseil de Sécurité a résumé le rôle des Nations Unies au Congo et confirmé, au troisième paragraphe du préambule,

> « les principes et les buts de l'Organisation des Nations Unies en ce qui concerne le Congo, à savoir:
>
> *a)* maintenir l'intégrité territoriale et l'indépendance politique de la République du Congo;
> *b)* aider le Gouvernement central du Congo à rétablir et maintenir l'ordre public;
> *c)* empêcher le déclenchement d'une guerre civile au Congo;
> *d)* assurer le retrait et l'évacuation immédiate du Congo de tous les personnels militaire et paramilitaire et conseillers d'autres nationalités ne relevant pas du commandement des Nations Unies, ainsi que de tous les mercenaires;
> *e)* fournir une assistance technique ».

Le paragraphe 4 du texte a étendu la portée de l'action des forces onusiennes au Congo en autorisant

> « le Secrétaire général à entreprendre une action vigoureuse y compris, le cas échéant, l'emploi de la force dans la mesure requise pour faire immédiatement appréhender, placer en détention dans

l'attente de poursuites légales ou expulser tous les personnels militaire et paramilitaire et conseillers politiques étrangers ne relevant pas du commandement des Nations Unies, ainsi que les mercenaires... ».

On voit donc que le rôle des forces des Nations Unies s'est peu à peu élargi, puisqu'au début, comme je l'ai signalé en citant le premier rapport du Secrétaire général, en particulier le paragraphe 16 de son rapport, elles constituaient surtout

« un organe mis à la disposition du Gouvernement pour le maintien de l'ordre et la protection des vies humaines ».

Le Secrétaire général a interprété avec beaucoup de prudence le mandat dont l'avait chargé le 14 juillet 1960 le Conseil de Sécurité, mandat lui permettant de fournir l'assistance militaire requise.

Néanmoins, l'évolution des événements a amené le Secrétaire général à intervenir, au besoin par la force, pour protéger l'intégrité territoriale et l'indépendance politique de la République congolaise, et éviter une guerre civile.

Il faut signaler cependant que le Conseil de Sécurité et le Secrétaire général ont veillé soigneusement à ce que toute action de l'ONU au Congo ne puisse être considérée comme une ingérence dans les domaines qui, selon l'article 2 (7) de la Charte, relèvent essentiellement de la régie interne de chaque État.

Le respect de ce principe exigeait comme condition préalable que toute action de l'Organisation des Nations Unies au Congo soit d'abord autorisée par écrit par le Gouvernement de la République congolaise; comme nous l'avons dit, cette autorisation fut accordée en termes fort explicites.

Par ailleurs, il était également essentiel que toute intervention ultérieure de l'Organisation des Nations Unies vise uniquement à aider le Gouvernement congolais dans les limites expressément indiquées en premier lieu par ce Gouvernement. Pour mettre en relief la fidélité du Conseil de Sécurité et du Secrétaire général à ce principe, nous voudrions rappeler leur conduite dans ce domaine. Nous avons vu que dans son rapport sur la mise en œuvre de la résolution adoptée le 14 juillet 1960 par le Conseil de Sécurité, le Secrétaire général avait indiqué que le contingent de l'ONU était, en fait, un organe mis à la disposition du Gouvernement pour le maintien de l'ordre public et la protection des vies humaines. Il a également déclaré dans le même rapport (p. 7) que c'était là

« une tâche qui incombe naturellement aux autorités nationales et qui leur reviendra dès que leur pouvoir aura été établi suffisamment ».

Il faut aussi signaler que dans sa résolution du 22 juillet 1960, le Conseil de Sécurité a reconnu nettement que

« le Conseil de Sécurité a recommandé d'admettre la République du Congo à l'Organisation des Nations Unies *en tant qu'entité* ».

Par ailleurs on lit au paragraphe 2 de la résolution:

« Le Conseil prie tous les États de s'abstenir de toute action qui pourrait tendre à empêcher le rétablissement de l'ordre public et

l'exercice de son autorité par le Gouvernement congolais, et aussi de s'abstenir de toute action qui pourrait saper l'intégrité territoriale et l'indépendance politique de la République du Congo. »

Dans sa résolution du 9 août 1960 (par. 4), le Conseil de Sécurité a réaffirmé, comme nous l'avons déjà indiqué,

« que la Force des Nations Unies au Congo ne sera partie à aucun conflit interne, constitutionnel ou autre, qu'elle n'interviendra en aucune façon dans un tel conflit ou ne sera pas utilisée pour en influencer l'issue ».

En outre, le 21 février 1961, le Conseil a exprimé sa conviction

« que la solution du problème est entre les mains du peuple congolais lui-même, à l'abri de toute ingérence de l'extérieur, et qu'il ne peut y avoir de solution sans conciliation ».

Dans la même résolution (par. 5 du préambule), le Conseil a affirmé

« que toute solution imposée, y compris la formation de tout gouvernement ne résultant pas d'une conciliation véritable, loin de régler aucun problème, augmenterait grandement les dangers de conflit à l'intérieur du Congo et la menace à la paix et à la sécurité internationales ».

Par sa résolution du 24 novembre 1961, le Conseil de Sécurité a déploré expressément

« toute action armée menée contre l'autorité du Gouvernement de la République du Congo, en particulier les activités sécessionnistes et l'action armée qui sont actuellement menées par l'administration provinciale du Katanga avec l'aide de ressources de l'extérieur et de mercenaires étrangers... ».

Et, au paragraphe 1 de la même résolution, le Conseil de Sécurité affirme qu'il

« réprouve énergiquement les activités sécessionnistes illégalement menées par l'administration provinciale du Katanga avec l'appui de ressources de l'extérieur et secondées par des mercenaires étrangers ».

Au paragraphe 8, le Conseil déclare

« que toutes les activités sécessionnistes dirigées contre la République du Congo sont contraires à la loi fondamentale et aux décisions du Conseil de Sécurité et *exige* expressément que les activités de cette nature actuellement menées au Katanga cessent immédiatement ».

Il serait utile également de consulter la résolution 1474 (ES-IV), adoptée le 16 septembre 1960 par l'Assemblée générale et touchant la situation au Congo. Au paragraphe 6 de ce texte, l'Assemblée générale,

« sans préjudice des droits souverains de la République du Congo, *invite* tous les États à s'abstenir de fournir, directement ou indirectement, des armes ou autre assistance à des fins militaires au Congo

pendant la durée de l'assistance militaire accordée à titre temporaire par l'intermédiaire des Nations Unies, sauf si les Nations Unies le demandent, par l'entremise du Secrétaire général, pour atteindre les objectifs de la présente résolution et des résolutions adoptées par le Conseil de Sécurité les 14 et 22 juillet et le 9 août 1960 ».

On peut constater que le Conseil de Sécurité, le Secrétaire général et l'Assemblée ont adopté une position très ferme, visant à protéger l'intégrité de la République du Congo; mais pour compléter ce tableau il peut être utile de nous reporter brièvement à certaines déclarations des représentants au Conseil de Sécurité. Ainsi, au cours de la nuit tragique du 13 au 14 juillet 1960, à l'issue de laquelle le Conseil de Sécurité a adopté sa fameuse résolution du 14, M. Slim, le distingué délégué de la Tunisie, a prononcé des paroles extrêmement importantes. Voici un passage de son allocution, d'après les documents officiels de la 873me réunion du Conseil de Sécurité, paragraphe 89:

« J'en viens à la situation, telle qu'elle vient d'être évoquée par le Secrétaire général, et à la demande d'assistance militaire formulée expressément par le Gouvernement congolais.

Il apparaît clairement, à la lumière de ces informations, que le Gouvernement congolais demande aux Nations Unies une assistance militaire lui permettant de protéger son territoire national. Ce sont là les termes mêmes du télégramme envoyé par le Gouvernement du Congo au Secrétaire général. Il semble donc à ma délégation que, gouvernement d'un État indépendant et souverain, le Gouvernement du Congo est seul juge de l'opportunité d'une telle assistance. Il vient d'en faire officiellement la demande. Rien ne pourrait s'opposer, selon nous, à ce que le Conseil de Sécurité, qui en est saisi, prenne une décision permettant rapidement une telle assistance dans les meilleurs délais possibles. »

Plus tard, au cours des débats, M. Ortona, le distingué représentant de l'Italie, a touché au fond même de la situation qui confronte le Conseil de Sécurité lorsqu'il a déclaré:

« L'indépendance et la souveraineté des États Membres est la clef de voûte de notre Organisation, et nous sommes tous fermement attachés à ce principe. Mais, lorsque le gouvernement d'un État Membre demande notre appui, nous ne devons pas hésiter à le lui accorder sous une forme qui lui permette d'affermir son indépendance et de rendre sa souveraineté plus sûre et ses relations internationales plus harmonieuses. »

Une autre déclaration, lourde de sens, a été faite par M. Quijano, le distingué représentant de l'Argentine, à la même réunion, qui a dit pour conclure ses observations (voir p. 32):

« La délégation argentine est dès lors disposée à appuyer les dispositions qui permettront au Secrétaire général de fournir au Congo l'assistance qu'il a demandée et, notamment, l'assistance militaire dont ce pays aura besoin jusqu'au moment où ses forces nationales de sécurité seront à même, de l'avis du Gouvernement, de s'acquitter entièrement de leur tâche. »

A la réunion du Conseil de Sécurité qui a eu lieu le 20 février 1961, M. Stevenson, le distingué représentant des États-Unis, a déclaré au sujet du projet de résolution qui a été adopté lors de cette réunion:

> « Je conclus qu'il est entendu que l'intention et le sens du projet de résolution, pris dans son ensemble, est d'empêcher toute ingérence étrangère par la fourniture d'armes ou de personnel de quelque source que ce soit, et c'est sur cette base que les États-Unis sont heureux de voter en faveur du projet de résolution. »

Il ressort de cette discussion que l'ONU se bornait effectivement à aider le Gouvernement de la République du Congo. Elle ne faisait rien de plus que de mettre en œuvre la volonté de ce Gouvernement dans son propre territoire, à la condition expresse que cette tâche serait remise au Gouvernement de la République du Congo dès que celui-ci serait en mesure de s'acquitter lui-même de ce rôle. Les dispositions de l'article 2, section 7, ont donc été respectées. Toutefois, ce seul facteur n'aurait pu suffire à justifier le cours d'action qu'a pris le Conseil de Sécurité. Ce qui a amené clairement le Conseil de Sécurité à agir, c'est que les événements du Congo constituaient une menace pour la paix et la sécurité internationales. Une affaire de ce genre devenait une question qui exigeait l'attention du Conseil, si l'on considère qu'en vertu de l'article 24 de la Charte il est principalement chargé du maintien de la paix et de la sécurité internationales.

Il est clair que le Conseil de Sécurité n'a jamais perdu de vue un seul instant cette responsabilité particulière en dirigeant les opérations au Congo.

Ainsi, lorsqu'il a adopté sa résolution du 14 juillet 1960, le Conseil de Sécurité le faisait en réponse à une requête adressée par télégramme au Secrétaire général par le président et le premier ministre de la République du Congo, demande qui, comme nous l'avons déjà indiqué, contenait l'affirmation suivante:

> « Aide militaire sollicitée a pour but essentiel protection du territoire national congolais contre actuelle agression extérieure qui menace paix internationale. »

Cet aspect de la question est démontré encore plus par la déclaration significative qu'a faite, au cours de la réunion de nuit du Conseil de Sécurité les 13 et 14 juillet 1960, M. José Correa, de l'Équateur, qui présidait le Conseil à cette occasion. Vers la fin des débats de cette réunion, il a résumé en ces mots la situation devant laquelle se trouvait le Conseil de Sécurité:

> « Une fois de plus, le Conseil de Sécurité est saisi d'une grave situation. Considérée dans son ensemble, cette situation est complexe, mais si l'on se place au point de vue international, on doit l'examiner en fonction de la présence de troupes étrangères sur le territoire de la République du Congo contre la volonté du Gouvernement congolais. Il est un fait indéniable et évident, c'est que cette situation compromet gravement les relations internationales et que, si elle ne venait pas à se modifier, elle mettrait sérieusement en danger la paix et la sécurité internationales. »

Comme preuve supplémentaire que le Conseil de Sécurité a toujours

eu à l'esprit la question du maintien de la paix et de la sécurité internationales, il faudrait citer également la résolution du Conseil du 22 juillet 1960. Dans le cinquième paragraphe du préambule de cette résolution, il est affirmé expressément que:

> « Le plein rétablissement de l'ordre public dans la République du Congo contribuerait efficacement au maintien de la paix et de la sécurité internationales. »

L'intention réelle à cet égard du Conseil de Sécurité ressort encore plus clairement d'un certain nombre de déclarations faites au cours de la réunion du 22 juillet 1960, pendant laquelle cette résolution a été adoptée. Ainsi, M. Ortona, le distingué représentant de l'Italie, a prononcé les paroles suivantes:

> « Aujourd'hui, les Nations Unies se proposent d'empêcher ce territoire [le Congo] de devenir un champ de bataille entre pays et entre races. Demain, les Nations Unies seront peut-être appelées de ce fait à assumer de nouvelles responsabilités, à ouvrir de nouvelles voies. »

A un autre point de sa déclaration, parlant du développement du Congo dans la paix et l'indépendance, M. Ortona a dit:

> « Tout cela, grâce à l'effort considérable déployé par les Nations Unies et avec l'aide des Nations Unies, peut se réaliser, et se réaliser rapidement. A une condition seulement: qu'il n'y ait aucune intervention de l'extérieur. »

A une étape ultérieure de la réunion, le président du Conseil de Sécurité, M. José Correa, de l'Équateur, a déclaré ceci, à titre de représentant de *son pays:*

> « L'opération des Nations Unies au Congo, exécutée sous la direction du Secrétaire général en vertu, d'une part, des pouvoirs généraux que lui confère la Charte et des pouvoirs qu'il tient des résolutions de l'Assemblée générale sur l'assistance technique et, d'autre part, des pouvoirs spéciaux que lui a conférés le Conseil de Sécurité par sa résolution du 14 juillet, constitue la première tentative entièrement coordonnée qui ait jamais été faite pour mettre fin à une situation de nature à compromettre la paix et la sécurité internationales, non seulement en supprimant les causes immédiates et externes de cette situation, mais aussi en s'attaquant à ses causes profondes. Il s'agit d'un effort, en quelque sorte gigantesque, accompli non seulement pour assainir l'atmosphère et résoudre les problèmes immédiats, mais également pour établir des conditions de stabilité politique, économique, sociale et administrative, de manière à combler les vides créés par l'état de choses actuel. »

Lorsque le Conseil de Sécurité s'est réuni pour examiner de nouveau la situation au Congo le 9 août 1960, il a dû faire face à d'autres situations encore plus dramatiques que celle du Katanga.

Parlant de cette question, et en particulier des raisons qui ont obligé les forces de l'ONU à entrer dans la province du Katanga, sir Claude Cortale, distingué représentant de Ceylan, a déclaré que la réponse avait été fournie par le Secrétaire général, celui-ci ayant souligné la nécessité

d'une telle action afin de trouver une solution à un problème qui, de fait, soulevait l'alternative de la paix ou de la guerre, et d'une guerre qui ne serait pas nécessairement limitée au Congo.

A nouveau, dans sa résolution du 21 février 1961, le Conseil de Sécurité, notant en premier lieu qu'il avait appris, avec un profond regret,

> « La nouvelle du meurtre des dirigeants congolais M. Patrice Lumumba, M. Maurice Mpolo et M. Joseph Okito »,

a ajouté qu'il était profondément préoccupé

> « par les graves répercussions de ces crimes et par le risque d'une guerre civile et d'effusions de sang généralisées au Congo, ainsi que par la menace à la paix et à la sécurité internationales ».

En terminant cette première partie de mon exposé, je voudrais citer une déclaration faite par M. Correa, le distingué représentant de l'Équateur, au cours de la réunion du Conseil de Sécurité qui a eu lieu le 9 août 1960. Cette déclaration, à mon avis, résume on ne peut mieux les éléments de fond régnant au Congo lors de l'intervention du Conseil de Sécurité. M. Correa a dit:

> « En autorisant le Secrétaire général à fournir au Gouvernement congolais l'assistance militaire dont il aurait besoin jusqu'au moment où les forces nationales de sécurité seraient à même d'accomplir entièrement leurs tâches, le Conseil de Sécurité a voulu combler un vide dans le domaine intérieur. Mais il l'a fait parce que ce vide avait provoqué l'arrivée des troupes belges et que le Gouvernement congolais éprouvant, et de ce vide et de cette arrivée, une angoisse compréhensible, avait appelé à son secours diverses Puissances dont la présence au Congo, en marge de l'Organisation des Nations Unies, aurait pu causer un grave conflit international. Il est donc indéniable que les forces des Nations Unies ne sont pas au Congo simplement pour se substituer aux forces congolaises, mais parce qu'elles ont à remplir une mission plus vaste: celle de préserver la paix et la sécurité internationales qui pourraient être en danger si l'insécurité interne dont le Congo souffrait vers le 13 juillet se prolongeait ou se reproduisait... *Ce n'est pas en raison des difficultés internes du pays, mais bien de leurs répercussions sur les relations internationales, que l'affaire du Congo relève d'une action des Nations Unies.* »

En cette matière, la Force de l'Organisation des Nations Unies au Congo a agi avec le consentement de l'État congolais. La Force des Nations Unies remplace en fait les forces nationales et, sous le contrôle du Secrétaire général, accomplit des tâches qui seraient normalement confiées aux forces nationales de sécurité. Or, parmi ces tâches, il faut ajouter au maintien de la paix et de l'ordre le maintien de l'indépendance politique et de l'intégrité territoriale du pays. Les forces de l'ONU ayant pour mission de remplacer la force nationale, temporairement incapable d'agir, elles jouent un rôle normal en prenant les mesures nécessaires pour atteindre ces objectifs.

Il est bien évident qu'en autorisant les forces de l'ONU à empêcher la guerre civile, le Conseil de Sécurité n'impose pas une mesure de contrainte à un État Membre, mais en se gardant bien d'intervenir dans les controverses d'ordre purement domestique, il va au-devant de

son désir naturel et maintes fois exprimé, d'ailleurs, de maintenir la paix et l'ordre au sein du pays.

De plus, il faut bien tenir compte en déterminant la portée des résolutions du Conseil de Sécurité de l'hypothèse fondamentale qui a inspiré son action depuis le début. Nous avons déjà exposé que le Conseil de Sécurité a eu constamment le souci, dans son action au Congo, d'assurer ou de maintenir la paix internationale, en prenant en particulier des mesures pour permettre aux interventions étrangères de prendre fin. Cette intervention s'est produite sous la forme de l'envoi de mercenaires et de matériel militaire. Le Conseil de Sécurité, dans l'optique qu'il a adoptée au sujet de la situation congolaise, a considéré le risque de guerre civile comme un des effets de l'intervention extérieure, et l'instruction donnée aux forces de l'ONU d'empêcher la guerre civile s'établit dans la ligne maîtresse de son action: soutenir le gouvernement central en accomplissant des tâches que les forces nationales ne sont pas en mesure d'exécuter, et empêcher ainsi l'intervention extérieure de se développer et de créer un risque de conflit international.

Comme nous l'avons signalé au début de notre exposé, les instructions du Conseil de Sécurité se sont inspirées constamment du double souci de respecter la personnalité de l'État congolais et donc de ne pas intervenir dans ses affaires intérieures, d'une part, et d'autre part, de contribuer directement par son action au maintien de la paix internationale.

J'en viens au deuxième point, c'est-à-dire aux fondements juridiques des résolutions ayant trait aux opérations de la Force d'urgence des Nations Unies. Ces opérations, comme je l'ai signalé, ont toujours été poursuivies avec l'approbation du Gouvernement égyptien.

La Charte établit sans équivoque que seul le Conseil de Sécurité a le pouvoir d'employer une force militaire sans le consentement des États sur les territoires desquels se dérouleront les opérations; ses articles 42 à 48 stipulent en outre que les forces armées de l'ONU ne peuvent être formées qu'aux termes d'accords spéciaux et commandées par le comité de l'état-major militaire, sous l'autorité suprême du Conseil.

Toutefois, les opérations de la Force d'urgence des Nations Unies ne se rangent pas dans cette catégorie; comme nous l'avons dit, elles ont été entreprises et poursuivies avec le consentement du Gouvernement égyptien; elles ressortissent donc à l'Assemblée générale qui détient, conformément à la Charte, des pouvoirs fort étendus, examinés en détail non seulement dans l'exposé écrit du Canada, mais encore dans les déclarations écrites de maints autres États, dont le Danemark et les États-Unis d'Amérique.

Il est probable que de tous les pouvoirs dont l'Assemblée est investie les plus importants sont ceux qui ont trait à la protection de la paix et de la sécurité internationales. L'article 24 de la Charte confère au Conseil de Sécurité la responsabilité principale mais non exclusive du maintien de la paix et de la sécurité internationales, telles que les définit l'article premier. L'Assemblée générale a sa part de responsabilités dans ce domaine important et elle a le droit et le devoir de l'exercer conformément aux dispositions du chapitre IV de la Charte. Je me réfère ici aux paragraphes 29 et suivants de la déclaration écrite du Canada.

Il convient de signaler que le Conseil de Sécurité a reconnu cette responsabilité de l'Assemblée et admis que les pouvoirs de celle-ci s'étendent directement aux opérations de la Force d'urgence des Nations Unies.

En effet, comme l'indique l'exposé du Canada, les opérations de la

Force d'urgence ont été ordonnées conformément au plan établi dans la résolution « L'Union pour la paix » de l'Assemblée générale.

Le Conseil de Sécurité a étudié avant l'Assemblée la crise de Suez qui a provoqué la création de la Force d'urgence des Nations Unies. Entre le 30 octobre et le 1er novembre, le Conseil s'est réuni pour examiner l'action d'Israël, de la France et du Royaume-Uni en Égypte. Le 1er novembre, le Conseil a adopté une résolution où il indiquait que le désaccord de ses Membres permanents l'avait empêché d'exercer la responsabilité principale qui lui incombait quant au maintien de la paix et de la sécurité internationales et décidait de convoquer l'Assemblée générale en session d'urgence, conformément à la résolution n° 377 (V) de l'Assemblée en date du 3 novembre 1950, afin de lui permettre de formuler les recommandations qui s'imposaient.

De cette résolution du 1er novembre 1956, il découle que la responsabilité de l'Assemblée générale en ce qui concerne le maintien de la paix et de la sécurité internationales a été officiellement confirmée par le Conseil; la résolution de « L'Union pour la paix » de l'Assemblée lui a donné à cet égard l'autorisation voulue.

On a beaucoup discuté des pouvoirs de l'Assemblée en ce qui a trait aux opérations de la Force d'urgence; on pourrait peut-être indiquer, pour compléter le tableau, que le Secrétaire général, instrument de mise en œuvre des résolutions en cause, est investi de toute l'autorité voulue par l'article 98 de la Charte. Cet article stipule en effet:

> « Le Secrétaire général agit en cette qualité à toutes les réunions de l'Assemblée générale, du Conseil de Sécurité, du Conseil économique et social et du Conseil de Tutelle. Il remplit toutes autres fonctions dont il est chargé par ces organes. »

[Audience publique du 15 mai 1962, matin]

Monsieur le Président, Messieurs les Membres de la Cour, hier j'ai eu l'honneur de présenter à la Cour quelques observations sur les termes des résolutions du Conseil de Sécurité relativement aux opérations entreprises au Congo, en rapport avec l'article II, section 7, de la Charte. J'ai aussi représenté le souci du Conseil de Sécurité à l'égard du maintien de la paix et de la sécurité internationales lorsqu'il a autorisé le Secrétaire général à fournir au Gouvernement congolais l'assistance que celui-ci demandait. Après avoir terminé la première partie de ma présentation, j'ai abordé la seconde en parlant brièvement du fondement juridique de l'action de la Force d'urgence des Nations Unies. Je poursuis maintenant l'exposé de cette seconde partie en passant à l'examen des bases juridiques des résolutions relatives à l'opération de la Force de l'Organisation des Nations Unies au Congo.

L'énumération des données relatives aux opérations des Nations Unies au Congo fait ressortir qu'ici encore il ne s'agissait, pour le Conseil, que de la mise en œuvre de lois sur le plan purement interne. Sans doute, l'ampleur des opérations a pu les faire considérer comme une intervention de caractère militaire. Mais à la lumière des dispositions de la Charte, il n'en reste pas moins vrai que l'action de l'Organisation des Nations Unies au Congo est exercée avec le consentement écrit du Gouvernement de la République du Congo. Les paragraphes 10 et suivants de la déclaration font ressortir que les forces de l'ONU ont pour mission principale de

créer au Congo les conditions grâce auxquelles les nationaux auront décidé eux-mêmes, sans pression extérieure, la forme de gouvernement qui leur convient.

Il y faut certaines conditions préalables, notamment: l'octroi d'une assistance technique au Gouvernement de la République du Congo, pour préserver la paix et l'ordre public; ensuite, l'évacuation de toutes les forces étrangères militaires ou paramilitaires se trouvant en territoire congolais, ainsi que de tous les mercenaires et conseillers politiques qui ne relèvent pas de l'autorité des Nations Unies.

Il est essentiel de noter que, comme il est stipulé dans la résolution du Conseil de Sécurité du 9 août 1960, au paragraphe 4,

> « la force des Nations Unies au Congo ne sera pas partie à aucun conflit interne, constitutionnel ou autre, n'interviendra en aucune façon dans un tel conflit ou ne sera pas utilisée pour en influencer l'issue ».

Les fonctions du contingent de l'ONU étant ainsi clairement définies, le Conseil de Sécurité ne s'est pas référé au comité d'état-major dont il est question dans les articles 42 à 48 de la Charte et dont l'efficacité serait nécessairement fonction d'accords militaires spéciaux, en vertu de l'article 43. Étant donné qu'il n'existe pas en ce moment d'accords de ce genre, le Conseil de Sécurité ne saurait faire appel au comité d'état-major.

Il s'agit donc de découvrir quels articles de la Charte justifient l'action du Conseil. Le Conseil de Sécurité n'a pas indiqué avec précision les articles de la Charte sur lesquels il entendait fonder son action. Mais il en est ainsi dans sa pratique habituelle. Il faut voir à cet effet le *Répertoire de la pratique suivie par les organes des Nations Unies, volume II*, pages 292 et suivantes, pages 357 et suivantes. A l'occasion le Conseil, dans ses résolutions, a employé le langage de certains articles particuliers de la Charte, donnant ainsi au moins une indication au sujet de ses intentions. Par exemple, dans sa résolution du 21 février 1961, le Conseil de Sécurité emploie les termes de l'article 39. A défaut d'indications claires de la part du Conseil de Sécurité, il semble bien qu'il faille examiner les articles de la Charte, et, pour sa part, le Gouvernement du Canada croit que les articles qu'il y a lieu de consulter sont: les articles 1 (par. 1), 24 (par. 1 et 2), 39, 40, 98 et peut-être, au besoin, les articles 33 à 38 inclusivement.

L'article 1 (par. 1) indique les buts des Nations Unies qui sont les suivants:

> « Maintenir la paix et la sécurité internationales, et à cette fin: prendre des mesures collectives efficaces en vue de prévenir et d'écarter les menaces à la paix et de réprimer tout acte d'agression ou autre rupture de la paix, et réaliser, par des moyens pacifiques, conformément aux principes de la justice et du droit international, l'ajustement ou le règlement de différends ou de situations, de caractère international, susceptibles de mener à une rupture de la paix. »

L'article 24 (par. 1) confère au Conseil de Sécurité la responsabilité principale du maintien de la paix et de la sécurité internationales et reconnaît qu'en s'acquittant des devoirs que lui impose cette responsa-

bilité, le Conseil de Sécurité agit au nom de tous les Membres de l'Organisation des Nations Unies.

Le deuxième paragraphe de cet article stipule que dans l'accomplissement de ces devoirs, le Conseil de Sécurité agira conformément aux buts et principes des Nations Unies. On trouve plus loin dans ce paragraphe l'indication des chapitres où sont énoncés les pouvoirs spécifiques accordés au Conseil de Sécurité.

En somme, l'article 24 confère au Conseil de Sécurité deux sortes de pouvoirs afin qu'il s'acquitte de la responsabilité principale du maintien de la paix et de la sécurité internationales: d'abord, le pouvoir général de prendre les mesures nécessaires pour s'acquitter de ces devoirs pourvu qu'elles n'entrent pas en conflit avec d'autres dispositions de la Charte. On peut soutenir que ce pouvoir découle directement, ou du moins implicitement, du paragraphe 2 de l'article 24, selon un avis consultatif de la Cour rendu le 11 avril 1949 au sujet des pouvoirs implicites de l'Organisation des Nations Unies. Cet avis portait sur l'indemnisation des blessures subies dans le service des Nations Unies. Et, en second lieu, les pouvoirs spécifiques énoncés dans les chapitres de la Charte dont il est fait mention au paragraphe 2 de l'article 24.

En citant l'avis consultatif du 11 avril 1949, il convient d'attirer l'attention sur l'énoncé ci-après qu'il renferme:

> « Selon le droit international, l'Organisation doit être considérée comme possédant ces pouvoirs qui, s'ils ne sont pas expressément énoncés dans la Charte, sont, par une conséquence nécessaire, conférés à l'Organisation en tant qu'essentiels à l'exercice des fonctions de celle-ci. »

Les pouvoirs implicites du Conseil de Sécurité ont été considérés comme devant être adéquats pour assurer la réalisation des buts et objectifs de la Charte. Ils ne sont pas limités aux pouvoirs spécifiques mentionnés au paragraphe 2 de l'article 24. A cet égard, il peut être utile aussi de se référer à l'opinion exprimée par M. Sobolev, secrétaire général adjoint de l'Organisation des Nations Unies, lors de la discussion de l'affaire du territoire libre de Trieste le vendredi 10 juin 1947:

> « Le paragraphe 1 de l'article 24 prévoit qu'afin d'assurer l'action rapide et efficace de l'Organisation, ses Membres confèrent au Conseil de Sécurité la responsabilité principale du maintien de la paix et de la sécurité internationales et reconnaissent qu'en s'acquittant des devoirs que lui impose cette responsabilité, le Conseil de Sécurité agit en leur nom. Les mots « responsabilité principale du maintien de la paix et de la sécurité internationales » rapprochés des mots « agit en leur nom » constituent en fait une délégation de pouvoirs d'une portée suffisante pour permettre au Conseil de Sécurité d'approuver les documents en question et d'assumer les responsabilités qui en découlent.
>
> De plus, les procès-verbaux de la conférence de San Francisco démontrent que les pouvoirs du Conseil, découlant de l'article 24, ne se limitent pas aux attributions spécifiques d'autorité mentionnées aux chapitres VI, VII, VIII et XII. Le Secrétaire général désire en particulier attirer l'attention sur la discussion qui eut lieu à la quatorzième séance de la Commission III/1, à San Fran-

cisco, au cours de laquelle tous les représentants ont reconnu que les pouvoirs du Conseil de Sécurité n'étaient pas limités aux pouvoirs spécifiques énoncés aux chapitres VI, VII, VIII et XII de la Charte. »

Le Secrétaire général adjoint a indiqué qu'il avait à l'esprit le document 597, Comité III/1/30. Et il poursuit:

« On remarquera que cette discussion portait sur une proposition d'amendement visant à limiter aux seules décisions prises en vertu des pouvoirs spécifiques du Conseil, l'obligation qu'ont les Membres d'accepter les décisions du Conseil. Au cours de cette discussion, toutes les délégations qui prirent la parole, à la fois en faveur de cet amendement ou contre, reconnurent que l'autorité de ce Conseil n'était pas limitée à ces pouvoirs spécifiques. Il fut reconnu également que la responsabilité du maintien de la paix et de la sécurité entraîne avec elle le pouvoir d'assumer cette responsabilité. On a vu que ce pouvoir n'était pas illimité, mais il était soumis aux exigences que comportent les buts et les principes de l'Organisation des Nations Unies.

Il semble que de cette discussion se dégage une conception fondamentale de la Charte; en d'autres termes, que les Membres des Nations Unies ont reconnu au Conseil de Sécurité des pouvoirs en rapport avec les responsabilités qui lui incombent relativement au maintien de la paix et de la sécurité. Les seules restrictions ressortent des principes et des buts fondamentaux qui figurent au chapitre premier de la Charte. »

Cette citation est tirée des procès-verbaux du Conseil de Sécurité pour la deuxième année, n° 3, pages 44 et 45.

Manifestement la décision du Conseil de Sécurité concernant le Congo ressortit à ses pouvoirs généraux ou, du moins, à ses pouvoirs implicites. De plus, le Conseil de Sécurité a pleine autorité en la matière en vertu de l'article 40 et peut-être même de l'article 39.

L'article 40 confère expressément au Conseil de Sécurité le pouvoir de requérir les parties intéressées de se conformer aux mesures provisoires qu'il estime nécessaires ou souhaitables, avant de prendre les mesures prévues à l'article 39. On peut sûrement affirmer que l'opération du Congo relève précisément de cette règle.

On pourrait dire, par ailleurs ou en outre, que la décision prise par le Conseil de Sécurité ressortit à la première partie de l'article 39, où il est dit que:

« Le Conseil de Sécurité constate l'existence d'une menace contre la paix, d'une rupture de la paix ou d'un acte d'agression et fait des recommandations... »

S'il en était autrement, il apparaîtrait que l'autorité nécessaire aux décisions du Conseil de Sécurité peut reposer sur les articles 33 à 38 de la Charte qui ont trait au règlement pacifique des différends de nature à mettre en danger la paix et la sécurité internationales. Aux termes de l'article 33, les parties aux différends de cette nature doivent avant tout en rechercher la solution par certaines méthodes, dont le recours à des dispositifs régionaux: et le Conseil de Sécurité, s'il le juge nécessaire, doit inviter les parties à recourir à de tels moyens. En vertu de l'article 34, le Conseil de Sécurité peut enquêter sur tout différend ou toute

situation qui pourrait entraîner un désaccord entre nations ou engendrer un différend, afin de déterminer si cette situation semble devoir menacer le maintien de la paix et de la sécurité internationales. D'après l'article 35, tout pays, membre ou non de l'Organisation, peut attirer l'attention du Conseil de Sécurité sur toute situation pouvant compromettre la paix et la sécurité internationales. Aux termes de l'article 36, le Conseil de Sécurité peut, à tout moment de l'évolution d'un différend ou d'une situation qui, en se prolongeant, peuvent compromettre la paix et la sécurité internationales, recommander les procédures ou méthodes d'ajustement appropriées. Les articles 37 et 38 apportent des précisions sur ce que le Conseil peut décider de recommander en vue d'une solution pacifique au conflit.

La décision prise par le Conseil de Sécurité au sujet du Congo semble entièrement compatible avec ces articles de la Charte. La situation congolaise, vraisemblablement, peut s'assimiler à un différend ou à une situation, au sens où ces expressions sont employées dans les articles 33 à 38 de la Charte; de même, les recommandations du Conseil de Sécurité au sujet des procédures et des méthodes à prendre pour trouver une solution relèvent clairement de l'autorité impartie au Conseil de Sécurité aux termes du chapitre VI de la Charte.

Bref, la nature exacte de l'autorité en vertu de laquelle le Conseil de Sécurité est intervenu dépassait amplement les cadres de l'opération relativement restreinte des Forces de l'Organisation des Nations Unies au Congo, qu'il a dirigée et qu'il dirige encore. Cette opération repose non pas sur une intervention directe du Conseil de Sécurité proprement dite mais sur l'appui bénévole que les États Membres ont accordé au Secrétaire général en se fondant sur les recommandations du Conseil de Sécurité.

De l'avis de mon Gouvernement, le Conseil de Sécurité dispose, en vertu des articles 1er et 24, du pouvoir général ou implicite que supposent ses décisions relatives à l'opération des Forces de l'Organisation des Nations Unies au Congo. Indépendamment de ce pouvoir, le Conseil de Sécurité est manifestement investi, d'après mon Gouvernement, de pouvoirs spécifiques prévus par différents articles de la Charte qui lui permettent d'agir de la même façon. Pour les raisons que j'ai indiquées précédemment, mon Gouvernement estime que ce sont les articles 33 à 38 inclusivement, ainsi que les articles 39 et 40, qui justifient amplement à cet égard la décision du Conseil.

Avant de passer à une autre partie de notre exposé, il convient peut-être de rappeler que l'autorité que le Conseil de Sécurité possède à plus d'un titre pour mener l'opération du Congo ne comporte pas la possibilité d'invoquer les dispositions relatives à l'état-major, prévues aux articles 42 à 46; il y a pour cela nombre de raisons, et notamment la suivante: les arrangements en ce domaine ne sont pas encore en vigueur, et il est manifeste aussi que le Conseil de Sécurité n'a jamais songé à se prévaloir de ces arrangements.

On a donné à entendre, les articles 39 et 40 faisant intégralement partie du chapitre VII de la Charte — qui a trait aux décisions relatives aux menaces contre la paix, aux ruptures de la paix et aux actes d'agression — et ce chapitre comprenant aussi les articles 42 à 46, que les articles 39 et 40 ne pourraient être invoqués qu'en rapport avec les arrangements concernant le système d'état-major visés par les articles 42 à 46.

Il semble que cet argument est en fait dépourvu de tout fondement,

comme suffit à le démontrer l'examen des articles en question. Une étude des articles 39 et 40 démontre qu'ils laissent au Conseil de Sécurité la faculté d'invoquer les arrangements relatifs à l'état-major prévus par les articles 42 à 46 ou de recourir à des mesures moins draconiennes. Ainsi, le Conseil de Sécurité peut, aux termes de l'article 39, se borner à formuler des recommandations en vue de résoudre un problème, une fois déterminé qu'il existe effectivement une menace contre la paix, une rupture de la paix ou un acte d'agression. D'après l'article 40, le Conseil de Sécurité peut, avant de prendre une décision prévue à l'article 39,

> « inviter les parties intéressées à se conformer aux mesures provisoires qu'il estime nécessaires ou souhaitables ».

Pour ces raisons il est difficile d'admettre l'argument selon lequel les articles 39 et 40 ne pourraient être dissociés des articles 42 à 46. Une telle interprétation irait manifestement à l'encontre de l'objet des articles 39 et 40.

Enfin, un dernier mot sur cet aspect de la question, au sujet du statut du Secrétaire général au regard des résolution du Conseil de Sécurité. Ces résolutions imposent d'importantes tâches exécutives et administratives, nécessaires pour leur mise en œuvre, tout comme dans le cas des résolutions de l'Assemblée générale relatives aux opérations de la Force d'urgence. En conformité de l'article 98 de la Charte, ces tâches ont été confiées au Secrétaire général, tout comme l'Assemblée générale l'avait fait dans le cas de la Force d'urgence.

Nous abordons maintenant la dernière partie de notre exposé avec la question des pratiques de l'Assemblée générale en matière budgétaire. Après une analyse de l'aspect budgétaire des résolutions de l'Assemblée générale et du Conseil de Sécurité relatives à la Force d'urgence et à l'opération du Congo, la déclaration canadienne concluait qu'en vertu des principes énoncés par les résolutions dont il s'agit, la Force d'urgence des Nations Unies et la Force de l'Organisation des Nations Unies au Congo devaient toutes deux être financées par le budget des Nations Unies tout en précisant que les contributions libres, apportant une aide financière spéciale, devaient être appliquées de façon à alléger le fardeau de ceux des gouvernements qui sont le moins capables d'assumer une part des dépenses (voir à ce sujet les pages 214 et 215 du cahier des déclarations écrites).

Montrons maintenant, par une revue des pratiques budgétaires de l'Assemblée générale, que les principes établis par ces résolutions ne souffrent aucune autre interprétation. La nécessité d'entrer dans le détail de ces importantes questions nous est épargnée en bonne partie par l'excellente et exhaustive étude qu'en ont faite les déclarations écrites de quelques États, et notamment celles des Gouvernements du Royaume de Danemark et des États-Unis d'Amérique. Dans ces conditions, il ne sera question ici, et brièvement, que de certains éléments-clés.

L'article 17, paragraphe 1 et paragraphe 2, de la Charte remet à la seule Assemblée générale le pouvoir d'adopter le budget des Nations Unies, d'autoriser les dépenses, d'assurer les recettes nécessaires et d'imposer aux États Membres les quotes-parts jugées nécessaires pour couvrir les dépenses de l'Organisation.

C'est dire que l'Assemblée générale est le seul organe des Nations Unies qui soit habilité à approuver ces dépenses, quelle qu'en soit la

nature et qu'il s'agisse de dépenses administratives ordinaires ou de dépenses devant assurer des opérations de maintien de la paix. Si la dépense est nécessaire du fait d'obligations contractées antérieurement par d'autres organes des Nations Unies, comme par exemple le Conseil de Sécurité, il se peut fort bien que l'Assemblée générale n'ait d'autre choix que d'y consentir. Il semble que tel soit le sens de l'avis consultatif émis le 13 juillet 1954 par la Cour au sujet de l'affectation des dommages-intérêts accordés par le Tribunal administratif des Nations Unies (voir à ce sujet le rappel de cette cause dans la déclaration du Gouvernement du Royaume de Danemark, page 150 du cahier des déclarations écrites).

Conformément au pouvoir que possède l'Assemblée générale d'approuver toutes les dépenses de l'Organisation, la pratique observée par l'Assemblée en matière budgétaire consiste à faire entrer dans le budget qu'elle approuve, non seulement les dépenses afférentes aux tâches ordinaires, mais toutes les autres dépenses aussi bien qui retombent sur le budget des Nations Unies, y compris, en place très importante, les dépenses afférentes aux opérations de maintien de la paix. Plusieurs postes du budget de 1962 se rattachent à des opérations de maintien de la paix entreprises à l'initiative de l'Assemblée générale ou du Conseil de Sécurité dans l'exercice des pouvoirs généraux qu'ils possèdent pour le maintien de la paix et de la sécurité internationales. Il en est énuméré un certain nombre dans la déclaration écrite du Gouvernement du Royaume de Danemark aux pages 146 et 147 du cahier des déclarations écrites.

Pour donner une idée du genre de postes comptables dont il s'agit, un seul exemple suffit: celui des dépenses afférentes à la Commission des Nations Unies pour l'unification et le relèvement de la Corée, organisme créé par l'Assemblée générale.

D'autre part, comme l'indique la déclaration écrite du Canada, pages 211 et 212 du cahier, l'Assemblée générale a la charge d'un certain nombre de programmes dont le financement est assuré par des fonds ne provenant pas du budget des Nations Unies. Il a été établi des comptes spéciaux pour ces programmes extra-budgétaires dont plusieurs sont énumérés dans la déclaration du Danemark, page 147. Y figurent notamment le Programme élargi d'assistance technique et le Fonds spécial des Nations Unies.

Comme l'a indiqué la déclaration du Canada, page 211 du cahier, l'expression « budget des Nations Unies », au sens de l'article 17 de la Charte, désigne les dépenses de l'Organisation autorisées par le budget approuvé par les Nations Unies. Pour 1962, ce budget se divise en trois sections:

première section, le budget ordinaire,
deuxième section, le budget de la Force d'urgence, et
troisième section, le budget de la Force des Nations Unies au Congo.

En dépit du fait que les budgets de la Force d'urgence et de la Force de l'Organisation au Congo ont été séparés du budget ordinaire pour des raisons de commodité administrative, par l'établissement de comptes spéciaux, l'analyse des résolutions pertinentes de l'Assemblée générale et du Conseil de Sécurité qui a été faite dans les déclarations écrites du Canada et de certains autres États révèle que les trois budgets ne constituent ni plus ni moins que des sections du budget d'ensemble des Nations Unies au sens de l'article 17. Il serait peut-être justifié jusqu'à un certain

point à placer dans une catégorie extra-budgétaire la section des budgets de la Force d'urgence et de la Force au Congo qui est assurée seulement par des fonds extra-budgétaires, si la structure financière de ces budgets avait été édifiée sur une telle base. Or, il n'en est rien. Afin d'assurer le financement de la Force d'urgence et de la Force de l'Organisation des Nations Unies au Congo, on a estimé nécessaire de garantir un appoint provenant des ressources financières de l'Organisation des Nations Unies en cas de déficit de ces deux opérations, déficit résultant d'une insuffisance des contributions libres destinées à financer les dépenses des Nations Unies pour lesquelles on compte sur ce mode de financement. Il y a là un élément décisif; les budgets de la Force d'urgence et de la Force opérant au Congo font tout autant partie intégrante du budget d'ensemble des Nations Unies que le budget ordinaire lui-même.

Une fois établi que les budgets de la Force d'urgence et de la Force de l'Organisation au Congo font partie du budget d'ensemble des Nations Unies, ce que l'Assemblée générale a fait en termes précis en vertu du mandat non moins précis que lui donne la Charte, il importe peu que les budgets de la Force d'urgence et de la Force au Congo soient traités séparément ou fassent partie du budget ordinaire des Nations Unies. Le fait qui compte, c'est que d'excellentes raisons de commodité administrative demandent que les dépenses de la Force d'urgence et de la Force au Congo soient distinguées de celles du budget ordinaire. Le traitement spécial nécessité par l'apport des contributions libres et l'établissement d'une échelle spéciale de cotisation a contribué, c'est évident, à faire prendre la décision d'établir des budgets séparés pour ces deux opérations, ainsi que l'énonce la déclaration écrite du Danemark, page 149 du cahier des déclarations écrites:

> « L'objet de l'article 17, section 2, est d'établir un mode sûr et efficace de financement des dépenses et non pas d'empêcher que des dépenses qui sont essentiellement des dépenses de l'Organisation soient financées par des fonds recueillis de diverses manières et notamment par le recours simultané aux contributions libres et à la cotisation obligatoire. »

Il ne faut pas perdre de vue non plus, d'autre part, que l'article V-5.1 et l'article V, section 6, sous-section 7, des règlements financiers des Nations Unies établis par la résolution 456 de l'Assemblée générale (16 novembre 1950) et modifiés par la résolution 450 de l'Assemblée générale le 3 décembre 1955 et par la résolution 973, section B, du 15 décembre 1955, établissent clairement qu'il peut être institué des comptes spéciaux et que, sauf disposition contraire adoptée par l'Assemblée générale, ces comptes doivent être financés par des contributions des États Membres selon une échelle de cotisation fixée par l'Assemblée générale.

Indication supplémentaire de ce qu'il n'a été fait absolument aucune distinction entre le traitement accordé au budget ordinaire et le traitement accordé au budget de la Force d'urgence et de la Force de l'Organisation au Congo, on notera que les méthodes budgétaires observées par l'Assemblée générale dans le cas des budgets de la Force d'urgence et de la Force de l'ONU au Congo sont toujours les mêmes que lorsqu'il s'agit d'approuver le budget ordinaire. Dans chacun des cas, le contrôleur prépare, au nom du Secrétaire général, les prévisions de dépenses. Celles-ci sont étudiées par le Comité consultatif pour les questions

administratives et budgétaires; par la suite, elles sont examinées en Cinquième Commission, puis, enfin, en séance plénière de l'Assemblée générale.

Pour conclure, je dirai qu'au sens de mon Gouvernement la question dont la Cour est saisie se rattache en premier lieu aux obligations financières des Membres des Nations Unies en ce qui concerne les opérations de la Force d'urgence et de la Force de l'Organisation des Nations Unies au Congo.

Le Gouvernement canadien estime que ces opérations n'ont, en aucune façon, violé les dispositions de l'article 2 (7) de la Charte, ayant été entreprises et poursuivies à la requête et avec le consentement des États dont le territoire est intéressé.

Les organes de l'Organisation des Nations Unies qui ont pris la décision d'autoriser et de soutenir ces opérations ont agi dans le cadre des pouvoirs qui leur sont attribués par la Charte, dans le but d'atteindre ses objectifs essentiels, et en particulier celui qui a trait au maintien de la paix internationale.

Et, en dernier lieu, il nous semble évident que l'établissement de budgets particuliers pour la Force d'urgence et pour la Force de l'Organisation au Congo ne peut valablement soutenir la thèse que l'Assemblée générale a voulu abandonner le principe que les dépenses afférentes à ces opérations soient assurées essentiellement par les cotisations obligatoires, tout en tenant compte des contributions volontaires provenant des États Membres.

En second lieu, la Cour est appelée à se prononcer indirectement sur une question plus large. C'est-à-dire la question de savoir si les Nations Unies, en fait, ont reçu des pouvoirs suffisants, aux termes de leur Charte, pour s'acquitter des immenses responsabilités qui leur sont confiées.

Mon Gouvernement croit sincèrement et avec la plus profonde conviction que la Charte a de fait conféré aux Nations Unies les pouvoirs nécessaires pour se bien acquitter de leurs responsabilités. Si la Cour répond par l'affirmative à la question qui lui a été posée au sujet des opérations de la Force d'urgence et de la Force au Congo, on aura confirmé le rôle de suprême importance que les auteurs de la Charte entendaient confier aux Nations Unies et que l'humanité leur demande maintenant de jouer dans la recherche des solutions aux problèmes mondiaux, dont les plus graves sont ceux que pose la recherche des moyens les plus propres à préserver la paix et la sécurité internationales.

2. ORAL STATEMENT OF MR. RIPHAGEN

(REPRESENTING THE GOVERNMENT OF THE NETHERLANDS)
AT THE PUBLIC HEARINGS OF 15 AND 16 MAY 1962

[Public hearing of 15 May 1962, morning]

Mr. President and Members of the Court:

The question of the obligations of Member States under the Charter of the United Nations in the matter of financing the United Nations operations in the Congo and in the Middle East has raised a great number of observations; some of them are clearly and purely of a political nature, others have a more or less legal nature.

The question itself, as phrased in the General Assembly Resolution 1731 (XVI), is a relatively simple one. Stripped of its numerous references to specific resolutions, the request for an advisory opinion submits to the Court the question whether particular expenditures of the United Nations specifically authorized by the General Assembly under Article 17, paragraph 1, of the Charter constitute expenses of the Organization within the meaning of paragraph 2 of the same Article.

Now, to the uninitiated this might seem a rather simple question, and I must confess, Mr. President and Members of the Court, that even after a careful study of the various learned arguments which have been put forward in the written statements which advocate a negative reply, I am still inclined to think that, after all, this question is not that complicated, and should be answered in the positive sense.

In challenging the obligations of a Member State to bear its share in certain expenses of the United Nations, much has been said and written about the legal nature of the United Nations, about the exclusive powers of the Security Council, about the domestic jurisdiction of States, about the conduct of UN forces in particular situations, about the responsibility of this or that State for the situation which has occasioned United Nations operations, about the special responsibility of permanent Members of the Security Council for measures to maintain international peace and security, about the relative capacity to pay of the various Member States, and about other matters.

A full discussion of all the arguments advanced would, of course, require a step by step analysis of the situation in the Middle East and, later on, in the Congo, and of the various resolutions and operations of the United Nations organs to which these situations gave rise, including, finally, the decisions of the General Assembly in respect of the authorization and the apportioning of the United Nations expenses.

For reasons which, I hope, will be justified by what—with the Court's permission—I am going to say, I would, however, prefer to concentrate on the fiscal power of the General Assembly, laid down in Article 17 of the Charter, and its relationship to other powers, rights and rules recognized in the Charter.

The fiscal power of the General Assembly, as laid down in Article 17 of the Charter, comprises—in so far as relevant here—two elements:

First of all, all expenditures of the Organization must be authorized by the General Assembly; under Article 18 of the Charter such authorizations require a two-thirds majority of the Members present and voting.

Second, the expenses of the Organization are covered by contributions of the Member States, the amounts of which shall be determined by the General Assembly; again, under Article 18 of the Charter the determination of the share of each Member State in the coverage of the expenses requires a two-thirds majority of the Members present and voting.

No limitation whatsoever of this fiscal power is provided for in the text of the Charter itself.

According to some of the written statements submitted to the Court, such limitations are, however, *implied* by the existence and the exercise of other powers—powers of the Member States and powers of other organs of the United Nations stipulated or recognized in the Charter.

One of the alleged limitations apparently relates both to the power of authorization and to the power of apportionment. I am referring here to the contention, put forward in the letter addressed to the Registrar of the Court by the *Directeur des Affaires politiques* of the French Ministry of Foreign Affairs (which is on p. 130 of the printed document). According to this contention, the fiscal power of the General Assembly would be limited to those expenses *"dont le principe était posé par la Charte comme une obligation juridique pour les États, c'est-à-dire les dépenses administratives"*.

Another of the alleged limitations of the fiscal power of the General Assembly refers more particularly to the power to *apportion* expenses, that is to the financial coverage. Thus, the view has been expressed—*inter alia* in the written statement submitted by the Government of the Czechoslovak Socialist Republic (on p. 177 of the printed document)—the view has been expressed that "all measures connected with the use of armed forces on behalf of the United Nations fall, of necessity, under Chapter VII, and, accordingly, also the measures connected with the material and financial coverage of armed actions fall under this Chapter". Presumably this would mean that the financial contribution of Member States to cover the expenses of the Organization connected with the use of armed forces could only be based on special agreements concluded between such Member and the Security Council under Article 43 of the Charter.

Finally, some written statements, submitted to the Court, allege that the fiscal power of the General Assembly is limited in particular with respect to the expenses which the General Assembly may *authorize*. Thus, in support of the contention that the General Assembly resolutions, mentioned in the request for an advisory opinion, do not create a legal obligation of the Member States, it is alleged that certain *activities* engaged in by the United Nations are "invalid" as contrary to the provisions of the Charter, and that certain *resolutions* in pursuance whereof these activities were undertaken by the United Nations are "invalid" since either the contents of those resolutions or the procedure according to which they were passed are contrary to the provisions of the Charter.

Obviously, these contentions are based on the assumption that only such expenses of the Organization may be authorized and apportioned as are made in respect of operations which are both undertaken in pursuance of "valid" resolutions, and are in themselves in accordance

with, or at least not contrary to, the rules of conduct laid down or recognized in the Charter.

In the submission of my Government, all these alleged limitations of the fiscal power of the General Assembly, whether they relate more particularly to authorization or to apportionment, or relate to the power as a whole, all these alleged limitations are in the opinion of my Government unfounded in law. Even if one could admit, *in abstracto*, some implied limitations of the kind referred to above, they could not apply to the case before the Court or, for that matter, to any situation which is likely to arise in practice.

With your permission, Mr. President and Members of the Court, I would like to elaborate this two-fold submission of the Netherlands Government.

The contentions put forward in the present case in support of a negative answer to the question submitted are unsound both in principle and in practice. They are, furthermore, completely unnecessary for safeguarding the legitimate interests of Member States, while they are, at the same time, destructive for the purposes of the world organization.

Unnecessary for safeguarding the legitimate interests of Member States, unpracticable and destructive for the effective functioning of the United Nations and—I might add also for these reasons—unsound in law; these are the three points I may briefly comment upon.

The alleged implied limitations of the fiscal power of the General Assembly are unnecessary for safeguarding the rights of Member States. Indeed, what is involved here is only the obligation of Member States to pay their share in the expenses made by the Organization, and nothing more. The question submitted to the Court does not involve any other obligation or limitation of the rights of Member States. It does not involve an obligation of Member States to make available to the United Nations troops or other personnel, or arms or other materials, or services of any kind. It does not involve an obligation of Member States to refrain from any activity which might adversely affect the United Nations operations. It does not involve an obligation of a Member State to admit within its territory or jurisdiction any United Nations activity or to allow any other State to infringe its sovereignty. In fact, the question does not involve any legal consequence at all save the obligation to pay a certain amount of money to the United Nations.

And even in this respect, the legitimate interests of Member States are amply safeguarded by the procedures provided for in the Charter. It is the General Assembly, the United Nations organ in which every Member State is equally represented, which alone can take a binding decision in this matter. And every single decision of the General Assembly, both in regard to authorization of any expenditure and in regard to the apportionment between the Member States, requires a two-thirds majority of the Members present and voting.

Now, in view of the effect of a decision of the General Assembly under Article 17 of the Charter—that is, the obligation to pay a specific amount of money—and in view of the procedure to be followed in taking this decision—that is a two-thirds majority of the Member States being required both for the authorization and for the apportioning of expenses —in view of this effect and procedure, is it reasonable to suggest that the fiscal power of the General Assembly is limited in law to particular types of expenditure to be determined "objectively"? Could there be

any merit in the contention that, without such *a priori* limitations the United Nations would have, as it has been said in the written statements on page 134, *"un pouvoir législatif mondial"* and would become, as is said on the same page, a *"super-État"*? It would seem obvious that the answer to both questions is: no!

The alleged implied limitations of the fiscal power of the General Assembly are also impracticable and destructive for an effective world organization.

I have listed before the three limitations which are allegedly implied by other Powers, given or at least recognized by the Charter. They purport to be "objective" limitations, the effect of which could be ascertained quasi-automatically and be acceptable to everybody without reasonable doubt.

Now, the written statements which stipulate these limitations leave us in considerable uncertainty as regards the exact dividing line between the expenses of the Organization which *are* expenses in the sense of Article 17, paragraph 2, of the Charter, and those which would *not* fall into that category.

According to the opinion advanced in the written statement of France (on p. 133 of the printed document), the magic formula here is: administrative versus other expenditure. But it is not clear from the letter what exactly the legal consequences of this distinction are supposed to be. Does it mean that the Organization cannot lawfully make any "non-administrative" expenditure? Apparently not, since this statement mentions with approval expenses which it does not qualify as "administrative" and which, though covered in whole or in part by voluntary contributions of some or all Member States, are nevertheless made by the Organization itself. Now, if such "non-administrative" expenditures are in principle allowed, do they figure in a budget and are they to be authorized by the General Assembly? If not, how then would the necessary financial control be exercised? And if such "non-administrative" expenditures are to be authorized by the General Assembly, that would mean that the distinction between "administrative" and "non-administrative" expenditures is irrelevant for the first paragraph of Article 17 of the Charter. But why then would such expenditures of the Organization not be covered by the second paragraph of the same Article? And what if the total expenditure in respect of certain United Nations operations is partly "administrative" and partly "non-administrative"? The answer probably would be, under the construction of the written statement of France, that they should partly be covered by voluntary contributions of Member States. But then again, it can only be the General Assembly which could adopt such *plan de financement particulier*, by calling on some or all Member States to pay voluntary contributions or noting that such contributions have been made, and apportioning the remainder of the total expenditure relating to the operations between the Member States. Now this is, in fact, what was done in some of the resolutions of the General Assembly relating to UNEF and ONUC. One may safely assume that any United Nations operation involves expenditures which even on the narrowest possible definition of the term are "administrative". But then the legal significance of the whole distinction between "administrative" and "other" expenditures could not be anything more than some sort of guidance with respect to the way the General Assembly should exercise its fiscal power under Article 17 of the

Charter. Indeed, such guidance would be of limited value, since there is nothing in the word "administrative" which would permit to make a sharp distinction *in concreto* between the one and the other expenditure. Actually, the French written statement itself states that: "*Sur le plan administratif, les Nations Unies ont assumé la gestion de nombreuses entreprises d'assistance humanitaire ou économique; mais les obligations financières qui en découlaient n'ont jamais pesé que sur les États qui les avaient acceptées et dans la mesure où ceux-ci les avaient acceptées.*" But then, the whole construction comes down to nothing more than the statement that the General Assembly, in the exercise of its fiscal power under Article 17 of the Charter, should carefully consider, both in authorizing and in apportioning expenses of the Organization, whether and to what extent such expenses should be covered by voluntary contributions or by obligatory contributions, and, in the latter case, according to what scale of assessment.

But then the question how the General Assembly should *exercise* its power under Article 17, paragraph 2, of the Charter to apportion the expenses of the Organization, the question how the General Assembly should *exercise* its power is not before the Court in the present instance.

[Public hearing of 16 May 1962, morning]

Mr. President, Members of the Court, yesterday I had the honour to advance that the alleged limitations of the fiscal power of the General Assembly are not necessary for safeguarding the legitimate interests of Member States; that they are impracticable and destructive for the effective functioning of the United Nations; and that they are unsound in law.

In commenting on the second point, that is that the alleged limitations are impracticable and destructive for the effective functioning of the world organization, I have referred to the written statement of the French Ministry of Foreign Affairs, according to which there should be made a distinction between "administrative" and other expenses. I have remarked that it is not quite clear from the French written statement what exactly the legal consequences of this distinction are supposed to be.

If the statement intends to assert that the General Assembly, in the course of *exercising* its fiscal power under Article 17 of the Charter, should keep in mind this distinction when it is going to decide what expenses are to be made and how they shall be covered, there might be some practical merit in the distinction.

However, the question how the General Assembly should *exercise* its power under Article 17, paragraph 2, of the Charter, and which considerations might guide the General Assembly in deciding on the scale of assessment, that question is *not* before the Court in the present instance.

Now, indeed, the French written statement seems to go further and seems to purport to state a legal rule according to which a Member State is entitled to refuse to pay its contribution to the expenses of the Organization on the ground that some of those expenses are, in the opinion of that Member State, of a "non-administrative" character, but then it attaches a far more important legal consequence to the distinction between administrative and other expenses.

In that case, the distinction would not only mean to give some guidance to the General Assembly, but would be the legal touchstone for

the existence or non-existence of financial obligations of Member States and for the validity or nullity of a General Assembly resolution apportioning expenses among Member States. Now surely, if one would admit that the fiscal power of the General Assembly is limited to a certain category of expenditures of the United Nations, the definition of that category should be a clear-cut definition, leaving no room for reasonable doubt on whether particular expenses are included in or excluded from such category. Otherwise, the door would be open for all sorts of doubts and each Member State could then dispute the amount of its contribution not only—as is indeed its right under the Charter—during the discussions in the General Assembly on the authorization of expenditure and on the method of coverage, but also *after* the General Assembly, by a two-thirds majority vote, has decided that the expenses may be made and shall be covered by obligatory contributions.

Now the consequences of such a system would be that the *authorized* expenditures could not be made before the contributions which should cover those expenses are actually made and to the extent that they have been made since, otherwise, the consequences of non-payment by one Member State would in practice have to result in an increase of the contributions of other Member States.

Now it seems obvious that any such *a priori* legal limitation of the fiscal power of the General Assembly would make it impossible for the Organization effectively to exercise its functions.

The same objections of a practical nature apply to the other alleged limitations of the fiscal power of the General Assembly, inasmuch as they all tend to make the legal obligation of a Member State to pay contribution dependent upon the political judgment of that Member State in respect of the United Nations operations which cause the expenses that are to be covered by such contributions.

Mr. President and Members of the Court, I now arrive at the third point I may briefly comment upon. The alleged limitations of the fiscal power of the General Assembly are unsound in law.

As I have already observed, the fiscal power of the General Assembly, stipulated in Article 17 of the Charter, is *not* expressly limited to any particular type or category of expenses of the Organization.

If, however, it is contended that this power *is* limited in law, such contention could only be based on the thesis that there is an *implied* limitation, arising from the fact that the Charter stipulates, or at least recognizes, other rights and powers which, *without* such limitation of the fiscal power of the General Assembly, would be nullified, encroached upon or frustrated.

However, the written statements suggesting a negative answer to the question submitted to the Court fail to indicate exactly *which* other powers—powers of other United Nations organs or powers of Member States—would, by implication, limit the fiscal power of the General Assembly. They fail to indicate *why* these other powers would be nullified, encroached upon or frustrated by the unlimited exercise of the fiscal power of the General Assembly, and they fail to indicate *to what extent* this fiscal power would, therefore, have to be construed as "limited".

To start with the last-mentioned point, it is obvious that the General Assembly, in the *exercise* of its fiscal power, may be under a legal duty to take into account the fact that some other organ has—within the

limits of its powers—taken a decision or acted in a way which entails legal consequences for the United Nations. Indeed, the Court has for example stated in the case of the *Awards of the United Nations Administrative Tribunal* that the General Assembly is legally bound to honour the financial consequences arising from such awards. In the present case, various arguments have been put forward which tend to show that the expenses of United Nations operations such as those in the Congo and the Middle East, in view of the amounts involved or the particular situation of certain Member States or the exceptional character of the operations, should be put on a special account and apportioned according to a scale of assessment different from that applicable to other expenses.

Now, we can leave aside whether these arguments tend to or could possibly give sufficient basis for the assumption that the General Assembly is *legally* bound to follow the course indicated therein. I think we can leave this aside since, in any case, such legal obligations of the General Assembly would refer to the *exercise* of its fiscal power. The question now submitted to the Court, however, concerns the *existence* of the power to authorize and apportion expenditures of the United Nations. Indeed, if the United Nations expenses relating to the United Nations operations in the Middle East and in the Congo are *not* expenses of the Organization within the meaning of Article 17, paragraph 2, there is no sense in discussing whether and how they would have to be apportioned. And if they *are* expenses of the Organization, well, then the question is answered.

Now, Mr. President and Members of the Court, we mentioned this question of possible duties of the General Assembly in respect of the exercise of its fiscal power because, in the theory, such duties might be the legal expression of the need to avoid contradiction and conflict between the general fiscal power of the General Assembly and the other rights and powers recognized or stipulated in the Charter. Indeed, one might, in a general way, argue that the General Assembly in the exercise of its fiscal power may, and perhaps even should, take into account not only the purely financial aspects of expenditure and coverage, but also other relevant factors. But that does *not* mean that such other factors are legally relevant in respect of the *existence* and scope of the fiscal power, or relevant for the *legal consequences* of its exercise in a given case. In other words, even if one maintains that in authorizing expenditures of the Organization the General Assembly may or should take into account the decisions of other United Nations organs in the light of the applicable Charter provisions, this would, from the legal point of view, still be a very long way from saying that some expenditures *cannot be* expenditures of the Organization. And even if one would maintain that, in apportioning the expenses of the Organization authorized by it, the General Assembly may or should take into account the rights and obligations of the Member States in the non-financial field under the Charter, this would still be far from admitting that the legal consequence of the apportioning—that is the financial obligation of a Member State to pay the allotted share—could be *legally nullified* by such other rights or obligations of the Member States.

Indeed, Mr. President and Members of the Court, there is, in all systems of law, a fundamental distinction between the question of the directives which an authority should follow in the exercise of its functions, and the question of the scope of its powers and the legal consequences of the exercise of those powers.

Now, only the latter question is, in the present case, submitted to the Court. Now, under these circumstances, it is respectfully submitted that the arguments which have been adduced in favour of a negative answer to the question put to the Court are in reality somewhat beside the point. This goes, in the first place, for all the arguments which are based in some way or another on the distinction between "administrative" and "other" expenses. It goes also for the arguments tending to prove that some Members of the United Nations should bear a larger share, or even all, of the expenses relating to certain United Nations operations, either in view of their position as permanent members of the Security Council or in view of their alleged responsibility for the situation which occasioned such operations. These arguments are all arguments which can be invoked in the course of the discussions of the General Assembly when it deliberates on the authorization and apportioning of certain United Nations expenditures. But they cannot have any legal relevance once the General Assembly *has* taken decisions on both points.

The arguments which are based on the provisions of Chapter VII of the Charter are, it is respectfully submitted, equally irrelevant in law once the General Assembly has taken decisions on the authorization and apportioning of expenses. Surely the provisions of Chapter VII stipulate obligations of Member States, powers of the Security Council and even rules which might be interpreted as safeguarding certain legitimate interests of individual Member States.

But it is difficult to see how and why *any* of those provisions of Chapter VII could be legally relevant in respect of the *financial* obligations to pay contributions to the United Nations.

Under Article 43 of the Charter,

> "all Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining peace and security".

Now, apart from the fact that no such agreement has ever been concluded between the Security Council and any Member State or group of Member States, one might say that there is in this Article some general sort of obligation of the Member States. But how could one possibly sustain that such obligations affect in any way the *financial* obligations to pay contribution to the United Nations in order to cover its authorized expenditures?

Apparently, those who invoke Chapter VII of the Charter do not have in mind the *obligations* of Member States under the provisions of this Chapter, but try to turn these provisions into the stipulation of a *right* of every Member State *not* to contribute anything to the maintenance of international peace and security otherwise than under a special agreement concluded by that Member State. Now that is *not* what the provisions of Chapter VII say, and it is *not* a reasonable implication of these provisions either. Surely, when Article 43 requires a special agreement between a Member State and the Security Council—an agreement subject to ratification in accordance with constitutional processes—that is because of the grave international and internal responsibilities involved for a State in the fact that *its* armed forces take military action or that

its territory is made available for the passage of foreign troops taking such action.

But nothing in any way comparable to such responsibilities is involved for a Member State in its financial contributions to the expenses made by the Organization as such, whatever the operations *of the United Nations*, causing such expenses, might be.

Thus, to the extent that one might construe the requirements of a special agreement in Article 43 of the Charter as a provision which safeguards a legitimate interest of a Member State, there is nothing in the fiscal power of the General Assembly under Article 17 which in any way nullifies, encroaches upon or frustrates that safeguard.

Now Chapter VII of the Charter is invoked in another context as well, and that is to suggest that the unlimited exercise of the fiscal power of the General Assembly might encroach upon the *powers of the Security Council* under that Chapter.

Now here again it is extremely difficult to see how there could be, in law, any conflict between the two powers in the case which is now before the Court. There could of course be some contradiction if the General Assembly, in the exercise of its fiscal power, would *fail* to authorize and apportion expenses of the United Nations which would result from the implementation of Security Council resolutions, taken under the provisions of Chapter VII. But in the present case, we are dealing with exactly the opposite situation. It is not the *failure* of the General Assembly to authorize and apportion expenditures of the United Nations, but the *decision* of the General Assembly to authorize and apportion expenditures, which is challenged. But what conflict could possibly arise between such a *positive* decision and the power of the Security Council under Chapter VII?

Actually, the present case deals with expenditures of the United Nations resulting from operations which were undertaken partly in pursuance of resolutions of the Security Council, partly in pursuance of resolutions of the General Assembly.

Now various written statements submitted to the Court suggest that some or all of these *operations* are, as such, contrary to the rules of conduct laid down in the Charter. They also suggest that some of the *resolutions*, in pursuance whereof the operations were undertaken, are "invalid", since they would have been adopted by a United Nations organ which, under the Charter, is incompetent to do so.

In the opinion of my Government, both these allegations are without substance in law. In its written statement, my Government has indicated the reasons on which its opinion is based. Since some of my distinguished colleagues here will and have already dealt with these allegations, you will perhaps allow me, Mr. President and Members of the Court, not to elaborate on this question at the present moment. Apart from the wish not to abuse the privilege of addressing the Court, there is another reason why I may ask the Court to remain silent on this point. Indeed, Mr. President and Members of the Court, in the submission of my Government the issue of the so-called "validity" of the resolutions and of the operations as such is *not legally relevant* for the question submitted to the Court in the present request for an advisory opinion.

The question submitted to the Court is limited in scope. It relates to certain specified expenditures, which *have been* authorized by the General Assembly, and to the financial obligations of Member States, resulting

from the apportioning of those expenses by decisions, which *have been* taken by the General Assembly.

Now the fiscal power of the General Assembly is challenged on the strength of arguments which are directed, not directly against the authorization and apportioning of *expenses*, but against the activities which entail those expenses, and against the *resolutions* which underly the activities.

Obviously, the strength of these arguments depends on the existence and the solidity of a legal "link" between the fiscal powers, rights and obligations on the one hand, and the operational powers, rights and obligations on the other hand.

It is by no means self-evident, in any legal system, that the non-observance of rules applicable to the operational field has any legal consequences in the fiscal field and *vice versa*. On the contrary, in most legal systems the two fields are quite distinct and, in principle, neatly separated. This would seem also true for the legal system created by the Charter of the United Nations. The authorization of expenditures for United Nations activities cannot, in law, justify all or any of those activities under the rules of conduct of the law of nations, including the Charter. But no more could the fact that some of those activities were proved to be contrary to such rules of conduct deprive the corresponding expenditures of their legal character as "expenses of the Organization". If, therefore—to take an example—the written statement of the Government of the Republic of South Africa submits—now I quote from page 264 of the printed document—

> "that there is justifiable doubt as to the validity of certain activities engaged in by the United Nations in the Congo in that they may well have exceeded and conflicted with the terms of the relevant resolutions and the provisions of the Charter",

it is respectfully submitted from our part that such doubts are legally irrelevant to the issue now before the Court.

It may be remarked in passing that it would be in fact impossible to designate *that part* of the total expenditure of the United Nations operations in the Congo which would correspond to the acts of the United Nations forces over there which are considered by South Africa to be "doubtful".

But, of course, such an objection is of a practical nature and would not apply to authorized expenditures of the United Nations which would be identifiable as relating solely and exclusively to the implementation of specific resolutions. Now here again, Mr. President and Members of the Court, it is, from a legal point of view, by no means self-evident that the alleged lack of "validity" of a resolution would taint the expenditures of the United Nations relating to its implementation, to the effect that they could not qualify as "expenses of the Organization".

There are perhaps few legal expressions which cover so many totally different things as the word "validity" in relation to a legal act. It is, indeed, generally recognized that a legal act may be "valid" in one respect and "invalid" in another respect.

It is also generally recognized that the "relativity" of the validity of a legal act is closely related to the diversity of legal interests which are protected by the rules governing its coming into being.

Actually one might say that the word "validity" in relation to a legal act is nothing more than a legal term of art indicating that the non-observance of one rule is sanctioned by the non-application of another rule.

In the present case some of the written statements argue that the alleged non-observance of certain rules in the course of the adoption of the General Assembly and Security Council resolutions in *pursuance* of which the United Nations has undertaken its operations should be sanctioned by the non-application of the rules relating to the expenses of the United Nations and the way in which they are covered.

Now surely such sanction can never be self-evident and could only be applied if there were some specific basis for it in the Charter itself. The mere use of the rather ambiguous term "validity"—or, for that matter, of the equally ambiguous term *"ultra vires"*—cannot justify such an extraordinary sanction.

Every Member State, by the sole fact of being a Member of the United Nations, accepts the obligation to bear its share in the expenses of the Organization. It has its say in the authorization of such expenses and it has its say in the determination of the scale of apportioning: each successive year the final decision on both points is taken by a two-thirds majority of the Member States.

Now it is suggested that this set of rules relating to the fiscal field should not be applied if some completely different set of rules, relating to the operational field, has not been observed.

Now it would seem that this suggestion not only does not find any foundation in the text of the Charter, it also leads to quite unacceptable consequences.

The suggestion that the rules relating to the fiscal field should not be applied if some completely different set of rules, relating to the operational field, has not been observed, does not find any foundation in the text of the Charter and would lead to unacceptable consequences.

This is particularly clear if we look at the type of objections raised in the present case against the operational resolutions of the General Assembly and the Security Council. These objections are two-fold. One is based on an interpretation of the dividing line between the powers of the General Assembly and those of the Security Council in matters of maintenance of international peace and security. The other is based on an interpretation of what constitutes matters essentially within the domestic jurisdiction of a State.

In the opinion of my Government, there is no merit in either of the two interpretations.

But even if there were some merit in the objections as such, they would still be *immaterial* for the issue which is at present before the Court.

One might perhaps argue that one or the other of the objections raised would at least be a *relevant* objection, if the Court would have to decide on the point whether a Member State were under an obligation to admit operations of the United Nations within its territory.

Or if the question submitted to the Court would be whether specific acts, otherwise contrary to the rules of conduct of the law of nations, could be justified by the fact that they were committed in pursuance of an operational resolution of a United Nations organ.

Or, even, if the Court were confronted with conflicting operational resolutions of different United Nations organs. But the present issue is *not* one of those just mentioned, nor even a comparable one.

The question now before the Court is only whether specific expenses of the United Nations are to be borne by the Member States.

It deals, so to speak, with the minimum legal effect of the existence of the United Nations *as an organization.*

If the financial obligation to pay contribution could be challenged by a Member State, notwithstanding the fact that the underlying decision of the General Assembly has been taken in strict accordance with the procedural requirements laid down in Article 17 of the Charter, then the door would be open for an endless amount of litigation and the Organization would be doomed to what the French call *"l'immobilisme"*.

And here, Mr. President and Members of the Court, the legal arguments join the practical arguments which I have had the honour to advance before.

Mr. President and Members of the Court, in concluding my statement I may be allowed to stress once again that my Government, for the reasons set out in its written statement, maintains the opinion that the resolutions of the General Assembly and of the Security Council in pursuance of which the United Nations untertook its operations in the Middle East and in the Congo are, in all respects, "valid" resolutions under the Charter.

If my oral statement has been primarily concerned with the fiscal power of the General Assembly, this has been done because the legal issue raised by the request for an advisory opinion has a bearing on more than the United Nations operations in the Middle East and in the Congo alone. In reality it involves nothing less than the existence of the United Nations as such.

For all these reasons, my Government remain of the opinion that the expenditures authorized by the General Assembly resolutions mentioned in the request for an advisory opinion do constitute expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter of the United Nations. Thank you.

3. EXPOSÉ ORAL DE M. R. MONACO

(REPRÉSENTANT DU GOUVERNEMENT ITALIEN)
AUX AUDIENCES PUBLIQUES DES 16 ET 17 MAI 1962

[Audience publique du 16 mai 1962, matin]

Monsieur le Président, Messieurs les Membres de la Cour, qu'il me soit permis de vous dire tout d'abord combien j'apprécie l'honneur et le grand privilège qui me sont réservés aujourd'hui de comparaître de nouveau devant vous.

Monsieur le Président, Messieurs les Membres de la Cour, les différents problèmes juridiques et financiers qui se posent à l'égard de la requête d'avis consultatif adressée à la Cour par l'Assemblée générale des Nations Unies ont été analysés assez profondément et sur une base très large par les exposés écrits présentés par plusieurs gouvernements, ce qui nous aide beaucoup dans notre exposé d'aujourd'hui, mais qui risque aussi de nous éloigner un peu de notre but fondamental qui consiste à apporter le plus de clarté possible à la question. C'est précisément à cause de cela qu'il apparaît nécessaire à ce moment de délimiter soigneusement la substance de la question posée à la Cour.

L'Assemblée générale s'est bornée à demander si oui ou non les dépenses autorisées par plusieurs résolutions de l'Assemblée elle-même et relatives à la Force d'urgence des Nations Unies ainsi qu'aux opérations des Nations Unies au Congo constituent des dépenses de l'Organisation au sens du paragraphe 2 de l'article 17 de la Charte. La demande en elle-même est très simple, bien qu'elle implique des questions d'une importance très remarquable dans le cadre de la structure et du fonctionnement de l'Organisation. Mais cette importance ne peut pas avoir comme conséquence de faire trancher par la Cour de Justice des problèmes qui ne se rattachent pas directement à la substance de la demande d'avis consultatif.

Notre point de départ, ainsi que l'objet de nos discussions, doit donc être exclusivement le texte dont il s'agit.

Le paragraphe 2 de l'article 17 prévoit que les dépenses de l'Organisation sont supportées par les États Membres selon la répartition fixée par l'Assemblée générale. Par conséquent, la question concerne exclusivement les modalités d'après lesquelles les dépenses causées par les deux opérations doivent être couvertes.

C'est une réalité incontestable que les dépenses nécessaires pour l'exécution desdites opérations ont été ordonnées par le Secrétaire général dans l'exercice de ses compétences. Par conséquent il n'y a pas lieu d'avoir des doutes sur la légitimité de la procédure financière qui s'est déroulée à cet égard. Cela signifie, en outre, qu'une question de responsabilité des organes qui ont agi à cet effet est actuellement inconcevable et qu'il ne s'agit pas de faire rentrer au budget de l'Organisation des fonds qui en seraient sortis d'une façon abusive.

La question sur laquelle la Cour doit se prononcer se réfère exclusivement à la manière d'après laquelle ces dépenses doivent être définitivement couvertes. Nous savons qu'elles ont été couvertes à titre provisoire

par des fonds provenant de plusieurs sources qui ne sont pas les sources ordinaires des finances de l'Organisation.

En d'autres termes, il faut voir quel est le système le meilleur pour répartir entre les États Membres les dépenses dont il s'agit. Cela signifie qu'il faut rechercher une clé de répartition appropriée, laquelle, j'insiste, ne doit pas nécessairement avoir comme conséquence de mettre à la charge des différents États Membres des cotisations proportionnelles à celles qui leur sont imposées pour ce qui concerne d'autres dépenses. L'article 17 laisse, en effet, tout à fait ouverte la question de savoir, dans un cas donné, si tel ou tel autre système de répartition des dépenses doit être adopté. Voilà donc que, même si la Cour donnera une réponse affirmative à la question qui lui a été posée, il s'ensuivra que l'Assemblée générale aura toujours le pouvoir de fixer une proportion entre les différentes quotes-parts qui tienne compte de la spécialité des dépenses encourues à cause des opérations au Moyen-Orient et au Congo.

Monsieur le Président, Messieurs les Membres de la Cour, nous croyons qu'il a été vraiment opportun de tâcher de délimiter avec exactitude la portée de la requête d'avis consultatif adressée à la Cour, ce qui nous facilitera dans l'accomplissement de notre tâche ultérieure.

Il s'agit donc d'une matière bien déterminée qui, en outre, tombe dans le domaine d'application d'un seul article, plus exactement d'un seul paragraphe d'un article de la Charte des Nations Unies. Nous en connaissons tous le libellé. Évidemment, afin de parvenir à une interprétation correcte, il faut lire et analyser le paragraphe 2 de l'article 17 en connexion avec le système de la Charte, c'est-à-dire avec les autres dispositions de la Charte qui peuvent avoir une certaine influence ou bien qui peuvent apporter une certaine aide afin d'interprétation.

Si on lit le paragraphe 2 de l'article 17 séparément des autres paragraphes du même article, et même si on lit l'article tout entier, il apparaît, au premier abord, tellement clair qu'aucun effort d'interprétation ne semble nécessaire. Tout de même, cette disposition est difficile à cause du fait qu'elle est très importante et parce qu'elle seule fixe les principes régissant le budget et les finances de l'Organisation.

Le premier paragraphe de l'article 17 n'intéresse pas immédiatement notre question. Si l'Assemblée générale, en vertu de ce paragraphe, a une compétence générale et exclusive en ce qui concerne le budget de l'Organisation, cela ne donne pas encore une solution au problème qui consiste à établir comment les dépenses déjà effectuées doivent être réparties entre les États Membres.

Tout revient donc au paragraphe 2 de cet article qui doit faire l'objet, avant tout, d'une interprétation littérale, laquelle évidemment tienne compte des mots employés par les rédacteurs de la Charte lorsqu'ils ont formulé le paragraphe. Il s'agit de savoir si, en disant « dépenses de l'Organisation », on a voulu considérer seulement certaines dépenses et non pas n'importe quelle dépense que l'Organisation peut effectuer dans l'exercice de ses fonctions et de ses pouvoirs.

A première vue, étant donné que le paragraphe 2 ne fait aucune distinction entre les différentes catégories de dépenses et que la règle contenue dans ce paragraphe est la seule, parmi toutes les dispositions de la Charte, qui se réfère aux dépenses de l'Organisation, on devrait parvenir à la conclusion que n'importe quelle dépense tombe sous cette disposition et, par conséquent, sous le pouvoir de l'Assemblée générale en tant que celle-ci est l'organe auquel la Charte confère la compétence

particulière de fixer la clé de répartition des dépenses et d'établir les montants d'argent qui sont mis à la charge de chacun des États Membres.

On sait toutefois que le principe *in claris non fit interpretatio*, qui d'ailleurs a été déjà appliqué plusieurs fois par cette Cour, doit être utilisé surtout en fonction de l'interprétation littérale. Mais même quand, sur la base de l'interprétation littérale, on obtient déjà un résultat satisfaisant, il ne faut pas laisser de côté l'interprétation systématique.

Quelle est, à cet égard, la place et la valeur de l'article 17 dans le système de la Charte? Cet article a été inséré sous le titre « Fonctions et pouvoirs de l'Assemblée ». Il est évident alors que, avec les dispositions de l'article 17, on a voulu donner à l'Assemblée un pouvoir général dans le domaine tout entier de la gestion budgétaire et financière de l'Organisation. Toutefois, l'idée de la gestion se réfère plutôt à la fonction attribuée à l'Assemblée qu'à ses pouvoirs. Mais il faut noter aussi que l'Assemblée elle-même ne fonctionne pas seulement comme organe de gestion des finances de l'Organisation — tâche qu'elle accomplit par l'intermédiaire d'un certain nombre d'organes subsidiaires —, car, en outre, elle exerce, en vertu de l'article 17, des pouvoirs de décision et de contrôle: tel est le pouvoir d'examiner — c'est-à-dire de contrôler — le budget et de l'approuver, c'est-à-dire de prendre à cet égard une décision qui oblige tous les États Membres. Et même quand elle fixe la mesure d'après laquelle les dépenses doivent être supportées par les différents États Membres, l'Assemblée exerce un véritable pouvoir, qui lui est attribué directement par l'article 17.

Les compétences financières et budgétaires de l'article 17 s'étendent à tous les domaines d'action de l'Organisation. L'article 17 ne fait en réalité aucune distinction entre les dépenses qui sont la conséquence de la décision ou de l'action d'un organe donné et celles qui dépendent d'un autre organe; au contraire, il comprend toutes les dépenses, soit qu'elles aient été causées à la suite de l'action ou de la décision d'un organe principal, soit qu'elles dépendent de l'action ou de la décision d'un autre organe nouveau et subsidiaire de l'Organisation.

En tenant toujours compte du système de la Charte et, plus spécialement, de celui du titre dont il s'agit — c'est le titre de « Fonctions et pouvoirs de l'Assemblée » —, il faut remarquer que, quand on a voulu faire des distinctions entre la compétence d'un organe et celle d'un autre organe, on l'a dit avec clarté, avec toute clarté. C'est précisément le cas des articles 12 et 14 du même titre qui visent les interférences possibles entre la compétence de l'Assemblée et celle du Conseil de Sécurité en ce qui concerne le maintien de la paix et de la sécurité internationales. Si même en matière budgétaire et financière on avait voulu faire une semblable distinction de compétence, il aurait été très facile de le dire d'une façon expresse. Le fait qu'on n'a rien dit à l'article 17 signifie que, même quand, en principe, on serait en présence de la compétence d'un organe qui ne soit pas l'Assemblée, celle-ci garde toujours sa compétence générale et exclusive pour ce qui concerne la matière budgétaire et financière. On a très fréquemment mis en relief que les difficultés d'interprétation de la question qui est posée à la Cour dépendent du fait que les dépenses ont été causées par l'action d'organes tels que la Force d'urgence et les forces des Nations Unies au Congo qui ne figurent pas parmi les organes normaux de l'Organisation. Mais cette opinion ne peut pas être suivie, car il y a des dispositions de la Charte qui donnent elles-mêmes la réponse à cette objection.

Il faut rappeler qu'en vertu des articles 7 et 22 de la Charte peuvent être créés tous les organes subsidiaires qui apparaissent nécessaires afin de réaliser les buts de l'Organisation. C'est surtout l'article 7 qui est important à cet égard, car il se réfère à n'importe quel organe de caractère subsidiaire, destiné à agir n'importe en quel domaine, et qui, évidemment, comprend tous les organes ayant ce caractère et qui sont émanation des organes principaux de l'Organisation.

La conséquence en est que même les dépenses causées par ces organes subsidiaires doivent être qualifiées comme dépenses de l'Organisation au sens de l'article 17, paragraphe 2.

Tels sont donc les résultats auxquels on doit parvenir sur la base de l'interprétation littérale et systématique de la disposition dont il s'agit.

Mais afin que notre analyse apparaisse plus complète, on peut encore avoir recours à l'histoire de l'article 17, c'est-à-dire aux travaux préparatoires, ainsi qu'aux autres éléments historiques qui peuvent démontrer quelle a été la volonté des rédacteurs de la Charte. Nous savons que l'importance qu'on peut attacher aux travaux préparatoires aux fins d'interprétation n'est pas décisive; dans plusieurs occasions la Cour s'est prononcée à cet égard. Mais on doit quand même reconnaître qu'on ne peut pas négliger les travaux préparatoires quand ils contiennent des éléments qui peuvent clarifier le sens et la portée d'une règle donnée.

Nous ne voulons pas prendre trop de temps à la Cour en exposant l'histoire complète à travers laquelle on est parvenu à la rédaction actuelle de l'article 17. Elle a déjà été présentée par certains des exposés écrits que M. le Président et MM. les Membres de la Cour connaissent très bien. C'est pour cela qu'on peut renvoyer à ce qu'on a déjà dit: nous nous référons surtout aux éléments vraiment complets qui sont dûs au Gouvernement du Danemark et qu'on peut retrouver aux pages 151 et suivantes du livre jaune réunissant les exposés écrits de différents gouvernements.

On voit là que, à partir des premières propositions formulées par le Gouvernement des États-Unis lorsque celui-ci présenta aux Gouvernements de la Chine, du Royaume-Uni et de l'Union soviétique les « *Tentative Proposals for a General International Organization* », en vue de la préparation de la conférence de Dumbarton Oaks, on a toujours considéré l'Assemblée générale comme le seul organe compétent à exercer les pouvoirs et les fonctions financières budgétaires de l'Organisation. En effet, au point II, B, 2 *f*, desdites propositions on peut lire que l'Assemblée a le pouvoir d'approuver le budget des organes et de l'Organisation et des institutions de l'Organisation elle-même, d'établir en outre une base de répartition des dépenses entre les États Membres ainsi qu'une procédure pour telle répartition, et en outre qu'elle a le pouvoir de contrôler, de faire des recommandations et d'adopter des mesures à l'égard des budgets des institutions spécialisées.

La conférence de Dumbarton Oaks a confirmé d'une façon très nette le principe d'après lequel la compétence budgétaire et financière de l'Organisation appartient exclusivement à l'Assemblée générale. Il suffit de lire le cinquième chapitre, section B, paragraphe 5, des propositions finales adoptées par ladite conférence pour pouvoir le constater: l'Assemblée générale, d'après ses propositions, est compétente premièrement à répartir les dépenses entre les États Membres — il faut remarquer, il faut souligner que la compétence qui avant tout est prise en considération est celle qui implique ce qu'on appelle le pouvoir fiscal de l'Organi-

sation, c'est-à-dire le pouvoir de faire cette répartition de dépenses et qu'elle peut en outre approuver le budget de l'Organisation.

Aucune modification qui soit digne d'être signalée n'a été introduite dans les textes de Dumbarton Oaks par les amendements qui furent demandés avant la conférence de San Francisco par les différents États. Et la conférence de San Francisco elle-même ne changea en rien la substance des propositions antérieures. Les questions financières furent comprises parmi les questions importantes à l'égard desquelles les décisions de l'Assemblée doivent être adoptées à la majorité des deux tiers. On marqua seulement d'une façon plus nette l'obligation des États Membres de faire face au paiement de montants d'argent mis à leur charge par l'Assemblée, en disant que *les dépenses seront supportées par les États Membres.*

L'histoire de la formulation de l'article 17 de la Charte est donc assez claire et en même temps assez simple. Il n'y a jamais eu une volonté, quelle qu'elle soit, tendant à soustraire à l'Assemblée générale la plénitude de la compétence en matière budgétaire et financière. On peut affirmer, au contraire, que le soi-disant pouvoir fiscal de l'Organisation a été souligné davantage avec la formule que nous avons dernièrement évoquée.

Voilà donc que même les travaux préparatoires contribuent à l'interprétation de l'article 17 qui est sans doute la plus claire et la plus simple et qui, d'autre part, correspond aussi à un critère logique, c'est-à-dire à celui d'attribuer la compétence, dans une matière donnée, à un seul organe, précisément parce que celui-ci est l'organe souverain de l'Organisation et celui qui est doué de la compétence la plus vaste.

Interprétation littérale, interprétation systématique, recours aux travaux préparatoires, c'est-à-dire reconstruction de la volonté des parties, nous amènent à la même conclusion. Par conséquent, pour ce qui est du problème d'interprétation, on pourrait même s'arrêter ici.

Il faut toutefois, Monsieur le Président, Messieurs les Membres de la Cour, rappeler un principe général d'interprétation auquel la jurisprudence de la Cour internationale de Justice ainsi que celle de la Cour permanente de Justice internationale se réfèrent dans ces certains cas. C'est précisément le principe d'après lequel les dispositions d'un traité et par conséquent aussi celles d'un acte institutif d'une organisation internationale peuvent être interprétées à la lumière de la pratique successive mise en œuvre par les parties contractantes ou par l'Organisation elle-même. On peut mentionner en ce sens, par exemple, l'avis consultatif rendu par la Cour le 3 mars 1950, en ce qui concerne l'*Admission de nouveaux Membres aux Nations Unies:* dans son avis la Cour a tenu compte de la manière d'après laquelle le Conseil de Sécurité et l'Assemblée générale avaient constamment interprété le texte de l'article 4 de la Charte. Ce qui a donné au regretté sir Hersch Lauterpacht l'occasion de dire, dans ce livre intitulé « *The Development of International Law by the International Court* » dans lequel la jurisprudence de la Cour dans sa fonction créatrice du droit international apparaît souvent comme une réalité vivante, que la Cour avait de cette façon ramené à l'idée de la conduite successive la pratique uniforme poursuivie par les organes des Nations Unies et toujours acceptée par ces derniers.

Voyons donc quelle a été la pratique de l'Assemblée générale en ce qui concerne les matières budgétaires et financières.

A cet égard nous ne croyons pas qu'il soit indispensable de nous pencher sur le problème si cette pratique, étant donné son développement uniforme, étant donné sa longue durée, a fait surgir ou non de véritables règles de droit coutumier à l'intérieur de l'Organisation. La preuve de l'existence d'une règle de droit coutumier est toujours très difficile. Mais ici à notre avis il n'est pas nécessaire d'apporter cette preuve. Il suffit de constater qu'un certain usage s'est développé et, ce qui importe le plus, que les États Membres l'ont accepté. De la pratique de l'Assemblée générale on peut déduire avant tout que le budget de l'Organisation tel qu'il est prévu par l'article 17, paragraphe 1, de la Charte, n'a pas été limité aux dépenses relatives aux pouvoirs et aux fonctions administratifs ainsi qu'à l'accomplissement des autres tâches ordinaires de l'Organisation, à l'exclusion donc des opérations ayant trait au maintien de la paix et de la sécurité internationales. Au contraire, on peut retrouver au sein du budget ordinaire de l'Organisation une série d'inscriptions qui se réfèrent précisément à certaines opérations pour le maintien de la paix qui ont été ordonnées par l'Assemblée générale ou même par le Conseil de Sécurité dans l'exercice des pouvoirs qui leur appartiennent relativement au maintien de la paix et de la sécurité internationales.

Par exemple dans le budget actuel de 1962 on peut retrouver les inscriptions suivantes:

Premièrement, celle relative à l'organisation pour le contrôle de l'armistice en Palestine qui a été instituée en vertu de la résolution S-1876 adoptée par le Conseil de Sécurité le 11 août 1949;

Deuxièmement, l'inscription qui se réfère à la Commission de conciliation des Nations Unies pour la Palestine créée par l'Assemblée générale avec sa résolution 194 de la troisième assemblée en date du 11 décembre 1948;

Troisièmement, l'inscription qui se réfère au groupe d'observateurs militaires des Nations Unies aux Indes et au Pakistan qui a été institué par le Conseil de Sécurité en vertu de sa résolution S-1469 du 14 mai 1950;

Et encore une autre inscription relative à l'agent des Nations Unies pour les Indes et le Pakistan nommé sur la base de la même résolution du Conseil de Sécurité;

On peut encore citer l'inscription relative à la Commission des Nations Unies pour l'unification et le relèvement de la Corée, instituée par l'Assemblée générale, résolution 376 du 7 octobre 1950;

Et finalement encore l'inscription se référant au Comité pour l'Afrique du Sud-Ouest, qui est plus récente et qui a été créé par l'Assemblée générale en vertu de sa résolution 1568 adoptée le 18 décembre 1960.

Monsieur le Président, Messieurs les Membres de la Cour, à part les exemples que nous avons cités tout à l'heure, il faut en outre rappeler que dans les budgets précédents de l'Organisation on peut retrouver des inscriptions relatives à des opérations tout à fait semblables à celles que nous avons évoquées.

Voilà donc que la pratique des Nations Unies a une signification très claire: c'est-à-dire que dès l'institution des Nations Unies, on a toujours considéré comme une procédure de caractère normal celle qui conduit à inclure dans le budget ordinaire les opérations qui sont financées conformément aux dispositions de l'article 17, paragraphe 2, c'est-à-dire en vertu de cotisations obligatoires mises à la charge des États Membres.

Naturellement, tout ne s'est pas passé sans difficulté au sein de l'Assemblée: en plusieurs occasions il y a eu des États qui ont contesté l'inclusion dans le budget de telle ou telle autre inscription. Mais l'Assemblée générale, avec des délibérations tout à fait valables, a toujours repoussé ces objections. Et, ce qui est très important au point de vue juridique et même en ligne de fait, les États qui avaient protesté ont fini par accepter les décisions de l'Assemblée et ont payé leurs contributions conformément à la base de répartition établie par application de l'article 17, paragraphe 2.

Il est vrai que certaines dépenses, à cause de leur nature particulière, n'ont pas été inscrites au budget ordinaire. En effet, l'Assemblée a décidé d'ouvrir des comptes spéciaux dans tous les cas où elle a estimé que le financement ne devrait pas être effectué par des cotisations obligatoires mises à la charge des États Membres, mais par d'autres méthodes. Il suffit de rappeler le cas, par exemple, du Fonds des Nations Unies pour les enfants, du Fonds spécial des Nations Unies et encore celui du Programme élargi d'assistance technique et d'autres institutions similaires, qui ont été financées par des contributions volontaires des États Membres. On comprend très aisément alors pourquoi dans ces cas le système prévu à l'article 17 n'a pas été utilisé, car il serait vraiment inutile d'imposer aux États Membres des cotisations obligatoires lorsque leur contribution dépend exclusivement de leur propre volonté. Il n'existe pas, dans cette hypothèse, une véritable obligation financière qui s'impose aux États Membres.

En ce qui concerne la Force d'urgence des Nations Unies et les forces des Nations Unies au Congo, on a eu recours, à titre provisoire, à des contributions volontaires à l'égard desquelles des comptes spéciaux ont été ouverts, mais cela n'apporte aucune preuve en faveur de la thèse qui tend à démontrer que, dans ce cas, on s'est éloigné du système prévu par l'article 17, paragraphe 2, de la Charte.

En effet, l'organe spécial de l'Assemblée générale qui est chargé de demander aux gouvernements de s'engager à des contributions volontaires, c'est-à-dire le Comité de négociation pour les fonds extra-budgétaires, n'a pas été saisi afin qu'il pût inclure dans le domaine de ses activités les comptabilités spéciales de la Force d'urgence et des forces des Nations Unies au Congo. D'autre part, si on analyse le texte des résolutions que l'Assemblée générale a adoptées à ces fins, on constate aisément qu'elles ne considèrent pas que le financement des opérations doive être assuré par des contributions volontaires, mais au contraire, et dans une mesure prépondérante, par des montants d'argent mis à la charge des États Membres.

La pratique budgétaire de l'Assemblée générale nous apporte donc la démonstration que l'article 17, paragraphe 2, a toujours été appliqué d'une façon uniforme et sur la base du principe qu'à l'Assemblée appartient la compétence exclusive dans ce domaine.

Nous croyons avoir contribué, avec ce qui précède, à l'interprétation la meilleure et la plus logique de l'article 17, paragraphe 2, ou, pour mieux dire, d'avoir mis en relief la seule interprétation possible dudit article.

Monsieur le Président, Messieurs les Membres de la Cour, le Gouvernement italien, toujours convaincu que dans cette question on peut aboutir à des bons résultats seulement si on tâche de séparer très nettement le côté budgétaire et financier de la question elle-même du côté militaire et

politique, croit qu'on peut s'inspirer à cet égard de certaines idées générales. Les considérations qui précèdent ont fait ressortir l'idée qu'à côté des autres obligations qui, d'après les dispositions de la Charte, incombent aux États Membres, on peut concevoir comme obligation ayant des caractères particuliers et autonomes, l'obligation financière. Les dispositions de la Charte obligent les États Membres à accomplir certaines actions, à s'abstenir d'autres actions, à collaborer avec l'Organisation. Elle pose à la charge des États Membres, avant tout, des obligations de caractère politique; ce sont là les obligations qui, par préférence, attirent l'attention de l'opinion publique sur l'Organisation. Mais les obligations relatives à la coopération sociale et économique entre États Membres et avec d'autres organisations internationales n'ont pas une moindre importance. Il suffit de se référer, par exemple, aux obligations découlant des programmes très variés qui visent le développement économique et social des nouveaux États Membres; l'exécution de ces programmes a des conséquences financières et budgétaires de la plus grande importance dans le système lui-même des Nations Unies.

[Audience publique du 17 mai 1962, matin]

Monsieur le Président, Messieurs les Membres de la Cour, hier, à la fin de mon exposé, j'ai tâché d'expliquer pourquoi on ne peut pas mettre sur le même plan les différentes catégories d'obligations qui sont mises à la charge des États Membres par les dispositions de la Charte. Il faut en effet faire certaines distinctions.

Une des distinctions les plus importantes, j'estime, est celle d'après laquelle on sépare d'un côté l'ensemble des obligations de fond des États Membres des obligations qui ont seulement un caractère budgétaire ou financier. En effet, en face de buts tellement variés que l'Organisation des Nations Unies possède et des conséquences financières également variées qui s'y rattachent, c'est une nécessité de séparer la gestion des intérêts qui touchent au fond de l'action de l'Organisation des intérêts qui, au contraire, ont un caractère instrumentaire, dans le sens qu'ils se bornent à fournir à l'Organisation des moyens financiers pour atteindre ses buts.

Les intérêts de caractère fondamental, qui sont essentiels pour la vie et pour le fonctionnement de l'Organisation, priment tous les autres intérêts. Le résultat en est que lorsqu'on doit pourvoir à ces intérêts, on pense tout d'abord à mettre en œuvre l'action nécessaire à cette fin, en laissant de côté pour le moment les problèmes relatifs aux conséquences qui en peuvent découler. Cela s'explique assez aisément et cela arrive aussi dans les systèmes juridiques étatiques quand on doit faire face à des nécessités imprévisibles et urgentes. Le gouvernement prend les mesures nécessaires sans évidemment savoir au préalable comment les dépenses extraordinaires qui en découleront seront couvertes. Tout cela signifie que le côté financier de l'action des institutions publiques, si important qu'il puisse apparaître, ne peut pas empêcher celles-ci de poursuivre tout d'abord les tâches qui leur sont imposées par les règles juridiques qui régissent leur action. Ce n'est pas seulement une nécessité, mais aussi, très souvent, une obligation de caractère constitutionnel, c'est-à-dire de caractère primaire dans la hiérarchie des obligations qui incombent aux organes publics. Il en est de même évidemment aussi pour les systèmes des organisations internationales.

Les obligations de caractère financier et budgétaire ont donc une autonomie qui leur appartient par rapport aux obligations de fond qui sont imposées par des règles juridiques aux organes ayant la responsabilité de décider la conduite d'un État, ou bien, le cas échéant, d'une organisation internationale. De telles obligations, tout en ayant leur source dans les actions du gouvernement de l'État ou de l'organisation internationale dont il s'agit, possèdent leur propre autonomie parce qu'elles obéissent à des règles particulières, surtout en ce qui concerne précisément la façon d'après laquelle les obligations de fond sont exécutées.

Tout cela explique très bien pourquoi un État Membre peut être un sujet de droit qui exécute très précisément les obligations de fond et qui au contraire n'obéit pas aux obligations d'un caractère financier. Il se peut au contraire qu'un État ne se conforme pas à ses obligations de fond, tandis qu'il remplit exactement ses obligations financières à l'égard de l'Organisation.

D'autre part, si on regarde d'un peu plus près le système des Nations Unies, on constate que les obligations financières ont un régime autonome auquel l'Organisation a donné une réglementation particulière en instaurant plusieurs organes auxiliaires et en émanant toute une série de règles qui s'appliquent exclusivement au domaine budgétaire et financier.

Si les obligations financières sont donc autonomes, bien que connexes, par rapport aux autres obligations des États Membres des Nations Unies, cela ne signifie pas que ces obligations soient douées d'une autorité inférieure ou bien d'une moindre efficacité à l'égard desdits États. Il suffit de rappeler, par exemple, que l'article 19 de la Charte établit des sanctions directes à la charge de l'État Membre qui ne remplit pas ses obligations financières à l'égard de l'Organisation, pour constater que même de ces obligations découlent des possibilités de contrainte, ou bien des sanctions, semblables à celles qui sont applicables pour obtenir l'exécution d'autres obligations. C'est pour cela que les obligations financières doivent être exécutées avec la même efficacité que les obligations de fond.

Nonobstant les arguments que nous avons exposés jusqu'ici et qui sont partagés par la plupart des gouvernements qui ont participé à ce débat ou qui vont y participer, on doit reconnaître qu'on entend toujours répétées certaines idées qui avaient été déjà exposées par quelques-uns des délégués au sein de l'Assemblée générale. C'est-à-dire que l'Assemblée, en mettant les quotes-parts des dépenses à la charge des États Membres, a dépassé les limites de sa compétence et qu'elle a envahi, par ce fait même, la compétence du Conseil de Sécurité.

Nous nous bornerons à répondre à cet argument en utilisant les observations très justes d'ailleurs qui ont été faites par le Gouvernement du Danemark dans son exposé écrit (voir la page 151 du cahier jaune qui contient les mémoires des différents États).

Quel que soit l'organe des Nations Unies compétent pour adopter une décision de fond, les conséquences financières d'une telle décision tombent sous la compétence de l'Assemblée générale. Étant donné qu'aucun autre organe n'a de compétence en matière budgétaire, dans la mesure où l'Assemblée se conforme à une décision de fond adoptée par un autre organe, elle demeure tout à fait libre de réaliser telle ou telle autre solution du problème budgétaire découlant de ladite décision. Si, par exemple, le Conseil de Sécurité adopte une décision rentrant dans les limites de sa compétence, l'Assemblée générale ne pourrait jamais rendre inefficace une telle décision en refusant d'apporter au budget de l'Organisation les

modifications correspondantes. D'autre part, le Conseil n'a aucun pouvoir d'empiéter sur la compétence de l'Assemblée générale en ce qui concerne les solutions que celle-ci estime donner aux aspects financiers de la décision du Conseil lui-même.

Les allusions fréquentes qu'on fait à la compétence ou bien à l'incompétence de l'Assemblée générale par rapport aux résolutions concernant l'institution et le financement de la Force d'urgence et des Forces des Nations Unies au Congo posent encore un autre problème. Un problème sur lequel peut-être on n'a pas encore suffisamment réfléchi. Il s'agit du problème de savoir quelles seraient les conséquences au point de vue budgétaire et financier si on pouvait prouver que lesdites résolutions sont dépourvues de validité.

La doctrine et la pratique se sont jusqu'ici très peu penchées sur la validité ou l'invalidité des actes juridiques internationaux. Il faut remarquer — en tout état de cause — que les précédents qui existent et les contributions doctrinales correspondantes se réfèrent seulement aux actes juridiques de caractère classique soit bilatéraux soit unilatéraux. Au contraire, on n'a presque jamais pris en examen à cet effet les actes émanant des organes des institutions internationales.

Nonobstant cela, tâchons d'étendre les principes régissant la validité des actes juridiques internationaux aux actes des Nations Unies qui font l'objet de la demande d'avis consultatif. Nous croyons avoir démontré que les résolutions de l'Assemblée générale sont pleinement valables; supposons, au contraire, qu'il s'agisse d'actes non valables parce qu'ils auraient été adoptés par un organe incompétent. Quelles en seraient alors les conséquences?

On dit que la validité d'un acte juridique international se réalise lorsqu'il réunit quatre conditions, c'est-à-dire: l'existence d'un sujet capable — dans notre cas dès qu'il s'agit d'une organisation internationale, ce serait plutôt un organe compétent à l'intérieur de l'organisation et non donc un sujet indépendant de droit. Deuxième condition, un objet approprié. En outre, il faut une volonté réelle et dépourvue de vices et enfin des formes convenables. Voilà les quatre conditions.

Dans le cas qui nous occupe, étant donné que nous croyons que toutes les autres conditions sont remplies, il n'y a pas lieu de faire une analyse à cet égard, car il s'agirait par hypothèse du manque éventuel de la condition consistant dans la compétence de l'organe.

Personne ne pourrait démontrer l'inexistence des résolutions de l'Assemblée générale, affirmer en d'autres termes la première conséquence de la nullité d'un acte qui consiste, dans les cas les plus graves, dans l'inexistence de l'acte lui-même. En effet, ici on ne peut pas dire qu'il y a inexistence des résolutions qui sont à la base des opérations au Moyen-Orient et au Congo pour le simple fait qu'entre autres elles ont été régulièrement exécutées. On pourrait alors au maximum affirmer que de telles résolutions sont nulles et non pas inexistantes. Mais ceci étant, il faut reconnaître que d'après la pratique et la doctrine l'acte nul a besoin d'être constaté dans une déclaration constitutive de sa nullité. En d'autres termes, il doit être déclaré non valable par un organe autorisé à cet effet par le droit international. C'est là l'opinion de la doctrine. Je me bornerai à citer l'étude très approfondie du professeur Guggenheim, intitulée « La validité et la nullité des actes juridiques internationaux », et qui figure dans le *Recueil des cours de l'Académie de droit international*, 1949, 1er volume, et surtout les pages 108 et suivantes. La raison de tout cela

en est que tout en étant prescrite par une règle objective de droit international, la non-validité de l'acte ne devient effective qu'après avoir été constatée par l'organe compétent. Par conséquent, l'acte nul, pour autant qu'il n'est pas déclaré non valable, déploie ses effets. Dans l'hypothèse dont il s'agit, comme dans tous les cas où l'annulation d'un acte non valable survient longtemps après que l'acte nul s'est produit, on est plutôt en présence d'une nullité relative — pas absolue — qui comme telle prend effet *ex nunc* et non *ex tunc*. Cela signifie que les effets qui se sont produits à la suite des résolutions de l'Assemblée générale demeureraient intacts.

Continuons donc dans notre hypothèse. Étant donné que l'annulation de l'acte ne se produit pas automatiquement, mais qu'il faut qu'un organe intervienne pour déclarer cette annulation, quel serait cet organe dans le système des Nations Unies? Il faut préalablement remarquer qu'on ne se trouve pas ici dans un système juridique étatique, ni même dans ces nouveaux systèmes juridiques des communautés supranationales. Dans ces dernières un contrôle juridictionnel est organisé pour établir la validité ou la non-validité des actes des différents organes. De sorte que, en ce dernier cas, il existe un juge qui peut en déclarer l'annulation. Dans le système des Nations Unies le seul organe qui pourrait être saisi pour réparer les conséquences d'une résolution entachée de nullité relative est l'Assemblée elle-même. Mais, comme le fait remarquer très exactement l'exposé écrit du Gouvernement du Japon (voir page 225 du livre jaune), l'Assemblée a déjà été saisie des objections contre les résolutions qui ont institué et financé la Force d'urgence et les opération des Nations Unies au Congo et les a déjà repoussées.

Ceci étant, on ne pourrait pas concevoir à l'égard des résolutions de l'Assemblée des Nations Unies d'autres voies de recours, c'est-à-dire des solutions contentieuses, précisément parce qu'il s'agit d'actes qui émanent d'une organisation internationale et qui, par ce fait même, expriment la volonté de tous les États Membres, même de ceux qui, lorsque ces actes ont été formés, ont manifesté une volonté contraire.

C'est précisément pour cela qu'un avis consultatif a été demandé à la Cour, en mettant en œuvre le seul moyen légitime prévu par la Charte en ce qui concerne les désaccords entre États Membres sur la valeur et la portée d'un acte émanant d'une institution de l'Organisation.

D'autre part, les États qui ne sont pas d'accord avec les résolutions de l'Assemblée générale ne pourraient pas réagir contre ces actes par un refus de reconnaissance. Nous savons que la non-reconnaissance est la sanction la plus simple et la plus immédiate que les États peuvent adopter contre les actes juridiques internationaux qu'ils estiment entachés de nullité; mais ce qui se passe dans le domaine des actes bilatéraux ne peut pas être appliqué aux actes des institutions internationales pour les raisons que nous avons indiquées tout à l'heure.

Voilà donc que, à ce stade de la procédure, toute référence à la doctrine de l'invalidité d'un acte émanant d'un organe des Nations Unies se révèle dépourvue de toute efficacité, et en tout état de cause elle ne peut pas apporter des solutions utiles en l'espèce. C'est pour cela que nous estimons que sur ce point on ne doit pas retenir davantage l'attention de la Cour.

Notre référence à l'idée de l'incompétence de l'Assemblée générale et, par conséquent, de la non-validité des résolutions de celle-ci, était purement hypothétique. Au contraire, il existe de nombreux arguments qui

nous amènent à reconnaître que l'Assemblée était tout à fait compétente. Cette compétence, comme nous l'avons déjà dit, est fondée sur l'article 17 de la Charte. Nous savons qu'il s'agit là de la seule disposition de la Charte qui a pour objet la gestion financière de l'Organisation. Il faut encore remarquer que même les dispositions des règlements — les dispositions secondaires — ne visent la compétence d'aucun autre organe des Nations Unies. En effet, le règlement de l'Assemblée générale spécifie les compétences de l'Assemblée elle-même dans ce domaine comme suit: « L'Assemblée générale arrête le règlement relatif à la gestion des finances de l'Organisation » (art. 153). D'autre part, l'article suivant — l'article 154 — confirme que toutes dépenses doivent être approuvées par l'Assemblée générale. Cette dernière a donc tous les pouvoirs en matière budgétaire, y compris le pouvoir de nommer des organes auxiliaires comme le Comité consultatif pour les questions administratives et budgétaires et le Comité technique des contributions. Ce sont là des organes qui sont entièrement subordonnés dans leur activité à l'Assemblée générale.

La formule employée au paragraphe premier, comme nous l'avons vu, indique clairement que toute décision obligatoire pour les États Membres en ce qui concerne le budget de l'Organisation relève de la compétence de l'Assemblée générale. A vrai dire, quand on a voulu attribuer à l'Assemblée une compétence d'une autre nature, dépourvue toutefois d'efficacité décisoire, on l'a dit d'une façon expresse. Tel est le cas du paragraphe 3 dudit article 17, qui donne à l'Assemblée le pouvoir de faire aux institutions spécialisées de simples recommandations sur leurs budgets administratifs. Le paragraphe 2 de l'article 17 confirme sans possibilité de doute que l'Assemblée générale est compétente à fixer l'échelle des contributions aux dépenses de l'Organisation. Dans l'espèce, l'Assemblée a exercé ce pouvoir, car elle a dérogé en faveur de certains États Membres au barème ordinaire établi pour les dépenses de l'Organisation. Il suffit de rappeler un paragraphe d'une résolution récente, la résolution 1583 de la XV^me^ Assemblée, dans laquelle l'Assemblée générale:

> « Décide que les contributions bénévoles déjà annoncées seront employées lorsque l'État Membre intéressé en aura fait la demande avant le 31 mars 1961, à réduire de 50 pour 100 au maximum:
>
> *a)* la contribution que les États Membres admis pendant la quinzième session de l'Assemblée générale doivent acquitter pour l'exercice 1960, conformément à la résolution 1552 (XV) de l'Assemblée générale en date du 18 décembre 1960;
>
> *b)* la contribution de tous les autres États Membres bénéficiant en 1960 d'une assistance au titre du programme élargi d'assistance technique, en commençant par les États dont la quote-part est fixée au minimum de 0,04 pour 100 et en continuant, successivement, par les États versant une quote-part supérieure, jusqu'à ce que le total des contributions bénévoles ait été entièrement employé. »

Il nous apparaît que cet exemple explique très bien le pouvoir d'adaptation que l'Assemblée générale possède dans la matière.

Il faut souligner en outre que la compétence de l'Assemblée générale en matière budgétaire est non pas seulement générale — c'est-à-dire consistant à examiner et à approuver le budget de l'Organisation — mais aussi exclusive. Aucun article, en effet, ne confère à un organe autre que l'Assemblée générale le pouvoir de prendre des décisions en matière budgétaire, même lorsqu'il s'agit de questions tout a fait particulières.

Aucun des articles concernant le Conseil de Sécurité, par exemple, ne se réfère à une compétence administrative ou budgétaire de cet organe. D'autre part, on ne pourrait pas évoquer l'article 43 de la Charte qui prévoit des accords spéciaux entre le Conseil de Sécurité et les États Membres pour mettre à sa disposition les forces armées, l'assistance et les facilités nécessaires au maintien de la paix et de la sécurité internationales.

Le système d'accords prévu à l'article 43 pour la création de contingents militaires à la disposition du Conseil de Sécurité *n'a jamais été réalisé*, nous le savons tous. On peut, en outre, remarquer que cet article, qui spécifie avec de nombreux détails les modalités et la substance desdits accords, ne prévoit pas un régime financier particulier pour les dépenses entraînées par leur réalisation. Les accords mentionnés à l'article 43, en effet, devraient aider à la réalisation des buts de la Charte en fournissant au Conseil de Sécurité les moyens de remplir ses fonctions institutionnelles. Les dépenses entraînées par les accords auraient dû être considérées en tout cas comme dépenses de l'Organisation au sens du paragraphe 2 de l'article 17 de la Charte.

La question qui nous occupe a donc été tranchée d'une façon très claire par les dispositions de la Charte. Mais, même à défaut de normes spécifiques, la solution ne pourrait pas différer. Il s'agit, en effet, d'atteindre un des buts essentiels de l'Organisation, qui engage dans son ensemble son action et sa responsabilité. On ne pourrait donc pas en attribuer la compétence à un organe autre que l'Assemblée générale, le seul organe dans lequel tous les États Membres sont représentés: d'autant plus que les dispositions de la Charte (art. 10 et suivants) lui donnent le pouvoir de discuter toute question ou affaire rentrant dans les buts des Nations Unies. Par conséquent, on ne pourrait jamais substituer à l'Assemblée générale un organe de compétence spécifique n'ayant, en outre, aucun pouvoir en matière financière et budgétaire.

Monsieur le Président, Messieurs les Membres de la Cour, le Gouvernement italien est fermement convaincu que les arguments qui ont été exposés, ainsi que les autres nombreux éléments qui ont été et qui seront apportés par les représentants des États participant à ces débats, vous donneront la preuve que la réponse à la demande d'avis consultatif doit être affirmative. C'est-à-dire que l'article 17, paragraphe 2, de la Charte des Nations Unies doit être interprété dans le sens que les dépenses entraînées par le financement des opérations des Nations Unies au Moyen-Orient et au Congo constituent des dépenses de l'Organisation au sens dudit article.

Le Gouvernement italien, qui a tâché de simplifier au maximum la portée de la question qui vous a été soumise, connaît très bien d'autre part que votre réponse n'aura pas seulement une grande signification en ce qui concerne la fonction créatrice de la Cour dans le développement du droit des organisations internationales, mais aussi une importance décisive pour la vie et pour l'efficacité d'action de l'Organisation des Nations Unies.

Nous avons la confiance la plus profonde dans la sagesse et dans l'autorité de la Cour, comme l'organe qui assure une garantie suprême à la règle de droit dans le domaine de la communauté internationale. Merci, Monsieur le Président, merci, Messieurs les Membres de la Cour.

4. ORAL STATEMENT OF SIR REGINALD MANNINGHAM-BULLER

(REPRESENTING THE GOVERNMENT OF THE UNITED KINGDOM)
AT THE PUBLIC HEARINGS OF 17 MAY 1962

[Public hearing of 17 May 1962, morning]

May it please the Court:

I should like at the commencement of my address to express my gratitude to the Court for their kindness in allowing me to address them today and my thanks to my distinguished colleagues for agreeing to my doing so.

It is my misfortune that, owing to other duties I have to perform, I shall not be able to hear the addresses of those who speak after me. I do hope that they will not think, and that the Court will not think, that my absence is in any sense discourteous. I should like to hear their speeches—even though I might disagree with some of them. I am only prevented from doing so by a form of *force majeure*.

The Court in this case has the advantage of having before it the written statements expressing the views of many nations. The United Kingdom has submitted such a statement which expresses our views on the question before the Court and which we hope will be helpful to the Court.

It is not, I feel, necessary for me, therefore, to traverse the whole ground covered by our written statement. I propose to make my address as short as I can, for, while it may be true that many lawyers are usually long-winded and it is certainly true, I fear, that some lawyers enjoy making long speeches, it is certainly apt to be tedious and tiring to listen to a whole series of speeches dealing with one rather narrow question.

It is my regret that I have not myself had the advantage of hearing the arguments so ably advanced by my distinguished colleagues in the course of the last few days. I have read what they said, and my learned friends who appear for the United Kingdom with me, and who heard their addresses, have considered them carefully with me. And I hope it will not be thought discourteous of me to say that, having read all the written statements and the speeches so far delivered, our confidence in the arguments respectfully submitted in our written statement is not reduced or undermined but enhanced.

Now, Sir, the first important question it seems to me that this Court has to determine is the *scope* of the question submitted to the Court. That question is clearly phrased and, in my submission, limited in extent, and the Court is not asked to express an opinion defining the meaning of the expression "expenses of the Organization" nor is it asked to say whether or not the General Assembly has exclusive fiscal power. It is only asked to decide whether particular expenses constitute expenses of the Organization.

And the particular expenses are, first, expenditures *authorized* in General Assembly resolutions relating to the United Nations operations in the Congo undertaken in pursuance of the Security Council and General Assembly resolutions and, secondly, expenditures *authorized* in General Assembly resolutions relating to the operations of the United

Nations Emergency Force undertaken in pursuance of General Assembly resolutions.

The terms of the question state—and it cannot be disputed—that the expenditure was in relation to United Nations operations in the Congo and operations of the United Nations Emergency Force, and the terms of the question stress the fact that in each case the expenditure in question was authorized by the General Assembly.

The Court is not, therefore, in my submission invited to express an opinion on the question whether it was within the power of the General Assembly to authorize such expenditure. The General Assembly, who have submitted the question to this Court, have not asked this Court to pronounce upon the validity or legality of any of the resolutions it has passed. It has only asked for the opinion of this honourable Court on the question whether certain expenditures it has authorized come within the meaning of the phrase in Article 17 (2) "expenses of the Organization".

In my submission, the terms of the question make this absolutely clear. Indeed, it would be surprising, I suggest, if the General Assembly now called into question the validity of a number of resolutions, adopted over a period of some five years by the majorities prescribed by the Charter—in some cases without a single contrary vote—in relation to operations of such importance as those in the Middle East and the Congo.

If the General Assembly had intended or desired to call into question the validity of its own resolutions, one would have expected it to do so in the clearest terms. It has not done so but, on the contrary, the precisely phrased question submitted, in my submission, shows that the General Assembly did not intend or desire this Court to pronounce upon the validity of its own resolutions. And if any confirmation of that is required—and in my submission it is not necessary—the confirmation is to be found in the fact that, when the resolution for seeking the opinion of this Court was before the Assembly, an amendment was moved which would have raised the question of the validity of the resolutions and that amendment was rejected by a vote of 47 against, 5 in favour, with 38 abstentions. (That is to be found in the provisional Verbatim Record of the 1086th Plenary Meeting—A/PV 1086, at pp. 67-70.)

Now, Sir, an argument has, I understand, been advanced before this Court to the effect that, even if action was taken by the General Assembly or the Security Council in excess of their powers under the Charter, none the less, under Article 17 (2), the General Assembly has power to apportion the expenses of such *ultra vires* action between the Members.

Mr. President and Members of the Court, to that argument I cannot subscribe. While one would not readily assume that the General Assembly or the Security Council would act in excess of their powers, if they did so the General Assembly in my submission could not apportion the expenses involved under Article 17 (2). For expenses of the Organization in that Article must by necessary implication mean expenses validly incurred.

Chapter IV gives the General Assembly certain powers and Article 17, which is in Chapter IV, is "mandatory". The General Assembly *shall* consider and approve the Budget. The expenses of the Organization *shall* be borne by the Members as apportioned by the General Assembly. That clearly imposes a duty to apportion such expenses of the Organization as are not met by voluntary contributions and, again in paragraph 3 of Article 17, we find a further duty placed on the General Assembly.

In my submission, it is not the case that by means of a mere financial resolution the General Assembly can create an obligation on Member States to make contributions in respect of expenses incurred in furtherance of a manifestly invalid resolution; for instance, a resolution recommending a contravention of a prohibition in the Charter. But, in so far as a resolution is clearly designed to fulfil the paramount purposes of the Charter and in pursuance of such a resolution expenses are duly incurred, for example by the Secretary-General under an authority conferred on him under Article 98, these expenses, then, are expenses of the Organization and when made the subject of a financial resolution of the General Assembly do create on apportionment a binding obligation on Member States to pay the assessed contribution.

Mr. President, having said this in answer to the argument advanced, I repeat that in my submission this Court is not asked to enquire into the validity of the resolutions referred to in the question and should proceed to consider the question submitted on the basis that the resolutions referred to in the question are valid.

Now, bearing in mind the fact that this Court in its Advisory Opinion of 8 June 1960 on the *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* stressed (*I.C.J. Reports 1960*, p. 153):

> "the Court as a judicial body is ... bound, in the exercise of its advisory functions, to remain faithful to the requirements of its judicial character",

and in its Advisory Opinion of 7 June 1955 on *South West Africa, Voting Procedure* (*I.C.J. Reports 1955*, pp. 71-72) said:

> "It is therefore essential that the Court should keep within the bounds of the question put to it by the General Assembly",

bearing those statements in mind, I apprehend that the Court will follow that course in this instance. While, of course, some consideration must be given to the meaning of the expression "expenses of the Organization" in Article 17 (2) in order to determine whether the expenditures in question fall within it, the Court will not, I assume, seek to define the meaning of that phrase; and further will not regard the question submitted to it as asking it to pronounce upon the validity of the resolutions passed by the General Assembly and Security Council.

The fact that the arguments deployed in the written statements submitted in the present case have ranged far and wide over the legal, quasi-legal and political fields cannot enlarge the scope of the question submitted and should not be allowed to distract attention from the essentially restricted nature of that question.

In my submission, all that the Court is asked to do is to say whether certain expenditures authorized by the General Assembly constitute "expenses of the Organization" within Article 17 (2); and in my submission, for the reasons I am about to advance, the answer to that question is in the affirmative.

"Expenses of the Organization" in Article 17 (2), in my submission, means expenses of the United Nations Organization; indeed that is obvious and, I suggest, cannot be disputed. And Article 7 prescribes that the principal organs of the United Nations are the General Assembly,

the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and a Secretariat. Power is given by that Article to establish in accordance with the provisions of the Charter such subsidiary organs as may be found necessary.

And the phrase "expenses of the Organization", I submit, covers the expenses of all these principal organs of the United Nations and of the subsidiary organs it has been found necessary to establish. The expenses of all these organs of the United Nations are "expenses of the Organization"—that is, of course, if they act in accordance with their powers. And it is not perhaps uninteresting to note that an organ is not defined. The power given by Article 7 (2) is unlimited. Any subsidiary organ that may be found necessary may be established in accordance with the Charter and once established its expenses form part of the expenses of the Organization.

That phrase "expenses of the Organization" means, in my submission, expenses *incurred* by the Organization. Article 17 (2) is specifically directed to the discharge of the liabilities of the Organization, but the budget which the General Assembly has to consider and approve under Article 17 (1) makes provision for the future, for future known liabilities, and it would therefore, in my submission, be right as a matter of construction to treat the phrase "expenses of the Organization" as meaning expenses incurred and to be incurred by the Organization.

The generality and width of Article 17 (2) is, I suggest, significant. It does not say "expenses approved in the budget". It is not confined to administrative expenses or to normal expenses. It is deliberately general, for it is obviously necessary to make provision for the discharge of all the expenses of the Organization, however they may be labelled, and whether or not they are included in the budget.

In my country we have an annual budget, and after the passing of that budget it may become necessary to incur expenditure not contemplated in the budget. And expenditure so incurred is still expenditure of the United Kingdom.

So, in my submission, with the United Nations; there can be no doubt that expenditure included in the budget is expenditure of the Organization, but it does not follow that expenditure not included in the budget is not expenditure of the Organization.

In the written statement of the Government of the Soviet Union, it is contended that "Article 17 ... provides for appropriations and the manner of their reimbursement only in the regular budget". (I have quoted the words which appear in that statement.) But the word "regular" does not appear in the Article. It is true that Article 17 (1) makes provision for a budget, but Article 17 (2) does not refer expressly or by implication to the budget. What 17 (2) is directed to is *all* expenses of the Organization. It would have been easy to say, if it had been desired, "The expenses of the Organization approved in the budget shall be borne by the Members as apportioned by the General Assembly." That was not said, and not said, in my submission, for obvious reasons. And really such a limitation is putting an unwarrantable gloss on the Article. It would go far to stultify the Organization, for it would mean that the United Nations would not be able to incur expense to maintain international peace and security—its primary object—unless provision for that expense was made in the budget.

Now in its Advisory Opinion on the *Effect of Awards of compensation*

made by the United Nations Administrative Tribunal (*I.C.J. Reports 1954*, at p. 59), this Court said:

> "The function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditures proposed to it; for some part of that expenditure arises out of obligations already incurred by the Organization, and to this extent the General Assembly has no alternative but to honour these engagements."

Where an obligation is incurred by the Organization, and no provision has been made in the last budget for the expenditure to meet that obligation, because no one had foreseen or could foresee that the obligation would have to be incurred, the Charter does not stipulate, nor is there any reason why it should, that the General Assembly—to adopt the expression used in the passage I have cited from the Opinion of this Court—that the General Assembly should honour its engagement after the next budget, after inclusion of this expenditure in the next budget. *That* is not provided by Article 17.

As the General Assembly have no alternative but to honour such an engagement, as expenditure incurred by any organ of the Organization is expenditure of the Organization, the General Assembly can, under Article 17 (2), proceed to apportion that expense and the Members will have to pay the sums apportioned to them, so that that obligation is in fact honoured.

The expenditure under consideration in this case has of course been authorized by the General Assembly, by the two-thirds majority prescribed by Article 18 (2)—the General Assembly which is the first of the organs mentioned in Article 7; and the organ dealt with in Chapter IV when the Security Council is dealt with in Chapter V.

And now it is contended that expenditure approved and authorized by this principal organ of the United Nations is not an expense of the Organization on the ground that it is not provided for in the regular budget.

In my submission, the character of the expense does not depend on whether or not it is provided for in the budget. If it is an expense of the Organization, it does not *cease* to be one on account of omission from the budget, and it will not *cease* to be an expense of the Organization merely because the General Assembly in their wisdom decide to deal with it outside the budget.

It may be that the decision is made to meet some part of the expense by voluntary contributions. But the fact that some contributions are voluntary and that some may be involuntary cannot affect the *character* of the expense. In so far as there are *voluntary* contributions, *pro tanto* is the amount reduced which is to be the subject of apportionment. But the character of the expense does not change on account of the manner in which it is sought to meet it. That, I submit, is the fallacy in the argument sought to be based on the fact that there may be voluntary contributions to this expenditure.

A short time ago I drew attention to the generality and the width of Article 17 (2) and pointed out that it did not say "expenses approved in the budget". I also said it was not confined to administrative expenses or to normal expenses. And I submitted that it was deliberately general.

The argument has been put forward before this Court that only administrative expenses can be treated as expenses of the Organization and that other expenses, whether they be described as operational or substantive expenses or in some other way, cannot be treated as expenses of the Organization.

With the greatest respect to those who put this argument forward, I must submit that it is completely misconceived.

In the first place, it means restricting the generality of the expression "expenses of the Organization" in Article 17 (2).

Secondly, it proceeds on the assumption that the only expense that any organ of the United Nations can legitimately incur is what is called an administrative expense.

It may not be easy to define what is covered by those words "administrative expenses", and I do not propose to take up the time of this Court in considering that.

But acceptance of this argument would mean that the powers of the United Nations to achieve its primary purpose prescribed in Article 1 (the maintenance of international peace and security) would be severely limited. However great the need might be for action, if this argument was right the United Nations could only incur administrative expenses. If there was urgent need to incur expense on some action, and the expense could not be described as administrative, the United Nations would be unable to act unless they were able to secure that the expense would be met by voluntary contributions. If those contributions were not forthcoming—and considerable delay might occur in finding out whether they could be secured—if this argument was right, the United Nations would be powerless to act however great the need.

I shall be referring to Article 43 in more detail later in my speech.

But for the purpose of considering this argument, let me assume that, under that Article, a special agreement is made with a Member State for the provision of armed forces. The Article is silent about the terms which such an agreement will contain.

In my submission it is deliberately so, and the Security Council has complete and unfettered discretion as to the terms of an agreement it makes under Article 43.

I submit it would be open to the Security Council to agree to pay the whole or part of the costs of the armed forces made available under that Article. If it did so, the expense could not be described as "administrative", but it cannot be doubted that it would be an expense of the Organization.

Now I have referred to this as, I submit, Article 43 drives another nail in the coffin of this argument. It is pointed out that a number of activities in the economic and social field—for example, UNICEF, UNRRA, the High Commissioner for Refugees and so on, have been wholly financed except for administrative purposes by voluntary contributions, and it is suggested that this shows that only administrative expenses can come within Article 17 (2).

I have already pointed out that the character of an expense is not changed by the manner in which the expense is met, and the fact that voluntary contributions have been made to the expenses of a subsidiary organ does not affect the fact that those expenses were expenses of *that* organ and so expenses of the Organization.

I do not propose to say any more in reply to this argument save this.

Even if it was well-founded with regard to the economic and social activities of the Organization for the purpose of achieving its purposes as defined in Article 1 (2), (3) and (4)—I need not remind the Court of the terms of those paragraphs—it does not follow that it applies to activities in relation to Article 1, paragraph 1.

In my submission, "expenses of the Organization" must be given its ordinary natural meaning, and no limitation or restriction of its natural meaning is permissible.

As we pointed out in our written statement, this Court said in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* (*I.C.J. Reports 1950*, p. 8) that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur, and (I quote),

> "when the Court can give effect to a provision of a treaty by giving the words used in it their natural and ordinary meaning it may not interpret the words by seeking to give them some other meaning".

And in its Advisory Opinion on *Conditions of admission of a State to Membership in the United Nations (Article 4 of the Charter)* (*I.C.J. Reports 1948*, at p. 63), the Court, when interpreting part of the Charter, said that the natural meaning of the words used led to a certain conclusion, which it adopted as correct. It also said, at page 63:

> "The Court considers that the text is sufficiently clear; consequently, it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself."

Now in my submission, the text of Article 17 (2) is clear. The Court can give effect to the words used in it in their natural and ordinary meaning in the context in which they appear. There is, I submit, here no reason to deviate from the consistent practice of this Court not to resort to preparatory work if the text of the treaty is sufficiently clear; though if such deviation is permissible, I would submit that for the reasons indicated in the written statement submitted by the Government of Australia, an examination of the *travaux préparatoires* discloses nothing to displace the natural meaning of the words in Article 17 (2).

Expenses of the Organization are expenses incurred by the organs of the Organization. And there can be no dispute that the expenditures in question here were incurred by the General Assembly and Security Council acting through the Secretary-General. So, under Article 17 (2), the General Assembly has power—and the duty—to apportion among the Members, and the Members are under a duty to pay the sums apportioned among them.

I think it would be convenient now to refer to some other arguments that have been advanced. In their written statement the Government of the Soviet Union say:

> "According to the United Nations Charter all questions involving actions for maintaining international peace and security—which includes the creation of the United Nations Emergency Force as well—come under the competence of the Security Council alone."

And, with the greatest respect to my distinguished colleague, I must say I find this an astonishing assertion. I ask the Court to note the language used:

> "all questions involving actions for maintaining international peace and security come under the competence of the Security Council alone".

"Actions" means any kind of action, calling a conference, making recommendations to the parties involved, appointing a commission to enquire into the position, police action for the maintenance of peace, all questions involving actions for the maintenance of international peace and security come under the competence of the Security Council alone. That is the assertion of the Soviet Union.

One has only to look at the Charter itself to see, in my submission, that it is not justified.

The first purpose of the United Nations—and it is expressed to be of the United Nations, not the Security Council—is:

> "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."

That is declared to be the purpose of the United Nations, of the Organization as a whole.

And yet the Soviet Union say that the General Assembly with 104 sovereign States cannot consider any question involving action of any character for maintaining peace. That, it is said, has to be left to the 11 Members of the Security Council alone.

Article 24 provides that in order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security. I ask the Court to note that the word is "primary", not "exclusive". If the contention of the Soviet Union was right one would expect the Article would say not "primary responsibility" but "exclusive responsibility". The use of the words "primary responsibility" clearly indicates that other organs of the United Nations also have responsibility for the maintenance of peace.

And the first principal organ mentioned in Article 7 is the General Assembly. Further, Articles 10 and 11 do not support the view of the Soviet Union. If that view was right, one would not only expect the first purpose stated in Article 1 to be stated to be the purpose of the Security Council—not of the United Nations—one would expect Article 24 to refer to "exclusive" and not "primary" responsibility, and one would expect the General Assembly to be prohibited from discussing and from considering questions involving actions for maintaining international peace—and no such restriction is to be found in Articles 10 and 11. In my submission to this Court I feel bound to submit that this assertion of the Soviet Union is not warranted.

Now, Sir, the contention has also been put forward, but not I think by the Soviet Union, that where action is taken by the Security Council

under Article 43 the expenses of the forces or assistance made available cannot be expenses of the Organization. Now, Sir, I would like to say a little about that contention; but I think it would probably be convenient now for an interpretation to be made of what I have already said and for me to start dealing with that after the adjournment.

[Public hearing of 17 May 1962, afternoon]

May it please the Court: I now want to say something about the contention to which I referred just before the Court rose—the contention that where action is taken by the Security Council under Article 43, the expenses of the forces or assistance made available cannot be expenses of the Organization. Under Article 43 all Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities including rights of passage necessary for the purpose of maintaining international peace and security.

Now, it is to be noted that this Article is not limited to securing the provision of armed forces, but extends to other forms of assistance and to facilities. It is also indicated that the assistance, whatever form it takes, is to be in accordance with a special agreement or agreements.

It is argued that in the light of Article 43 the expenses of peace-keeping activities of the Security Council fall to be borne by individual Members under a special agreement or agreements, and are not expenses of the Organization. The terms of the special agreement or agreements are not prescribed. The argument assumes that the expenses will be borne by the Member States concerned. But why should that be assumed? Why should the agreements not provide that the expenses should in whole or in part be borne by the United Nations?

It really could not be suggested that it would be beyond the competence of the Security Council to make such an agreement.

If it did, the expense would clearly, in my submission, be an expense of the Organization which would fall for apportionment under Article 17 (2).

Now, no one has suggested that the Security Council acted—they certainly did not purport to do so—under Article 43, and I have only referred to that Article because of the argument that has been based upon it—an argument which depends upon the assumption, for which there is no justification, that the special agreement could not include a provision whereby the Security Council, and so the United Nations, undertook to meet some part or all the cost of the assistance, whatever form it might take, that was required.

Now, Sir, I want to turn to Article 98. Under that Article the functions of the Secretary-General are prescribed. He is to act as Secretary-General in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and the Article provides that he is to perform such other functions as are entrusted to him by these organs.

As a matter of construction of the Article, the words in that Article "such other functions" mean functions in addition to those particularly described. There is no definition or limitation of the "such other func-

tions" that can be entrusted to him. They can be entrusted to him by the General Assembly and by the Security Council.

When one looks at Chapters IV and V of the Charter, which deal with the functions and powers of the General Assembly and Security Council respectively, and indeed when one looks elsewhere in the Charter, one does not find any express provision authorizing either organ to entrust functions to the Secretary-General or any express provision restricting their powers to do so. It is, I submit, a necessary implication from the wording of Article 98 that both these organs, the General Assembly and the Security Council, have power to entrust functions to the Secretary-General. It is also, I submit, a necessary implication from Article 98 that they can entrust such functions as they think fit to him, with the object of achieving the purposes mentioned in Article 1—and provided, of course, that the functions entrusted to him do not conflict with a prohibition on the actions of the United Nations, such as that contained in Article 2 (7).

Now, the expenditures authorized by the General Assembly to which the question submitted to this Court relates are expenditures incurred in the discharge of the functions entrusted to the Secretary-General. They were authorized by the General Assembly and they are in my submission beyond any shadow of doubt expenses of the Organization.

I now want to turn, if I may, to the steps taken by the General Assembly in regard to the financing of the UNEF and Congo operations, and I will, if I may, deal with them in that order.

The first reference to the financing of UNEF is to be found in paragraph 15 of the Secretary-General's second and final report of 6 November 1956 (document A/3302), and that paragraph reads as follows:

> "The question of how the Force should be financed likewise requires further study. A basic rule which at least could be applied provisionally would be that a nation providing a unit would be responsible for all costs of equipment and salaries, while all other costs should be financed outside the normal budget of the United Nations. It is obviously impossible to make any estimate of the costs without a knowledge of the size of the Corps and the length of its assignment."

And if I may interpolate there, I suggest that the Secretary-General is giving *that* as the reason for financing outside the normal budget. He went on to say:

> "The only practical course, therefore, would be for the General Assembly to vote a general authorization for the cost of the Force on the basis of general principles such as those here suggested."

On the following day, the General Assembly adopted Resolution 1001 (ES-I), the fifth operative paragraph of which approved provisionally the basic rule laid down in the paragraph of the Secretary-General's report which I have just quoted to the Court.

The next step was the adoption by the General Assembly on 26 November 1956, by a vote of 52 in favour and nine against with 13 abstentions, of Resolution 1122 (XI). So far as relevant, that Resolution read as follows:

> "The General Assembly...
>
> Having considered and provisionally approved the recommen-

dations made by the Secretary-General in paragraph 15 of his report of 6 November 1956,

1. *Authorizes* the Secretary-General to establish a United Nations Emergency Force Special Account to which funds received by the United Nations, outside the regular budget, for the purpose of meeting the expenses of the Force shall be credited and from which payments for this purpose shall be made..."

Now immediately before the adoption of this Resolution by the General Assembly, the Secretary-General made a statement in the plenary meeting in the course of which he said (and I quote from the *Official Record* of the 596th Plenary Meeting, para. 225):

"... I wish to make it equally clear that while funds received and payments made with respect to the Force are to be considered as coming outside the regular budget of the Organization, the operation is essentially a United Nations responsibility, and the special account to be established must, therefore, be construed as coming within the meaning of Article 17 of the Charter."

That was the Secretary-General's clear expression of his opinion. It is, I submit, entitled to great respect, and there really cannot have been any doubt in the minds of those who voted for the Resolution immediately after he made that statement that the expenses to be met from the special account for which the Resolution provided were "expenses of the Organization" within Article 17.

And the Court is, I submit, entitled to conclude that the Resolution was adopted on that basis.

Now, 5½ years later, there are those who seek to establish that the Secretary-General was wrong—and that despite what he said, despite the passage of this Resolution immediately after his statement, the expenses of this United Nations operation were not expenses of the United Nations.

A month later, on 21 December 1956, the General Assembly, by a vote of 62 in favour and 8 against with 7 abstentions, adopted Resolution 1089 (XI). The first operative paragraph of this Resolution decided that:

"1. ... the expenses of the ... Force, other than for such pay, equipment, supplies and services as may be furnished without charge by the Member Governments, shall be borne by the United Nations and shall be apportioned among the Member States, to the extent of $10 millions, in accordance with the scale of assessments adopted by the General Assembly for the financial year 1957."

Now the Court will note the close correspondence between the language used in this Resolution and that of Article 17 (2). There really can be no doubt that when the General Assembly said that expenses of the Force, other than for items provided without charge, "shall be borne by the United Nations and shall be apportioned among the Member States", it was treating those expenses as "expenses of the Organization" within the meaning of Article 17 (2).

The next resolution to which I desire to refer is Resolution 1090 (XI) of 27 February 1957. After noting that the expense of the Force already approved represented "a sizeable increase in assessments placed on Member States", it invited voluntary contributions to meet further ex-

penditures of $6.5 millions authorized in addition to the $10 millions which had been apportioned under Resolution 1089.

And these two Resolutions 1089 and 1090 set the pattern for the subsequent General Assembly resolutions on the financing of the Force which are referred to in the request to the Court. I need not refer to them in any detail.

The 1957 and 1958 Resolutions used language virtually the same as that of the operative paragraph I have quoted from Resolution 1089. The 1959 and 1960 Resolutions used slightly different language. The decision was "to assess" so many million dollars "against all Members on the basis of the regular scale of assessments", and they provided for the use of voluntary contributions to reduce the financial burden on States with least capacity to pay.

But these differences of language were not such as to indicate an intention on the part of the General Assembly to treat the expenditures in question otherwise than as "expenses of the Organization".

Throughout, in my submission, the General Assembly has treated the expenditures involved as "expenses of the Organization". Admittedly, it has provided for part of those expenditures to be met by voluntary contributions and not by apportionment, but that does not, I submit, affect the character of the expenditure.

There are, I suggest, no grounds for supposing that the General Assembly had any doubts about the character of the expenditures. Its clear intention was just to ease the financial burden on the membership as a whole.

Admittedly too, the General Assembly did not include the expenses of UNEF in the regular budget of the Organization. Its reasons for not including them were ones of convenience and not of principle, and that is made clear by paragraph 108 of the Secretary-General's Summary Study of the experience derived from the establishment and operation of the Force (document A/3943).

I now come to the resolutions dealing with the expenses of the Congo operations. The first "financing" resolution adopted by the General Assembly was Resolution 1583 (XV) of 20 December 1960. This Resolution, adopted by a vote of 46 in favour and 17 against, with 24 abstentions, contained a preambular paragraph recognizing that

> "the expenses involved in the United Nations operations in the Congo for 1960 constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the United Nations Charter and that the assessment thereof against Member States creates binding legal obligations on such States to pay their assessed shares...".

It went on to decide, first, to establish an *ad hoc* account for the expenses of the United Nations in the Congo and, secondly, that the amount of $48.5 millions

> "shall be apportioned among the Member States on the basis of the regular scale of assessment..."

subject to provisions for the use of voluntary contributions to reduce the burden on the States with least capacity to pay.

Now the Court will note that the General Assembly in this Resolution has placed on record its view that the expenses involved constituted "expenses of the Organization" within the meaning of Article 17 (2).

And further the Court will note that the General Assembly could only have made the apportionment made by this Resolution in the exercise of its power under Article 17 (2) and on the basis that the expenses in question were expenses of the Organization.

Now I come to what I may call the important Resolution 1619 (XV) of 21 April 1961. This Resolution, adopted by a vote of 54 in favour and 15 against, with 23 abstentions, included the following preambular paragraph:

> "Bearing in mind that the extraordinary expenses for the United Nations operations in the Congo are essentially different in nature from the expenses of the Organization under the regular budget and that therefore a procedure different from that applied in the case of the regular budget is required for meeting these extraordinary expenses..."

In the operative paragraphs, the General Assembly decided, *inter alia*, to open an *ad hoc* account for the expenses of the Congo operation for 1961, to appropriate $100 millions for those expenses from 1 January to 31 October 1961, and to apportion as expenses of the Organization the amount of $100 millions among the Member States in accordance with the scale of assessment for the regular budget, subject to provisions for the use of voluntary contributions to reduce the burden on States with the least capacity to pay.

Again, there are two points here to which I should like to invite attention. The first is that the language of the preambular paragraph, which I read to the Court, is the same as that of a preambular paragraph in a later resolution, not referred to in the request to the Court, which is quoted on page 273 of the written statement submitted by the Government of the Soviet Union as showing that the General Assembly did not consider the expenses of the Congo operation as expenses of the Organization within the meaning of Article 17 (2). The suggestion is presumably that, in describing the expenses of the Congo operation as "extraordinary" and as "essentially different in nature from the expenses of the Organization under the regular budget", the General Assembly was intending to exclude those expenses from the category of "expenses of the Organization". In my submission, it was doing nothing of the kind. The references to the extraordinary nature of the expenses of the Congo operation were, I submit, clearly included by the General Assembly, not to show that those expenses were something other than "expenses of the Organization", but to explain why it intended to adopt a different procedure to meet them from that applied in the regular budget. That it did in fact regard them as "expenses of the Organization" is, I venture to think, put beyond doubt by the subsequent operative paragraph in which it apportioned the amount of $100 millions among the Member States "as expenses of the Organization", for unless it regarded that amount as expenses of the Organization, it had no power to apportion under Article 17 (2). The resolution from which the quotation in the Soviet written statement is taken also contained an operative paragraph apportioning the amount concerned among the Member States "as expenses of the Organization".

Before leaving this point, I should like to remind the Court of a passage in a statement made by the Secretary-General in the course of the debates

in the Fifth Committee which led up to the adoption of Resolution 1619. He said—and I quote from paragraph 17 of document A/C.5/864:

> "Several of the representatives have naturally laid emphasis on the size of the Congo expenditures and on their 'extraordinary' character. But how, from a legal and constitutional point of view, can these factors lead to a conclusion that they are not expenses of the Organization? The fact that these expenses have been substantial and unusual ... cannot mean that the Charter provision must now be disregarded. Nor would there appear to be any practical necessity to do so. For, under Article 17, the Assembly has a broad discretion to deal with the apportionment of expenses; it may provide—and in fact it has provided—for different methods of apportionment to meet the necessities in particular cases. Certainly it is free to take into account ... special considerations ... and to ensure a just and equitable distribution of the burdens assumed by the Organization in maintaining international peace and security. This can be done with full respect for the legal principles prescribed in the Charter and without departing from the clear and specific rule that the costs constitute expenses of the Organization within the meaning of the Charter."

Now I have ventured to cite this long quotation because I think it expresses very well the real point here; that is, that the fact that certain expenses are of an extraordinary nature may be very relevant to the question of what arrangements the General Assembly should make to meet them—how they should be apportioned, and so on; it does not, however, make them any the less "expenses of the Organization".

Mr. President and Members of the Court, my submission to you is that the terms of the resolutions on the financing of the Congo operation referred to in the request, like those on the financing of UNEF, demonstrated a clear opinion on the part of the General Assembly that the expenses of the operation were "expenses of the Organization" within Article 17 (2).

I am not seeking, of course, to suggest that the views and practice of the General Assembly are in any way conclusive of the question before the Court. If it was conclusive, there would not be the request from the General Assembly to this Court. But it is, I submit, relevant for the Court to know on what basis the General Assembly has throughout the years acted in these matters.

If the expenses were *not* expenses of the Organization, they have, throughout these years, acted wrongly. The Secretary-General has been wrong and they have been wrong.

That, of course, *is* the contention of certain States. In my submission, it is a contention that this Court should unequivocally reject.

Mr. President and Members of the Court, I am now glad to be able to tell you that I have almost concluded my submissions. At the commencement of my speech I submitted that the General Assembly had not requested this Court to express its opinion or to pronounce upon the validity and legality of actions taken by the Assembly itself and the Security Council in relation to UNEF and the Congo.

I do not propose to repeat the reasons for that submission. Having made it, I merely wish to add this: If the General Assembly had wanted this Court to pronounce upon the legality of its resolutions and actions,

the question to this Court would have been very differently phrased. And the question can be answered without going into those matters. In my submission it should be answered without going into them and, holding that opinion as we do very strongly, I do not propose to deploy arguments in support of the validity of the actions in relation to UNEF and the Congo of the General Assembly and Security Council just because certain of my colleagues wish to challenge their legality. No doubt such arguments could be deployed, but I do not propose to add to the length of an already long speech by putting them forward. I will merely content myself by saying in other words what we say in our written statement, in paragraph 8, that in so far as the resolutions and actions of these two organs were within the purpose stated in Article 1, paragraph 1—and no one in this Court has suggested that they were not for that purpose—we support their validity.

The action taken was with the consent of the Governments of the countries affected. The action taken for the maintenance of international peace and security with the consent of the Governments concerned was regarded as essential. If the United Nations could not take the action it did, if its action was invalid or illegal, the United Nations would be indeed a defective instrument for the preservation of peace, and the hopes and aspirations of many millions of people would be disappointed.

Mr. President, it might perhaps be to the convenience of the Court if I were, in conelusion, to summarize my submissions to the Court:

1. That the scope of the question submitted for the consideration of this Court is a very narrow one, namely, to decide whether certain expenditures authorized by the General Assembly were "expenses of the Organization" within the meaning of that expression in Article 17 (2) of the Charter.

2. That as the expenditures under consideration are stated in the question to have been authorized by resolutions of the General Assembly, the Court should proceed upon that basis and should accept as a fact that they were so authorized.

3. That the Court is not asked by the General Assembly to consider the validity and legality of any of the resolutions referred to in the question and should not embark upon that task. The scope of the question put to the Court cannot be enlarged by arguments advanced by certain States, and I ask the Court to make it clear in its decision that as it is not asked by the General Assembly to do so it does not pronounce upon the validity of resolutions passed by the General Assembly itself and by the Security Council.

4. That if, contrary to my submission, the Court is of the opinion that they are asked to consider the validity and legality of the authorization for the expenditures in question, Article 17, which entrusts the duty of approving the budget to the General Assembly and the duty to approve any financial arrangements with specialized agencies, clearly implies that the General Assembly can authorize expenditure.

5. That it should be recognized that the General Assembly as well as the Security Council has responsibility for the maintenance of

international peace and security; has power to, and is entitled to discuss and consider questions involving action for the maintenance of peace and can entrust to the Secretary-General functions in addition to the functions particularly mentioned in Article 98 and that the Security Council has similar powers under Article 98.

6. That the exercise by the General Assembly and by the Security Council of the powers to which I have just referred must be for one or more of the purposes stated in Article 1 and must not conflict with any prohibition contained in the Charter, such as that contained in Article 2 (7).

7. That the expenditures in question, incurred on the authority of the General Assembly and the Security Council, are expenses of the Organization.

Mr. President, I would like to thank you and the Honourable Members of this Court for listening to me so patiently and courteously. We lawyers from the United Kingdom are accustomed to having questions put to us, in the course of our argument, by the Court, to elucidate and to test the arguments we advance. It is an unusual experience—and I would say an enjoyable one—to speak for so long without a question from the Court. I hope that I have made my submissions to the Court clear and I would like to conclude by repeating my expression of thanks to the Court.

5. ORAL STATEMENT OF MR. JENS EVENSEN

(REPRESENTING THE NORWEGIAN GOVERNMENT)
AT THE PUBLIC HEARINGS OF 17 AND 18 MAY 1962

[Public hearing of 17 May 1962, afternoon]

Mr. President, Members of the Court:

The legal questions placed before this Court are directly affecting the Norwegian Government, as it affects all Member Governments of the United Nations, because the questions have far-reaching implications for the present and the future of the Organization and thus for our troubled world.

The Norwegian Government has not filed any written pleadings or statements in the procedure but, in view of the importance of the problems involved, my Government desires to present its views orally.

At the meeting of the United Nations Fifth Committee on 14 April 1961, the representative of India stated:

> "The problem has to be solved for the sake not only of the success of the Congo undertaking, but for the future financial integrity of the United Nations itself." (Doc. A/C 5/863, p. 1.)

My Government fully agrees. And the facts supporting this statement are easily ascertained from the United Nations budget estimates. The printed estimates for the year 1962 show that the assessments for the regular United Nations budget for 1961 is some $69,000,000, while the UNEF and the Congo assessments for the same year are some $167,500,000. Thus, the assessments for these two peace-preserving actions are almost 2½ times higher than the regular United Nations budget. (Doc. A/4770, p. VII.)

As to the arrears due for these two actions, the last figures available show that as of 31 March 1962 the arrears of the UNEF assessments for the period 1957 to 1961 are some $24,000,000. The arrears for 1962 with regard to UNEF were some $7,500,000. Arrears for the UNOC assessments were for the period 1960-1961 some $51,500,000 and for 1962 alone some $66,500,000. (ST/ADM/SER. B/157.)

Total arrears up to and including 1961 thus amount to some $76,000,000 for these two actions alone. In addition hereto the expected arrears for 1962 must be taken into account. At present they amount to $74,000,000 for 1962 alone. But it is expected that this last figure will be substantially reduced during the financial year.

These figures corroborate the information given by the Secretary-General on 11 December 1961 to the effect that the United Nations will have plunged into a debt of some $170,000,000 as of 30 June 1962, and he further states that the United Nations are facing imminent bankruptcy and, further, that its future as a peace-preserving instrument will possibly be doomed, unless a satisfactory solution is found to the questions now placed before the Court. (A/C 5/907, pp. 3 and 4.)

The questions put to the Court by the Request of the General Assembly are, as stated by the British representative, clearly defined and restricted.

The Request concerns two specific actions only, namely the UNEF action and the Congo action. The Request does not pertain to the various legal implications of these events but is expressly confined to one special aspect thereof, namely the question concerning the financing of the expenditures incurred. The Request is further confined to specific items of expenditures enumerated in the Request. And finally, it is confined to the relationship between these expenditures and Article 17, paragraph 2, of the Charter.

The Court has not been asked to give an Advisory Opinion on the question of the validity or the legality of the basic decisions of the General Assembly or the Security Council. But the Government of Norway shares the view expressed by the Government of Denmark in the written statement, pages 153-154, that these basic decisions of the United Nations might theoretically have been so patently illegal that the Court would have been forced to declare the ensuing financial resolutions in question null and void.

Here, it must be borne in mind, however, that it is a principle embedded in the United Nations Charter that each of the main organs shall judge their own competence. This rule is expressly laid down in Article 36, paragraph 6, of the Statute of the Court where the jurisdiction of the Court is concerned. The principle is equally inherent in the activities of the other main organs, and especially the General Assembly and the Security Council.

It cannot be presumed that a main organ of the United Nations is acting in an illegal manner or in illegal capacities. Those who want to make such extraordinary contentions must have a very difficult position legally. As a matter of fact, in an ordinary case they surely would have been considered to have the full burden of proof for such an extravagant contention. The Norwegian Government strongly feels that the facts of the present situation leave no doubt that the basic decisions of the General Assembly and of the Security Council are valid and binding.

It follows clearly from the Request that the Court has not been asked to express any opinion on the possible scale for assessing each nation its share of the expenses. Nor has the Court been asked to express itself on the wisdom or expediency of the steps taken in Egypt or in the Congo or on the size of the expenditures incurred.

In its Request, the General Assembly has defined the subject-matter in such a manner as to leave for the Court's decision legal questions in accordance with Article 96 of the Charter and 65 of the Statute of the Court. No doubt can possibly exist as to the Court's jurisdiction to deal with and render an Advisory Opinion in compliance with the Request of 20 December 1961.

Mr. President, before I enter into an examination of the contents of Article 17 of the Charter, I shall dwell upon certain aspects concerning the legality of the underlying United Nations actions. These questions have been dealt with in detail in various written statements. The distinguished delegate from Canada has furthermore made a thorough review of it in his oral address to the Court. I fully share his views in the matter. I am also in agreement with the views expressed by Professor Riphagen that these issues in principle are irrelevant and immaterial.

Consequently, I shall merely stress certain points which may be of a more specific interest to the application of Article 17 to the present problems.

I shall start with certain aspects of the UNEF operations in Egypt.

The United Nations Emergency Force in the Middle East was created under the stress of an extremely grave situation. In my submission, it is not an over-statement to maintain that the peace of the world may have hinged on immediate and effective actions by the United Nations in this case.

The United Nations and its Members may with pride register the fact that this action was eminently successful as later developments have demonstrated.

The highlights of the dramatic events were: On 29 October 1956 and the following days, armed forces advanced into Egyptian territory and large-scale hostilities broke out. The situation was immediately considered by the Security Council in four meetings held between 30 October and 1 November 1956, and by the General Assembly in an emergency session lasting from 1 November to 10 November.

Due to the effective intervention by the Organization and to the consent given by Egypt to the effect that United Nations troops could enter its territory and remain there, the hostilities ceased during the night of 6 November and 7 November. On 15 November the first UNEF forces arrived in Egypt and the withdrawal of French and British forces commenced. The withdrawal of foreign troops was terminated in March 1957, and as early as 8 March the Secretary-General could report that peace prevailed along the whole of the demarcation line.

This was no small achievement, and the United Nations had proved to the world that it was able to fulfil its main task as a peace preserving organization. Peace was effectively restored by comparatively simple means. Should really Members of the United Nations be allowed to shirk their obligations to contribute financially to this noble endeavour?

Of great importance for the present problems are the circumstances leading up to the Security Council Resolution of 1 November 1956. Because of the veto laid down by France and the United Kingdom, it soon became apparent that the Security Council would not be able to take effective measures in this grave conflict. Consequently, Yugoslavia submitted a draft resolution to the Security Council on 31 October 1956, proposing an emergency session of the General Assembly in accordance with the Uniting for Peace Resolution of 1950. This proposal was adopted on 1 November 1956, with 7 votes for it, including the votes of the Union of Soviet Socialist Republics and the United States.

In my opinion, it may be of paramount importance for the correct solution of the pending problems to be aware of the fact that the Soviet Union by voting for this resolution not only agreed to call an emergency session but expressly adhered to the principles of the Uniting for Peace Resolution. The Resolution of 1 November 1956 is very outspoken on this point. It says:

> "The Security Council, considering that a grave situation has been created by the action taken against Egypt,
>
> Taking into account that the lack of unanimity of its permanent members at the 749th and 750th meetings of the Security Council *has prevented it from exercising its primary responsibility* for the maintenance of international peace and security,
>
> Decides to call an emergency special session of the General Assembly as provided in the General Assembly's Resolution 377 A (V) of 3 November 1950 in order to make appropriate recommendations." (Printed *in extenso* p. 25 of the written statement.)

In addition to using the procedure prescribed in the Uniting for Peace Resolution, and to some extent even using the direct wording of the Uniting for Peace Resolution, this 1956 Resolution of the Security Council expressly refers to the Uniting for Peace Resolution, Section A, in its last paragraph. Section A of the Uniting for Peace Resolution, approved in this manner by the Soviet Union, as applicable in the prevailing situation, expressly includes among the peace-preserving recommendations of the General Assembly "the use of armed forces when necessary to maintain or restore international peace and security".

The stand taken by the Soviet Union in 1956 immensely helped the re-establishment of peace in the world. But I respectfully submit that this stand is irreconcilable with any contention to the effect that the General Assembly's resolutions are invalid as infringing upon basic provisions of the Charter concerning the division of power between the Security Council and the General Assembly.

Another fact which it is essential to bear in mind is that in accordance with the stand taken in the Security Council, the Soviet Union did participate in the emergency session of the General Assembly, and it did not vote against the basic resolutions of the Assembly. On the contrary, it voted for Resolution 997 of 2 November 1956, aiming at a cease-fire and the withdrawal of armed forces behind the armistice lines.

With regard to the three General Assembly Resolutions creating the UNEF forces, namely the Resolution of 4 November 1956, the Resolution of 5 November 1956 and the main Resolution of 7 November 1956, the Soviet Union did not vote against them but abstained from voting. France and the United Kingdom likewise abstained from voting on these Resolutions of 4 November and 5 November, but voted for the main Resolution of 7 November 1956. Nor did Egypt or Israel vote against these various resolutions.

[Public hearing of 18 May 1962, morning]

Mr. President, Members of the Court, I shall, with the Court's permission, continue with my exposé concerning certain legal aspects of the basic UNEF operations.

France has, in its written statement, made certain observations as to the legality of the UNEF actions. For political reasons, France used its veto power in the Security Council. It also voted against the calling of an emergency session. France did not vote against, but abstained from voting on the General Assembly's Resolutions of 4 November and 5 November. But it voted *for* the main General Assembly Resolution of 7 November, establishing the UNEF forces. And France is one of the draftsmen and a co-sponsor of the Uniting for Peace Resolution of 3 November 1950.

In the light of these facts, it seems rather difficult to maintain in one form or the other that the steps taken by the General Assembly are illegal as violating main provisions of the Charter and that for such or similar reasons this peace-preserving action should not be financed under Article 17 of the Charter.

Another crucial point is the fact that the UNEF operations were put into action with the consent of all the parties directly concerned. The General Assembly's Resolution of 7 November 1956 expressly adopts

this principle, which was laid down in paragraph 9 of the Secretary-General's report of 6 November 1956 (A/3302) as follows:

> "Functioning, as it would, on the basis of a decision reached under the terms of the resolution 'Uniting for Peace', the force, if established, would be limited in its operations to the extent that the consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to establish the force with the consent of those parties which contribute units to the force, it could not request the force to be stationed or operate on the territory of a given country without the consent of the Government of that country. This does not exclude the possibility that the Security Council could use such a force within the wider margins provided under Chapter VII of the United Nations Charter."

Accordingly all troop contingents used served on a voluntary basis. None of the States participating were ordered to do so or *could* have been ordered to do so by the General Assembly. And by the same token Egypt was not ordered, as it *could not* have been ordered by the General Assembly, to accept the UNEF forces on its territory. Egypt expressly consented to the use of UNEF by a cablegram to the Secretary-General on 5 November 1956. Later and on 8 February 1957 a status agreement concerning the use of the UNEF forces was concluded between Egypt and the United Nations by its Secretary-General. (See doc. A/3526.)

Due to lack of consent on the part of Israel, UNEF forces were never stationed in Israel. On the other hand, both Israel, United Kingdom and France agreed to the withdrawal of their troops and to the use of UNEF as an international fire brigade. It follows from these facts that the UNEF operation never was an action taken under Chapter VII of the Charter. Especially it never was an action undertaken according to Articles 42 and 43 of the Charter.

It was an action of quite another nature. The cornerstone of this action was the consent of all parties concerned. The UNEF operated under the direction of the General Assembly as a subsidiary organ according to Article 22 of the Charter. This has been repeatedly recognized. Thus, in the agreement of 8 February 1957 (see doc. A/3526) between Egypt and the United Nations, it is stated that the United Nations Emergency Force is "an organ of the General Assembly of the United Nations established in accordance with Article 22 of the Charter". And, in paragraph 23 of the same agreement, it is repeated that the United Nations Emergency Force is "a subsidiary organ of the United Nations established by the General Assembly". This agreement was formally recognized by the General Assembly in Resolution No. 1126 (XI) of 22 February 1957.

In this connection I may also refer to an article written by the French professor Chaumont in *Annuaire français de Droit international*, 1958, pages 399 *et sqq.* In this thorough analysis of the legal status of the UNEF forces there seems to exist no doubt in his mind as to the conclusion as follows (and this is from p. 403):

> *"Il s'agit donc ici de l'application de l'article 22 de la Charte qui autorise l'Assemblée générale à créer les organes subsidiaires qu'elle juge nécessaires à l'exercice de ses fonctions."*

Even if some doubts nevertheless should exist as to whether the UNEF forces could be considered a subsidiary organ within the meaning of Article 22 of the Charter, it is the submission of the Norwegian Government that the UNEF operations lie well within the express or implied powers conferred upon the General Assembly under the Charter. Article 24 of the Charter confers on the Security Council the primary responsibility for the maintenance of international peace and security, but not the exclusive responsibility. On the contrary, time and again the General Assembly has taken the necessary steps within the confines of the Charter, with a view to preserving international peace and security. Or, as stated by Professor Chaumont, with special reference to the UNEF (and I quote from p. 404 of the same article):

> *"L'action entreprise par le Secrétaire général dès le 4 novembre 1956 s'est donc située dans la perspective et les limites des pouvoirs de recommandation de l'Assemblée générale."*

As to the events in connection with the UNOC operations in the Congo, the following points may have a specific bearing on the questions we have before us.

The legal basis for the UNOC operations was not only the consent of the Congolese Government, but the express request for assistance made by the proper authorities in a telegram of 12 July 1960. The telegram stated amongst others:

> "The Government of the Republic of Congo requests urgent dispatch by the United Nations of military assistance",

and further that the situation in the Congo was so grave as to be a "threat to international peace". (Doc. S/4382.)

The situation was immediately considered by the Security Council, which in its 873rd meeting on 13 July 1960, with 8 votes to none, adopted a Resolution (S/4387) deciding, *inter alia*, to authorize

> "the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary".

Among the 8 votes cast for this Resolution were the two permanent Members, the Soviet Union and the United States of America. Furthermore, Argentina, Ceylon, Ecuador, Italy, Poland and Tunisia voted for the Resolution.

Aside from the important fact that the Soviet Union voted for this procedure, a fact which, in my submission, would make it rather difficult to maintain that the Congo operations should be unconstitutional under the Charter, the following four points of the Resolution may have a bearing upon the questions before us.

First, that the Security Council expressly authorized the Secretary-General to take the necessary steps.

Secondly, that by the express terms of the Resolution such steps required the consent of the Government of the Republic of the Congo.

And thirdly, the very important fact that the Resolution expressly authorized the Secretary-General to render "*military* assistance". How can it now possibly be said that the military assistance rendered in the Congo, in compliance with the terms of this Resolution, be illegal and thus not financially binding for Member States?

And finally the contents of the said Resolution clearly demonstrate that the steps prescribed therein were not the type of mandatory actions provided for in Articles 42 and 43 of the Charter. For the following reasons:

The Resolution delegated to the Secretary-General the authority to take the necessary steps without even defining in detail what steps for him to take. In my submission, it is impossible to assume that the authority conferred upon the Security Council by Articles 42 and 43, involving the right to give binding orders to governments, could be delegated to the Secretary-General, at least not in such unspecified and general manner as in the Resolution of 14 July. The delegation of power to the Secretary-General in this Resolution is in and of itself *proof enough* to the fact that these steps do not belong to the category of actions provided for in Articles 42 and 43, but are steps of a much less serious character.

Furthermore, actions taken under Articles 42 and 43 are not dependent upon consent from the State or States involved, while the Resolution expressly puts down the consent of the Republic of the Congo as a prerequisite for the UNOC actions.

Finally, it is equally clear that the Resolution does not purport to order Member States to participate in joint military actions. On the contrary, the forces constituting the UNOC forces were placed at the disposal of the United Nations voluntarily by certain States.

In a new Resolution of 22 July 1960 (S/4405) the Security Council unanimously commended the Secretary-General for "the prompt action he had taken to carry out" the former Resolution, and in the said Resolution the Security Council further voted that "the arrival of the troops of the United Nations force in Leopoldville had already had a salutary effect". Not one word is found in this Resolution indicating that the UNOC measures taken by the Secretary-General were illegal and violating the provisions of the Charter. On the contrary, the Resolution, with the approval of France and the Soviet Union, endorsed the said steps and commended the Secretary-General for the actions taken.

The Security Council Resolution of 9 August 1960 (S/4426) confirmed the authority given to the Secretary-General by the two previous Resolutions and further called upon Member States, in accordance with Articles 25 and 49 of the Charter, to afford mutual assistance in carrying out the necessary measures. But the said Resolution failed to mention Articles 42 and 43 of the Charter. The Soviet Union voted for this Resolution, while France abstained. The representative of the Soviet Union explained his stand as follows—and I quote from the Security Council *Official Records* for August 8 to 9, 1960, p. 53:

> "'The USSR delegation voted in favour of the text because it enables the Security Council to carry out its most important task, namely to ensure that Belgium would immediately and unconditionally withdraw its troops from the entire territory of the Republic of the Congo, including the province of Katanga.
>
> Our vote was also determined by the consideration that the adoption of this Resolution, which confirms the broad authority given to the Secretary-General by the Council in the two earlier Resolutions, once again emphasizes, and emphasizes unanimously, that the Secretary-General has the obligation to take decisive meas-

> ures, without hesitating to use any means to that end, to remove the Belgian troops from the territory of the Congo and to put an end to acts directed against the territorial integrity of the Republic of the Congo." (*Official Records of the Security Council*, 886th meeting, p. 53.)

It seems clear from this statement that the Soviet Union here again endorsed the implementation by the Secretary-General of the 14 July Resolution.

Again, on 21 February 1961, the Security Council reaffirmed its former Resolutions (see doc. S/4741) with the Soviet Union and France abstaining. But again on 24 November 1961 the Security Council adopted a Resolution (S/5002) reaffirming the former Resolutions, and authorizing "the Secretary-General to take vigorous actions, including the use of requisite measures of force" and urged all Member States to lend their support to these steps. The Soviet Union voted *for* this Resolution, while France and United Kingdom abstained.

In view of this voting record, how can it now be maintained in the printed statement of the Soviet Union, page 271 at the bottom, that:

> "The Security Council's Resolution S/4387 of 14 July 1960 served as a basis for the United Nations operation in Congo. However, that Resolution has been implemented in violation of the provisions of the United Nations Charter"?

Let us, in spite of this record, for a minute theoretically assume that the Secretary-General *had* really implemented the Resolutions in question in an illegal manner. Who else should be responsible for the financing of these steps but the Organization? The only theoretical alternative would be to make the Secretary-General *personally* liable. But no-one can seriously maintain that such a result would be possible in practice or legally sound under the Charter.

Allow me finally in connection with the UNOC operations to make one remark concerning a statement set forth by the South African Government at pages 265-266 of the printed document. It is here alleged that the UNOC actions are in violation of the provisions of Article 2 (7) of the Charter, the Article relating to the domestic jurisdiction issues. It is respectfully submitted that this line of argument is untenable. As long as the said operations are conducted in compliance with the urgent request and with the consent of the proper Congolese authorities, how can possibly these actions violate the provisions of Article 2 (7) of the Charter?

Mr. President, I shall now with the Court's permission proceed to an interpretation of Article 17, paragraph 2, of the Charter. But, in view of the very detailed examination given in previous oral statements, I shall be brief on at least certain of the main points.

It is the submission of the Norwegian Government that the General Assembly has the right and the obligation under Article 17, paragraph 2, to obtain the necessary funds for these two actions in question from Member States.

The stand taken by the General Assembly in the various resolutions mentioned in the Request is therefore fully in accordance with the Charter of the United Nations and with the scope and purpose of the Organization.

First, the wording of Article 17, paragraph 2, supports this conclusion. It is not necessary once more to quote the sub-paragraph, but it should be borne in mind that these broad terms were not accidentally included in the Charter. On the contrary, and as mentioned in the written statement of the United States, page 194, the First Committee of Commission II at the San Francisco Conference amended slightly the original Dumbarton Oaks proposals on this point for the following reasons—and I quote from the Committee's records:

> "In taking this action the Committee considered the view of the Advisory Committee of Jurists that a clear statement of the obligation of the Members to meet the expenses of the Organization should be found in the Charter."

Thus the present wording of Article 17, paragraph 2, has been carefully phrased and adopted in order to avoid the difficulties and the doubts which faced the League of Nations during its first years. The Covenant of the League of Nations actually had to be amended in 1924, in order to make it clear that the Assembly possessed the sole authority with regard to the budgetary and financial questions of the League.

Article 17 of the Charter expressly states that the Charter confers upon the General Assembly the same authority to consider and approve the budget under paragraph 1 thereof, and to apportion the "expenses of the Organization" to the Members under paragraph 2 thereof. Actually, the paragraph is so clear that, in my submission, it is unwarranted according to the prevailing rules of international law and the practice of this Court to resort to preparatory documents for its interpretation. But, as has been stated by the Italian delegate, even the preparatory documents support the clear text of Article 17.

In his treatise on the *United Nations Budget Process*, Professor J. D. Singer explains the principle laid down in Article 17, as follows, on page 173:

> "The Charter made it quite clear that ultimate budgetary authority lay with the Assembly, and that this body would have the power to approve all proposed expenditures and decide upon a scale of apportionment. The Covenant, by omitting this delineation of power, made it necessary for the Assembly to struggle for several years with the Council before gaining fiscal control."

Allow me further to refer to the treatise by Russel and Muther on the *History of the United Nations Charter*, page 377, where it is stated:

> "Financial and budgetary provisions for the new organization were even less controversial than administrative questions ... the Staff Charter returned to the traditional system of having the Conference alone vote the budgets and approve the financial regulations of the institution, on the ground that all members had to share the obligation and should therefore share the decisions..."

And, on pages 862 to 863 of the same work, it is likewise stressed as follows:

> "There was complete agreement that the General Assembly should apportion the expenses of the Organization among the members and

should have authority to approve the budget, as provided in the Dumbarton Oaks Proposals. The only issue was whether the Charter should specify methods of apportionment and of budgetary preparation and examination. There were a few amendments to these ends, but the consensus in each case was that they involved details that were too technical for decision by the Conference and that should not be rigidly formalized by being included in the Charter.

It was therefore agreed that the Assembly should make its own rules on these matters."

An examination of the provisions of Article 17, paragraph 2, also shows that it is all-inclusive and mandatory.

First, paragraph 2 applies the words "the expenses of the Organization" in general. The French and Spanish texts contain the equivalent thereof —"*Les dépenses de l'Organisation*". The Russian text is identical with the Spanish—"*ee rasxodbi*"—"its expenses", referring to the Organization.

The wording is thus general. It does not expressly or implicitly distinguish between ordinary expenses and extraordinary expenses. In the written document, page 123, even Upper Volta, in principle opposing the right to apply Article 17, feels compelled to admit that:

> *"C'est regrettable que la Charte ne prévoit pas de discrimination entre les dépenses 'ordinaires' et 'extraordinaires'."*

In addition there is no distinction between expenses included as an item of the regular budget or expenses carried on separate accounts.

In view of these clear provisions, now can it possibly be alleged that the expenses incurred by the Organization in pursuit of the very purpose for which it has been created, namely the maintenance of world peace, are not covered by Article 17? To interpret Article 17 in such a manner as to leave these main expenses of the Organization unaccounted for in the Charter would be unwarranted and dangerous, to say the least.

Allow me next to dwell briefly on certain basic provisions of the Charter concerning the task entrusted to the United Nations.

In the Preamble it is impressed upon us that one of the main purposes of the United Nations is:

> "to save succeeding generations from the scourge of war".

The United Nations was created in the midst of a world war for this very purpose. And, to the same end, the Preamble provides that the peoples of the United Nations shall "*unite our strength* to maintain international peace and security".

It is readily admitted that the Preamble does not contain enforceable provisions. But it has legal force and effect from the interpretational standpoint. Here I beg to refer to an article on the law and the procedure of the International Court of Justice in the *British Yearbook of International Law 1957*. It is written by an international jurist whose name it is unnecessary to introduce to this Court. On page 229 it is stated:

> "The Preamble to a treaty is not only an integral part of the treaty, but is also, within the limits of its proper functions—particularly its interpretational functions—as binding in character as any other part of the treaty; it merely does not contain, or does not usually contain, directly operative provisions."

But other stipulations in the Charter do contain enforceable provisions to the same effect. Article 1, paragraph 1, of the Charter emphasizes as the first purpose of the Organization:

> "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."

The obligation is placed upon the Members to take "effective collective measures". Along the same lines, paragraph 4 of Article 1 provides that the United Nations shall

> "be a center for harmonizing the actions of nations in the attainment of these common ends".

Can we, under the present circumstances, devise any better way to take "effective collective measures" and to harmonize the actions of the nations than by the two peace-preserving actions now up for questioning in connection with the application of Article 17, paragraph 2?

Allow me to proceed with Article 2 of the Charter. Paragraph 2 thereof provides that:

> "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil *in good faith* the obligations assumed by them in accordance with the present Charter."

And paragraph 5 thereof provides that:

> "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter."

The obligation to give every assistance necessary obviously includes the obligation to render economic assistance by meeting assessed financial obligations according to Article 17, paragraph 2, of the Charter.

And, is to take a stand whereby the United Nations is threatened by imminent bankruptcy "fulfilling one's obligations in good faith"? Is a stand, whereby effective peace-preserving actions in the future would be made almost impossible and whereby the whole existence of the United Nations is threatened, in conformity with the obligations undertaken by Member Nations according to Articles 1 and 2 of the Charter?

One basic principle of treaty interpretation is the principle of integration, meaning that treaty provisions are to be interpreted in their natural and ordinary meaning *"in the context in which they occur"*, as stated by this Court in the Second Advisory Opinion on the *Admission of New Members*. (See *I.C.J. Reports 1950*, p. 8.)

To preserve peace is the main obligation of the United Nations Members and the noblest purpose of this Organization. The broad terms applied by Article 17, paragraph 2, cannot possibly be interpreted in such a manner as to leave this main purpose of the Organization without the necessary financial backing. Such a result would be just the opposite of interpreting treaty provisions in their proper context in accordance with the natural and ordinary meaning of the words used.

Certain Members of the United Nations have maintained that in spite of the general wording of Article 17, paragraph 2, it refers to ordinary

expenses only, while so-called extraordinary activities should fall outside the scope of this paragraph. In answer to such contentions I venture to present an additional observation. How is it possible to regard the main purpose of the United Nations, namely the maintenance of international peace and security, as an *extraordinary* activity?

Actually, the Charter has no other provisions than Article 17 concerning the preparation of the budget and the financing of the necessary expenses of the Organization.

In the opinion of the Norwegian Government, the provisions of Article 17 obviously cover all expenditures incurred in fulfilling the main tasks of the Organization. Otherwise, the Organization and its organs would be left completely helpless.

This conclusion is supported by another major principle of treaty interpretation repeatedly resorted to by the International Court of Justice and its predecessor, namely, the principle of effectiveness. In this connection, it seems appropriate to quote a few sentences from the late Sir Hersch Lauterpacht on *The Development of International Law by the International Court*. Part IV of this book is devoted to "The Effectiveness of the Law". On page 267 Sir Hersch states as follows:

> "The general tendency to secure the effectiveness of treaties has guided the Court in the interpretation of another branch of modern international law, namely that relating to international institutions and organizations."

And on pages 274-275 he makes the following observations:

> "In general, in relation to the interpretation of the Charter of the United Nations, the Court has repeatedly and on a large scale acted upon the principle of effectiveness—on a scale so large as to bring its pronouncements on the subject within the category of judicial legislation."

Judge Lauterpacht refers here to the Advisory Opinion rendered on 11 April 1949 concerning *Reparations for Injuries suffered in the service of the United Nations*. In this Opinion the Court stated, *inter alia*, that:

> "Under international law the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties." (*I.C.J. Reports 1949*, p. 182.)

In the present case, there is no need for the Court to resort to judicial legislation. The text of Article 17, paragraph 2, is sufficiently clear. The principle of effectiveness merely serves to corroborate the primary principle of interpretation "to give effect to the words used in their natural and ordinary meaning in the context in which they occur".

I shall now proceed to a brief examination of the previous practice of the Organization in financial matters. This examination demonstrates, in the submission of the Norwegian Government, that the apportionment of the expenses incurred in the peace-preserving actions in Gaza and in the Congo to the various Members of the United Nations is not an innovation of the General Assembly. There already existed an established practice of the United Nations to the effect that expenses incurred in

peace-preserving operations, whether initiated by the Security Council or the General Assembly, are to be apportioned by the General Assembly according to the provisions contained in Article 17, paragraph 2. These appropriations have yearly constituted a considerable part of the United Nations budget.

The distinguished Delegate from Italy mentioned the United Nations Truce Supervision Organization in Palestine established in accordance with the Security Council Resolution of 11 August 1949. This mission has had yearly expenses of more than $1½ million. It figures in the United Nations budget for 1962 with $1,560,000. The necessary appropriations have always been made by the General Assembly under Article 17, paragraph 2.

Likewise, the United Nations Conciliation Commission for Palestine, established by the General Assembly Resolution of 11 December 1948. The expenses of this Commission have varied between $40,000 and $75,000. It figures in the 1962 budget with $75,500.

The United Nations Military Group in India and Pakistan was established in accordance with Security Council Resolution of 14 March 1950, in connection with the cease-fire agreement between these two countries. The yearly expenses of this Group amount to some $450,000. The figure given in the 1962 budget is $426,000.

Mention may also be made of the United Nations representative in India and Pakistan, which was established by the Security Council Resolution of 14 March 1950. The amounts are here rather small. It is $33,000 a year.

The United Nations Commission for the Unification and Rehabilitation of Korea was established on 7 October 1950 by a General Assembly Resolution. This Commission superseded the United Nations Commission of Korea established in 1947. The expenses of this Commission have figured in the budget at an average of some $150,000 a year. The figure given in the 1962 budget is $181,000.

The United Nations Advisory Council for Somaliland under Italian administration was established in accordance with a General Assembly Resolution of 21 November 1949. It figured in the budget of the Organization up to 1960 with a yearly average of $150,000.

The United Nations Field Service established by the General Assembly in May 1949 may likewise serve as an interesting example. This service figures in the 1962 budget with an estimate of $1,366,000. Of its personnel 67 members are currently assigned to UNEF and 84 members are assigned to UNOC. These expenses are borne by the Members as apportioned by the General Assembly according to Article 17, paragraph 2.

Furthermore, I beg to draw attention to the expenses included in the budget pertaining to the Military Staff Committee. According to Article 47 of the Charter this Committee shall advise and assist the Security Council in all questions relating to military efforts required for the maintenance of international peace and security. Naturally, the expenses of this peace-preserving body, varying between $100,000 and $200,000 per year, have been included in the budget and assessed according to Article 17, paragraph 2.

Perhaps the most interesting parallel is the so-called UNOGIL mission established in Lebanon. Upon the request of Lebanon, the Security Council, on 11 June 1958, decided "to dispatch urgently an observation

group to proceed to Lebanon" and "authorizes the Secretary-General to take the necessary steps to that end". (S/4023.)

An observation group consisting of several hundred military personnel was established by the Secretary-General. The group was called UNOGIL.

Subsequent to the stationing of American troops in Lebanon and British troops in Jordan in 1958, an additional resolution was passed by the General Assembly on 7 August 1958, requesting the Secretary-General

> "to make forthwith, in consultation with the governments concerned and in accordance with the Charter ... such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances and thereby facilitate the early withdrawal of the foreign troops from the two countries". (A/3905, Resolution 1237-ES III.)

However, Jordan refused to accept the stationing of a United Nations force in Jordan and a non-military observation group was therefore established in that country. (See A/3934/Rev. 1, September 1958, p. 29.)

But UNOGIL operated successfully in Lebanon and the expenses of this corps were included in the ordinary budget and apportioned according to the provisions of Article 17, paragraph 2.

In the fall of 1958 the UNOGIL forces consisted of 600 military personnel.

To cover the costs of this action, the United Nations Advisory Committee recommended that (and I quote from p. 7 of a document of 28 November 1958, A/4013):

> "A supplementary credit of $3,600,000 should be approved under Chapter I of a new section 4 *(a)* of the 1958 budget in respect of the UNOGIL.
>
> A supplementary credit of $100,000 should be approved under Chapter II.
>
> An additional appropriation of $500,000 should be included in a new section 4 *(a)* of the 1959 budget in respect of the expenses of the UNOGIL."

These were no small amounts. On 13 December 1958 the General Assembly appropriated the supplementary amount of $3,700,000 for the budgetary year of 1958 with 59 votes for, 10 abstentions and no votes opposing it. (Resolution 1334-XIII.)

The additional appropriations for the financial year of 1959 in the amount of $500,000 were likewise adopted in the General Assembly with 66 votes for, 11 abstentions and no votes against. (Resolution 1338-XIII.)

How can the assessments to Member States for expenses incurred by UNOGIL be in conformity with the Charter while it is irreconcilable with the same Charter to assess the expenses incurred by the UNEF and the UNOC actions in the same manner?

The UNOGIL example is especially interesting for several reasons. It bears a striking similarity to the task of the UNEF mission. It was a rather large scale operation involving substantial expenses and a fairly large number of military personnel. Its clearly peace-preserving purpose

did not prevent the expenses from being assessed according to Article 17, paragraph 2. Furthermore, the fact that its existence and authority was based on a resolution by the Security Council made no difference in respect to the applicability of Article 17, paragraph 2.

I might cite a host of other examples. Suffice it here to refer to the following: the United Nations Special Committee on the Balkans, established by Resolution of the General Assembly of 21 October 1947; the United Nations Commission for Indonesia, established by the Security Council on 21 January 1949 to assist the Government of the Netherlands and the Government of Indonesia to settle their disputes. Mention may also be made of the proposed establishment of the Administration of the Free Territory of Trieste by the Security Council Resolution of 10 January 1947.

These commissions and bodies were entrusted with the task of preserving the peace. They were established either by the Security Council or by the General Assembly. They were financed in accordance with the provisions of Article 17, paragraph 2.

I may conclude my examination on this practice with a quotation from page 211 of the article mentioned in *British Yearbook of International Law 1957*. It is here stated, as to the principle of subsequent practice:

> "In interpreting a text, recourse to the subsequent conduct and practice of the parties in relation to the treaty is permissible, and may be desirable, as affording the best and most reliable evidence, derived from how the treaty has been interpreted in practice, as to what its correct interpretation is."

I shall now, with the Court's permission, present certain additional observations with regard to various statements in the printed documents.

Allow me first to make a few comments on certain observations set forth on pages 123-124 of the printed documents. First, as I have already mentioned, the Government of Upper Volta here admits that Article 17 in its text makes no distinction between ordinary and extraordinary expenses. However, certain observations are made with regard to the temporary character of the two organs in question. It is respectfully submitted that the fact that the UNEF and the UNOC are "temporary organs" has no bearing upon the applicability of Article 17 (2). On the contrary, as practice shows, the inclusion of a host of such transitory committees and organs in the budget of the United Nations is an established practice.

On page 124, the Government of Upper Volta further invokes Article 2 (4) as an argument against the assessment of expenses under Article 17 (2). Paragraph 4 of Article 2 provides:

> "All Members shall refrain in their international relations from the threat or the use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purpose of the United Nations."

To regard the UNEF and the UNOC operations as manifestations of power politics of Member States is a misconception. On the contrary, as amply demonstrated by the Canadian delegate, these actions were taken in conformity with the scope and the purposes of the Organization;

they were taken in accordance with the principles contained in the Preamble and the first two articles of the Charter to the end that the Members shall unite their peace-preserving strength in and through the United Nations Organization in order to "ensure by the acceptance of principles and the institution of methods that armed forces shall not be used save in common interest". The actions now in question are steps directed towards the attainment of these common goals.

Allow me next to make a few remarks on certain observations made on page 133 of the printed document by the French Government, and I refer to page 133, paragraph 3 (I use the English translation):

> "In 1945 the States Members of the United Nations did not agree to anything other than to enabling the General Assembly to authorize and reasonably estimate all the expenses the principle of which was laid down by the Charter as a legal obligation on States, that is to say, the administrative expenses of the United Nations."

For reasons already explained, I venture to propose that this line of argument is not tenable. No such restrictions are found in the text of Article 17, nor in the preparatory documents.

The practices of the United Nations are clearly formulated along other lines. Each budget contains a number of items which do not belong to the category "administrative expenses". And it would be a critical state of affairs if the only explicit provisions in the Charter concerning finances should refer to strictly administrative expenses, while the main tasks of the Organization are left to be financed with alms from more or less willing contributors.

To leave the financing of the main tasks of the Organization, namely its peace-promoting functions, to voluntary contributions would, in the submission of the Norwegian Government, be an extremely dangerous road to follow. And furthermore, it would be contrary to the clear provisions of the Charter.

It is difficult to believe that the main tasks of the Organization could possibly be fulfilled properly if the financing thereof should be left to voluntary contributions. First, as shown in Egypt and in the Congo, such grave conflicts arise so suddenly and immediate actions by the United Nations are so paramount that any delays caused by financial difficulties or protracted negotiations with Member States would easily prove disastrous.

Secondly, if such actions were to be financed by voluntary contributions, the result might easily be that it was the rich and the mighty States who could take care of these aspects. The consequence might be that to the world the steps taken would easily be considered as steps taken by a single State or a single group of States and not as steps taken by the United Nations under the Charter. An interpretation of Article 17 (2) leading to such undesirable results cannot be legally sound.

On page 134 of the printed documents, the French Government gives vent to the fear that by applying Article 17 too much power would be vested in the General Assembly. It would confer on this organ the powers of a world government *("un pouvoir législatif mondial")*.

Allow me first, Mr. President, to draw attention to the fact that such fear was not expressed in 1950 when the French Government was one of the main sponsors of the Uniting for Peace Resolution of 3 November

1950. France actually took part in the drafting of the text of that Resolution. In a meeting of the General Assembly on 1 November 1950 the French delegate, Mr. Chauvel, in a brilliant speech made the following statements recommending the adoption of the Uniting for Peace Resolution—and I quote from page 301 of the General Assembly Fifth Session plenary meetings:

> "France, I repeat, stands for the Charter and for the whole Charter. Its policy is founded on the rights and the guarantees laid down in the Charter and also on the obligations it entails. It appears inconceivable to my delegation that those rights and guarantees, those obligations, the very Charter itself, should lapse into impotence and ineffectiveness... It is unthinkable that this entire machinery designed to safeguard the peace and security of the world should remain inactive when there is a threat to peace and security. And if, as I have shown to be the fact, there is a real danger of such inactivity, then we must revise our customs, our methods, our rules and our interpretations."

And:

> "It is with that desire, to ensure the effective application of the Charter, that my delegation co-operated in drafting the proposal which is now submitted to the General Assembly. My delegation felt in so doing that it was unnecessary to revise the Charter which itself afforded the means of ensuring that its principles should be applied. It considered that it would be sufficient in some respects to adjust our customs and rules, in others to augment the means laid down from year to year by which the United Nations could meet its obligations."

My Government subscribes to these words and it does not share the fears now expressed that giving the General Assembly the budgetary role entrusted to it by the clear text of the Charter would be to confer upon the said organ a world legislative power.

On the same page of the written document, namely page 134, it is concluded that—and I quote from the English translation:

> "It is to be feared that there may be a temptation to deduce the existence for the General Assembly of a discretionary and unlimited budgetary power."

The Norwegian Government does not share these views. The General Assembly does not have a discretionary and unlimited budgetary power under the Charter.

Here one must not overlook the findings of this high tribunal in its previous Advisory Opinion rendered on 13 July 1954 concerning the *Effect of Awards of Compensation made by the United Nations Administrative Tribunal.*

The question then placed before the Court was, of course, not quite analogous to the questions now under discussion. But the said Opinion is highly interesting in the light of these present contentions. It is clear from the Court's findings that the Court did not consider the budgetary role assigned to the General Assembly under Article 17 as unlimited and discretionary. On the contrary, the Court held, on page 59:

"The function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it; for some part of expenditure arises out of obligations already incurred by the Organization and to this extent the General Assembly has no alternative but to honour these engagements."

And, at the bottom of the same page, the Court concludes:

"The Court therefore considers that the assignment of the budgetary functions to the General Assembly cannot be regarded as conferring upon it the right to refuse to give effect to the obligation arising out of an award of the Administrative Tribunal."

The Court's findings are the firmly established practice of the United Nations. The Administrative Tribunal was a subsidiary organ of the United Nations established by the General Assembly. It goes without saying, these basic findings of the Court apply even more so with regard to the main organs, like the Security Council. Thus, one has no reason to fear that the General Assembly's role as the budgetary and financial organ is unlimited and discretionary.

[Public hearing of 18 May 1962, afternoon]

Mr. President, Members of the Court, I shall continue with a few observations in connection with the statement set forth on pages 227-229 by the Portuguese Government. It is, as I have already stated, clear that the budgetary and financial powers of the General Assembly also comprise the activities of the Security Council. The stand taken by the Portuguese Government to the opposite effect is not only irreconcilable with the system laid down in the Charter but also irreconcilable with the firmly established practice of the Organization.

A special objection is raised by the Portuguese Government on page 228 of the printed documents, and I will read from the English translation. It is clearly alleged by the Portuguese Government that

"any other interpretation would indeed mean that the Assembly would exercise a domination over the Council that would be contrary to the letter and to the spirit of the Charter".

In the view of the Norwegian Government, this statement, this stand, is untenable, and it is sufficient in this connection to refer to the quotation I have already made from the Advisory Opinion of 1954. Furthermore, no one denies that the General Assembly has the financial power, at least concerning the administrative expenses of the Security Council. The argument of Portugal should obviously be equally applicable to this aspect of the General Assembly's budgetary power.

On page 228, paragraph 6, it is further stated, and I use the English translation:

"As the Assembly does not exercise a power of control on the Specialized Agencies, it has not the power to approve their budget, but only the power of making recommendations that have no obligatory force (Article 17, paragraph 3). On what grounds could it have a more far-reaching power in respect of operations decided upon by the Security Council?"

It is respectfully submitted that this argumentation is based on a misconception of the system applied by the Charter as to the Specialized Agencies.

As the name indicates, these Specialized Agencies are specific and more or less autonomous organizations, many of them existing before the creation of the United Nations. Examples are the International Labour Organisation, the Universal Postal Union and the International Telecommunication Union. It was, however, decided at San Francisco to bring such organizations *into relationship* with the United Nations as expressly stated in Article 57 of the Charter.

Special agreements have consequently been concluded with these organizations, according to Article 63 of the Charter. But they are not organs of the United Nations. They have their special and independent fields of activities, their own organs, finances, budgets and so forth.

No parallel whatsoever can be drawn between these Specialized Agencies and the Security Council. And the very purpose and scope of Article 17, paragraph 3, was to have such Specialized Organizations in reality outside the financial power of the General Assembly, even though the General Assembly could examine their budgets as a matter of form. Thus, Article 17, paragraph 3, clearly stands as an exception to the main principle concerning the budgetary and financial powers of the General Assembly laid down in the two preceding paragraphs of Article 17.

Finally, on pages 228-229 certain conclusions are drawn from Article 19 of the Charter. Article 19 provides that the failure to comply with one's financial obligations may deprive a Member State of its right to vote in the General Assembly, while nothing is said in Article 19 about the loss of voting rights in the Security Council. In the opinion of the Portuguese Government, this should indicate that the General Assembly are not concerned with the financial aspects of the activities of the Security Council.

This line of argument has no basis in the facts leading up to the formulation of Article 19. Suffice it here to quote the following passage from the work by Professor J. D. Singer, *Financial International Organization* (which I have referred to previously), pages 7-8:

> "As indicated earlier, a fifth item came before Committee II/1 when several delegates criticized the Dumbarton Oaks Proposal as being hardly sufficient in the matter of prompt and regular payment of national contributions. Noting the omission in the Covenant on this score, the Norwegian delegate concluded that the 'helplessness of the League in this respect undoubtedly tended to lower its prestige', he therefore proposed a Charter Clause retracting all rights and privileges of membership from any State falling behind in payments. The Dutch went even further, suggesting that the seat of any Member on the Security Council (apparently either permanent or temporary) would be forfeited if it fell behind on dues; that suggestion closed with a terse comment that 'a rule of this nature would tend to minimize the accumulation of arrears'. A less stringent compromise, initiated by Australia, called only for disqualification from voting the non-permanent seats in the Security Council. After weighing the several penalties put forth, the Committee accepted the loss of voting privileges *in the Assembly* as the most suitable."

It takes no further explanation to show that this result was the most happy one for obvious political reasons. It had nothing to do with the question of the extent of the General Assembly's budgetary authority with regard to the Security Council.

Allow me finally to make certain additional observations in connection with the Czechoslovak statement, printed at pages 177-179, and the statement by the Union of Soviet Socialist Republics of April 1962, printed as a separate document. These statements set forth the following *main lines of argumentation.*

Firstly it is contended that the UNEF action and the UNOC action were illegal as violating Article 24 and Chapter VII of the Charter.

Secondly it is maintained that the financing of such peace-preserving actions is lying outside the scope of Article 17. They could only be financed through special agreements under Article 43 of the Charter.

I do not deem it necessary to revert to the first question. It has been fully covered in what has been said hereinbefore.

With regard to the second question, the view of the Government of Norway is also stated hereinbefore. The UNEF operation was an operation undertaken by the General Assembly, well within the limits of its authority as laid down in Chapter IV of the Charter. It is crystal clear to the Norwegian Government that the financing thereof falls under the provisions laid down in Article 17, paragraph 2. This result cannot encroach upon the rights and authorities conferred upon the Security Council in Article 24 and Chapter VII of the Charter.

With regard to the UNOC action, it has also been amply demonstrated that the authority to undertake these steps falls under the express or implied authority conferred upon the Security Council under Chapter VI or under Article 39 of the Charter. And further, that the situation never reached the stage where enforcement actions available to the Security Council under Articles 42 and 43 were decided on and used.

Consequently, the principal stand of the Government of Norway is that the Court does not need to consider this subsidiary question raised in the statements of the USSR and Czechoslovakia as to whether the financing of enforcement actions under Articles 42 *et sqq.* is covered by Article 17, paragraph 2, or not. The provisions in Article 43 concerning the conclusion of special agreements do not enter into the picture at all. The UNOC action must be financed under the ordinary rules of Article 17, paragraph 2. It does not in principle differ from the UNEF action, the UNOGIL action and similar actions where the question of financing is concerned.

Subsidiarily and from a purely theoretical point of view, I shall briefly revert to the question as to whether other and materially different rules govern the question of financing of enforcement actions undertaken in compliance with Articles 42 *et sqq.* The starting-point for a discussion here is that Article 43 of the Charter places upon the Members the express obligation to comply with the orders of the Security Council with regard to joint enforcement actions. Such orders may involve the duty to place at the disposal of the Security Council armed forces and to make other forms of assistance and facilities available to the Council, again as a matter of duty. From the practical point of view it is self-evident that such orders cannot be put into effective operation without specific agreements as to the contents and details of the obligations concerned. It must be borne in mind in this connection, as is also clearly

stated in paragraph 2 of Article 43, that the said agreements are supposed to settle such practical questions as the number and the types of forces, their degree of readiness and general location, the question of replacement of personnel and equipment, the question of military bases, the question of right of passage, and so on. But the reference in Article 43 to "armed forces, assistance and facilities" does not, in the submission of the Norwegian Government, intend to regulate the general questions of financing with all Member States. These questions have been much better taken care of by the provisions of Article 17, paragraph 2. And, from a practical point of view, it would be impossible to arrange the question of the general distribution of expenses for such action through bilateral or multilateral agreements between the Organization and all Member States. Here I may refer to the statement by Professor Riphagen in his oral address, where he stated:

> "As to the extent one might construe the requirements of a special agreement in Article 43 of the Charter as a provision which safeguards a legitimate interest of a Member State, there is nothing in the fiscal power of the General Assembly under Article 17 which in any way nullifies, encroaches upon and frustrates that safeguard."

Mr. President, Members of the Court, I have come to the end of my statement. I should only like to make one final observation.

A certain confusion seems to reign among those contending that Article 17 is not applicable to the present questions.

Some of them seem to advocate that the line should be drawn between ordinary expenses, where Article 17 applies, and extraordinary expenses, but they are not prepared to give us a clear definition of the distinction. And what are the main characteristics of ordinary expenses *versus* extraordinary expenses in the life of the United Nations? Others want to draw a distinction between administrative expenses and non-administrative expenses. Nor can they give us a satisfactory definition of this distinction, and they cannot explain why the practice of the United Nations should be illegal. Others, again, seem to distinguish between expenses incurred in the activities of the General Assembly and expenses incurred by the activities of the Security Council, and others want to draw the line between expenses incurred under Chapter VII of the Charter, especially Articles 42 and 43, and other expenses. And there may be other opinions and variations as well.

But one fact emerges clearly from these varying positions. They offer us no adequate solution, but they offer us sheer confusion where the United Nations and the world need clarity. They offer us vague suggestions or no suggestions at all, where the Charter lays down a clear and workable principle as to the financing of the tasks of the Organization.

My Government strongly feels that such a stand is legally unsound and politically disastrous.

Thank you, Mr. President, Members of the Court.

6. ORAL STATEMENT OF SIR KENNETH BAILEY

(REPRESENTING THE GOVERNMENT OF AUSTRALIA)
AT THE PUBLIC HEARINGS OF 18 AND 19 MAY 1962

[Public hearing of 18 May 1962, afternoon]

Mr. President and Members of the Court:

I confess the trepidation and the pleasurable excitement with which I approach the task of addressing this august tribunal for the first time. It is natural that I should be sensible also, being sixth in the list to address you, of the law of diminishing returns.

The Government of Australia has already stated to the Court in writing its reasons for submitting that the question upon which the Court's opinion has been asked should be answered 'yes': that is to say, that the expenses incurred by the United Nations in the UNEF and in the Congo operations *do* constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter—with the consequence that by virtue of that paragraph each Member of the Organization is under a legal obligation to pay its share of those expenses as apportioned among the Members by the General Assembly, and with the further consequence that by virtue of Article 19 a Member declining to pay its share may thereby, if it allows its arrears to reach the amount referred to in that Article, disqualify itself from voting in the General Assembly.

I shall not merely repeat orally what is contained in the written statement of the Government of Australia. Moreover, in order to avoid repetition, I shall not repeat the arguments that have been adduced in support of the same conclusion by the distinguished representatives who have preceded me from Canada, the Netherlands, Italy, the United Kingdom and Norway respectively. In the broad, if not indeed in every detail, I am respectfully content to adopt and support the submissions they have made.

I have been asked, Mr. President, and perhaps Members of the Court have asked themselves, what has led the Government of Australia, in view of the factors involved in distance, time and expense, to participate in these oral hearings. The answer lies partly in the greatness of the issue raised, and the importance to every Member of the United Nations, in our view, of the answer that the Court will give to the question submitted for advice. A negative answer would, in our submission, threaten the immediate financial solvency of the Organization; it would threaten the ability of the United Nations to bring these two great current peace-keeping operations to their proper conclusion; it would threaten the ability of the Organization to deal with similar problems of peace and security in the future, and indeed would entirely change the character of the Organization. Such an issue, in our judgment, challenges Members of the United Nations to offer whatever assistance lies in their power in clarifying the matters on which this Advisory Opinion is sought. The

Government of Australia feels itself to have a great, indeed a vital, investment in the maintenance of an effective international organization.

In addition, Mr. President, the Government of Australia has a more specific concern in connection with the contentions to be considered by the Court. Not only in the debate in the General Assembly out of which these proceedings have grown but in some of the written statements submitted to the Court, the history of certain proposed Australian amendments, moved at the United Nations Conference on International Organization in 1945, in relation to what is now Article 19 of the Charter, has been used in support of a proposition that according to the understanding and intention of the founders and draftsmen of the Charter the expenses of military operations undertaken in pursuance of Security Council resolutions were not to be regarded as "expenses of the Organization", for the purposes of Article 17 of the Charter (or, by consequence, for the purpose of Article 19 either).

That certainly was neither the understanding nor the intention of the Australian delegation at San Francisco, which indeed put forward the relevant amendments *alio intuitu* altogether. Primarily therefore I propose, Mr. President, in this oral statement, to explain why and how the history of these Australian amendments at San Francisco cannot correctly be used in the manner suggested, and why and how that history does not in any way warrant an answer in the negative to the question now submitted for the Court's advice.

Discussions at San Francisco as to the provisions which now stand as Articles 49 and 50 of the Charter have also been used, in some of the written statements submitted to the Court in the present matter, in support of a contention that the expenses of enforcement action strictly so called, or even more generally the expenses of all operations under Chapter VII of the Charter, are not included in the category of "expenses of the Organization" for the purposes of Article 17. I shall deal, Mr. President, with this aspect too of the San Francisco discussions, and shall give reasons for holding that, seen in true perspective, they likewise afford no warrant for giving to the terms of Article 17 the restricted meaning suggested.

Considerations of that kind, Mr. President, plainly lead to questions even wider. I mean in particular one of the basic questions in the interpretation of international treaties, that is to say whether there is any room or justification for resorting to the preparatory work in order to determine the meaning of the established text. The Government of Australia will submit firmly, on that point, that in this instance the text is so clear as to exclude all possibility of contradiction or modification from the preparatory work. But at this initial stage of my argument, it is perhaps unnecessary to say more than that, unless some authoritative limitation could be spelt out from the *travaux préparatoires*, it seems quite hopeless, on the text of the Charter as it stands, to deny to the expenses authorized by the resolutions now under consideration by the Court the character of "expenses of the Organization". The Charter so plainly contemplates in its express terms, not two budgetary systems, one under the authority of the General Assembly and one not, but only one exclusive budgetary system, vested in the membership of the Organization acting through the required majority in the General Assembly.

I shall address myself, Mr. President, as briefly as I may, in turn to each of the three matters which I mentioned in opening the argument:

First, therefore, the bearing, if any, upon the interpretation of Article 17, paragraph 2, of the Charter of certain proposed Australian amendments at San Francisco.

What is said about these proposed amendments, in the documents for consideration by the Court, will be found in quite a number of places. I hope that it will be convenient for the Court if I supply the references. I have set them out in the text before me, a copy of which I have handed in, and I hope they can be taken into the transcript from that text without my wearying the Court by reading a list of them now. There are from the General Assembly, statements by the representative of Mexico (made at the 837th meeting of the Fifth Committee of the General Assembly on 13 April 1961, recorded in document 13 in the dossier of these proceedings); by the late Secretary-General (made at the 839th meeting of the same Committee on 17 April 1961, recorded in document 15 of the dossier); and by the representative of Australia (made at the same meeting, recorded also in document 15). There are, in the written statements submitted to the Court and contained in the Court's printed volume, statements by the Government of the United States (at pp. 207-209); the Government of Australia (at pp. 235-238); the Government of South Africa (at pp. 260 and 262); and the Government of the Soviet Union (at p. 273 of the English text of that Government's written statement).

On the history of these Australian amendments, the representative of Mexico, in the General Assembly in April 1961, based the statement that

> "expenses resulting from operations involving the use of armed forces, as in the case of the Congo operations, were deliberately and intentionally excluded by the San Francisco Conference from the application of the penalty provided for in Article 19". (Dossier, document 13, p. 33.)

A similar statement is made by the Government of the Soviet Union, at page 273 of the English text. If statements of that character could be supported on the records, the point would, of course, have some importance. But in truth the records altogether disprove the point.

The Government of Australia thinks it has demonstrated this in its written statement, at pages 235-238. But examination both of the San Francisco Conference records and of our own governmental records, since the written statement was filed, makes it possible to offer some further clarification in point of detail. Our general answer, however, to the Mexican contention and to those who have since adopted it, is not changed. What we say is that the Australian amendments did not in terms say anything about costs or expenses, and were not directed at all against failure to meet financial commitments. They were directed, and were thoroughly understood at the time to be directed, towards providing a sanction, by loss of voting rights in the General Assembly, for failure to perform the military obligations laid down by what is now Article 43 of the Charter—that is to say, initially and in the first instance, to negotiate through the Military Staff Committee a special agreement to supply armed forces and other assistance on call by the Security Council, and in the second place, to carry out enforcement action, if required, in accordance with the special agreement so entered into.

There was indeed, Mr. President, another Australian amendment which (along with proposals from India, from the Netherlands and from

Norway) supplied the idea that now finds expression in Article 19 of the Charter—the idea, that is, that Members who fall into arrears with their contributions should lose voting rights in the General Assembly. But the Court does not for present purposes need to concern itself in any way with that amendment. The amendments now in question were put forward, certainly, in the same complex of proposals and in the same document. But they had an entirely different object in view, as is made clear, not only in the written statement of the Government of Australia, but also in the written statement of the Government of the United States at page 208 of the Court's printed volume.

Let me now give to the Court, Mr. President, the text of the two proposed amendments that are relevant for present purposes. The text is not, I think, included in the note supplied as document 194 in the dossier on the history of the drafting of Article 17, and I am not sure that the text is altogether clearly set out in the Australian written statement (pp. 236-237). The basic proposal was to include in the Dumbarton Oaks text on the composition of the Security Council the following new paragraph (San Francisco documents, Vol. 3, p. 550):

> "(4) No member shall be eligible for election to a non-permanent seat unless it has, within two years of the coming into force of this Charter, or such period as the Security Council may deem reasonable, entered into a special agreement in accordance with the provisions of paragraph (5) of Section (B) of Chapter VIII" (that is to say present Article 43).

Now, correlative to that Security Council eligibility proposal, the Australian delegation proposed, as an additional sanction, to insert in the Chapter dealing with voting rights in the General Assembly, on the assumption that the Security Council proposal that I have just quoted would be adopted in the Third Commission, the following text (San Francisco documents, Vol. 3, p. 546):

> "A Member of the United Nations shall be disqualified for voting in the election to fill the non-permanent seats in the Security Council if—
> *(a)* under paragraph (4) of Section (A) of Chapter VI"—that is the paragraph that I have just read—"it is itself ineligible for election to the Security Council."

What I have called the Security Council eligibility proposal was of course a matter for Commission III in San Francisco. On 16 May 1945, Committee 1 of that Commission rejected the Australian Security Council amendment (San Francisco documents, Vol. 11, p. 298). That rejection plainly left without legal foundation the General Assembly voting rights proposal which I read second, because that proposal only operated, and could only operate, if the Charter should embody the Security Council eligibility proposal, that is to say, because it could only operate on Members which were under the proposed new paragraph ineligible for election, and the proposed new paragraph had itself been rejected. Two days later, however, on the 18th of May, notwithstanding the rejection of the Security Council eligibility proposal, the Assembly "voting rights" proposal was called on on the business paper of Committee 1 of Com-

mission II (the General Assembly Commission). The agenda of the Committee set the proposal out, with an accompanying note, the proposal being of course set out in its original and only form, which referred across to the Security Council amendment. The point I make, Mr. President, is that on that agenda paper nobody could have thought that the Australian amendment had anything whatever to do with financial obligations. The records show plainly, up to that point, that the Australian proposal had been concerned, and concerned only, with the negotiation of special agreements for the purposes of what is now Article 43. The notes on the agenda, which were supplied for the information of members of the Committee, most carefully distinguish between the two distinct questions that had to be considered by the Committee that day—whether, that is, there should be a penalty of loss of voting rights, first, for non-payment of expenses (which was one proposal) and second, for ineligibility for election to the Security Council (through failure, that is, to negotiate a special military agreement) on the other hand (that was another proposal). The two things, though taken at the same meeting, had nothing to do with each other. (This agenda paper may be found in the San Francisco documents, Vol. 8, p. 259.)

The available records do not show in detail what happened at that meeting of Committee II (1) on the 18th of May 1945. But obviously enough, the Australian representative in that Committee, in order to keep his proposal alive at all, in view of the rejection of the Security Council eligibility proposal, must have foreshadowed an amending text along broader lines, and he did foreshadow an amending text along broader lines. Many Members of the Court, Mr. President, will perhaps at this stage evoke personal recollections of the difficulty there was at the San Francisco Conference of keeping the documentation in one Committee in step with what was happening so quickly in other Committees.

The summary record of the Committee meeting of the 18th of May 1945 does, however, sufficiently indicate what the new lines of the Australian proposal would be. (San Francisco documents, Vol. 8, pp. 364-365.) The new proposal evidently was to deprive a Member of voting rights in the General Assembly for failure to perform its obligations as contemplated under what is now Article 43—to perform its obligations generally under Article 43. But the proposal itself was at that meeting postponed until the appropriate Technical Committee had settled the Security Council text which would settle and define the obligations, before which of course no Australian draftsman could properly settle the terms of his proposed "voting rights" amendment. In fact, no new Australian text was placed on the business paper until the meeting of the Committee called for the 8th of June 1945. (San Francisco documents, Vol. 8, p. 365; Vol. 12, pp. 469-470.) It was along the lines foreshadowed, and the text was this:

> "A Member shall have no vote if it has not carried out its obligations as set forth in Chapter VIII, Section B, paragraph 5." (That is to say, Article 43 of the Charter.)

The proposal encountered strong opposition and was withdrawn (San Francisco documents, Vol. 12, p. 476). The fact that Article 43 has never been implemented by the making of special agreements gives, or may give, rise to some speculation as to what would have been the

history of the United Nations if that particular Australian amendment had in fact been adopted. But that is not a question, Mr. President, that the Court has to answer. It is sufficient for my purposes to point out that, though in its wider and ultimate form the Australian amendment would no doubt have covered failure to carry out enforcement action on call as well as prior failure to negotiate a special agreement—and only the latter was covered in the original form—even in the wider form the amendment had nothing whatever to say about the expenses of enforcement action, either about who should bear them or as to how and by whom, if shared, they should be apportioned. Viewed in proper perspective against the records, the proposed Australian "voting rights" amendments at San Francisco afford therefore no reason for denying to the expenses of the UNEF and the Congo operations the character of "expenses of the Organization" for the purposes of Article 17. Indeed, in our submission, the proposed Australian amendments contribute nothing whatever to the elucidation of the question presently before the Court. They were, in our submission, put in issue in these proceedings only through a complete misconception of their object and effect, and, in our submission, should be eliminated from consideration—should and *must* be eliminated from consideration altogether.

I turn now, Mr. President, to the second portion of the San Francisco discussions, which has been put forward in some of the papers for the Court's consideration as supporting by implication the exclusion from the scope of Article 17 of the Charter of all expenses incurred in maintaining international peace and security. The relevant portion here is what now forms Articles 49 and 50, the text of which is as follows and which, in the Dumbarton Oaks text, appeared as paragraphs 10 and 11 respectively of Chapter VIII, Section B.

Article 49, Dumbarton Oaks text paragraph 10:

> "The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

Article 50, Dumbarton Oaks paragraph 11:

> "If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems."

Several references may be found in the Court's documentation to the discussion that took place in San Francisco on these provisions. The matter was touched on by the Government of Portugal in its written statement (p. 228 of the Court's printed volume); by the Government of Czechoslovakia (pp. 181-182); by the Government of Australia (pp. 233-235); and by the Government of South Africa (p. 262, all in the same volume).

The suggestion here, as I understand it, Mr. President, is that the discussions in San Francisco in the Commission dealing with the Security Council—Commission III (3)—show an intention that a duty to share in the expenses of maintaining international peace and security could not

fall on any Member of the United Nations otherwise than by agreement, and that by arrangement with the Security Council.

In our submission, Mr. President, this proposition rests on a fundamental misconception of the San Francisco discussions—a misconception aided perhaps by records which, though they served their contemporary purpose well, seem now, to us who study them with hindsight, somewhat lacking at times in analytical precision. An obvious difficulty with the records in this particular matter arises from the fact that so very few delegations—indeed less than a handful in all—participated from one end to the other of the discussion. In such circumstances, inferences as to the views of the great but silent majority can be drawn only precariously, if at all.

Clearly enough, as has been said, the brief discussion of costs by the few participants in Committee III (3) at San Francisco centred on the costs of enforcement action in pursuance of Article 43. But in the course of that discussion, though the term "costs" or "expenses" is frequently used, no overt, no clear, distinction was drawn between the costs of the *action* and the costs of the *Organization*, or between the expenses of the *action* and the expenses of the *Organization*. Yet, Mr. President, for purposes of the Court in this matter, involving as those purposes do the interpretation of the resolutions cited in the question for advice, that distinction between costs of the Organization and costs of the individual Members is obviously vital.

The reason for inattention to this basic distinction does not appear on the record, and cannot be readily perceived. There may of course have been more than one reason. Those delegations, those few delegations, that contributed to the discussion seem to me to have assumed, in some cases at any rate, that in the ordinary course the Security Council would insist, when it made a special agreement with an individual Member or group of Members, that the Member or Members concerned would themselves bear, in their entirety, the costs of the forces or material or facilities which they agreed to make available to the Security Council on call. But whether the large silent majority accepted that assumption or whether, for that matter, it acted on the completely contrary assumption that the expenses of enforcement action by the Security Council would ordinarily be apportioned by the General Assembly like any other expenses of the Organization, does not anywhere appear. The very issue was never brought out into the open.

The only amendment proposed to what is now Articles 49 and 50, the only amendment proposed that dealt with the costs of enforcement action, was proposed by the Union of South Africa. (Text in San Francisco documents, Vol. 3, p. 478; discussion, Vol. 12, pp. 392-393.) The proposed amendment was heavily defeated. The summary record is quite short, Mr. President, and perhaps it may be convenient for the Court if I read it, for the transcript. The heading is:

> "*Discussion: Costs of Enforcement Action*
>
> The Delegate of the Union of South Africa supported his Government's amendment adding to paragraph 10, Section B, Chapter VIII [that is Article 49], a sentence specifying that aggressor nations should pay the costs of enforcement action taken against them [Doc. 2, G/14 (d) (2), p. 1]. He explained that his Government believed this would be an additional deterrent to aggression.

The Delegate of Iran seconded the South African amendment. The Delegate of the United States opposed the South African amendment. He foresaw a further obstacle to the satisfactory operation of the enforcement machinery of the Security Council. He pointed out that paragraph 11, Section B, Chapter VIII [that is Article 50], already provided for the relief of economic hardship which might be incurred by some States as a result of their participation in enforcement measures.

The Delegate of the Union of South Africa pointed out that paragraph 11 [Article 50] concerned only special economic difficulties and not the heavy costs of enforcement actions. The Delegate of Iran said that, while great nations might be fully able to bear the costs of enforcement action, it might be very difficult for a small nation to do so. However, he expressed his Delegation's satisfaction with the explanation of the Delegate of the United States."

That is the end of the summary record of the discussion.

On the basis of that discussion and of the Committee's vote on the South African amendment, the Rapporteur's report (Vol. 12, p. 513) was made, made by no less a person than M. Paul-Boncour. At the risk of excessive quotation, I cite this also in full. It again is quite short:

"*Economic Problems of Enforcement Action*

In conclusion, having heard various explanations on the subject of mutual assistance between States in the application of the measures determined by the Security Council and having noted the legitimate concern expressed by South Africa that the expenses of enforcement action carried out against a guilty State should fall upon that State, the Committee declared itself satisfied with the provisions of paragraphs 10 and 11. [Articles 49 and 50.]

A desire moreover was expressed that the Organization should, in the future, seek to promote a system aiming at the *fairest possible distribution* [and those words are underlined in the original] of expenses incurred as a result of enforcement action.

Having duly noted the explanations and suggestions given, the Committee unanimously adopted, without change, paragraphs 10 and 11 of the Dumbarton Oaks Proposals."

That is the end of the Rapporteur's report.

Much to the same effect is a comment on that passage in the Rapporteur's report by the representative of Canada, which appears at pages 435 and 443 of the same Volume 12 of the San Francisco papers, and which I think completes the San Francisco record. The text is as follows:

"The Canadian Delegate said that he felt that the records of the Committee should show that some consideration had been given to the question of the payment of the costs of enforcement action. The only discussion so far had been with respect to the defeated amendment proposed by the Delegate of the Union of South Africa. He thought that it was not possible to draft a text which could lay down definite rules for application in all the types of cases which might arise. He was of the opinion that the language

of paragraphs 10 and 11 taken together would permit arrangements to be made for sharing the costs of enforcement action among the Members if this proved to be desirable. Otherwise an inequitable financial burden might be placed on certain Members who were acting on behalf of the Organization. If this interpretation was not opposed by one of the sponsoring governments, he would be satisfied to have it placed upon the record without further discussion. The Secretary observed that the Summary Report of the fifteenth meeting of the Committee [Doc. 649] already included the explanation of the United States Delegate of paragraph 11 in which he accepted this principle."

That is the end of the statement of the representative of Canada.

[Public hearing of 19 May 1962, morning]

At the adjournment yesterday, Mr. President, I had just finished reading to the Court the records of the discussions at San Francisco on the provisions that now appear as Articles 49 and 50 of the Charter. I pass now to consider how far, if at all, those discussions disclose a general and accepted understanding at San Francisco that the expenses of enforcement action would not be apportionable among the Members of the United Nations by the General Assembly as expenses of the Organization.

What does clearly emerge from these records, which I read yesterday, is that the delegations that spoke were concerned about problems which included, but which certainly went far beyond, the question of distributing or apportioning the expenses incurred in enforcement measures. Significance attaches, in our submission, to the wide, and apt, title used for this section of his report by the Rapporteur—"*Economic Problems of Enforcement Action*". Some delegations may, for example, have had in mind the possibility of economic embargoes (Art. 41 of the Charter), the adoption of which might greatly disrupt the economy of some Members, though without necessarily involving "expenses" in any ordinary sense at all. There is, in any event, no hint, throughout these records, that the special arrangements contemplated as possible under Articles 49 and 50 were to operate in derogation from, or as an exception to, still less as an alternative to, the ordinary budgetary and financial system of the Organization. It occurs to me, Mr. President, that the solution contemplated by Article 50 for the "special economic problems" confronting an individual State as arising out of enforcement measures, though that solution could take the form of some financial adjustment, would more likely be of an administrative, or even what might be called a political, character. In consideration of the economic difficulties being experienced by a particular State, the Security Council might, for example, in the exercise of its discretion under Article 48, excuse that Member altogether from participation in the particular enforcement action concerned, or, for that matter, decide to call upon it to fulfil only a part of its agreed commitments. By every route, Mr. President, one gets further and further away, in our submission, from any idea that these particular Charter provisions should be understood as carrying any budgetary implications. We perhaps do best justice to the discussions at San Francisco if we regard Articles 49 and 50 as inserted in order to ensure sufficient flexibility to meet all kinds of enforcement cases—even cases that could adequately be

dealt with by the ordinary budgetary and financial procedure, or, paradoxically, cases that might actually arise out of the ordinary budgetary procedure—as for example the General Assembly in the Congo resolutions made special provision for cases where the ordinary budgetary procedure worked hardship—or was thought possibly to work hardship—to individual States. Properly understood, the San Francisco discussions are entirely consistent with the view—as the Government of Australia has submitted at page 234 in its written statement—that unless some other arrangements are made the expenses of enforcement action would be apportionable under the ordinary fiscal procedure of the Organization.

To the extent, Mr. President, to which the assumption was made at San Francisco that under the system of special military agreements the Member concerned would ordinarily have to bear the financial costs of the forces supplied, it must, in our submission, be insisted that there is in the Charter no legal foundation whatever for any such assumption. In the Korean operation, which perhaps comes nearest in principle to the operations envisaged in Articles 42-48, the costs of the enforcement action were in fact wholly borne by the individual Members which acted on behalf of the Organization. But even under the régime of special agreements strictly so called there is nothing whatever in the provisions of the Charter—Articles 42 to 50 inclusive—which could reasonably be interpreted as *requiring* such an arrangement, or as precluding the Security Council from making a military agreement with a Member under which the Organization would itself bear, in part or even in whole, the expenses of the forces or facilities to be provided on call by the Member. The vital provisions are in Article 43, which does not from one end to the other so much as mention costs or expenses, and which leaves the Security Council with a completely unfettered discretion as to the conditions on which it will make a special agreement.

What, in our submission, is true of the Security Council in its treaty preparations for possible enforcement action under Chapter VII is, in our submission, equally true in relation to the Secretary-General when, in pursuance of Article 98 of the Charter, he is entrusted by the relevant organ of the United Nations with the function of organizing military forces for the maintenance of international peace and security. He, like all other organs of the United Nations, may have to work—indeed will have to work—within a budget fixed by the General Assembly. But within that budget he will be able to accept financial responsibility, in whole or in part, on behalf of the United Nations, and the charges so accepted will thereby become "expenses of the Organization".

In a case, Mr. President, where by virtue of special agreement the relevant expenses of enforcement action are borne wholly by the Member concerned, there would of course be *no* "expenses of the Organization" to be apportioned under Article 17 of the Charter. On the other hand, to the extent to which part of the expenses of enforcement action are borne—but only *part*—by the individual Member or Members concerned, there will be expenses remaining to be apportioned as "expenses of the Organization", but a lesser quantum. The resolutions currently under consideration by the Court neatly illustrate that proposition. I refer in that regard to the Australian written statement at page 181, and to what has been said by others in the course of the oral proceedings, in particular by the distinguished representative of the United Kingdom.

What would be the legal position, it may be asked, in relation to

the expenses of enforcement action strictly so called, if, to the contrary of the cases I have just been considering, the special agreement concerned omitted altogether to deal with the question of liability for the expenses involved? For present purposes the question is of course hypothetical, because on no view are the UNEF or the Congo operations to be regarded as enforcement action. There would seem to be strong grounds for the view—and in our submission it is the correct view—that in such a case the United Nations itself would be responsible and the expenses would be "expenses of the Organization". The action contemplated in Chapter VII is definitely that of the United Nations (Charter, Article 45); action is to be taken by the Security Council itself "when it has decided"—and I emphasize *it* has decided—"to use force", and the Military Staff Committee, itself an organ of the United Nations established by the Charter, is to be

> "responsible for the strategic direction of any armed forces placed at the disposal of the Security Council". (Articles 42-47.)

On that view, the expenses of enforcement action would properly answer the description of "expenses of the Organization" and would thus be wholly apportionable under Article 17, paragraph 2. As the Government of Australia contended in its written statement at page 234, there was nothing really inconsistent with that view in the discussions at San Francisco.

The observations of the learned commentators on the Charter, Dr. Goodrich and Dr. Hambro, to which I myself like so many others owe a great debt of gratitude, must, in our submission, be understood in the light of the analysis of the San Francisco discussions that I ventured to put forward. So understood, there is little to which we would wish to take exception. If the assumption were correct that under Chapter VII of the Charter the costs of "enforcement action" would ordinarily fall upon the Members concerned, and not on the Organization, then it would follow, obviously enough, as the learned authors say summarily in a footnote, that such costs would not be included in the "expenses of the Organization" to which Article 17 refers; and that, in our submission, is precisely the assumption that the learned authors must be regarded as having made. But there is, in the submission of the Government of Australia, nothing in what Dr. Goodrich and Dr. Hambro say to warrant the inference that in their opinion the expenses of enforcement action *could* not be "expenses of the Organization" for the purposes of Article 17. Still less is there any reason to suppose that they, Dr. Goodrich and Dr. Hambro, would have denied the character of "expenses of the Organization" to the expenses under consideration in these proceedings, for these expenses do not on any view fall within the category of "costs of enforcement action".

My final comment on the San Francisco record, Mr. President, is to submit that, even if the records could be regarded as showing as a matter of fact that those Members which participated in the discussion were acting on an assumption that, subject to adjusting action mediated by the Security Council, the costs of enforcement action under Chapter VII of the Charter must be borne by those Members who will agree to bear them, and could not be apportioned obligatorily among the Members by the General Assembly, such an assumption could not, as a matter of law, in view of the express provisions of the Charter, be

allowed to control or restrict the interpretation of Chapter VI and Chapter VII themselves. Still less could the existence of such an assumption suffice to read artificial and unnecessary restrictions and exceptions into the plain, wide and specific words of Article 17, paragraph 2. What I have said is, in our submission, *a fortiori* true of an assumption at San Francisco that cannot in any sense be treated as having been generally accepted.

I submit for consideration in this regard by the Court an illustration by way of analogy, drawn from the constitutional law of Australia. The Constitution in that country is federal, the federal legislature having power to make laws with respect only to specified subject-matters. One of these matters is number xiii:

> "Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks and the issue of paper money."

In pursuance of that power, the Parliament in 1947 made a law designed to "nationalize" banking, that is to say to vest in an existing banking corporation established by the Parliament the exclusive power to carry on banking business. The Act was challenged in the courts on a number of grounds, and it was ultimately held invalid. One of the grounds of challenge, however, was that the founders of the Constitution could never have contemplated a law which prohibited the carrying on of business by the whole of the established system of private trading banks, that the power to make laws must be read as necessarily requiring the continuance of a private banking system, and must therefore be regarded as limited to the regulation of that system. On that point, however, the challenge failed, and the law was held to be within power. The present Chief Justice of Australia, Mr. Justice Dixon as he then was, said this ((1948) *76 Commonwealth Law Reports* at p. 332):

> "it well may be that the framers of the Australian Constitution instinctively assumed that banking would not form a subject of prohibition, that it would be carried on by trading banks and that the relation of banker and customer would remain consensual. The assumption perhaps accounts for the form and content of paragraph (xiii)"—the paragraph which I read—."But the assumptions made in framing a power and the restrictive intentions which it expresses are two very different things."

I apply precisely to the present problem, Mr. President, not of course as authority but as an acceptable statement of legal principle, the concluding sentence of the passage that I have just read. It may be that, at the San Francisco Conference, it was assumed by some that the Organization would never (though there is no suggestion in the records that it *could* not) accept responsibility, through the General Assembly in the exercise of its budgetary powers, for the expenses of military action for the maintenance of international peace and security. In the resolutions now before the Court, however, it has repeatedly and unequivocally done so, and accepted financial responsibility on the part of the Organization. In the submission of the Australian Government, the Court should not so restrict the scope of Article 17, paragraph 2, as to hold that it was not competent to do so. In the words of Mr. Justice Dixon:

"the assumptions made in framing a power and the restrictive intentions which it expresses"—that is to say which its words express—"are two very different things".

In our submission, the San Francisco discussions offer no warrant, even on the assumption stated, for denying to the expenses authorized by the resolutions now before the Court the character of "expenses of the Organization" within the express words of Article 17, paragraph 2.

In approaching, Mr. President, the concluding section of my argument, I mention briefly one or two matters about which I do not propose to speak—not because the Government of Australia has no views on these matters, but because they have already in these proceedings been examined so fully by others, and because we are content to adopt as our own the arguments they have put forward. In particular, I do not propose to add anything to what has been said by others on the question of the validity of the resolutions authorizing the UNEF and the Congo operations. Like the Netherlands and the United Kingdom, we do not think that, in order to answer the question submitted for advice, the Court is required to pronounce upon the consistency with the Charter of these resolutions, and indeed in our own written statement we did not discuss that question at all. In so far as the point is thought material, however, the Government of Australia regards the resolutions as entirely consistent with the Charter, and submits that their validity has been fully established by the arguments submitted in particular by the Governments of Denmark, of Canada, of Norway and of the United States.

I shall offer no argument, also, Mr. President, upon the fiscal practice of the United Nations and its relevance to the question upon which the Court is asked to advise. On that point, the Government of Australia submits, for the reasons already adduced by others, that the requirements of Article 17 have in all respects been correctly observed and applied in relation to the expenses of the operation now under consideration.

I return, therefore, Mr. President, to the remaining (the third) question which I posed in opening—namely, whether there is any justification in this instance for resorting to the preparatory work of the Charter for the purpose of determining the meaning of its established text. I have indeed myself discussed at some length the relevant preparatory work at the San Francisco Conference—partly in order that the matter may be fully considered by the Court, partly in order to remove, for the record, certain misconceptions as to the San Francisco discussions which, in our submission, have found expression in some of the documents submitted for consideration by the Court. I am thankful for the patience with which my exposition has been received. It has been my submission that the records of those discussions disclose nothing to displace or modify, or even throw doubt upon, the *prima facie* meaning of the Charter text itself. But I wish now to go further and to submit that even if the matter were otherwise, and it could be established that at San Francisco the understanding expressed in the relevant committee had been that the expenses of peace-keeping operations of the United Nations would not be apportionable by the General Assembly, this would nevertheless be an absolutely classic case for rejecting the *travaux préparatoires*.

The rules or canons of interpretation, after all, are but experienced

generalizations about the way in which men think and write, and the way in which legal texts are brought into existence. The principles are familiar, and in that regard, the jurisprudence of this Court is clear as well as consistent and authoritative. I do not wish or need to repeat or add to the references given in our own written statement and amplified in the course of the oral hearings by others. But in this field there is nothing exceptional or esoteric about the position in international law, and there are substantially identical rules to be found in the jurisprudence of all developed legal systems. I permit myself therefore, Mr. President, to cite by way of additional formulation a formulation of the basic rule for the interpretation of legal texts which has found wide acceptance in the jurisprudence of my own country. It is this:

> "In the interpretation of a completely self-governing Constitution founded upon a written organic instrument ... if the text is explicit, the text is conclusive, alike in what it directs and what it forbids."

The reference is to the Amalgamated Society of Engineers *v.* Adelaide Steamship Company in 1920 (28 *Commonwealth Law Reports*, at p. 150).

That statement of principle is, in our submission, Mr. President, completely in accord with what this Court itself has said, as for instance in the *Ambatielos* case ("where the text is clear..."), and if accepted is completely decisive, also, in respect of the question submitted for the Court's advice in these proceedings.

In the nature of things there can be no test capable of mechanical or automatic application, to determine when and whether a text is so clear as to preclude a court of law from attributing to it, by reference to any other material, any other than its ordinary and natural meaning. One must of course look to context and see whether there are elsewhere in the instrument any limitations expressed or necessarily implied. Here there are, in our submission, *none*, and indeed their very absence is striking and significant in an instrument which establishes no less than six principal organs of the United Nations, yet vests fiscal competence in only one of them. And nothing could be more simple and explicit than the text of Article 17, paragraph 2, itself: "The expenses", that is to say *all* expenses, "of the Organization shall be borne by the Members", that is to say by *all* Members, "as apportioned by the General Assembly."

In dealing with such a text it would, in our submission, be a wise rule of practical experience that declared that there is here "no occasion to resort to preparatory work". The San Francisco records that I have placed before the Court for examination illustrate perfectly the difficulties into which the interpreter is so often plunged when, where he is faced with an ambiguous text, he is driven to attempt to resolve obscurities by reference to the preparatory work and to assumptions and ideas accepted beforehand. The relevant records here are brief, not to say skimpy. It is impossible to deduce from them with any pretence at exactitude what assumptions were made, and still more what were generally agreed, as to the ways in which enforcement expenses might be shared or distributed. Disagreeing with the legal assumptions of a member of a committee with whose conclusions one nevertheless agrees is an exercise so graceless that fortunately in busy deliberative bodies it is seldom carried out, and it is small wonder that the San Francisco records are so difficult to draw inferences from. But one thing that does emerge plainly from those records is that nobody at San Francisco

foreshadowed even the possibility of peace-keeping activities such as those authorized by the resolutions now before the Court. Another is the uncontested and incontestable fact that the San Francisco Conference adopted without qualification the plain text of Article 17. There could be no clearer or stronger case than this one, in our submission, Mr. President, for rejecting resort to the preparatory work as an aid in the interpretation of the wholly explicit provisions of Article 17, paragraph 2.

For these reasons the Government of Australia submits that the question for advice should be answered 'Yes'.

I thank you, Mr. President and the Members of the Court.

7. ORAL STATEMENT OF MR. Ó CAOIMH

(REPRESENTING THE GOVERNMENT OF IRELAND)
AT THE PUBLIC HEARING OF 19 MAY 1962, MORNING

Mr. President and Members of the Court:

At this stage of the proceedings before the Court on a request for an Advisory Opinion, when the representatives of several States have made oral submissions to the Court, it is almost inevitable that much of what I have to say will already have been touched on by some one or more of these representatives. The question before the Court is limited in its nature, and it is understandable if the opinions and quotations, which I have selected as being likely to be of some assistance to the Court, have also been regarded as of some consequence by other representatives who have already addressed the Court. I would, therefore, ask the Court to bear with me if in my submissions I should touch on matters which have already been the subject of submissions by others.

In their written statement to the Court of 20 February 1962, my Government have respectfully requested the Court to answer in the affirmative the question put to it by the General Assembly at its 1086th meeting and as respects which I have today the honour of addressing the Court. In the course of that Statement it was submitted that the Court could not reasonably come to any conclusion other than that the expenses authorized by the Resolutions referred to in the Request constitute expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter of the United Nations.

At the outset I feel that I must stress that, although what has been requested by the General Assembly is an Advisory Opinion of the Court, the decision may have far more significant repercussions on what my Government consider to be fundamental functions of the United Nations than the settlement of the money issues involved, although, of course, the settlement of these issues is vital to the solvency of the Organization.

My first submission will concern the question of what precisely is the problem on which the Court has been requested by the General Assembly to give an Advisory Opinion. It is evident from the written statements already before the Court that certain States are under the impression that the Court has been requested to advise on the question of the *validity* of the action taken by the General Assembly and the Security Council in relation to the Middle East and the Congo. Indeed the Court has been asked in the written submission of one State to determine

> "whether and to what extent activities engaged in in the Congo were valid both in terms of valid resolutions and the terms of the Charter".

This approach to the question is, in my submission, based on a misapprehension. What the General Assembly has asked to be advised

on is whether certain expenditure incurred by the Secretary-General in pursuance of authorizations of the General Assembly and the Security Council are expenses of the Organization under Article 17 (2) of the Charter. There is no reference in the question to the validity of the resolutions establishing UNEF and UNOC nor was it, in my submission, the desire of the General Assembly that the Court should investigate the legality of these resolutions. The proceedings in the Fifth Committee and the General Assembly which preceded the Request to the Court for an Advisory Opinion have been discussed in the written and oral submissions of several Member States, and I do not propose to review those proceedings in any detail. I should, however, like to quote for the Court the views expressed, by way of explanation of vote, in the General Assembly on 20 December 1961 by the delegates of El Salvador and the Ivory Coast. (I am quoting from the English translation.) First, the delegate of El Salvador said:

> "My delegation wishes to explain very briefly why it voted against the amendment (A/L. 378) submitted by the delegation of France and in favour of the draft resolution given at the end of the Fifth Committee's report (A/5062).
>
> Under the terms of the French amendment, the General Assembly, instead of merely requesting the International Court of Justice to give an Advisory Opinion on whether the expenditures authorized in the resolutions setting up the United Nations Emergency Force in the Middle East in 1956 and the Force responsible for the United Nations operations in the Congo constitute expenses of the Organization within the meaning of paragraph 2 of Article 17 of the Charter, would first ask the Court whether those expenditures were decided on in conformity with the provisions of the Charter. That is obviously tantamount to considering the legal validity of the resolutions adopted by the Security Council and by the General Assembly.
>
> For us there is no doubt at all that both the General Assembly and the Security Council were acting in legitimate exercise of their powers—and, indeed, were discharging obligations specifically imposed upon them by the Charter with respect to the maintenance of international peace and security—in adopting those resolutions and arranging for the financing of the two operations.
>
> The only thing we are doubtful about is the method of financing, or, in other words, the distribution of costs among the different Member States. That is why we voted in favour of the proposal to consult the International Court of Justice in accordance with the terms of the draft resolution recommended by the Fifth Committee in its report. The first preambular paragraph of the resolution adopted a few moments ago reads as follows:
>
> > 'Recognizing the need of the General Assembly for authoritative legal guidance as to obligations of United Nations Members under the Charter in the matter of financing United Nations operations in the Congo and in the Middle East.'
>
> The wording of this part of the preamble seems to us to be sufficiently clear to limit the scope of the Advisory Opinion to the purely legal issue, without introducing any implications of a legal nature and certainly without casting doubt on the validity of the reso-

lutions adopted in both cases by the Security Council and the General Assembly."

That is the end of the quotation from the explanation given by the distinguished delegate of El Salvador. He was followed by the delegate of the Ivory Coast who said (and again I quote from the translation):

> "The delegation of the Ivory Coast would like to state briefly the reasons which led it to vote in favour of the resolution submitted to us. In the first place, it considers that the primary role of the United Nations is to maintain peace. Emergency forces are established to intervene wherever peace is disturbed and therefore to restore peace. We are all aware that in such circumstances emergency forces entail budgetary expenses which must be met.
>
> The subject of our discussion is whether such expenses constitute regular expenses for which each of our delegations is obliged to pay, or whether they are extraordinary expenses. My delegation therefore considers it appropriate to put the question to the International Court of Justice in order that we may have a definitive opinion. That is why my delegation voted in favour of the resolution.
>
> It opposed the amendment submitted by France because it considers that the amendment raises a political issue, the question of the legality of action taken by the General Assembly in implementation of decisions of the Security Council. It is a fact that in taking all those decisions the Security Council was aware that they had budgetary implications. Consequently the General Assembly is bound by the decision of the Security Council and must take all steps which will enable it to put them into effect."

My Government respectfully submit, Mr. President and Members of the Court, that the question should be approached in the spirit of these two statements which I have quoted, and that the Court is not compelled to concern itself with the question of validity and can answer the question on which advice is sought without investigating this issue.

Mr. President and Members of the Court, in the course of my Government's written statement, it was argued (p. 249 of the written statement) that paragraphs 1, 2 and 3 of Article 17 of the Charter read together clearly indicate that it is, *prima facie*, for the General Assembly alone to determine what expenditures constitute expenses of the Organization. The statement continues:

> "It may validly be contended that 'expenses of the Organization' are such expenditures duly incurred as the Assembly in exercise of its mandatory budgetary powers may decide are to be apportioned among the Members. By authorizing the expenditures and apportioning them among the Members, the Assembly exercises these powers, and the expenditures in question may therefore be said to constitute 'expenses of the Organization'."

It is not suggested that the General Assembly is *unlimited* in its power of dealing with budgetary matters. Its position has already been clarified by the Court in the Advisory Opinion in connection with the *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (*I.C.J. Reports 1954*, p. 59):

"But the function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it; for some part of that expenditure arises out of obligations already incurred by the Organization and, to this extent, the General Assembly has no alternative but to honour these engagements."

Subject to such limitation as should be inferred from the advice referred to, the General Assembly, I submit, has the special role assigned to it under the Charter of determining what constitute expenses of the Organization and of apportioning such expenses among the Members. Before a determination of the General Assembly, acting in that special role, could be called in question, it would, in my submission, require the clearest possible evidence demonstrating that under no circumstances could the expenses included in the determination be regarded as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter.

It has, I submit, been demonstrated beyond doubt in the written statements submitted to the Court that the resolutions of the General Assembly in connection with the expenses of UNEF and ONUC were intended to come within the ambit of Article 17, paragraph 2, of the Charter. (I refer, in particular, to the statement of the Government of the Kingdom of Denmark.) Indeed, the Secretary-General at the 596th Plenary Meeting of the Assembly made the position quite clear when he said (in connection with UNEF):

"I wish to make it equally clear that while funds received and payments made with respect to the Force are to be considered as coming outside the regular budget of the Organization, the operation is essentially a United Nations responsibility and the Special Account to be established must, therefore, be construed as coming within the meaning of Article 17 of the Charter."

The intentions of the General Assembly in this regard are further emphasized in later resolutions which took into account the fact that certain Member States had a lesser capacity to meet the assessments made on them in the ordinary process in connection with the operations of the Force. In so far as ONUC is concerned, the case needs no argument. The very first resolution dealing with the financial implications of the operations in the Congo (1583 (XV)) contains the following recital:

"Recognizing that the expenses involved in the United Nations operations in the Congo for 1960 constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations and that the assessment thereof against Member States creates binding legal obligations on such States to pay their assessed shares."

In my respectful submission it has been clearly demonstrated that the General Assembly intended that the expenses involved in the operations in the Middle East and in the Congo should come under Article 17, paragraph 2.

It seems unnecessary to negative at length the argument that because special accounts were established in respect of the operations of UNEF

and ONUC it follows that expenses incurred in connection with those operations do not fall to be assessed in the ordinary way under Article 17, paragraph 2, of the Charter. Such, certainly, was not the view of the Secretary-General in connection with UNEF (cf. Statement at 596th plenary meeting of the General Assembly, which I have already quoted). Furthermore, although special accounts have been established, there is no reason why any special legal significance should attach to that fact in relation to the question of assessments. In fact, it is submitted that it is perfectly evident, from the resolution and the statement of the Secretary-General already referred to, that the establishment of the special accounts was not intended, in any way, to indicate that the expenses in question should not come under Article 17, paragraph 2.

In the written statement of my Government it was submitted that in construing the expression "expenses of the Organization" one must have regard to the purposes of the Organization. At the risk of appearing repetitious, I will read once again what is the very first purpose of the United Nations, as stipulated in the Charter. Chapter I, Article 1, paragraph 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."

It can hardly be seriously contended that the operations of UNEF and ONUC (whatever disputes may exist as to the precise legal basis for the existence of those bodies under the Charter) do not come within the Article I have just quoted. *Prima facie*, therefore, expenses incurred in connection with the operations of UNEF and ONUC would appear to be expenses of the Organization, since such expenses were incurred in pursuance of the very first purpose of the Charter. Has any evidence been produced to rebut the presumption that the expenses in question constitute expenses of the Organization within the meaning of Article 17, paragraph 2? In my respectful submission to the Court, no such evidence exists, and, for the reason that it would be necessary to show that the expenses were incurred for a purpose *outside* the Charter which, we say, the purpose under consideration clearly is not.

Various reasons have been put forward as to why the expenses incurred should not be regarded as expenses of the Organization. It has been suggested, for example, that the expression "expenses of the Organization" must only relate to the ordinary administrative outgoings of the Organization and that it cannot be held to embrace large-scale operations of the type under consideration.

While it is true that expenditure on operations of the United Nations in the Middle East and Congo differs from the ordinary expenses of the Organization from the point of view of the amount involved, no valid reason has been produced to demonstrate that the cost of such operations does not come within the expression "expenses of the Organization" as it is used in Article 17, paragraph 2, of the Charter. On the contrary, it has been shown that the practice belies any such argument, for the ordinary budget includes expenses for operations of a similar nature

initiated by the General Assembly or the Security Council. This has been admirably demonstrated in the written statement of the Government of the Kingdom of Denmark, and in the oral submissions on behalf of other States. Furthermore, the magnitude of the expenses involved constitutes no legal impediment against regarding such expenses as expenses of the Organization.

This view has been that of the Secretary-General as expressed in the Fifth Committee at its 839th meeting when he said:

> "... Several of the representatives have naturally laid emphasis on the size of the Congo expenditures and their 'extraordinary' character. But how, from a legal and constitutional point of view, can these factors lead to a conclusion that they are not expenses of the Organization? The fact that these expenses have been substantial and unusual—indeed, unforeseeable at the time of San Francisco—cannot mean that the Charter provisions must now be disregarded. Nor would there appear to be any practical necessity to do so." (A/C.5/864.)

It is of significance that no distinction is made in budgetary practice between UNEF and ONUC and the so-called "regular budget", that is to say, the estimates are prepared by the Secretary-General, considered by an Advisory Committee, the Fifth Committee and by the General Assembly which authorizes financial commitments, appropriations of funds and makes the assessments on Members to obtain the necessary revenues; in no sense are UNEF and ONUC classified as "extra-budgetary". It should be noted furthermore that the Secretary-General is authorized to spend funds against the "regular budget" appropriations irrespective of any shortfall in contributions. A similar authorization applies to UNEF and ONUC. An essential difference between the extra-budgetary accounts and the "regular budget", UNEF and ONUC is that programmes of the former are mainly determined by the financial resources available while the programmes of the latter determine the contributions, thus the working capital fund provides funds for UNEF, ONUC and the "regular budget", but not for the extra-budgetary funds. A further point to be stressed, in so far as budgetary practice is concerned, is that the Secretary-General is authorized to borrow from extra-budgetary funds in his custody to provide working capital for the "regular budget", UNEF and ONUC, but he is not authorized to borrow funds for extra-budgetary programmes.

It is submitted that the expression "extraordinary expenses" in relation to the United Nations operations in the Congo, where it occurs in the third recital of Resolution 1619 of the General Assembly, has reference only to the method of apportioning the expenses. The use of this phrase means only that a method for apportioning the expenses different from the normal scale of assessments should be used. This construction is completely borne out by the operative part of the Resolution in question—in paragraph 4 of which the Assembly decided to apportion as expenses of the Organization the amount of $100 million among the Member States in accordance with the scale of assessment for the regular budget, subject to provisions not material in detail to the present consideration.

The question might well be asked, as it was asked by the representative of Ireland at the 831st meeting of the Fifth Committee, if the

expenses in question are not "expenses of the Organization", what are they? And, if they do not come under Article 17 of the Charter, which article do they come under? Some States argue that the answer is to be found in Article 43 of the Charter; that the costs of operations under Article 43 of the Charter are to be met by means of special agreements. In the course of their written submission, my Government have already contended that Article 43 is not relevant to the question at issue. It has been pointed out time and again that the provisions of Article 43 have remained inoperative because of the failure to agree on the principles upon which agreements under that Article should be based. However, even if Article 43 had been invoked, there is nothing in the Charter to suggest that the operation of that Article must necessarily preclude expenses arising thereunder being considered as "expenses of the Organization" within the meaning of Article 17, paragraph 2. I may be permitted to quote the views of the Secretary-General in this regard. He said:

> "No one can question the right of the Security Council to take decisions in pursuance of Article 43 or 48 or any other provisions under which it has competence. However, once the Council has taken a valid decision which imposes responsibilities on the Organization and requires implementation by the Secretary-General, then the costs which are involved are clearly expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter and therefore must be apportioned by the General Assembly. True, the Council retains the right to revoke or change its decisions, but, as long as the decisions require expenditures by the Organization, then Article 17, paragraph 2, must be considered applicable." (A/PV 977.)

Quite apart from the fact that Article 43 could not in fact have been implemented in the existing circumstances, it seems manifest from the documentation available that it was never the intention to operate under that Article. It is not open to doubt that the operations of the United Nations both in relation to the Middle East and the Congo were carried out with the consent of the Governments of the territories concerned. There was at no time any question of enforcement action as envisaged by Articles 42 and 43 of the Charter. In so far as UNEF is concerned, this was made quite clear by the second report of the Secretary-General of 6 November 1956 on the plan for an emergency international United Nations Force, in the course of which he said, in paragraph 9:

> "While the General Assembly is enabled to establish the force with the consent of those parties which contribute units to the force, it could not request the force to be stationed or operate on the territory of a given country without the consent of the Government of that country. This does not exclude the possibility that the Security Council could use such a force within the wide margins provided under Chapter VII of the United Nations Charter. I would not for the present consider it necessary to elaborate this point further, since no use of force under Chapter VII, with the rights in relation to Member countries that this would entail, has been envisaged."

On the following day, 7 November 1956, the General Assembly adopted Resolution 1001, in the course of which the Assembly noted with appreciation the second and final report of the Secretary-General on the plan for an emergency international United Nations Force and expressed its approval

> "of the guiding principles for the organization and functioning of the emergency international United Nations Force as expounded in paragraphs 6 to 9 of the Secretary-General's report".

I respectfully submit, Mr. President and Members of the Court, that no further argument is required to show that the General Assembly at no time considered in relation to UNEF that the action taken was of the nature contemplated in Article 43 of the Charter.

Mr. President and Members of the Court, if one examines the actions in relation to the Congo a similar pattern of intention emerges. Although in the case of the Congo it was the Security Council and not the General Assembly that made the necessary decisions, at no time was it considered that the Council was taking measures which would engage Article 43 of the Charter. That such was the view of the Secretary-General is borne out by his first statement to the Fifth Committee of the United Nations on 17 April 1961 (Doc. A/C.5/864) when he said:

> "... The function of the United Nations Force—as stated initially —was to assist in maintaining law and order; this was later expanded by the Security Council Resolution of 21 February to include the objective of preventing civil war. The Security Council considered these measures necessary to counteract the threat to international peace, but the measures themselves did not constitute 'sanctions' or enforcement action directed against a State as contemplated by Articles 42 and 43 of the Charter.
>
> The records of the Security Council leave no doubt about this. No one ever suggested that its decisions regarding the Congo were in any way related to Article 43 of the Charter, and no proposal was made that agreements for this purpose should be concluded between the Security Council and Members as contemplated by that Article. Even more significant is the fact that no single member of the Security Council and indeed not a single member who took part in the debates in the Security Council or the General Assembly on this subject stated, or even intimated that the Council had acted on the basis of Article 43.
>
> On the contrary, it was explicitly stated in the Security Council that the resolutions did not constitute an enforcement measure in the sense referred to in Article 42 of the Charter."

Further argument that Article 43 of the Charter is irrelevant seems unnecessary.

In the course of my Government's written statement it was pointed out that the only provision of the Charter for meeting expenditure is contained in Article 17. It was indicated that the only powers given to the Assembly to take decisions on expenditure are to be found in that Article. The Assembly has never purported to act under any other article, and none of the other principal organs of the United Nations has claimed for itself the right to take decisions on questions of expenditure or suggested that other provisions of the Charter gave it

power to do so. In my respectful submission, the wording of Article 17 (2) must be given its natural and ordinary meaning in the context in which it occurs, and the natural and ordinary meaning of the "expenses of the Organization" is *all* the expenses of the Organization. There is no limitation in Article 17, paragraph 2, the terms of which are quite clear. No distinction is made between "administrative" and "other" expenses.

I had intended at this stage of my submission to deal briefly with the inference which the written statements of the Governments of the Soviet Union and of South Africa seek to draw from the withdrawal of an Australian amendment at the San Francisco Conference. Having heard the exhaustive review of the history of that amendment in the oral submission of the representative of the Government of Australia, I do not find it necessary to take up the time of the Court with this point, since the learned representative of Australia has so ably demonstrated that the inference which was sought to be drawn is quite unsustainable. In any event, it has, I submit, clearly been demonstrated that Article 43 has no relevance to the operations of the United Nations in the Middle East and the Congo.

In the course of my submission, I have endeavoured, consistently with my opening remarks, to avoid the question of the validity of the operations of the United Nations in the Middle East and the Congo. There would, I believe, be little difficulty in demonstrating the validity of such operations, but the question of their validity is unlikely to be considered in detail by the Court. With the Court's permission, however, I will allow myself one observation which relates to the powers which must be implied to any organization of the nature of the United Nations. In the course of my Government's written submission, advertence was already made to the Court's observation in the course of its Advisory Opinion concerning *Reparation for Injuries suffered in the Service of the United Nations* when it said:

> "Under international law, the Organization must be deemed to have those powers which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to its duties. This principle of law was applied by the Permanent Court of International Justice to the International Labour Organisation in its advisory opinion No. 13 of July 23rd 1926 (Series B, No. 13, p. 18), and must be applied to the United Nations."

This principle of law so well enunciated by the Court finds its counterpart in the domestic laws of Member States. It proceeds basically from the acceptance of the fact that not everything can be reduced to writing and incorporated in a Charter or other fundamental law of a body such as the United Nations. In common law countries a maxim exists which expresses the same idea in relation to public bodies; it reads:

> "*Ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest.*"

We are told that "One of the first principles of law with regard to the effect of an enabling act is that if the legislature enables something to be done, it gives power, at the same time, by necessary implication to do everything which is indispensable for the purpose of carrying out

the purpose in view". (I quote from Craies *Statute Law*, Fifth Edition, p. 239.)

If this principle is acceptable both in the municipal and in the international field, as I submit it must be under the authorities, it will be apparent that powers of the United Nations to effect the operations in the Middle East and the Congo must be implied of necessity if it should be considered that the articles relied on in the submissions of other States are not in themselves sufficient to authorize the operations referred to.

It is submitted that in a case such as this, where there is no conflict between the organs of the United Nations, the Court need not be too assiduous in seeking precise and express authority for the action taken. It is understood, of course, that if there should be a conflict between two such organs, the Court might, in seeking to resolve the difference, have to apply strict rules of construction. Here there is no such conflict. In the case of UNEF, the matter was transferred by the Security Council to the General Assembly under the Uniting for Peace Resolution. In the case of UNOC, the effective resolutions were those of the Security Council, but the action taken was approved by the General Assembly.

I should like to recall that the resolution of the General Assembly establishing UNEF was carried without a single dissentient vote, and that there was no serious challenge to the authority of the United Nations regarding either UNEF or UNOC in the appropriate political organizations at the time when the operations were undertaken. It seems strange to my Government that States which did not avail themselves of their right to oppose the basic resolutions, or stranger still *voted* for such resolutions, should seek to maintain that the action taken on foot of them was *ultra vires*.

Finally, I should like to say that my presence here today, representing as I do my Government, indicates the very real concern which my Government feel regarding the outcome of these proceedings. As I indicated in my opening remarks, the fact that the matters at issue relate to the manner in which liability for large sums of money is to be apportioned is, of course, of great importance. What my Government are particularly concerned with, however, is the survival of the United Nations as a healthy and solvent Organization equipped with the necessary power to discharge its functions, the most important of which is to play a full and effective part in relieving tension and preserving international peace and security.

In this submission to the Court, I have touched on only a few of the points which could be discussed: others have covered the ground convincingly, and it is unnecessary to recapitulate their arguments. In conclusion, I respectfully submit to the Court that in the written submissions before the Court and in the oral submissions made and to be made here, the Court will find compelling reasons for giving an affirmative answer to the question upon which its Advisory Opinion is sought.

I thank you for your kindness, Mr. President and Members of the Court.

8. ORAL STATEMENT OF MR. TUNKIN

(REPRESENTING THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS)

AT THE PUBLIC HEARING OF 21 MAY 1962, MORNING

Mr. President, Members of the Court:

The position of the Soviet Union with regard to financing the operations of the United Nations Emergency Force in the Middle East and the United Nations Operations in the Congo has been set forth in the Memorandum submitted by the Soviet Government in reply to a request by the International Court of Justice.

The Soviet Government is of the opinion that the operations of the United Nations Emergency Force in the Middle East, as well as the United Nations Operations in the Congo, impose no financial obligations on the Members of the United Nations both for the reason that these operations are not carried out in accordance with the requirements of the United Nations Charter and because the expenses of these operations are not the expenses referred to in Article 17, paragraph 2, of the Charter.

The Resolution of the General Assembly of 20 December 1961 poses before the International Court of Justice the question whether the expenses involved in the operations in the Congo and in the Middle East are "the expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

It is universally recognized in international law that none of the parties to a treaty is obliged to bear more responsibility than was assumed by it according to this treaty. For the States Members of the United Nations such a treaty is the Charter within the limits of which they bear their responsibility. Therefore, in order to answer the question put to the International Court of Justice, it is first of all necessary to establish whether the operations that caused the financial consequences correspond to the requirements of the United Nations Charter.

We shall first consider in this connection the question of the United Nations Emergency Force.

The representatives of the Western Powers who have preceded me at this rostrum repeated one after another that the General Assembly resolution establishing this Emergency Force was perfectly legitimate and that no one could doubt it.

An old maxim says: "*repetitio est mater studiorum*". And I believe that my colleagues will remember for a long time all they have said on this subject. But the repetition of one and the same assertion does not yet prove its validity.

I would like to state briefly the position of the Soviet Union on this question.

From the very moment when the United Nations Emergency Force in the Middle East was established the Soviet Government considered, and continues to consider, that the resolution of the General Assembly on the creation of this Force contradicts the United Nations Charter.

I would like to remind you of the statement of the Soviet delegation, which clearly indicates the position of the Soviet Government held at the moment of the creation of the United Nations Emergency Force and held consistently since then.

I will quote the statement made by Mr. Kouznetzov, the Head of the Soviet delegation, at the 567th meeting of the First Extraordinary Session of the General Assembly on 4 November 1956:

> "As regards the creation and stationing on Egyptian territory of an international police force, the Soviet delegation is obliged to point out that this force is being created in violation of the United Nations Charter.
>
> The General Assembly resolution on the basis of which it is now proposed to form this force is inconsistent with the Charter. Chapter VII of the Charter empowers the Security Council, and the Security Council only, not the General Assembly, to set up an international armed force and to take such action as it may deem necessary, including the use of such a force, to maintain or restore international peace and security.
>
> The resolution on the creation of an international armed force is also inconsistent with the purposes for which the United Nations Charter permits the creation and use of an international force. The Charter envisages the use of such a force to help a State victim of aggression to repel the aggressor and to defend such a State against the aggressor.
>
> But the resolution 1000 of 5 November 1956 and the plan for its implementation, which is contained in the resolution just adopted provide for the use of an international force for quite another purpose than that of repelling aggression against Egypt. The plan provides for the introduction of the international force into Egyptian territory and the transfer of a large part of that territory, including the Suez Canal Zone, to its control.
>
> For these reasons, the Soviet delegation regards the proposal for the establishment by the General Assembly of an international force to be stationed on Egyptian territory, a proposal which bypasses the Security Council, as contrary to the United Nations Charter.
>
> However, in view of the fact that in this instance the victim of aggression has been compelled to agree to the introduction of the international force, in the hope that this may prevent any further extension of the aggression, the Soviet delegation did not vote against the draft resolution, but abstained."

This quotation from the statement of the Soviet delegation may also show how groundless was the assertion of the distinguished representative of Norway that the establishing of the Emergency Force allegedly not only did not raise any objections on the part of the Soviet Union but was almost approved by it.

As is clear from the above-mentioned statement of the Soviet delegation such an assertion does not correspond to the facts.

I am also bound, Mr. President, to invite the attention of the Court to the wrong interpretation of the Soviet Government's view on the question of the Emergency Force that was given by the representative of the United Kingdom in his statement of 17 May 1962.

The distinguished representative of the United Kingdom said:

> "And yet the Soviet Union says that the General Assembly with 104 sovereign States cannot consider any question involving action of any character for maintaining peace. That, it is said, has to be left to the 11 Members of the Security Council alone."

I must say that the Soviet Union has never asserted that the General Assembly is not competent to discuss any question relating to the maintenance of international peace and security. What we have asserted and continue to assert is that it is not within the competence of the General Assembly to take decisions regarding questions requiring action to maintain international peace and security. Such are the provisions of the Charter.

The Memorandum of the Soviet Government to which the British delegate was referring states as follows:

> "According to the United Nations Charter all questions involving action for maintaining international peace and security—which includes the creation of the United Nations Emergency Force as well—come under the competence of the Security Council alone."

In order to justify the unlawful actions of the General Assembly references are made to the fact that by adopting the Resolution for the establishment of the Emergency Force in the Middle East the General Assembly was allegedly acting on the request of the Security Council and in accordance with the General Assembly's Resolution 377 A of 3 November 1950.

In the Security Council's Resolution (S/3721) there is indeed a reference to the Resolution 377 A of 3 November 1950, but the Security Council did not ask the General Assembly to take action for maintaining peace and security, which under the Charter the Security Council alone is competent to take.

I shall quote the Security Council's decision (S/3721). The Security Council

> "Decides to call an emergency special session of the General Assembly as provided in the General Assembly's Resolution 377 A of 3 November 1950, in order to make appropriate recommendations."

The General Assembly may under the provisions of the Charter make recommendations with regard to the questions relating to maintenance of international peace and security. The problem is, what kind of recommendations?

The Memorandum of the Soviet Government states on this question the following:

> "In so far as the General Assembly is concerned, it may consider"—and here the Memorandum uses the language of Article 11 of the Charter—"the general principles of co-operation in the maintenance of international peace and security; may discuss any questions relating to the maintenance of international peace and security; may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both."

And I continue the Memorandum of the Soviet Government:

> "But the General Assembly is not competent to take decisions on the carrying out of any action to maintain international peace and security."

Article 11, paragraph 2, of the Charter reads:

> "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

Such was, and still is, the position of the Soviet Government in regard to the validity of the General Assembly Resolution under which the United Nations Emergency Force in the Middle East had been created.

The attitude of the Soviet Government to the financing of these armed forces follows from the above-mentioned basic position.

Thus, as the Emergency Force for the Middle East was set up in violation of the United Nations Charter, circumventing the Security Council, the financing of that Force cannot be regarded as an obligation incumbent upon the Member States of the United Nations under the Charter.

Now I wish to draw your attention to the question of the United Nations Operations in the Congo.

The Soviet Government considers that the Security Council's Resolution S/4387 of 14 July 1960, which served as a basis for the United Nations Operation in the Congo, was implemented in violation of the provisions of the United Nations Charter.

Under the United Nations Charter the Security Council, and not the General Assembly, determines which Member States are to participate in carrying out its decisions involving the maintenance of international peace and security.

Article 48, paragraph 1, reads:

> "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine."

From this provision of the Charter it follows that the Security Council alone can determine which of the Members of the United Nations must participate in actions for maintaining international peace and security. The Charter does not invest any other body with such rights.

The United Nations Charter defines also the conditions under which Member States participate in the implementation of the Security Council's decisions for maintaining international peace and security.

These conditions are laid down in Article 43 of the Charter. These provisions of the Charter have also not been observed with regard to the United Nations Operations in the Congo.

What did really take place?

The Secretary-General and not the Security Council, as is provided by Article 48 of the Charter, determined the list of States which were invited to participate with their armed forces or otherwise in the United Nations Operations in the Congo. The Security Council has in fact been debarred from directing the United Nations Operations in the Congo.

The United Nations Operations in the Congo have been directed by the Secretary-General alone.

The question of technical and financial assistance for the United Nations Operations in the Congo also was solved in violation of the Charter.

Disregarding the Security Council, the Secretary-General applied to the General Assembly for appropriations to defray the expenses involved in the United Nations Operations in the Congo; and the General Assembly, in its turn, without being so entitled by the Charter, adopted a resolution on appropriations for those operations.

It is precisely due to these violations of the Charter that the Soviet Government refused to acknowledge the legitimacy of the resolutions adopted by the General Assembly on the appropriations for the United Nations Operations in the Congo and declared that it would not consider itself committed to any extent by such unlawful resolutions.

Now, Mr. President, I would like to say a few words with reference to the interpretation of Chapter VII of the Charter in relation to the United Nations Operations in the Congo, that was proposed by the representative of Canada in his statement here on 15 May.

The distinguished representative of Canada asserted that Articles 42-46 of the Charter, prescribing the procedure and conditions under which the Security Council can use armed forces for maintaining international peace and security, have nothing to do with the United Nations Operations in the Congo, and that, in this case, the Security Council has been acting in accordance with Articles 33-38 and also Articles 39 and 40 of the Charter.

Such an interpretation of the United Nations Charter with regard to the United Nations Operations in the Congo is astonishing, if I may use the language of my distinguished colleague from Great Britain.

Articles 33-38 come under Chapter VI of the Charter "Peaceful settlement of disputes".

Is it possible to describe the United Nations Operations in the Congo, involving the use of armed forces, as a "peaceful settlement of disputes"? My submission of course is, it is not possible.

The present case is concerned with the measures involving the use of armed forces that the Security Council may undertake only in accordance with Chapter VII of the Charter.

The representative of Canada referred to Articles 39 and 40, Chapter VII. He asserted that Articles 42-46 of the same Chapter have nothing to do with the United Nations Operations in the Congo.

This assertion is essentially wrong.

What then do Articles 39 and 40, to which the Canadian representative proposed to restrict the application of Chapter VII of the Charter in the matter of the United Nations Operations in the Congo, provide?

Article 39 reads:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

Thus, Article 39 refers to Articles 41 and 42 of the Charter, stating that the Security Council undertakes measures for the maintenance or

restoration of international peace and security in accordance with the provisions of Articles 41 and 42 of the Charter.

Other Articles of Chapter VII, and Articles 43 and 48 in particular, stipulate the circumstances and conditions under which States may participate in implementing the Security Council's decision.

A detailed analysis of these Articles is given in the Memorandum of the Soviet Government, and I shall not repeat it.

The only thing I would like to mention, in this respect, is that Article 43 requires the conclusion of an agreement, or agreements, between the Security Council and Member States and the ratification of such agreements by the signatory States in accordance with their constitutional procedures. This, in my opinion, may constitute, to some extent, a guarantee that each Member State would assume only those obligations which it can fulfil and that a State will not be subjected to obligations that go beyond its possibilities and are not in compliance with the Charter.

One more observation with regard to the problem I am discussing. In the written memoranda of the Governments and oral statements of the majority of the representatives of the Western States, it is asserted that any expenses incurred by the organs of the United Nations constitute "the expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, regardless of the legality of the resolutions and measures that caused the expenses.

Thus, an attempt is being made to separate the question of financial obligations of Members of the United Nations from the question of the character and legality of the actions involving corresponding expenditures.

This attempt would be explained by the fact that the creation of the United Nations Emergency Force in the Middle East and the United Nations Operations in the Congo, the allocations in payment of which constitute the matter of the present discussion, were undertaken or conducted, or both, in violation of the United Nations Charter.

For my submission, it is beyond any shadow of doubt that the problem of financial obligations is closely connected with that of the legality of corresponding measures under the terms of the Charter of the United Nations. I note with satisfaction that the United Kingdom representative expressed the same opinion. Here is what he has stated:

> "While one would not readily assume that the General Assembly or the Security Council would act in excess of their powers, if they did so the General Assembly, in my submission, could not apportion the expenses involved under Article 17, paragraph 2. For expenses of the Organization in that Article must by necessary implication mean expenses validly incurred."

The conclusion to be drawn from the considerations I have presented is that the United Nations Emergency Force in the Middle East and the United Nations Operations in the Congo do not impose financial obligations on the Member States.

Now, Mr. President and Members of the Court, I come to the second part of my statement relating to the scope of Article 17, paragraph 2, of the Charter.

The question formulated in the Resolution of the General Assembly 1731 of 20 December 1961 is as follows: Do certain expenditures, and

I quote, "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations?"

Let us discuss this problem after we have dealt with the question of the legitimacy of the activities for which the expenditures are required.

One argument in favour of an affirmative answer to this question advanced by some representatives here relates to the competence of the General Assembly with regard to financial matters.

Proceeding from the assumption that the General Assembly is the sole organ of the United Nations vested with competence in financial matters, these representatives have inferred that the powers of the General Assembly in this field are unlimited. In my submission this assertion is untenable.

The United Kingdom representative had to admit that not only the General Assembly but also the Security Council had some competence in financial matters.

But even if the General Assembly were the sole organ having financial authority, that would not, indeed that could not, mean that its power is unlimited.

The competence of each organ of the United Nations is determined by the provisions of the United Nations Charter. The Charter is a treaty concluded between States, and no organ of the United Nations can amend it except according to the provisions described by the Charter itself.

To suggest that the States Members of the United Nations have given to the General Assembly unlimited power to impose upon them financial obligations would amount to an assertion that a supranational financial authority has been created. This is certainly too sweeping an assumption which finds no confirmation in the provisions of the Charter.

The financial competence of the General Assembly rests on the provisions of Article 17 of the Charter, the relevant paragraphs of which read as follows:

> "First, the General Assembly shall consider and approve the budget of the Organization.
>
> Second, the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

Here again it has been suggested that inasmuch as the language of Article 17 is general and contains no limitations, this Article relates not only to the regular budget of the Organization but also to such extraordinary expenditures as those for the United Nations Emergency Force and the United Nations Operations in the Congo.

It is however clear that a correct conclusion with regard to the actual province of Article 17 of the Charter must be drawn not from the analysis of this single Article, but from the analysis of the relevant provisions of the Charter as a whole. The reason for this is that a general rule does not exclude the possibility of a particular rule or rules relating to specific situations.

Such particular rules do exist, and the United Kingdom representative has been forced to admit it. I have in mind Article 43 of the Charter, the relevant provisions of which read as follows:

> "First, all Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accord-

ance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

Second, such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided."

Speaking of Article 43, the distinguished representative of Italy and also the distinguished representative of Norway endeavoured to create an impression that it had no bearing on financial problems. However, the language they used was evasive. They cautiously avoided being specific and that in my opinion is significant.

The United Kingdom representative ventured, however, to express the opinion that Article 43 of the Charter covered also financial questions and that agreements between the Security Council and the Member States concluded under this Article might include financial arrangements.

The analysis of the relevant provisions of the Charter leaves no doubt that while Article 17 lays down a general rule, Article 43 contains a particular rule, a *lex specialis*, which relates to expenditures for certain actions for the purpose of maintaining international peace and security. Such actions may be undertaken in pursuance of a decision of the Security Council. If actions of the United Nations Emergency Force and the United Nations Operations in the Congo were undertaken and carried out in compliance with the provisions of the Charter, they would undoubtedly fall within the category of actions contemplated in Article 43 of the Charter.

The reason why all arrangements for such actions as the use of armed forces have been put into a separate category is not difficult to see.

Such measures have an extraordinary character and they may affect vital interests of States, including their national economy.

Now, Mr. President, I come to the question of United Nations practice with regard to appropriations for the United Nations Emergency Force and the United Nations Operations in the Congo.

The statements of some Governments say that the General Assembly resolutions concerning the financing of the United Nations Emergency Force in the Middle East and the United Nations Operations in the Congo use the language of Article 17 of the United Nations Charter and that this allegedly demonstrates the intention of the General Assembly to act under this Article.

An analysis of the circumstances in which the General Assembly resolutions concerning the financing of the above-mentioned United Nations Operations were adopted and also an analysis of the texts of those resolutions lead us to an entirely different conclusion.

The General Assembly has never, either directly or indirectly, regarded the expenses of the United Nations Emergency Force in the Middle East as "the expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

As far as the United Nations Operations in the Congo are concerned, the General Assembly's Resolution of 20 December 1961 is in quite the opposite sense.

I should like to remind you briefly of the history of the adoption by the General Assembly of the resolutions concerning the financing of the United Nations Operations in the Middle East and in the Congo.

Let us consider first the resolutions of the General Assembly or, more precisely, the relevant paragraphs of these resolutions concerning the financing of the United Nations Emergency Force in the Middle East.

The first mention of the financing of the United Nations armed forces in the Middle East is found in the General Assembly Resolution 1001 (E-I)—document A/Res./395 of 6 November 1956.

Paragraph 5 of this Resolution reads:

> "Approves provisionnally the basic rule concerning the financing of the Force laid down in paragraph 15 of the Secretary-General's report."

The basic procedure relating to the financial allocations for the armed forces, that was approved by the General Assembly as a *provisional* measure, consisted of the following:

> "A basic rule which, at least, could be applied provisionally, would be that a nation providing a unit would be responsible for all costs for equipment and salaries, while all other costs should be financed outside the normal budget of the United Nations."

I have quoted paragraph 15 of the Secretary-General's report, document A/3302, relating to the plan for establishing the United Nations Emergency Force, the very paragraph that was approved as a provisional measure by the General Assembly as a basic procedure for the financing of the United Nations Emergency Force.

What has it in common with Article 17? Where is the language of Article 17 of the Charter?

The basic procedure for financing the United Nations Emergency Force proposed by the Secretary-General and *approved* as a provisional measure by the General Assembly embodies the suggestion that a State providing a unit would be responsible for all costs, for equipment and salaries, while all other costs should be financed *outside* the normal budget of the United Nations.

This procedure seems to stress even more strongly that the expenses needed to meet the maintenance costs of the United Nations armed forces have nothing in common with the ordinary expenses within the meaning of Article 17, paragraph 2, of the United Nations Charter.

This thesis has also been definitely stated in the subsequent United Nations resolutions concerning the financing of the United Nations Emergency Force and in the resolutions regarding the Secretary-General's proposals on the subject.

In his reports and oral statements the Secretary-General more than once made recommendations to the General Assembly to consider the expenses of the Emergency Force as "the expenses of the Organization" within the meaning of Article 17, paragraph 2. But not one of these recommendations was approved by the General Assembly.

I should like to refer, for instance, to the Secretary-General's report on "the administrative and budgetary measures relating to the United Nations Emergency Force" (document A/3383), submitted to the XIth Session of the General Assembly. In paragraph 5 of this report the Secretary-General recommended that

> "... the General Assembly decide at an early date on the methods of allocating to Member States the costs of the Force to be financed by the United Nations".

This recommendation by the Secretary-General was not approved. The General Assembly refused to consider the question of allotting to States Members contributions to meet the costs of the Emergency Force as had been recommended by the Secretary-General in paragraph 5 of his report.

In its Resolution 1122 (XI) of 26 November 1956, the General Assembly repeated the essence of paragraph 5 of its Resolution 1001 (E-I) of 6 November 1956 and requested the Fifth Committee and, as appropriate, the Advisory Committee on Administrative and Budgetary Questions, to consider and, as soon as possible, to report on further arrangements that need to be adopted regarding the costs of maintaining the Force.

If the General Assembly, in making allocations in respect of the Emergency Force, intended to act under Article 17 of the Charter, I wonder what was the reason for requesting the Fifth Committee and the Administrative and Budgetary Committee to consider and present a specific report relating to the further measures that must be taken in regard to the maintenance costs of the Emergency Force.

There can be no doubt that the General Assembly did not intend to consider the financing expenses of the United Nations Emergency Force as "the expenses of the Organization" within the meaning of Article 17 of the Charter, and it is precisely for that reason that the General Assembly requested its Administrative and Budgetary Committee to consider the question of measures for financing the above-mentioned operations.

The intention of the General Assembly not to equate expenditures on the financing of the United Nations Emergency Forces with the expenses of the Organization within the limits of Article 17, paragraph 2, is more obviously expressed in the General Assembly Resolution 1089 of 21 December 1956 which was adopted with regard to the Secretary-General's report (document A/3389) and in the following paragraph of *the Preamble in particular*:

> "Considering that the Secretary-General, in his reports dated 21 November and 3 December 1956, has recommended that the expenses relating to the Forces should be apportioned in the same manner as the expenses of the Organization, considering further that several divergent views, not yet reconciled, have been held by various Member States on contributions or on the method suggested by the Secretary-General for obtaining such contributions..."

I should like you to note that in the extract just cited from General Assembly Resolution 1089 it was said that the Secretary-General

> "has recommended that the expenses relating to the Force should be apportioned in the same manner as the expenses of the Organization".

I stress the words "the expenses of the Organization", meaning the expenses provided for in Article 17, paragraph 2.

Had the General Assembly considered the emergency expenses as "the expenses of the Organization" within the meaning of Article 17, paragraph 2, it would have approved the Secretary-General's recommendations. But the General Assembly did not do that and set up a

Special Committee for studying the question of financing the United Nations Emergency Force.

It seems to be quite clear that the language of the resolutions of the General Assembly does not suggest the intention of the General Assembly to act under Article 17 in regard to the financing of the Emergency Force, but on the contrary these resolutions distinctly differentiate the expenses of the United Nations Emergency Force from the expenses of the Organization within the meaning of Article 17, paragraph 2.

Moreover, the Resolutions of the General Assembly in the most unambiguous manner associate the formula "expenses of the Organization", mentioned in Article 17, paragraph 2, with the ordinary budget of the Organization and stress the quite different character of the expenses for the financing of the Emergency Force.

Under the pressure of some States the General Assembly more than once resumed the discussion of the question of procedure and sources for the financing of the United Nations Emergency Forces.

The Administrative and Budgetary Committee was entrusted with the study of this question. A special committee was set up. The result was always the same—different points of view were stated, but it was invariably confirmed that the expenses of the Emergency Force differ from the expenses of the ordinary budget, and the idea was rejected that the expenses of the United Nations Emergency Force are the same as the expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter.

I wish to refer to the report of the Committee set up by the General Assembly (Resolution 1089 of 21 December 1956) for the discussion of the question of financing the United Nations Emergency Force (Document A/C. 5/707). The relevant part of this report reads as follows:

> "The draft resolution presented by the representative of the United States, on which subsequent discussion in the Committee was largely focussed...",

and I continue to quote:

> "By way of a preamble to this draft resolution, it was proposed that, in addition to calling attention to Resolutions 1122 and 1089 already adopted by the General Assembly on 26 November and 21 December 1956, the view should be recorded that Force expenses constitute United Nations expenditure within the general scope and intent of Article 17 of the Charter, and that such expenses are therefore subject in principle to apportionment among Member States, in accordance with the scale of assessment adopted in Resolution 1087 by the Assembly for contributions to the annual budget of the United Nations."

But the report of the Committee continues:

> "In the course of the ensuing discussion, the opinion was expressed that the proposed preambular paragraph, referred to above, served no essential purpose and that its inclusion in any draft resolution to be submitted to the Fifth Committee could only result in needless debate on an issue of principle concerning which Member Governments had already made their positions clear. Some Members, while accepting the view that the Force expenditures were a United

> Nations responsibility, did not consider that they could properly be regarded as subject to the provisions of Article 17 of the Charter. Others maintained the position previously expressed in the Fifth Committee to the effect that such costs as might be incurred were solely and exclusively the responsibility of the Governments of Israel, France and the United Kingdom and not of the United Nations membership as a whole. Still other members of the Committee held to the view that the provisions of Article 17 were in fact applicable."

The above-mentioned extract from the Special Committee's report clearly indicates that in the question of the financing of the United Nations Emergency Force there was no agreement between Member States.

It was precisely because of this that the Special Committee could not submit to the General Assembly definite recommendations, but limited itself to explaining the different opinions expressed by the Members of the Committee on this subject.

The last resolution of the General Assembly relating to the procedure of financing the Emergency Force has been adopted at the XIIIth Session (Resolution 1337).

The General Assembly requested the Secretary-General

> "to consult with the Governments of Member States with respect to their views concerning the manner of financing the Force in the future, and to submit a report together with the replies to the General Assembly at its XIVth Session".

Such a report has been presented by the Secretary-General to the XIVth Session of the General Assembly.

The replies of the Governments did not indicate much change in the conflicting positions that had been previously expressed. They failed to come to any general agreement when this question was discussed at the XIVth Session of the General Assembly. The XIVth Session of the General Assembly was once more unable to come to any decision on the report of the Secretary-General.

Besides, I would like to state that none of the resolutions were adopted by the General Assembly unanimously. On each occasion a number of Member States expressed their objections of principle against these resolutions, objections grounded on the Charter of the United Nations, and refused to take part in the financing of these operations. In actual fact more than 50% of the Members of the United Nations do not take part in financing the Emergency Force.

Now I wish to invite your attention to the practice of the United Nations with regard to the financing of the United Nations Operations in the Congo. In the Resolution of the General Assembly 1732 (20 December 1961) it is stated that

> "... the extraordinary expenses for the United Nations Operations in the Congo are essentially different in nature from the expenses of the Organization under the regular budget and that, therefore, a procedure different from that applied in the case of the regular budget is required for meeting these extraordinary expenses".

A number of Latin-American countries, and Venezuela and Mexico in particular, were the authors of the draft of this paragraph.

I would refer to the statement of the representative of Mexico in which it is directly pointed out that the object of this paragraph is to emphasize that the expenses of the United Nations Operations in the Congo cannot be considered as the expenses of the Organization within the meaning of Article 17, paragraph 2:

> "As I said in my statement of 3 April 1961, supporting the statement made earlier that same day by the Venezuelan representative when he formally introduced the eighteen-Power draft resolution, the proposal is based on a premise which the sponsors regard as axiomatic. This premise is stated in the second preambular paragraph, which affirms that the character of the extraordinary expenses of these operations"—that is to say, of the United Nations Operations in the Congo—"is fundamentally different from that of the other expenses of the Organization included in the regular budget. In other words, my delegation believes that these expenses cannot be considered as 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter."

However, to be precise I must indicate that the first Resolution of the General Assembly (Resolution 1585) relating to the financing of the United Nations Operations in the Congo included a paragraph to the effect that the expenses of the United Nations Operations in the Congo were "the expenses of the Organization" within the meaning of Article 17, paragraph 2.

But the fact is that this language has been excluded from the subsequent resolutions on the financing of the United Nations Operations in the Congo and substituted by a paragraph of an opposite meaning which I have quoted earlier.

Such are the facts concerning the resolutions of the General Assembly on the financing of the United Nations Emergency Force and the United Nations Operations in the Congo. They confirm our conclusion that the General Assembly has never, either directly or indirectly, considered the expenses of the United Nations Emergency Force in the Middle East as the expenses of the Organization within the meaning of Article 17, paragraph 2.

With regard to the financing of the United Nations Operations in the Congo, the practice has not been consistent. However, in the last resolution the General Assembly has distinctly pointed out that these expenses "are essentially different in nature from the expenses of the Organization under the regular budget" and that therefore for meeting them "a procedure different from that applied in the case of the regular budget is required".

I now come, Mr. President, to the final part of my statement. It has frequently been said here that the existing situation with regard to the financing of the United Nations Operations in the Congo and the United Nations Emergency Force in the Middle East has in itself much danger for the United Nations Organization, and that a negative answer to the question now before the Court may create a threat to the very existence of the United Nations.

The most pathetic statement in this respect was the one by the representative of Australia. Here is what the distinguished representative of Australia has said:

> "A negative answer would, in our submission, threaten the immediate financial solvency of the Organization; it would threaten the ability of the United Nations to bring these two great current peace-keeping operations to their proper conclusion; it would threaten the ability of the Organization to deal with similar problems of peace and security in the future, and indeed would entirely change the character of the Organization."

One question does arise inevitably. Why do representatives of those States, who claim to be the advocates of the strengthening of the United Nations Organization, keep silence about the genuine causes of the present situation, about those who have undermined the very foundations of the United Nations, who flagrantly violated the most important principles of the United Nations Charter and who by such actions brought the Organization to its present financial position?

What was the position of those States at the moment when the British, French and Israelian aggression was taking place?

Some of the States represented here have themselves taken part in that aggression. Undoubtedly the States who started the aggression against Egypt knew beforehand that the attitudes of other Western States—their allies in aggressive military pacts at least—would not be unfavourable to them.

I recall the statement of President Eisenhower, made in connection with the aggression against Egypt in 1956. The President of the United States declared that Great Britain and France, of course, had the right to use force against Egypt, but he simply considered the course they had adopted was not a reasonable one. And such a statement which in fact legally justified the British, French and Israelian aggression, was made despite the fact that the United Nations Charter prohibits the use of force and even the threat of force against the territorial integrity or political independence of any State (Article 2, paragraph 4, of the United Nations Charter).

If the States represented here were so anxious concerning the interests of the United Nations, the question arises why then did they not think of those interests at that time. If they had taken another stand at that time, there would have been no aggression against Egypt, and consequently no United Nations Emergency Force in the Middle East.

Let us take now the United Nations Operations in the Congo. If there had been no Belgian aggression supported by Belgium's partners in the NATO against the young Congolese Republic, there would be no United Nations Operations in the Congo. And this aggression would not have been undertaken if Belgium had not known beforehand that her partners in the NATO would stand up for the aggressor. At all events, this aggression would have been stopped at the very beginning if the Soviet Union's proposals, directed against aggression, had been accepted and implemented and if the Western Powers had not been thwarting the steps directed against this aggression. If the United Nations Operations in the Congo had been conducted in full compliance with the requirements of the United Nations Charter and if the Western Powers had been honestly supporting these actions, the blood of the great Congolese patriot

Lumumba and many other fighters for the independence of the Congo would not have been shed and the foreign mercenaries and the Belgian puppet Tshombe would long ago have been expelled from the country and the Congolese people would have been peacefully constructing their new life.

One may say, of course, "Let bygones be bygones—why should one recall this now? The financial position of the United Nations Organization is very serious, and we must find the way out immediately."

That is not the correct approach, Mr. President and Members of the Court. The facts I have been referring to are not merely a matter of history. They are of great importance in determining the correct approach to the question under discussion, and in our opinion they should be taken into consideration.

From the historical point of view, the question of the financing of the United Nations Emergency Force in the Middle East and the United Nations Operations in the Congo might be no more than an episode in the life of the international Organization.

We should not sacrifice the principles of the United Nations Charter, on which depends the very existence and the future of the Organization, even though by that sacrifice we might reach a more simple solution of this or that current problem.

In this connection, Mr. President and Members of the Court, I would like to invite your attention to a very dangerous tendency which can be seen throughout the written replies of some Governments and also the statements of the representatives which have been made in this Hall.

This tendency consists of opposing the so-called effectiveness of the United Nations to the provisions of its Charter. Roughly speaking, according to this conception, it is necessary to strive for the so-called effectiveness of the United Nations, disregarding the provisions of its Charter and in accordance with the principle: "The end justifies the means".

The above-mentioned tendency emanates from a conception that is usually called "realistic". This so-called realistic conception reflects the main features of the "position of strength" policy and it is an attempt to provide a theoretical justification of that policy.

I do not propose to dwell upon the content of this conception—it is well-known.

I would only like to state that the above-mentioned realistic conception is full of a nihilistic attitude to the international law and in its extreme manifestation regards international law as a legal "strait-jacket" for diplomacy and calls to remove this legal strait-jacket.

The opposing of the effectiveness of the United Nations Organization to the principles of its Charter is in fact nothing else than the manifestation of these nihilistic tendencies irrespective of the motives by which the supporters of such an opposition are impelled.

The opposing of the effectiveness of the United Nations Organization to the observance of the principles of the United Nations Charter is legally groundless and dangerous. It is clear to everyone that the observance of the principles of the United Nations Charter is the necessary condition of the effectiveness of the United Nations. The experience of the United Nations clearly shows that only on the basis of the strict observance of the principles of the United Nations Charter can the Organization become an effective instrument for the maintenance of

international peace and security and the development of friendly relations among States.

Moreoever, the very existence of the United Nations as a world organization depends on the observance by the States of the fundamental principles of the Charter.

And obviously, Mr. President, in resolving the question under discussion the Court should be guided by the provisions of the Charter of the United Nations.

The Government of the Soviet Union submits that, in accordance with the United Nations Charter, the operations of the United Nations Emergency Force in the Middle East, as well as the United Nations Operations in the Congo, impose no financial obligations on the United Nations Members both for the reason these operations were carried out not in compliance with the requirements of the United Nations Charter, and because the expenses of these operations are not the expenses referred to in Article 17, paragraph 2, of the Charter.

Thank you, Mr. President and Members of the Court.

9. ORAL STATEMENT OF MR. CHAYES

(REPRESENTING THE GOVERNMENT OF THE UNITED STATES OF AMERICA)
AT THE PUBLIC HEARING OF 21 MAY 1962, AFTERNOON

May it please the Court:

The issue before the Court is whether the United Nations has legal authority to raise funds for the accomplishment of its paramount purpose, the maintenance of international peace and security.

It has been rightly said here that the question upon which the General Assembly has asked your advice is a precise and limited one. Nevertheless, its answer requires a consideration of fundamental questions of the distribution of powers within the United Nations. It has profound implications for the capacity of the Organization to survive and to realize its aims. In the view of the Government of the United States, no more important question has ever been before the International Court.

The importance of the case is witnessed by the number of Governments that have taken advantage of the opportunity under the Statute of the Court to submit views in writing and orally on the questions at issue. The Court has had the benefit of written statements on both sides of the question from 18 Governments and has, in the last 10 days, heard oral arguments, also, I am glad to say, on both sides of the question, from 8 Governments.

At this stage, there is little to be added by way of detailed exegesis to what distinguished Counsel have already said. Certain remarks have been made in the course of the argument before you calling into question the conduct and the good faith of Governments represented here (including my own) and of some that are not. I reject those remarks, but I do not propose to respond to them. This is not a place where political recriminations, unfortunately common in other forums, should properly be rehashed. And such remarks are, of course, wholly irrelevant to the issues in this case. What may be useful now is to restate the essential structure of the case for an affirmative answer to the Assembly's question, and to respond to the major thrusts that have been made against that case.

The argument for an affirmative answer is straightforward. There is only one article in the Charter dealing with financial obligations of Members, Article 17, paragraph 2. It provides: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." It vests in the Organization the power, by resolution of the General Assembly apportioning and assessing expenses, to require Member States to pay charges lawfully incurred. This is the meaning, and the whole meaning, of Article 17. It is the plain meaning of the text; it coincides with the intention of the framers of the Charter evidenced in the preparatory work; it is reinforced by the unbroken practice of the Organization under the Charter. It reflects, as a Committee of Jurists said in construing the parallel article of the League of Nations Covenant,

"the general principle, a principle applicable to all associations, that legally incurred expenses of an association must be borne by all its Members in common". (*Contribution of the State of Salvador to the Expenses of the League*, A. 128. 1922. V, p. 193.)

The contention has been advanced that the term "expenses", despite its generality, must be read to mean *some* expenses rather than *all* expenses, "administrative" expenses as opposed to "operational" expenses, "normal" expenses in contrast with "extraordinary" expenses. These distinctions cannot be sustained. They are without support in the text of the Charter, in the San Francisco discussions, or in the experience of the United Nations. They cannot be applied coherently in practice. If adopted, they would lead to doubt and confusion about the financial obligations of Members, a field in which, more than most, clarity and certainty are needed for the effective functioning of the Organization. These points have been developed persuasively and in detail by others. May I simply add to the references already before the Court the Note of the Controller in the dossier prepared by the Secretary-General. This Note shows, among other things, that the Working Capital Fund of the United Nations, though not a part of the "regular" budget and though used to meet "extraordinary" expenditures, notably those for peacekeeping "operations", has been consistently provided for by assessment against the Members under Article 17. (*Note by the Controller on Budgetary and Financial Practice of the United Nations*, pp. 41, 55.)

The meaning of Article 17, paragraph 2, then, is this: The United Nations has the power, by resolution of the General Assembly apportioning and assessing expenses, to require the Member States to pay for expenditures lawfully made. I think there can be no doubt that that power was exercised in the resolutions levying assessments to cover the expenditures for the Middle East and Congo Forces. It is true that, on occasion, these expenditures were characterized as "extraordinary", that assessments to cover them were not made in the regular budget, that they were charged against an *ad hoc* or special account. On the basis of these factors, it has been suggested to the Court that the General Assembly was not acting to impose the obligation of payment upon Member States for the assessments made in the resolutions.

Direct expressions to the contrary are many and weighty and have been cited to the Court. But put these aside. Read the financing resolutions together, one after the other. Read especially the operative portions rather than the preambular material. Consider the form in which they are stated, the sharpness of the distinction they make between the voluntary contribution they solicit and the assessments they exact. See the concern they show for the burden upon poorer Members caused by the financial obligations imposed. All this is utterly at odds with the notion that the Assembly did not intend to exercise its power to impose binding assessments. On the other hand, all of the circumstances adduced in support of that notion can be, and have been, explained in terms that are fully consistent with the intention of the Assembly to exercise its power to bind.

If the Assembly has power under Article 17 to impose binding financial obligations for all expenditures lawfully incurred, and if it is granted that the Assembly intended to exercise that power, then the only argument that remains against the binding character of the assessments is that they were not levied to cover expenditures *lawfully* incurred.

A review of the written and oral arguments for a negative answer to the question before the Court reveals that the main thrust of these submissions is indeed directed at the legality of the expenditures themselves; the legality, that is, of the activities giving rise to them.

To what extent, if any, is this question of lawfulness open, assuming, as I think everyone does, that there is no doubt about the formal regularity of the assessing resolutions?

A number of my colleagues have taken the position that the Court need not and should not inquire into the validity of the underlying resolutions establishing and regulating the Congo and Middle East Forces, except, perhaps, to assure itself that these resolutions are not "manifestly invalid". They point to the language of the Resolution putting the question to the Court, and to the debates preceding its adoption, as showing an intention that the Court's inquiry should confine itself to the legal effect of the assessing resolutions alone.

The United States is in full agreement with this position. Certainly, the Assembly had no desire to cast doubt on the validity of its own actions over a five year period. The Court can, in my view, decide this case without an investigation into the power of the Assembly and the Security Council, under the Charter, to adopt the resolutions establishing and governing the Congo and Middle East Forces. If it can do so, it is bound to do so, both by the terms of the Resolution putting the question and on general principles of constitutional adjudication which prescribe that issues of constitutional power should be passed upon only when that is essential to the decision of the case.

The first way by which to avoid considering the validity of the underlying resolutions is simply to assume that they are valid. The Assembly has the right to define its question as it chooses, so long as the limitation does not stultify the Court's processes. If it does not wish its actions called in question, it may ask the Court to consider the effect of the assessing resolutions on the assumption that the underlying resolutions are valid. The Court should accept that assumption, at least where it does not do violence to common sense or to the Court's own sense of the requirements of adjudication. In this case, the assumption of validity is far from being absurd or far-fetched or patently untenable. Quite the reverse. It is the argument against validity which is fine-spun, and relies on subtle and attenuated argumentation, elaborating limitations, supposedly implied or inherent, upon powers expressly granted. In these circumstances, the Court need not review the Assembly's own considered judgment that its actions were lawful, a judgment expressed initially when the forces were constituted, a judgment reiterated as questions of their mission or financial support came before the Assembly, and a judgment stated finally by the precision with which the Assembly formulated its question to the Court.

Secondly, in a sense, the question of validity is logically irrelevant to the decision the Court must make. Suppose, for the sake of argument, that this Court, or some other authoritative organ, were now to determine that the resolutions establishing UNEF and ONUC were "unconstitutional". The decision could not erase the fact that UNEF and ONUC had existed. They existed by virtue of resolutions adopted without dissenting votes. These resolutions are themselves interpretations of the Charter holding that the actions taken are within the powers granted to the organ adopting the Resolution. Until they are authoritatively set

aside, persons or States dealing with the Organization in respect of matters covered by the Resolutions were entitled to regard them as valid and effective, at least in the absence of an important irregularity in the procedure by which they were adopted or a substantive invalidity so patent as to amount to a manifest usurpation. If, acting pursuant to such resolutions, the Secretary-General entered into obligations committing the United Nations to pay for goods or services furnished by Member States or private persons, those obligations are binding in law upon the United Nations as an organization. It was legally obliged to repay them. And this Court has said, as to expenditures arising out of "obligations already incurred by the Organization":

> "the General Assembly has no alternative but to honour these engagements".

I refer to the case *The Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (*I.C.J. Reports 1954*, pp. 47, 59).

On this line of reasoning, I believe the Court may give an affirmative answer to the question put to it by the General Assembly without examining the substantive validity of the resolutions by which the Congo and Middle East forces were created, at least in so far as those assessments are required to cover existing contractual obligations of the Organization to pay money for goods and services furnished. Since the United Nations deficit is estimated at $170 million as of 30 June 1962, while the arrearages on assessments levied under the resolutions before the Court are at most only $150 million, this analysis would lead to an affirmative answer as to all past assessing resolutions.

As I understand them, the submissions of the Governments of the Netherlands, the United Kingdom and Ireland upon this point do not differ substantially from the arguments I have just made.

Let me repeat. In the words of the Attorney-General of Ireland,

> "the Court is not compelled to concern itself with the question of validity and can answer the question on which advice is sought without investigating this issue".

I submit that it should do so.

But if the Court itself should conclude that it must examine the validity of the underlying resolutions in order to arrive at an answer to the question put by the Assembly, then, in my view, the Resolution putting the question does not preclude such an inquiry. The written statement of the Government of France seems to say otherwise—I quote from page 130 of the booklet of printed statements:

> "... the question put to the Court does not enable the latter to give a clear-cut opinion on the juridical basis for the financial obligations of Member States or on the United Nations constitutional problems underlying them".

And the statement concludes, at pages 134-135:

> "To sum up, the Government of the French Republic considers that the circumstances in which the Court has been consulted are not such as to make it possible to obtain the legal opinion which is considered necessary."

This, in my submission, cannot be so. The Assembly wanted advice on its question. It did not mean to put to the Court a question which it could not answer, or to place conditions upon the Court which would prevent it from answering. This was expressly stated in the debates before the adoption of the Resolution. The representative of the United States said in the Fifth Committee consideration of the Resolution—and I quote now from the *Official Records*, General Assembly, 16th Session, Fifth Committee, 879th Meeting, pages 292-293:

> "It was the sponsors' intention that the Court should consider the question exhaustively and in all its aspects."

The representative of the United Kingdom added in Plenary Session of the Assembly—again I quote from the 16th Session of the General Assembly, *Provisional Verbatim Record*, 1086 Plenary Meeting, A/PV/1086, at page 62:

> "... the International Court, in considering the question which was formulated in the draft resolution recommended by the Fifth Committee, will undoubtedly be able to take into consideration all relative provisions of the Charter. Furthermore, it will of course be open, under the Statute of the Court, to any Member State that wishes to do so to submit to the Court its views on the conformity with the Charter of the decisions taken in regard to the expenditures referred to in the draft resolution..."

On this basis, the Assembly accepted the resolution as reported from the Fifth Committee and rejected a French amendment that would have broadened the statement of the question.

From this it follows that, if the Court should differ with the views, advanced by the Governments of the United States, the United Kingdom, Australia, Ireland and others, that the issues can properly be limited so as to avoid passing upon the validity of the underlying resolutions, then it is free to inquire into these broader questions.

Now may I digress here for a moment to deal with another challenge to the Court's competence. The South African Government contends that, and I quote from page 269 of the printed volume,

> "the whole question submitted for an advisory opinion could only be answered if the Court is fully informed as to the *causa* of the expenditures authorized by the relative General Assembly resolutions".

The short answer to this is that the question put to the Court deals only with "expenditures *authorized* in the General Assembly resolutions...". Those resolutions cannot be taken to have *authorized* expenditures for activities outside the terms of the basic resolutions establishing and governing the Forces.

Since there may be circumstances in which the validity of the underlying resolutions might be considered by this Court, and since certain Governments have argued the matter at length, let me address myself to their principal contentions.

These are two. According to the first, the United Nations is debarred from organizing any international force, except by the means provided in Article 43 of the Charter—that is, special agreements negotiated "on

the initiative of the Security Council" to be "concluded between the Security Council and Members ... or groups of Members". And the United Nations may not deploy any international force except as provided in Articles 44 through 48 of the Charter; that is, at the direction of the Security Council and with the assistance of the Military Staff Committee.

The second argument is that, even if the United Nations can raise an international force apart from Article 43 by voluntary contribution of troops and equipment, it must limit itself to voluntary financial contributions to support such a force.

Let me take up each of these arguments in turn.

The statement of the Government of the Czechoslovak Socialist Republic says:

> "The pertinent provisions of the Charter, in particular Articles 43 and 48, provide the basis for assistance to be made available by Member States in all operations taken in the name of the Organization...
>
> Any other way of undertaking actions by the Organization with the use of armed forces goes beyond the principles of international co-operation in the efforts for the preservation of peace and security, enunciated by the United Nations Charter, and can in no way establish legal obligations binding the Member States under Article 2, paragraphs 2 and 5, of the Charter." (That is at p. 178 of the printed booklet.)

In the statement of the Government of the Union of Soviet Socialist Republics the same point is made:

> "... Chapter VII of the Charter envisaged that it was the Security Council alone and not the General Assembly that may set up international armed forces and take such action as might be necessary to maintain or restore international peace and security, including the use of such armed forces." (That is at p. 271 of the Soviet statement.)

Thus, according to the Soviet Union, the Middle East Force, authorized by the General Assembly, was unlawful *ab initio*. The United Nations operations in the Congo, although authorized by the Security Council, are also invalid, it says, because the procedural provisions of Articles 43 and 48 were not complied with.

The text of Article 43 demonstrates that these assertions are unsound. On its face, the Article merely establishes a procedure by which Members are

> "to make available to the Security Council, *on its call* ... armed forces, assistance, and facilities ... necessary for the purpose of maintaining international peace and security".

With the implementation of that procedure, the Security Council would not have to depend on volunteers, but could have required that military force be furnished to it. There is no suggestion in the text of the Article that it provides the exclusive method for raising armed forces. On the contrary, it addresses itself to a very special case, the use of armed forces without the contemporaneous consent of the Member State furnishing them.

This conclusion is reinforced by the context in which Article 43 is placed in the Charter. The subject-matter of Chapter VII is "Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression". Article 39 opens the Chapter by providing that the Security Council shall determine the existence of such events and shall make recommendations or take decisions to deal with them. Article 40 describes provisional measures; Article 41 provides for sanctions short of the use of force. Only when lesser measures are considered inadequate may the Security Council take action by military force "as may be necessary to maintain or restore international peace and security". What action is contemplated? I quote the Article:

> "... demonstrations, blockade, and other operations by air, sea, or land forces...",

that is, the commitment of UN military forces to battle.

It was to provide forces that could be requisitioned for this purpose, for military hostilities, that agreements under Article 43 were contemplated. Because such forces were subject to being committed to action by mandatory decision of the Security Council, an advance agreement ratified according to the constitutional processes of the Member States was required.

All this is underscored by the subsequent provisions of the Charter. According to Article 44, when the Security Council "has decided to use force" it must invite participation in its deliberations by a Member before summoning its armed forces under an Article 43 agreement. Article 45 deals with "urgent military measures"; Article 46 with "plans for the application of armed force"; Article 47 provides for a Military Staff Committee, responsible for "strategic direction of any armed forces placed at the disposal of the Security Council", under Article 43; and, finally, Article 48 provides that the Security Council shall designate the Member States to take "action" required to carry out its "decisions".

Thus it is seen that the purpose of Chapter VII is to provide for the most far-reaching of the responsibilities entrusted to the United Nations —that of taking decisions binding on the Members to bring international force to bear, through active military hostilities if need be, against the will of the aggressor—indeed, to break his will.

The occasions for the exercise of such powers will be rare—they will be moments of supreme crisis. Given the magnitude of the powers envisioned, it was appropriate that they be surrounded with the elaborate procedural safeguards of Chapter VII: Security Council veto, the necessity of prior special agreements ratified by Member States, provisions for qualified membership in the Security Council, and a requirement for the exhaustion of lesser remedies. All these restrictions and safeguards are unnecessary for the more usual range of peace-keeping activities authorized by Articles 11 and 24, even when the instrumentality employed may be men of the armed forces of Member nations.

Activities outside the purview of Chapter VII involve no "action" to carry out "decisions" binding on Member States. I use those terms "action" and "decision" in the special sense they have in Chapter VII. The States concerned, when action is taken outside Chapter VII, would have to consent to those activities in each particular case, either by supplying forces or by admitting them to their territory. This safeguard of contemporaneous consent is adequate to the case.

The special and unique possibility provided in Chapter VII for taking binding decisions for action, including military action, against an aggressor was thought to be the salient advantage correcting the salient weakness that had doomed the League of Nations to ineffectiveness. Speaking in plenary session at San Francisco, the Rapporteur of the Committee on Enforcement Measures, M. Paul-Boncour, made this clear (and I quote at some length from his statement, which is to be found in Vol. I of UNCIO, at p. 688. The emphasis in the quotation is the Rapporteur's):

> "When everything possible has been done to maintain peace, if the aggressor persists in his purpose, there is only one way to oppose him, and that is by *force*. But the Covenant of the League merely provided for the recommendation of military sanctions involving air, sea, or land forces, and consequently left the nations the option of backing out.
>
> Today this flaw has been eliminated. In the Charter sanctioned by this plenary assembly ... the *obligation* for all Member States to help in suppressing aggression is plainly established. An international force is to be formed and placed at the disposal of the Security Council in order to insure respect for its decisions. This force will consist of national contingents arranged for in advance by special agreements negotiated on the initiative of the Security Council. These special agreements will determine the composition of this force, its strength, degree of preparedness, and location. If called upon to do so by the Security Council, the entire force will march against a State convicted of aggression, in accordance with the provisions for enforcement as laid down by the Security Council."

In the event, of course, it has not turned out that way. The Security Council has never taken a binding decision to use force under Article 42 and has never negotiated an agreement under Article 43. But the Charter meant to *add to* and *reinforce* the peace-keeping powers of the League, not to subtract from them. There was no desire to withdraw the power of recommendation of military sanctions involving land, sea or air forces. There was no purpose to shackle these other peace-keeping enterprises with limitations and restrictions designed solely for the terrible eventuality of a war against aggression. It was San Francisco's intention to eliminate the "option of backing out" that M. Paul-Boncour described in the League Covenant, not the option of coming in.

Now, I should like to recall to the Court that voluntary peace-keeping operations not unlike those here under consideration were undertaken by the League of Nations from its earliest days.

In 1920, a dispute involving considerable fighting broke out between Poland and Lithuania over possession of the city of Vilna. The League Council proposed, and Lithuania and Poland agreed, that the inhabitants of Vilna and its province should themselves decide whether to belong to Poland or to Lithuania. The vote was to be organized by the League. Polish troops, which had occupied Vilna, were to be replaced by an international force acting under the orders of the League Council. A number of Members of the League were invited to contribute a company each to the proposed international force, and nine countries agreed. The international force, consisting of some 1,500 men, did not actually enter

upon the disputed territory, but preparations for its organization and dispatch were far advanced and considerable expenses were incurred on the strength of the Council's resolutions. I should say that the reason the force did not enter upon the disputed territory was the objection of a neighboring nation—a factor not present in the Middle East and Congo operations. How were the expenses incurred in the preparation of the force borne? The budget submitted to the League Assembly indicates that the expenses of the force, in the amount of 422,260 gold francs, were borne not by the States contributing the troops, but by the League. (Chapter 3 of the Budget for 1924, League of Nations Document A.4 (2). 1923.X, at p. 6; Item: "Reimbursement of expenses incurred by Denmark, Norway and Sweden in 1920 for the establishment of an international force for the conducting of the proposed plebiscite in Vilna".)

The history of the League of Nations also provides an example of a voluntary international force that was not only proposed and incurred expenses, but actually discharged its duties in full. You will recall that in 1935 a plebiscite was held to determine whether or not the Saar should rejoin Germany. The League Council decided that an international force was needed to ensure order during the plebiscite period. Accordingly, at the end of 1934, an International Force of 3,300 men was established. Its entry into the Saar was with the agreement of the Governments of Germany and France. Contingents were voluntarily contributed by Britain, Italy, Sweden and the Netherlands. These facts appear from the Resolution of the League Council of 8 December 1934. (*Official Journal*, 1934, p. 1730.) Like the Council Resolution establishing the Vilna force, this Resolution made no reference to the sole article of the Covenant, Article 16, that provided for recommendations on the use of armed force. The Resolutions in both cases were of course approved unanimously by the Council Members. The expenses of the Saar force, over and above the normal costs of the troops already provided for in the national budgets of the Governments contributing them, were not met by those Governments, but were charged to the fund for expenditure in connection with the plebiscite. (*Ibid.*, pp. 1762-1763, 1841-1842.) The international force for the Saar performed its duties with conspicuous success.

The possibility of voluntary contribution of military force was not only sanctioned by the practice of the League, it was recognized in discussions of the United Nations almost from the beginning. You will recall the construction of the Charter put forward by the Secretary-General in the Trieste case in 1947, already read to the Court by M. Cadieux. (Security Council, *Official Records*, 2nd year, 91st Meeting, pp. 44-45.) There the Secretary-General maintained that, in the light of its broad responsibilities under Article 24, the Security Council was not restricted to powers specifically enumerated in the Charter. The Council, acting on this construction, accepted the Trieste instruments there in question by a vote of 10-0 with one abstention, on the understanding, as expressed by the Secretary-General, that the powers enumerated in the Charter

> "do *not* vest the Council with sufficient authority to undertake the responsibilities imposed by the instruments in question".

Thus the Council must have acted on the view of its implied powers set forth by the Secretary-General.

A year later, when the Palestine partition plan was under discussion, the Secretary-General explicitly applied this view of the Security Council's powers to the question of raising armed forces. I refer to a working paper prepared by the Secretariat for the United Nations Palestine Commission covering, among other things, the question of providing an international force to implement the partition plan. In it, the Secretary-General addressed this issue:

> "Under what conditions the Security Council may employ an international armed force."

The paper recognizes that:

> "The Security Council might employ an international force in the Palestine case ... in virtue of Article 42 of the Charter..."

To do so, it says, the Council should find as a precondition "the existence in Palestine of a threat to the peace, a breach of the peace or an act of aggression". But it could *also* raise an international force *apart* from Chapter VII. The General Assembly "had *requested* the Security Council, *inter alia*, to take necessary measures as provided for in the plan for its implementation". And this aspect of the Assembly's resolution, taken in conjunction with Article 24 of the Charter, would authorize the recruitment of an armed force. The Secretary-General concluded, and referred expressly to the interpretation in the Trieste case, that this course would be followed by the Security Council only "after previously having reached the conclusion that no threat to the peace, breach of the peace or act of aggression had occurred"—that is to say, when the necessary precondition for action under Chapter VII was absent.

> "An international armed force set up on this basis", said the Secretary-General, "would not be one in the sense of Chapter VII of the Charter. It would have the character of an international police force for the maintenance of law and order in a territory for which the international society is still responsible." (The document is A.AC. 21/13, 9 February 1948, pp. 8-11.)

Again, in 1948, after the assassination of Count Bernadotte, the Secretary-General proposed the establishment of a United Nations Guard. The Guard was to be directly recruited and equipped by the Secretary-General, was to serve under his instructions, and was to be financed out of the regular United Nations budget. Although the United Nations Guard itself did not materialize, the United Nations Field Service, so recruited, so directed, and so financed, was derived from this conception. It is in action today with UNEF and ONUC, as well as on other UN missions.

Finally, the Uniting for Peace Resolution, adopted in 1950 by a vote of 52-5, with 2 abstentions, foresaw the establishment of international forces on a voluntary basis and outside the scope of Article 43. Indeed agreement on a procedure for establishing such forces was one of the prime purposes motivating that resolution.

In all this, I have the feeling I have been belabouring the obvious. For certainly a sovereign State may volunteer its armed forces for any purpose whatever, so long as it does not trench upon the right of any other sovereign and so long as it obtains the consent of those through or

upon whose territory the forces operate. A State, or group of States, would be free, if the necessary consents were obtained, to use its forces to maintain the peace, as the Middle East and Congo forces are now being used. The United Nations Charter does not limit that right. And surely what States might band together to do outside the United Nations, it is not forbidden that they do through the mechanism of that Organization whose primary purpose is the maintenance of international peace and security.

I shall not devote much time to the question whether, once we are satisfied that the procedures of Article 43 are not themselves exclusive, the Security Council *nevertheless* has the sole right to maintain armed forces for peace-keeping operations to the exclusion of the General Assembly. The Charter provisions are plain. The Security Council's responsibility for the maintenance of peace and security is "primary", not exclusive. The General Assembly, under Articles 10 and 11, has full authority to make recommendations on questions relating to the maintenance of international peace and security. There are only two exceptions. It may not consider such questions while the Security Council is itself so engaged and it must refer to the Council those questions on which "action" is required—that is to say, action pursuant to decisions binding the Members, which the Security Council alone can take. Neither of these exceptions applies to recommendations for the contribution of forces and for their use with the consent of the States concerned, where, as with UNEF, the Security Council is not seized of the matter at the time the resolution is adopted.

For the establishment of an armed force at the call of the Security Council, in accordance with its binding decisions, Article 43 provides the only procedure, true. But the Court will search the Charter in vain to find any prohibition against *voluntary* use of armed force upon the recommendation of either the Council or the Assembly, and with the consent or at the request of nations whose security is threatened. And the Court will be slow to rule that, in adding to the arsenal of powers available to the United Nations the supreme power to order mandatory application of military force, the framers of the Charter withdrew or restricted well-known powers of a lesser character based on the consent of all interested parties.

This leads us to the second argument against the validity of the underlying resolutions of the General Assembly and the Security Council establishing the forces in question—an argument, on the surface, less sweeping than the one we have just considered. The argument grants that the United Nations could, either through the Security Council or the General Assembly, recommend that Member States contribute forces for the use of the Organization. But how, it asks, can the Organization compel a Member to pay for the expenses of forces that it could not compel that Member to contribute? Voluntary forces, it concludes, must be financed by voluntary contributions.

This is basically the argument put forth in the letter to the Court from the Government of the French Republic. Quoting its representative in the General Assembly debate on the Advisory Opinion Resolution, the letter says:

> "Firstly, the General Assembly has not the right, merely by voting on a budget, to extend the competence of the United Nations; ...

> Secondly, in the case of any United Nations organ, the power to make recommendations to Member States is not sufficient to impose upon them any form of obligation.
>
> Thirdly, the legal power to make recommendations to Member States does not include permission to create, by the circuitous method of a direction addressed to the Secretary General ... any obligations for the States." (P. 75.)

But the argument proves too much. Carried to its logical conclusion, it would mean that the Organization could not compel its Members to pay for anything, except expenditures flowing from binding decisions of the Security Council. With the exception of such decisions, *all* actions of the Organization are either recommendations to the Member States or directions to the Secretary-General or other subsidiary organs; and, in the French view, these cannot give rise to binding financial obligations. The French submission recognizes that such a conclusion is untenable. Thus, it is led to assert the distinction between administrative and operational expenses which, as appears elsewhere, is unwarranted in the language or history of the Charter and would be unworkable in practice.

More fundamentally, in my view, the French argument puts the case the wrong way. The United Nations can pay for what it is empowered to do. If it can accept volunteers, it can defray the financial obligations generated by the activities of those volunteers.

In the case before the Court, the fact that the United Nations could not compel Members to contribute contingents to an international force is beside the point. It was not obliged to appeal to States for such contingents. This was a convenient way to proceed, but not the only way. The Assembly might have chosen to raise the force by direct recruitment. To do so, it might have needed the consent of individual States to pursue recruiting activities on their soil, or with respect to their nationals; and it would have needed the consent of the States on whose soil the recruits were to be housed, trained or used. But if those consents were obtained, it is hard to see what would prohibit the Organization from raising such a force and, if it did so, from paying for it by assessment. Indeed, just this process was contemplated for the establishment of the proposed United Nations Guard to which I have referred.

Member States do not find their protection against such action—if protection is needed—in legal strictures of the Charter, but in the political requirement of a two-thirds majority in the General Assembly both to initiate the action and to make the necessary financial arrangements. If these majorities can be mustered; if the activities engaged in are immediately related to the express purposes of the United Nations; if they are approved in due course according to the regular procedures of one of its organs having competence over the subject-matter; if they do not contravene any prohibition of the Charter nor invade the sovereign powers of individual States—if conditions such as these are satisfied, I can perceive no reason why the United Nations should be prohibited from levying assessments to pay for goods and services needed for those activities. The goods and services may be furnished by States Members. Often they will be furnished by private agencies or individuals. In neither case could the United Nations *require* that they be made available. But I do not see why, in either case, this should militate

against the Organization's power to raise money by assessment to pay for them.

Thus, in my view, the French argument falls to the ground. It may have a certain plausibility to say that, if the Organization cannot compel a State to contribute forces, it cannot compel it to pay for forces contributed by others. But it would be equally plausible and equally erroneous to say that, since a national government cannot compel one of its citizens to work on a dam, it cannot tax him to pay for the work of others.

If any inquiry at all is to be permitted into the validity of the underlying resolutions establishing UNEF and ONUC, it must be directed to the substantive question: what can the United Nations do? What it can do, it can finance under the provisions of Article 17.

Mr. President, Members of the Court, the framers of the Charter and the people of the nations adopting it resolved together "to save succeeding generations from the scourge of war". They named the first object of their efforts: to maintain international peace and security. This Court in deciding this case will also decide, in large measure, whether they succeeded.

Mr. Justice Oliver Wendell Holmes said in a great case on the treaty power under the United States Constitution:

> "... when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism... The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago..." (*Missouri* v. *Holland*, 252 U.S. 430, 433 (1920).)

The question before the Court must be addressed in the light of the whole experience of the United Nations Organization. What is that experience?

The innovation of the Charter, the power of the Organization acting through the Security Council to compel the contribution of military forces for military action against aggressors, this innovation was stillborn. If it had been the only method available to the Organization for using armed forces to meet threats to the peace, it may be said with some confidence that the worst of such threats would have remained unmet, and the Organization might now be in the same state as was the League of Nations fifteen years after its establishment.

Instead, however, a power that *was* available to the League, the power to take voluntary collective measures using troops of Member States as instruments in appropriate cases, that power took on a new vitality in dealing with the kind of threats to the peace we have had in the post-war world. By discriminating but imaginative use of this power, through 15 years and under three Secretaries-General, the Organization has been able to carry out its first purpose, to keep the peace. In Palestine and Kashmir, on the Gaza strip, in Lebanon, and now in the Congo, armed contingents, contributed voluntarily by their own Governments and acting with the consent of all States concerned, have operated successfully under the flag and the command of the United Nations to

safeguard international peace and security. In Korea, a United Nations force of national contingents, furnished without the compulsion of a Security Council decision, fought successfully to restore the situation as it existed before hostilities began.

The Court is asked to ignore this history, to strike down the one method by which experience has shown the United Nations can effectively summon military forces to deal with threats of aggression and breaches of the peace. The Soviet argument would reject this method out of hand. It would confine the Organization exclusively to the Chapter VII procedures which experience so far has shown to be sterile and useless. The French submission would accomplish the same result, not by prohibiting entirely the establishment and operation of United Nations forces outside the purview of Chapter VII, but by cutting off the possibility of financing such forces through assessments under Article 17. I said a moment ago that what the United Nations can do, it can pay for. The converse is also true—what it cannot pay for, it cannot do. The French position, equally with the Soviet, would bring to an end the use of United Nations forces for peace-keeping missions.

Mr. President, Members of the Court, if I may be permitted to refer again to the court I know best, the Supreme Court of my own country, it is, like this one, a custodian of a great charter granting and allocating political power to be exercised in pursuit of large purposes.

One of the early historic cases to come before that Court was *McCulloch* v. *Maryland*. That case too concerned the fiscal power granted by the Constitution to the entity which it had created. The question was whether the Federal Government had power to incorporate a central bank—to establish a subsidiary organ—when neither the power to incorporate nor the power to engage in banking were expressly granted in the words of the Constitution.

Chief Justice Marshall, the first great Chief Justice, wrote the decision in that case. He said:

> "A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and all of the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never by understood by the public, its nature, therefore, requires, that only its great outlines should be marked, its important objects, designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves... In considering this question, then, we must never forget, that it is a *constitution* we are expounding." (3 *Wheaton* 406 (1819).)

This injunction—we must never forget it is a Constitution we are expounding—is classic in American jurisprudence. It is, indeed, as the Attorney-General of Ireland remarked the other day, a general principle of law recognized by civilized nations. The principle found expression in the jurisprudence of this Court when it said:

> "Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being

essential to the performance of its duties." (*Reparation for Injuries suffered in the Service of the United Nations, I.C.J. Reports 1949*, pp. 174, 182.)

The Court needs no reminder that it is dealing with a constitutive instrument, regulating, within its scope, important relations among men and nations, meant to endure for many years, designed to promote great ends and intended to grant powers adequate to serve the purposes for which it was established. The constitution we are expounding here must contain within it the authority to mount and support the actions by which, in the years since its adoption, the United Nations has successfully defended a precarious peace.

It remains only to thank you, Mr. President and Members of the Court, for myself and, if I may, on behalf of my colleagues, for the patience and courtesy with which you have heard us.