

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CERTAIN EXPENSES
OF THE UNITED NATIONS
(ARTICLE 17, PARAGRAPH 2, OF THE CHARTER)
ADVISORY OPINION OF 20 JULY 1962

1962

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

CERTAINES DÉPENSES
DES NATIONS UNIES
(ARTICLE 17, PARAGRAPHE 2, DE LA CHARTE)
AVIS CONSULTATIF DU 20 JUILLET 1962

This Opinion should be cited as follows:

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I.C.J. Reports 1962, p. 151.”*

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*« Certaines dépenses des Nations Unies (article 17, paragraphe 2, de la Charte), Avis consultatif du 20 juillet 1962 :
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CERTAIN EXPENSES OF THE UNITED NATIONS

(ARTICLE 17, PARAGRAPH 2, OF THE CHARTER)

Resolution 1731 (XVI) of General Assembly requesting advisory opinion.—Objections to giving opinion based on proceedings in General Assembly.—Interpretation of meaning of “expenses of the Organization”.—Article 17, paragraphs 1 and 2, of Charter.—Lack of justification for limiting terms “budget” and “expenses”.—Article 17 in context of Charter.—Respective functions of Security Council and General Assembly.—Article 11, paragraph 2, in relation to budgetary powers of General Assembly.—Role of General Assembly in maintenance of international peace and security.—Agreements under Article 43.—Expenses incurred for purposes of United Nations.—Obligations incurred by Secretary-General acting under authority of Security Council or General Assembly.—Nature of operations of UNEF and ONUC.—Financing of UNEF and ONUC based on Article 17, paragraph 2.—Implementation by Secretary-General of Security Council resolutions.—Expenditures for UNEF and ONUC and Article 17, paragraph 2, of Charter.

ADVISORY OPINION

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; Registrar GARNIER-COIGNET.

Concerning the question whether certain expenditures authorized by the General Assembly "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations",

THE COURT,

composed as above,

gives the following Advisory Opinion:

The request which laid the matter before the Court was formulated in a letter dated 21 December 1961 from the Acting Secretary-General of the United Nations to the President of the Court, received in the Registry on 27 December. In that letter the Acting Secretary-General informed the President of the Court that the General Assembly, by a resolution adopted on 20 December 1961, had decided to request the International Court of Justice to give an advisory opinion on the following question:

"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?"

In the Acting Secretary-General's letter was enclosed a certified copy of the aforementioned resolution of the General Assembly. At the same time the Acting Secretary-General announced that he would transmit to the Court, in accordance with Article 65 of the Statute, all documents likely to throw light upon the question.

Resolution 1731 (XVI) by which the General Assembly decided to request an advisory opinion from the Court reads as follows:

"The General Assembly,

Recognizing its need for authoritative legal guidance as to 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,

1. *Decides* to submit the following question to the International Court of Justice for an advisory opinion:

“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?”

2. *Requests* the Secretary-General, in accordance with Article 65 of the Statute of the International Court of Justice, to transmit the present resolution to the Court, accompanied by all documents likely to throw light upon the question.”

* * *

On 27 December 1961, the day the letter from the Acting Secretary-General of the United Nations reached the Registry, the President, in pursuance of Article 66, paragraph 2, of the Statute, considered that the States Members of the United Nations were likely to be able to furnish information on the question and made an Order fixing 20 February 1962 as the time-limit within which the Court would be prepared to receive written statements from them and the Registrar sent to them the special and direct communication provided for in that Article, recalling that resolution 1731 (XVI) and those referred to in the question submitted for opinion were already in their possession.

The notice to all States entitled to appear before the Court of the letter from the Acting Secretary-General and of the resolution therein enclosed, prescribed by Article 66, paragraph 1, of the Statute, was given by letter of 4 January 1962.

The following Members of the United Nations submitted statements, notes or letters setting forth their views: Australia, Bulgaria,

Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Denmark, France, Ireland, Italy, Japan, Netherlands, Portugal, Romania, South Africa, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Upper Volta. Copies of these communications were transmitted to all Members of the United Nations and to the Acting Secretary-General of the United Nations.

Mexico, the Philippines and Poland referred in letters to the views expressed on their behalf during the session of the General Assembly.

The Acting Secretary-General of the United Nations, in pursuance of Article 65, paragraph 2, of the Statute, transmitted to the Court a dossier of documents likely to throw light upon the question, together with an Introductory Note and a note by the Controller on the budgetary and financial practices of the United Nations; these documents reached the Registry on 21 February and 1 March 1962.

The Members of the United Nations were informed on 23 March 1962 that the oral proceedings in this case would open towards the beginning of May. On 16 April 1962 they were notified that 14 May had been fixed as the opening date. Hearings were held from 14 to 19 May and on 21 May, the Court being addressed by the following:

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| for Canada: | M. Marcel Cadieux, Deputy Under-Secretary and Legal Adviser for the Department of External Affairs; |
| for the Netherlands: | Professor W. Riphagen, Legal Adviser to the Ministry of Foreign Affairs; |
| for Italy: | M. Riccardo Monaco, Professor at the University of Rome, Head of Department for Contentious Diplomatic Questions, Ministry of Foreign Affairs; |
| for the United Kingdom of Great Britain and Northern Ireland: | The Rt. Hon. Sir Reginald Manningham-Buller, Q.C., Attorney-General; |
| for Norway: | Mr. Jens Evensen, Director-General, Ministry of Foreign Affairs; |
| for Australia: | Sir Kenneth Bailey, Solicitor-General; |
| for Ireland: | Mr. Aindrias O' Caoimh, S.C., Attorney-General; |
| for the Union of Soviet Socialist Republics: | Professor G. I. Tunkin, Director of the Juridical-Treaty Department of the Ministry of Foreign Affairs; |
| for the United States of America: | The Honorable Abram Chayes, Legal Adviser, Department of State. |

* * *

Before proceeding to give its opinion on the question put to it, the Court considers it necessary to make the following preliminary remarks:

The power of the Court to give an advisory opinion is derived from Article 65 of the Statute. The power granted is of a discretionary character. In exercising its discretion, the International Court of Justice, like the Permanent Court of International Justice, has always been guided by the principle which the Permanent Court stated in the case concerning the *Status of Eastern Carelia* on 23 July 1923: "The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court" (P.C.I.J., Series B, No. 5, p. 29). Therefore, and in accordance with Article 65 of its Statute, the Court can give an advisory opinion only on a legal question. If a question is not a legal one, the Court has no discretion in the matter; it must decline to give the opinion requested. But even if the question is a legal one, which the Court is undoubtedly competent to answer, it may nonetheless decline to do so. As this Court said in its Opinion of 30 March 1950, the permissive character of Article 65 "gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, I.C.J. Reports 1950, p. 72). But, as the Court also said in the same Opinion, "the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused" (*ibid.*, p. 71). Still more emphatically, in its Opinion of 23 October 1956, the Court said that only "compelling reasons" should lead it to refuse to give a requested advisory opinion (*Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the Unesco*, I.C.J. Reports 1956, p. 86).

The Court finds no "compelling reason" why it should not give the advisory opinion which the General Assembly requested by its resolution 1731 (XVI). It has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely, the interpretation of a treaty provision.

In the preamble to the resolution requesting this opinion, the General Assembly expressed its recognition of "its need for authori-

tative legal guidance". In its search for such guidance it has put to the Court a legal question—a question of the interpretation of Article 17, paragraph 2, of the Charter of the United Nations. In its Opinion of 28 May 1948, the Court made it clear that as "the principal judicial organ of the United Nations", it was entitled to exercise in regard to an article of the Charter, "a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers" (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, I.C.J. Reports 1947-1948, p. 61).

The Court, therefore, having been asked to give an advisory opinion upon a concrete legal question, will proceed to give its opinion.

* * *

The question on which the Court is asked to give its opinion is whether certain expenditures which were authorized by the General Assembly to cover the costs of the United Nations operations in the Congo (hereinafter referred to as ONUC) and of the operations of the United Nations Emergency Force in the Middle East (hereinafter referred to as UNEF), "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations".

Before entering upon the detailed aspects of this question, the Court will examine the view that it should take into consideration the circumstance that at the 1086th Plenary Meeting of the General Assembly on 20 December 1961, an amendment was proposed, by the representative of France, to the draft resolution requesting the advisory opinion, and that this amendment was rejected. The amendment would have asked the Court to give an opinion on the question whether the expenditures relating to the indicated operations were "decided on in conformity with the provisions of the Charter"; if that question were answered in the affirmative, the Court would have been asked to proceed to answer the question which the resolution as adopted actually poses.

If the amendment had been adopted, the Court would have been asked to consider whether the resolutions *authorizing the expenditures* were decided on in conformity with the Charter; the French amendment did not propose to ask the Court whether the resolutions *in pursuance of which the operations in the Middle East and in the Congo were undertaken*, were adopted in conformity with the Charter.

The Court does not find it necessary to expound the extent to which the proceedings of the General Assembly, antecedent to the adoption of a resolution, should be taken into account in interpreting that resolution, but it makes the following comments on the argument based upon the rejection of the French amendment.

The rejection of the French amendment does not constitute a directive to the Court to exclude from its consideration the question whether certain expenditures were "decided on in conformity with the Charter", if the Court finds such consideration appropriate. It is not to be assumed that the General Assembly would thus seek to fetter or hamper the Court in the discharge of its judicial functions; the Court must have full liberty to consider all relevant data available to it in forming an opinion on a question posed to it for an advisory opinion. Nor can the Court agree that the rejection of the French amendment has any bearing upon the question whether the General Assembly sought to preclude the Court from interpreting Article 17 in the light of other articles of the Charter, that is, in the whole context of the treaty. If any deduction is to be made from the debates on this point, the opposite conclusion would be drawn from the clear statements of sponsoring delegations that they took it for granted the Court would consider the Charter as a whole.

* * *

Turning to the question which has been posed, the Court observes that it involves an interpretation of Article 17, paragraph 2, of the Charter. On the previous occasions when the Court has had to interpret the Charter of the United Nations, it has followed the principles and rules applicable in general to the interpretation of treaties, since it has recognized that the Charter is a multilateral treaty, albeit a treaty having certain special characteristics. In interpreting Article 4 of the Charter, the Court was led to consider "the structure of the Charter" and "the relations established by it between the General Assembly and the Security Council"; a comparable problem confronts the Court in the instant matter. The Court sustained its interpretation of Article 4 by considering the manner in which the organs concerned "have consistently interpreted the text" in their practice (*Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950*, pp. 8-9).

The text of Article 17 is in part as follows:

"1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

Although the Court will examine Article 17 in itself and in its relation to the rest of the Charter, it should be noted that at least three separate questions might arise in the interpretation of paragraph 2 of this Article. One question is that of identifying what are "the expenses of the Organization"; a second question might

concern apportionment by the General Assembly; while a third question might involve the interpretation of the phrase "shall be borne by the Members". It is the second and third questions which directly involve "the financial obligations of the Members", but it is only the first question which is posed by the request for the advisory opinion. The question put to the Court has to do with a moment logically anterior to apportionment, just as a question of apportionment would be anterior to a question of Members' obligation to pay.

It is true that, as already noted, the preamble of the resolution containing the request refers to the General Assembly's "need for authoritative legal guidance as to obligations of Member States", but it is to be assumed that in the understanding of the General Assembly, it would find such guidance in the advisory opinion which the Court would give on the question whether certain identified expenditures "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter". If the Court finds that the indicated expenditures are such "expenses", it is not called upon to consider the manner in which, or the scale by which, they may be apportioned. The amount of what are unquestionably "expenses of the Organization within the meaning of Article 17, paragraph 2" is not in its entirety apportioned by the General Assembly and paid for by the contributions of Member States, since the Organization has other sources of income. A Member State, accordingly, is under no obligation to pay more than the amount apportioned to it; the expenses of the Organization and the total amount in money of the obligations of the Member States may not, in practice, necessarily be identical.

The text of Article 17, paragraph 2, refers to "the expenses of the Organization" without any further explicit definition of such expenses. It would be possible to begin with a general proposition to the effect that the "expenses" of any organization are the amounts paid out to defray the costs of carrying out its purposes, in this case, the political, economic, social, humanitarian and other purposes of the United Nations. The next step would be to examine, as the Court will, whether the resolutions authorizing the operations here in question were intended to carry out the purposes of the United Nations and whether the expenditures were incurred in furthering these operations. Or, it might simply be said that the "expenses" of an organization are those which are provided for in its budget. But the Court has not been asked to give an abstract definition of the words "expenses of the Organization". It has been asked to answer a specific question related to certain identified expenditures which have actually been made, but the Court would not adequately discharge the obligation incumbent on it unless it examined in some detail various problems raised by the question which the General Assembly has asked.

It is perhaps the simple identification of "expenses" with the items included in a budget, which has led certain arguments to link the interpretation of the word "expenses" in paragraph 2 of Article 17, with the word "budget" in paragraph 1 of that Article; in both cases, it is contended, the qualifying adjective "regular" or "administrative" should be understood to be implied. Since no such qualification is expressed in the text of the Charter, it could be read in, only if such qualification must necessarily be implied from the provisions of the Charter considered as a whole, or from some particular provision thereof which makes it unavoidable to do so in order to give effect to the Charter.

In the first place, concerning the word "budget" in paragraph 1 of Article 17, it is clear that the existence of the distinction between "administrative budgets" and "operational budgets" was not absent from the minds of the drafters of the Charter, nor from the consciousness of the Organization even in the early days of its history. In drafting Article 17, the drafters found it suitable to provide in paragraph 1 that "The General Assembly shall consider and approve *the budget* of the Organization". But in dealing with the function of the General Assembly in relation to the specialized agencies, they provided in paragraph 3 that the General Assembly "shall examine the *administrative budgets* of such specialized agencies". If it had been intended that paragraph 1 should be limited to the administrative budget of the United Nations organization itself, the word "administrative" would have been inserted in paragraph 1 as it was in paragraph 3. Moreover, had it been contemplated that the Organization would also have had another budget, different from the one which was to be approved by the General Assembly, the Charter would have included some reference to such other budget and to the organ which was to approve it.

Similarly, at its first session, the General Assembly in drawing up and approving the Constitution of the International Refugee Organization, provided that the budget of that Organization was to be divided under the headings "administrative", "operational" and "large-scale resettlement"; but no such distinctions were introduced into the Financial Regulations of the United Nations which were adopted by unanimous vote in 1950, and which, in this respect, remain unchanged. These regulations speak only of "the budget" and do not provide any distinction between "administrative" and "operational".

In subsequent sessions of the General Assembly, including the sixteenth, there have been numerous references to the idea of distinguishing an "operational" budget; some speakers have advocated such a distinction as a useful book-keeping device; some considered it in connection with the possibility of differing scales of assessment or apportionment; others believed it should mark a differentiation of activities to be financed by voluntary contribu-

tions. But these discussions have not resulted in the adoption of two separate budgets based upon such a distinction.

Actually, the practice of the Organization is entirely consistent with the plain meaning of the text. The budget of the Organization has from the outset included items which would not fall within any of the definitions of "administrative budget" which have been advanced in this connection. Thus, for example, prior to the establishment of, and now in addition to, the "Expanded Programme of Technical Assistance" and the "Special Fund", both of which are nourished by voluntary contributions, the annual budget of the Organization contains provision for funds for technical assistance; in the budget for the financial year 1962, the sum of \$6,400,000 is included for the technical programmes of economic development, social activities, human rights activities, public administration and narcotic drugs control. Although during the Fifth Committee discussions there was a suggestion that all technical assistance costs should be excluded from the regular budget, the items under these heads were all adopted on second reading in the Fifth Committee without a dissenting vote. The "operational" nature of such activities so budgeted is indicated by the explanations in the budget estimates, e.g. the requests "for the continuation of the operational programme in the field of economic development contemplated in General Assembly resolutions 200 (III) of 4 December 1948 and 304 (IV) of 16 November 1949"; and "for the continuation of the operational programme in the field of advisory social welfare services as contemplated in General Assembly resolution 418 (V) of 1 December 1950".

It is a consistent practice of the General Assembly to include in the annual budget resolutions, provision for expenses relating to the maintenance of international peace and security. Annually, since 1947, the General Assembly has made anticipatory provision for "unforeseen and extraordinary expenses" arising in relation to the "maintenance of peace and security". In a Note submitted to the Court by the Controller on the budgetary and financial practices of the United Nations, "extraordinary expenses" are defined as "obligations and expenditures arising as a result of the approval by a council, commission or other competent United Nations body of new programmes and activities not contemplated when the budget appropriations were approved".

The annual resolution designed to provide for extraordinary expenses authorizes the Secretary-General to enter into commitments to meet such expenses with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, except that such concurrence is not necessary if the Secretary-

General certifies that such commitments relate to the subjects mentioned and the amount does not exceed \$2 million. At its fifteenth and sixteenth sessions, the General Assembly resolved "that if, as a result of a decision of the Security Council, commitments relating to the maintenance of peace and security should arise in an estimated total exceeding \$10 million" before the General Assembly was due to meet again, a special session should be convened by the Secretary-General to consider the matter. The Secretary-General is regularly authorized to draw on the Working Capital Fund for such expenses but is required to submit supplementary budget estimates to cover amounts so advanced. These annual resolutions on unforeseen and extraordinary expenses were adopted without a dissenting vote in every year from 1947 through 1959, except for 1952, 1953 and 1954, when the adverse votes are attributable to the fact that the resolution included the specification of a controversial item—United Nations Korean war decorations.

It is notable that the 1961 Report of the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations, while revealing wide differences of opinion on a variety of propositions, records that the following statement was adopted without opposition:

"22. Investigations and observation operations undertaken by the Organization to prevent possible aggression should be financed as part of the regular budget of the United Nations."

In the light of what has been stated, the Court concludes that there is no justification for reading into the text of Article 17, paragraph 1, any limiting or qualifying word before the word "budget"

* * *

Turning to paragraph 2 of Article 17, the Court observes that, on its face, the term "expenses of the Organization" means all the expenses and not just certain types of expenses which might be referred to as "regular expenses". An examination of other parts of the Charter shows the variety of expenses which must inevitably be included within the "expenses of the Organization" just as much as the salaries of staff or the maintenance of buildings.

For example, the text of Chapters IX and X of the Charter with reference to international economic and social cooperation, especially the wording of those articles which specify the functions and powers of the Economic and Social Council, anticipated the numerous and varied circumstances under which expenses of the Organi-

zation could be incurred and which have indeed eventuated in practice.

Furthermore, by Article 98 of the Charter, the Secretary-General is obligated to perform such functions as are entrusted to him by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council. Whether or not expenses incurred in his discharge of this obligation become "expenses of the Organization" cannot depend on whether they be administrative or some other kind of expenses.

The Court does not perceive any basis for challenging the legality of the settled practice of including such expenses as these in the budgetary amounts which the General Assembly apportions among the Members in accordance with the authority which is given to it by Article 17, paragraph 2.

* * *

Passing from the text of Article 17 to its place in the general structure and scheme of the Charter, the Court will consider whether in that broad context one finds any basis for implying a limitation upon the budgetary authority of the General Assembly which in turn might limit the meaning of "expenses" in paragraph 2 of that Article.

The general purposes of Article 17 are the vesting of control over the finances of the Organization, and the levying of apportioned amounts of the expenses of the Organization in order to enable it to carry out the functions of the Organization as a whole acting through its principal organs and such subsidiary organs as may be established under the authority of Article 22 or Article 29.

Article 17 is the only article in the Charter which refers to budgetary authority or to the power to apportion expenses, or otherwise to raise revenue, except for Articles 33 and 35, paragraph 3, of the Statute of the Court which have no bearing on the point here under discussion. Nevertheless, it has been argued before the Court that one type of expenses, namely those resulting from operations for the maintenance of international peace and security, are not "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, inasmuch as they fall to be dealt with exclusively by the Security Council, and more especially through agreements negotiated in accordance with Article 43 of the Charter.

The argument rests in part upon the view that when the maintenance of international peace and security is involved, it is only the Security Council which is authorized to decide on any action relative thereto. It is argued further that since the General Assembly's power is limited to discussing, considering, studying and recommending, it cannot impose an obligation to pay the expenses which result from the implementation of its recommendations. This

argument leads to an examination of the respective functions of the General Assembly and of the Security Council under the Charter, particularly with respect to the maintenance of international peace and security.

Article 24 of the Charter provides:

“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...”

The responsibility conferred is “primary”, not exclusive. This primary responsibility is conferred upon the Security Council, as stated in Article 24, “in order to ensure prompt and effective action”. To this end, it is the Security Council which is given a power to impose an explicit obligation of compliance if for example it issues an order or command to an aggressor under Chapter VII. It is only the Security Council which can require enforcement by coercive action against an aggressor.

The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. Article 14 authorizes the General Assembly to “recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations”. The word “measures” implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so. Thus while it is the Security Council which, exclusively, may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies and the making of recommendations; they are not merely hortatory. Article 18 deals with “*decisions*” of the General Assembly “on important questions”. These “*decisions*” do indeed include certain recommendations, but others have dispositive force and effect. Among these latter decisions, Article 18 includes suspension of rights and privileges of membership, expulsion of Members, “and budgetary questions”. In connection with the suspension of rights and privileges of membership and expulsion from membership under Articles 5 and 6, it is the Security Council which has only the power to recommend and it is the General Assembly which decides and whose decision determines status; but there is a close collaboration between the two organs. Moreover, these powers of decision of the General Assembly under Arti-

cles 5 and 6 are specifically related to preventive or enforcement measures.

By Article 17, paragraph 1, the General Assembly is given the power not only to "consider" the budget of the Organization, but also to "approve" it. The decision to "approve" the budget has a close connection with paragraph 2 of Article 17, since thereunder the General Assembly is also given the power to apportion the expenses among the Members and the exercise of the power of apportionment creates the obligation, specifically stated in Article 17, paragraph 2, of each Member to bear that part of the expenses which is apportioned to it by the General Assembly. When those expenses include expenditures for the maintenance of peace and security, which are not otherwise provided for, it is the General Assembly which has the authority to apportion the latter amounts among the Members. The provisions of the Charter which distribute functions and powers to the Security Council and to the General Assembly give no support to the view that such distribution excludes from the powers of the General Assembly the power to provide for the financing of measures designed to maintain peace and security.

The argument supporting a limitation on the budgetary authority of the General Assembly with respect to the maintenance of international peace and security relies especially on the reference to "action" in the last sentence of Article 11, paragraph 2. This paragraph reads as follows:

"The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such question to the State or States concerned or to the Security Council, or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not merely to general questions relating to peace and security, but also to specific cases brought before the General Assembly by a State under Article 35, in its first sentence empowers the General Assembly, by means of recommendations to States or to the Security Council, or to both, to organize peace-keeping operations, at the request, or with the consent, of the States concerned. This power of the General Assembly is a special power which in no way derogates from its general powers under Article 10

or Article 14, except as limited by the last sentence of Article 11, paragraph 2. This last sentence says that when "action" is necessary the General Assembly shall refer the question to the Security Council. The word "action" must mean such action as is solely within the province of the Security Council. It cannot refer to recommendations which the Security Council might make, as for instance under Article 38, because the General Assembly under Article 11 has a comparable power. The "action" which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely "Action with respect to threats to the peace, breaches of the peace, and acts of aggression". If the word "action" in Article 11, paragraph 2, were interpreted to mean that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the General Assembly may make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article 11, paragraph 2, has no application where the necessary action is not enforcement action.

The practice of the Organization throughout its history bears out the foregoing elucidation of the term "action" in the last sentence of Article 11, paragraph 2. Whether the General Assembly proceeds under Article 11 or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity—action—in connection with the maintenance of international peace and security. Such implementation is a normal feature of the functioning of the United Nations. Such committees, commissions or other bodies or individuals, constitute, in some cases, subsidiary organs established under the authority of Article 22 of the Charter. The functions of the General Assembly for which it may establish such subsidiary organs include, for example, investigation, observation and supervision, but the way in which such subsidiary organs are utilized depends on the consent of the State or States concerned.

The Court accordingly finds that the argument which seeks, by reference to Article 11, paragraph 2, to limit the budgetary authority of the General Assembly in respect of the maintenance of international peace and security, is unfounded.

* * *

It has further been argued before the Court that Article 43 of the Charter constitutes a particular rule, a *lex specialis*, which derogates

from the general rule in Article 17, whenever an expenditure for the maintenance of international peace and security is involved. Article 43 provides that Members shall negotiate agreements with the Security Council on its initiative, stipulating what "armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security", the Member State will make available to the Security Council on its call. According to paragraph 2 of the Article:

"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."

The argument is that such agreements were intended to include specifications concerning the allocation of costs of such enforcement actions as might be taken by direction of the Security Council, and that it is only the Security Council which has the authority to arrange for meeting such costs.

With reference to this argument, the Court will state at the outset that, for reasons fully expounded later in this Opinion, the operations known as UNEF and ONUC were not *enforcement* actions within the compass of Chapter VII of the Charter and that therefore Article 43 could not have any applicability to the cases with which the Court is here concerned. However, even if Article 43 were applicable, the Court could not accept this interpretation of its text for the following reasons.

There is nothing in the text of Article 43 which would limit the discretion of the Security Council in negotiating such agreements. It cannot be assumed that in every such agreement the Security Council would insist, or that any Member State would be bound to agree, that such State would bear the entire cost of the "assistance" which it would make available including, for example, transport of forces to the point of operation, complete logistical maintenance in the field, supplies, arms and ammunition, etc. If, during negotiations under the terms of Article 43, a Member State would be entitled (as it would be) to insist, and the Security Council would be entitled (as it would be) to agree, that some part of the expense should be borne by the Organization, then such expense would form part of the expenses of the Organization and would fall to be apportioned by the General Assembly under Article 17. It is difficult to see how it could have been contemplated that all potential expenses could be envisaged in such agreements concluded perhaps long in advance. Indeed, the difficulty or impossibility of anticipating the entire financial impact of enforcement measures on Member States is brought out by the terms of Article 50 which provides that a 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 [preventive or enforcement] measures, shall have

the right to consult the Security Council with regard to a solution of those problems". Presumably in such a case the Security Council might determine that the overburdened State was entitled to some financial assistance; such financial assistance, if afforded by the Organization, as it might be, would clearly constitute part of the "expenses of the Organization". The economic problems could not have been covered in advance by a negotiated agreement since they would be unknown until after the event and in the case of non-Member States, which are also included in Article 50, no agreement at all would have been negotiated under Article 43.

Moreover, an argument which insists that all measures taken for the maintenance of international peace and security must be financed through agreements concluded under Article 43, would seem to exclude the possibility that the Security Council might act under some other Article of the Charter. The Court cannot accept so limited a view of the powers of the Security Council under the Charter. It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.

Articles of Chapter VII of the Charter speak of "situations" as well as disputes, and it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a State. The costs of actions which the Security Council is authorized to take constitute "expenses of the Organization within the meaning of Article 17, paragraph 2".

* * *

The Court has considered the general problem of the interpretation of Article 17, paragraph 2, in the light of the general structure of the Charter and of the respective functions assigned by the Charter to the General Assembly and to the Security Council, with a view to determining the meaning of the phrase "the expenses of the Organization". The Court does not find it necessary to go further in giving a more detailed definition of such expenses. The Court will, therefore, proceed to examine the expenditures enumerated in the request for the advisory opinion. In determining whether the actual expenditures authorized constitute "expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter", the Court agrees that such expenditures must be tested by their relationship to the purposes of the United Nations in the sense that if an expenditure were made for a purpose which is not one of the purposes of the United Nations, it could not be considered an "expense of the Organization".

The purposes of the United Nations are set forth in Article 1 of the Charter. The first two purposes as stated in paragraphs 1

and 2, may be summarily described as pointing to the goal of international peace and security and friendly relations. The third purpose is the achievement of economic, social, cultural and humanitarian goals and respect for human rights. The fourth and last purpose is: "To be a center for harmonizing the actions of nations in the attainment of these common ends."

The primary place ascribed to international peace and security is natural, since the fulfilment of the other purposes will be dependent upon the attainment of that basic condition. These purposes are broad indeed, but neither they nor the powers conferred to effectuate them are unlimited. Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action. But when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization.

If it is agreed that the action in question is within the scope of the functions of the Organization but it is alleged that it has been initiated or carried out in a manner not in conformity with the division of functions among the several organs which the Charter prescribes, one moves to the internal plane, to the internal structure of the Organization. If the action was taken by the wrong organ, it was irregular as a matter of that internal structure, but this would not necessarily mean that the expense incurred was not an expense of the Organization. Both national and international law contemplate cases in which the body corporate or politic may be bound, as to third parties, by an *ultra vires* act of an agent.

In the legal systems of States, there is often some procedure for determining the validity of even a legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted; the opinion which the Court is in course of rendering is an *advisory* opinion. As anticipated in 1945, therefore, each organ must, in the first place at least, determine its own jurisdiction. If the Security Council, for example, adopts a resolution purportedly for the maintenance of international peace and security and if, in accordance with a mandate or authorization in such resolution, the Secretary-General incurs financial obligations, these amounts must be presumed to constitute "expenses of the Organization".

The Financial Regulations and Rules of the United Nations, adopted by the General Assembly, provide:

"Regulation 4.1: The appropriations voted by the General Assembly shall constitute an authorization to the Secretary-

General to incur obligations and make payments for the purposes for which the appropriations were voted and up to the amounts so voted.”

Thus, for example, when the General Assembly in resolution 1619 (XV) included a paragraph reading:

“3. *Decides* to appropriate an amount of \$100 million for the operations of the United Nations in the Congo from 1 January to 31 October 1961”,

this constituted an authorization to the Secretary-General to incur certain obligations of the United Nations just as clearly as when in resolution 1590 (XV) the General Assembly used this language:

“3. *Authorizes* the Secretary-General ... to incur commitments in 1961 for the United Nations operations in the Congo up to the total of \$24 million...”

On the previous occasion when the Court was called upon to consider Article 17 of the Charter, the Court found that an award of the Administrative Tribunal of the United Nations created an obligation of the Organization and with relation thereto the Court said that:

“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”. (*Effects of awards of compensation made by the United Nations Administrative Tribunal, I.C.J. Reports 1954, p. 59.*)

Similarly, obligations of the Organization may be incurred by the Secretary-General, acting on the authority of the Security Council or of the General Assembly, and the General Assembly “has no alternative but to honour these engagements”.

The obligation is one thing: the way in which the obligation is met—that is from what source the funds are secured—is another. The General Assembly may follow any one of several alternatives: it may apportion the cost of the item according to the ordinary scale of assessment; it may apportion the cost according to some special scale of assessment; it may utilize funds which are voluntarily contributed to the Organization; or it may find some other method or combination of methods for providing the necessary funds. In this context, it is of no legal significance whether, as a matter of book-keeping or accounting, the General Assembly chooses to have the item in question included under one of the standard established sections of the “regular” budget or whether it is separately listed in some special account or fund. The significant fact is that the item is an expense of the Organization and under

Article 17, paragraph 2, the General Assembly therefore has authority to apportion it.

The reasoning which has just been developed, applied to the resolutions mentioned in the request for the advisory opinion, might suffice as a basis for the opinion of the Court. The Court finds it appropriate, however, to take into consideration other arguments which have been advanced.

* * *

The expenditures enumerated in the request for an advisory opinion may conveniently be examined first with reference to UNEF and then to ONUC. In each case, attention will be paid first to the operations and then to the financing of the operations.

In considering the operations in the Middle East, the Court must analyze the functions of UNEF as set forth in resolutions of the General Assembly. Resolution 998 (ES-I) of 4 November 1956 requested the Secretary-General to submit a plan "for the setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities in accordance with all the terms of" the General Assembly's previous resolution 997 (ES-I) of 2 November 1956. The verb "secure" as applied to such matters as halting the movement of military forces and arms into the area and the conclusion of a cease-fire, might suggest measures of enforcement, were it not that the Force was to be set up "with the consent of the nations concerned".

In his first report on the plan for an emergency international Force the Secretary-General used the language of resolution 998 (ES-I) in submitting his proposals. The same terms are used in General Assembly resolution 1000 (ES-I) of 5 November in which operative paragraph 1 reads:

"Establishes a United Nations Command for an emergency international Force to secure and supervise the cessation of hostilities in accordance with all the terms of General Assembly resolution 997 (ES-I) of 2 November 1956."

This resolution was adopted without a dissenting vote. In his second and final report on the plan for an emergency international Force of 6 November, the Secretary-General, in paragraphs 9 and 10, stated:

"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 Govern-

ment 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. I would not for the present consider it necessary to elaborate this point further, since no use of the Force under Chapter VII, with the rights in relation to Member States that this would entail, has been envisaged.

10. The point just made permits the conclusion that the setting up of the Force should not be guided by the needs which would have existed had the measure been considered as part of an enforcement action directed against a Member country. There is an obvious difference between establishing the Force in order to secure the cessation of hostilities, with a withdrawal of forces, and establishing such a Force with a view to enforcing a withdrawal of forces."

Paragraph 12 of the Report is particularly important because in resolution 1001 (ES-I) the General Assembly, again without a dissenting vote, "*Concurs* in the definition of the functions of the Force as stated in paragraph 12 of the Secretary-General's report". Paragraph 12 reads in part as follows:

"the functions of the United Nations Force would be, when a cease-fire is being established, to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the other terms established in the resolution of 2 November 1956. The Force obviously should have no rights other than those necessary for the execution of its functions, in co-operation with local authorities. It would be more than an observers' corps, but in no way a military force temporarily controlling the territory in which it is stationed; nor, moreover, should the Force have military functions exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict take all necessary steps for compliance with the recommendations of the General Assembly."

It is not possible to find in this description of the functions of UNEF, as outlined by the Secretary-General and concurred in by the General Assembly without a dissenting vote, any evidence that the Force was to be used for purposes of enforcement. Nor can such evidence be found in the subsequent operations of the Force, operations which did not exceed the scope of the functions ascribed to it.

It could not therefore have been patent on the face of the resolution that the establishment of UNEF was in effect "enforcement action" under Chapter VII which, in accordance with the Charter, could be authorized only by the Security Council.

On the other hand, it is apparent that the operations were undertaken to fulfil a prime purpose of the United Nations, that is, to

promote and to maintain a peaceful settlement of the situation. This being true, the Secretary-General properly exercised the authority given him to incur financial obligations of the Organization and expenses resulting from such obligations must be considered "expenses of the Organization within the meaning of Article 17, paragraph 2".

Apropos what has already been said about the meaning of the word "action" in Article 11 of the Charter, attention may be called to the fact that resolution 997 (ES-I), which is chronologically the first of the resolutions concerning the operations in the Middle East mentioned in the request for the advisory opinion, provides in paragraph 5:

"Requests the Secretary-General to observe and report promptly on the compliance with the present resolution to the Security Council and to the General Assembly, for such further action as they may deem appropriate in accordance with the Charter."

The italicized words reveal an understanding that either of the two organs might take "action" in the premises. Actually, as one knows, the "action" was taken by the General Assembly in adopting two days later without a dissenting vote, resolution 998 (ES-I) and, also without a dissenting vote, within another three days, resolutions 1000 (ES-I) and 1001 (ES-I), all providing for UNEF.

The Court notes that these "actions" may be considered "measures" recommended under Article 14, rather than "action" recommended under Article 11. The powers of the General Assembly stated in Article 14 are not made subject to the provisions of Article 11, but only of Article 12. Furthermore, as the Court has already noted, the word "measures" implies some kind of action. So far as concerns the nature of the situations in the Middle East in 1956, they could be described as "likely to impair ... friendly relations among nations", just as well as they could be considered to involve "the maintenance of international peace and security". Since the resolutions of the General Assembly in question do not mention upon which article they are based, and since the language used in most of them might imply reference to either Article 14 or Article 11, it cannot be excluded that they were based upon the former rather than the latter article.

* * *

The financing of UNEF presented perplexing problems and the debates on these problems have even led to the view that the General Assembly never, either directly or indirectly, regarded the

expenses of UNEF as "expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter". With this interpretation the Court cannot agree. In paragraph 15 of his second and final report on the plan for an emergency international Force of 6 November 1956, the Secretary-General said that this problem required further study. Provisionally, certain costs might be absorbed by a nation providing a unit, "while all other costs should be financed outside the normal budget of the United Nations". Since it was "obviously impossible to make any estimate of the costs without a knowledge of the size of the corps and the length of its assignment", the "only practical course ... 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".

Paragraph 5 of resolution 1001 (ES-I) of 7 November 1956 states that the General Assembly "*Approves provisionally* the basic rule concerning the financing of the Force laid down in paragraph 15 of the Secretary-General's report".

In an oral statement to the plenary meeting of the General Assembly on 26 November 1956, the Secretary-General said:

"... 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".

At this same meeting, after hearing this statement, the General Assembly in resolution 1122 (XI) noted that it had "*provisionally approved* the recommendations made by the Secretary-General concerning the financing of the Force". It then authorized 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". The resolution then provided that the initial amount in the Special Account should be \$10 million and authorized the Secretary-General "pending the receipt of funds for the Special Account, to advance from the Working Capital Fund such sums as the Special Account may require to meet any expenses chargeable to it". The establishment of a Special Account does not necessarily mean that the funds in it are not to be derived from contributions of Members as apportioned by the General Assembly.

The next of the resolutions of the General Assembly to be considered is 1089 (XI) of 21 December 1956, which reflects the uncertainties and the conflicting views about financing UNEF. The divergencies are duly noted and there is ample reservation concerning possible future action, but operative paragraph 1 follows the recommendation of the Secretary-General "that the expenses relating to the Force should be apportioned in the same manner as the expenses of the Organization". The language of this paragraph is clearly drawn from Article 17:

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

This resolution, which was adopted by the requisite two-thirds majority, must have rested upon the conclusion that the expenses of UNEF were "expenses of the Organization" since otherwise the General Assembly would have had no authority to decide that they "shall be borne by the United Nations" or to apportion them among the Members. It is further significant that paragraph 3 of this resolution, which established a study committee, charges this committee with the task of examining "the question of the *apportionment* of the expenses of the Force in excess of \$10 million ... and the principle or the formulation of *scales of contributions different from the scale of contributions* by Member States to the ordinary budget for 1957". The italicized words show that it was not contemplated that the Committee would consider any method of meeting these expenses except through some form of apportionment although it was understood that a different *scale* might be suggested.

The report of this study committee again records differences of opinion but the draft resolution which it recommended authorized further expenditures and authorized the Secretary-General to advance funds from the Working Capital Fund and to borrow from other funds if necessary; it was adopted as resolution 1090 (XI) by the requisite two-thirds majority on 27 February 1957. In paragraph 4 of that resolution, the General Assembly decided that it would at its twelfth session "consider the basis for financing any costs of the Force in excess of \$10 million not covered by voluntary contributions".

Resolution 1151 (XII) of 22 November 1957, while contemplating the receipt of more voluntary contributions, decided in paragraph 4 that the expenses authorized "shall be borne by the Members of the United Nations in accordance with the scales of assessments

adopted by the General Assembly for the financial years 1957 and 1958 respectively”.

Almost a year later, on 14 November 1958, in resolution 1263 (XIII) the General Assembly, while “*Noting with satisfaction the effective way in which the Force continues to carry out its function*”, requested the Fifth Committee “to recommend such action as may be necessary to finance this continuing operation of the United Nations Emergency Force”.

After further study, the provision contained in paragraph 4 of the resolution of 22 November 1957 was adopted in paragraph 4 of resolution 1337 (XIII) of 13 December 1958. Paragraph 5 of that resolution 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 fourteenth session”. Thereafter a new plan was worked out for the utilization of any voluntary contributions, but resolution 1441 (XIV) of 5 December 1959, in paragraph 2: “*Decides to assess the amount of \$20 million against all Members of the United Nations on the basis of the regular scale of assessments*” subject to the use of credits drawn from voluntary contributions. Resolution 1575 (XV) of 20 December 1960 is practically identical.

The Court concludes that, from year to year, the expenses of UNEF have been treated by the General Assembly as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter.

* * *

The operations in the Congo were initially authorized by the Security Council in the resolution of 14 July 1960 which was adopted without a dissenting vote. The resolution, in the light of the appeal from the Government of the Congo, the report of the Secretary-General and the debate in the Security Council, was clearly adopted with a view to maintaining international peace and security. However, it is argued that that resolution has been implemented, in violation of provisions of the Charter inasmuch as under the Charter it is the Security Council that determines which States are to participate in carrying out decisions involving the maintenance of international peace and security, whereas in the case of the Congo the Secretary-General himself determined which States were to participate with their armed forces or otherwise.

By paragraph 2 of the resolution of 14 July 1960 the Security Council “*Decides 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*”. Paragraph 3 requested the

Secretary-General "to report to the Security Council as appropriate". The Secretary-General made his first report on 18 July and in it informed the Security Council which States he had asked to contribute forces or matériel, which ones had complied, the size of the units which had already arrived in the Congo (a total of some 3,500 troops), and some detail about further units expected.

On 22 July the Security Council by unanimous vote adopted a further resolution in which the preamble states that it had considered this report of the Secretary-General and appreciated "the work of the Secretary-General and the support so readily and so speedily given to him by all Member States invited by him to give assistance". In operative paragraph 3, the Security Council "*Commends* the Secretary-General for the prompt action he has taken to carry out resolution S/4387 of the Security Council, and for his first report".

On 9 August the Security Council adopted a further resolution without a dissenting vote in which it took note of the second report and of an oral statement of the Secretary-General and in operative paragraph 1: "*Confirms* the authority given to the Secretary-General by the Security Council resolutions of 14 July and 22 July 1960 and requests him to continue to carry out the responsibility placed on him thereby". This emphatic ratification is further supported by operative paragraphs 5 and 6 by which all Member States were called upon "to afford mutual assistance" and the Secretary-General was requested "to implement this resolution and to report further to the Council as appropriate".

The Security Council resolutions of 14 July, 22 July and 9 August 1960 were noted by the General Assembly in its resolution 1474 (ES-IV) of 20 September, adopted without a dissenting vote, in which it "fully supports" these resolutions. Again without a dissenting vote, on 21 February 1961 the Security Council reaffirmed its three previous resolutions "and the General Assembly resolution 1474 (ES-IV) of 20 September 1960" and reminded "all States of their obligations under these resolutions".

Again without a dissenting vote on 24 November 1961 the Security Council, once more recalling the previous resolutions, reaffirmed "the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out" in those resolutions. Operative paragraphs 4 and 5 of this resolution renew the authority to the Secretary-General to continue the activities in the Congo.

In the light of such a record of reiterated consideration, confirmation, approval and ratification by the Security Council and by the General Assembly of the actions of the Secretary-General in

implementing the resolution of 14 July 1960, it is impossible to reach the conclusion that the operations in question usurped or impinged upon the prerogatives conferred by the Charter on the Security Council. The Charter does not forbid the Security Council to act through instruments of its own choice: under Article 29 it "may establish such subsidiary organs as it deems necessary for the performance of its functions"; under Article 98 it may entrust "other functions" to the Secretary-General.

It is not necessary for the Court to express an opinion as to which article or articles of the Charter were the basis for the resolutions of the Security Council, but it can be said that the operations of ONUC did not include a use of armed force against a State which the Security Council, under Article 39, determined to have committed an act of aggression or to have breached the peace. The armed forces which were utilized in the Congo were not authorized to take military action against any State. The operation did not involve "preventive or enforcement measures" against any State under Chapter VII and therefore did not constitute "action" as that term is used in Article 11.

For the reasons stated, financial obligations which, in accordance with the clear and reiterated authority of both the Security Council and the General Assembly, the Secretary-General incurred on behalf of the United Nations, constitute obligations of the Organization for which the General Assembly was entitled to make provision under the authority of Article 17.

* * *

In relation to ONUC, the first action concerning the financing of the operation was taken by the General Assembly on 20 December 1960, after the Security Council had adopted its resolutions of 14 July, 22 July and 9 August, and the General Assembly had adopted its supporting resolution of 20 September. This resolution 1583 (XV) of 20 December referred to the report of the Secretary-General on the estimated cost of the Congo operations from 14 July to 31 December 1960, and to the recommendations of the Advisory Committee on Administrative and Budgetary Questions. It decided to establish an *ad hoc* account for the expenses of the United Nations in the Congo. It also took note of certain waivers of cost claims and then decided to apportion the sum of \$48.5 million among the Member States "on the basis of the regular scale of assessment" subject to certain exceptions. It made this decision because in the preamble it had already recognized:

"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”.

By its further resolution 1590 (XV) of the same day, the General Assembly authorized the Secretary-General “to incur commitments in 1961 for the United Nations operations in the Congo up to the total of \$24 million for the period from 1 January to 31 March 1961”. On 3 April 1961, the General Assembly authorized the Secretary-General to continue until 21 April “to incur commitments for the United Nations operations in the Congo at a level not to exceed \$8 million per month”.

Importance has been attached to the statement included in the preamble of General Assembly resolution 1619 (XV) of 21 April 1961 which reads:

“*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.”

However, the same resolution in operative paragraph 4:

“*Decides further* 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 the provisions of paragraph 8 below [paragraph 8 makes certain adjustments for Member States assessed at the lowest rates or who receive certain designated technical assistance], pending the establishment of a different scale of assessment to defray the extraordinary expenses of the Organization resulting from these operations.”

Although it is not mentioned in the resolution requesting the advisory opinion, because it was adopted at the same meeting of the General Assembly, it may be noted that the further resolution 1732 (XVI) of 20 December 1961 contains an identical paragraph in the preamble and a comparable operative paragraph 4 on apportioning \$80 million.

The conclusion to be drawn from these paragraphs is that the General Assembly has twice decided that even though certain expenses are “extraordinary” and “essentially different” from those under the “regular budget”, they are none the less “expenses of the Organization” to be apportioned in accordance with the power granted to the General Assembly by Article 17, paragraph 2. This conclusion is strengthened by the concluding clause of paragraph 4 of the two resolutions just cited which states that the decision therein to use the scale of assessment already adopted for the

regular budget is made “pending the establishment of a *different scale of assessment* to defray the extraordinary expenses”. The only alternative—and that means the “different procedure”—contemplated was another *scale* of assessment and not some method other than assessment. “Apportionment” and “assessment” are terms which relate only to the General Assembly’s authority under Article 17.

* * *

At the outset of this opinion, the Court pointed out that the text of Article 17, paragraph 2, of the Charter could lead to the simple conclusion that “the expenses of the Organization” are the amounts paid out to defray the costs of carrying out the purposes of the Organization. It was further indicated that the Court would examine the resolutions authorizing the expenditures referred to in the request for the advisory opinion in order to ascertain whether they were incurred with that end in view. The Court has made such an examination and finds that they were so incurred. The Court has also analyzed the principal arguments which have been advanced against the conclusion that the expenditures in question should be considered as “expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter of the United Nations”, and has found that these arguments are unfounded. Consequently, the Court arrives at the conclusion that the question submitted to it in General Assembly resolution 1731 (XVI) must be answered in the affirmative.

For these reasons,

THE COURT IS OF OPINION,

by nine votes to five,

that 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.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of July, one thousand nine hundred and sixty-two, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) B. WINIARSKI,
President.

(Signed) GARNIER-COIGNET,
Registrar.

Judge SPIROPOULOS makes the following declaration:

While accepting the Court's conclusion, I cannot agree with all the views put forward in the Advisory Opinion. In particular, I consider that the affirmative reply to the request for an opinion is justified by the argument that the resolutions of the General Assembly authorizing the financing of the United Nations operations in the Congo and the Middle East, being resolutions designed to meet expenditure concerned with the fulfilment of the purposes of the United Nations, which were adopted by two-thirds of the Members of the General Assembly present and voting, create obligations for the Members of the United Nations.

I express no opinion as to the conformity with the Charter of the resolutions relating to the United Nations operations in the Congo and the Middle East, for the following reasons:

The French delegation had proposed to the General Assembly the acceptance of an amendment to the text, finally adopted by it, according to which amendment the question put to the Court would have become: "Were the expenditures authorized, etc. ... decided on in conformity with the provisions of the Charter and, if so, do they constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations?"

On 20 December 1961, in the course of the meeting of the General Assembly, this amendment was accompanied by a statement by the

French delegation justifying the submission of the French amendment and which, among other things, said:

“In the opinion of the French delegation, 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. The Court cannot, in fact, appraise the scope of those resolutions without determining what obligations they may create for Member States under the Charter.

It is for this reason that the French delegation is submitting to the Assembly an amendment [A/L. 378] the adoption of which would enable the Court to determine whether or not the Assembly resolutions concerning the financial implications of the United Nations operations in the Congo and the Middle East are in conformity with the Charter. Only thus, if the matter is referred to the Court, will it be done in such a way as to take into account the scope and nature of the problems raised in the proposal to request an opinion.”

The French amendment was rejected.

The rejection of the French amendment by the General Assembly seems to me to show the desire of the Assembly that the conformity or non-conformity of the decisions of the Assembly and of the Security Council concerning the United Nations operations in the Congo and the Middle East should not be examined by the Court. It seems natural, indeed, that the General Assembly should not have wished that the Court should pronounce on the validity of resolutions which have been applied for several years. In these circumstances, I have felt bound to refrain from pronouncing on the conformity with the Charter of the resolutions relating to the United Nations operations in the Congo and the Middle East.

Judges Sir Percy SPENDER, Sir Gerald FITZMAURICE and MORELLI append to the Opinion of the Court statements of their Separate Opinions.

President WINIARSKI and Judges BASDEVANT, MORENO QUINTANA, KORETSKY and BUSTAMANTE Y RIVERO append to the Opinion of the Court statements of their Dissenting Opinions.

(Initialed) B. W.

(Initialed) G.-C.