SEPARATE OPINION OF JUDGE SIR PERCY SPENDER

I agree that the question should be answered in the affirmative.

The Court is called upon to answer a question which, exceedingly important though it is, lies within a comparatively limited compass.

That question is whether certain particularized expenditure—money spent or to be spent—authorized by certain specified resolutions of the General Assembly, constitute "expenses of the Organization" within the meaning of Article 17 (2) of the Charter.

Whilst the form in which the question has been framed may not in any manner inhibit the Court from considering any aspect of the Charter, or any part of the record presented to it, to the extent it considers relevant, the opinion the Court gives ought not, in my view, go beyond the limits of what is reasonably necessary to permit it to answer the question. To go beyond these limits is I think an excess of function.

For my part I have not found it necessary to express any opinion upon the validity or regularity of the resolutions pursuant to which the operations in the Congo and the Middle East were undertaken. A conclusion thereon would not, in my view, affect the answer which should be given to the question.

Article 17 has a provenance and field of its own. It is the only Article in the Charter which deals with the budgetary affairs and the expenses of the Organization. Neither the word "budget" in Article 17 (1) nor the word "expenses" in Article 17 (2) is qualified in any manner in the text, nor elsewhere by anything appearing in the Charter.

The word "budget" in Article 17 (1) covers all finance requirements of the Organization and the word "expenses" in Article 17 (2) covers all expenditures which may be incurred on behalf of the Organization, which give effect to the purposes of the United Nations. There is, upon the proper interpretation of Article 17, no legal basis for confining these words to what has been described as "normal", "ordinary", "administrative" or "essential" costs and expenditure, whatever precisely these terms may denote. The expenditures referred to in the question put to the Court were of a character which could qualify them as incurred in order to give effect to the purposes of the Organization. It was in these circumstances for the General Assembly, and for it alone, to determine, as it did, whether these expenditures did qualify as those of the Organization and to deal with them pursuant to its powers under Article 17 (2).

Once the General Assembly has passed upon what are the expenses of the Organization, and it is apparent that the expenditure incurred and to be incurred on behalf of the Organization is in furtherance of its purposes, their character as such and any apportionment thereof made by the General Assembly under Article 17 (2) of the Charter cannot legally be challenged by any Member State. Its decision may not be impugned and becomes binding upon each Member State. It would be anarchic of any interpretation of the Charter were each Member State its own interpreter of whether this or that particular expense was an expense of the Organization, within the meaning of Article 17 (2), and could, by its own interpretation, be free to refuse to comply with the decision of the General Assembly.

It is, moreover, evident that once the Secretary-General, who, under Article 98 of the Charter, is bound to perform such functions as the General Assembly or the Security Council may entrust him with, is called upon by either organ to discharge certain functions, as he was in respect to the operations in both the Congo and the Middle East, and in discharging them he engages the credit of the Organization and on its behalf incurs financial obligations, then, unless the resolution under which he acts, or what he does, is unconnected with the furtherance of the purposes of the Organization, the moneys involved may properly be dealt with by the General Assembly as "expenses of the Organization". Once they have been, the action of the General Assembly would not be open to challenge by a Member State even if the resolutions under which he was called upon to act were not in conformity with the Charter and even if he should exceed the authority conferred upon him. He is the Chief Administrative Officer of the Organization and director of the Secretariat which itself is an organ of the United Nations. If, acting within the apparent scope of his authority, he engages the credit of the Organization, the General Assembly has, in my view, full power to acknowledge the financial obligations involved as "expenses of the Organization" within the meaning of Article 17 (2) and act accordingly.

Subject to the above and to certain general observations that I wish to make on the discharge by the Court of its function of interpreting the Charter, I associate myself with the opinion of the Court.

* * *

The interpretation given to Article 17 and in particular to subparagraph (2) thereof accords a wide power to the General Assembly.

It is however nothing to the point to contend that so to interpret Article 17 (2) confers an authority so extensive that it could lead the General Assembly, by virtue of its control over the finances of the Organization, to extend, in practice, its own competence in other fields in disregard of the provisions of the Charter. Whatever the ambit of power conferred upon any organ of the United Nations, that may be ascertained only from the terms of the Charter itself. Once the Court has determined the interpretation it must accord to a provision of the Charter on which it is called upon to express its opinion, its function is discharged. Any political consequences which may flow from its decision is not a matter for its concern.

* * *

General Observations on the Interpretation of the Charter

Words communicate their meaning from the circumstances in which they are used. In a written instrument their meaning primarily is to be ascertained from the context, the setting, in which they are found.

The cardinal rule of interpretation that this Court and its predecessor has stated should be applied is that words are to be read, if they may so be read, in their ordinary and natural sense. If so read they make sense, that is the end of the matter. If, however, so read they are ambiguous or lead to an unreasonable result, then and then only must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really meant when they used the words under consideration (*Competence of the General Assembly regarding Admission to the United Nations, I.C.J. Reports 1950*, p. 8, and *Polish Postal Service in Danzig*, P.C.I.J., Series B, No. 11, p. 39).

This injunction is sometimes a counsel of perfection. The ordinary and natural sense of words may at times be a matter of considerable difficulty to determine. What is their ordinary and natural sense to one may not be so to another. The interpreter not uncommonly has, what has been described as, a personal feeling towards certain words and phrases. What makes sense to one may not make sense to another. Ambiguity may lie hidden in the plainest and most simple of words even in their natural and ordinary meaning. Nor is it always evident by what legal yardstick words read in their natural and ordinary sense may be judged to produce an unreasonable result.

Moreover the *intention* of the parties at the time when they entered into an engagement will not always—depending upon the nature and subject-matter of the engagement—have the same importance. In particular in the case of a multilateral treaty such as

the Charter the intention of its original Members, except such as may be gathered from its terms alone, is beset with evident difficulties. Moreover, since from its inception it was contemplated that other States would be admitted to membership so that the Organization would, in the end, comprise "all other peace-loving States which accept the obligations contained in the Charter" (Article 4), the intention of the framers of the Charter appears less important than intention in many other treaties where the parties are fixed and constant and where the nature and subject-matter of the treaty is different. It is hardly the intention of those States which originally framed the Charter which is important except as that intention reveals itself in the text. What is important is what the Charter itself provides; what—to use the words of Article 4—is "contained in ... the Charter".

It is, I venture to suggest, perhaps safer to say that the meaning of words, however described, depends upon subject-matter and the context in which they are used.

* * *

In the interpretation of a multilateral treaty such as the Charter which establishes a permanent international mechanism or organization to accomplish certain stated purposes there are particular considerations to which regard should, I think, be had.

Its provisions were of necessity expressed in broad and general terms. It attempts to provide against the unknown, the unforeseen and, indeed, the unforeseeable. Its text reveals that it was intended —subject to such amendments as might from time to time be made to it—to endure, at least it was hoped it would endure, for all time. It was intended to apply to varying conditions in a changing and evolving world community and to a multiplicity of unpredictable situations and events. Its provisions were intended to adjust themselves to the ever changing pattern of international existence. It established international machinery to accomplish its stated purposes.

It may with confidence be asserted that its particular provisions should receive a broad and liberal interpretation unless the context of any particular provision requires, or there is to be found elsewhere in the Charter, something to compel a narrower and restricted interpretation.

The stated purposes of the Charter should be the prime consideration in interpreting its text.

Despite current tendencies to the contrary the first task of the Court is to look, not at the *travaux préparatoires* or the practice which hitherto has been followed within the Organization, but at the terms of the Charter itself. What does it provide to carry out its purposes?

If the meaning of any particular provision read in its context is sufficiently clear to satisfy the Court as to the interpretation to be

given to it there is neither legal justification nor logical reason to have recourse to either the *travaux préparatoires* or the practice followed within the United Nations.

The Charter must, of course, be read as a whole so as to give effect to all its terms in order to avoid inconsistency. No word, or provision, may be disregarded or treated as superfluous, unless this is absolutely necessary to give effect to the Charter's terms read as a whole.

* * *

The purpose pervading the whole of the Charter and dominating it is that of maintaining international peace and security and to that end the taking of effective collective measures for the prevention and removal of threats to the peace.

Interpretation of the Charter should be directed to giving effect to that purpose, not to frustrate it. If two interpretations are possible in relation to any particular provision of it, that which is favourable to the accomplishment of purpose and not restrictive of it must be preferred.

A general rule is that words used in a treaty should be read as having the meaning they bore therein when it came into existence. But this meaning must be consistent with the purposes sought to be achieved. Where, as in the case of the Charter, the purposes are directed to saving succeeding generations in an indefinite future from the scourge of war, to advancing the welfare and dignity of man, and establishing and maintaining peace under international justice for all time, the general rule above stated does not mean that the words in the Charter can only comprehend such situations and contingencies and manifestations of subject-matter as were within the minds of the framers of the Charter (cf. *Employment of Women during the Night*, P.C.I.J., Series A/B, No. 50, p. 377).

The wisest of them could never have anticipated the tremendous changes which politically, militarily, and otherwise have occurred in the comparatively few years which have elapsed since 1945. Few if any could have contemplated a world in thraldom to atomic weapons on the scale of today, and the dangers inherent in even minor and remote events to spark wide hostilities imperilling both world peace and vast numbers of mankind. No comparable human instrument in 1945 or today could provide against all the contingencies that the future should hold. All that the framers of the Charter reasonably could do was to set forth the purposes the organization set up should seek to achieve, establish the organs to accomplish these purposes and confer upon these organs powers in general terms. Yet these general terms, unfettered by man's incapacity to foretell the future, may be sufficient to meet the thrusts of a changing world.

The nature of the authority granted by the Charter to each of its organs does not change with time. The ambit or scope of the authority conferred may nonetheless comprehend ever changing circumstances and conditions and embrace, as history unfolds itself, new problems and situations which were not and could not have been envisaged when the Charter came into being. The Charter must accordingly be interpreted, whilst in no way deforming or dislocating its language, so that the authority conferred upon the Organization and its various organs may attach itself to new and unanticipated situations and events.

All canons of interpretation, however valuable they may be, are but aids to the interpreter. There are, as this Court's predecessor acknowledged, many methods of interpretation (*Territorial Jurisdiction of the International Commission on the River Oder*, P.C.I.J., Series A, No. 23, p. 26). The question whether an unforeseen, or extraordinary, or abnormal development or situation, or matter relating thereto, falls within the authority accorded to any of the organs of the Organization finds its answer in discharging the essential task of all interpretation—ascertaining the meaning of the relevant Charter provision in its context. The meaning of the text will be illuminated by the stated purposes to achieve which the terms of the Charter were drafted.

* * *

Practice within the United Nations—Its effect on or value as a criterion of interpretation.

In the proceedings on this Advisory Opinion practice and usage within the United Nations has been greatly relied upon by certain States, which have availed themselves of the opportunity to present their views to the Court, as establishing a criterion of interpretation of relevant Charter provisions.

It was for example contended by one State that usages developed in the practice of the United Nations have dealt with certain items of expenditure as expenses of the Organization within the meaning of Article 17 (2) and that such usages whether or not they could be said to have attained the character of customary legal principle are relevant for the purposes of interpreting the meaning and scope of resolutions adopted by the General Assembly concerning specific questions. So usage within the United Nations, it was urged, has sanctioned the inclusion in the budget expenses of the Organization of items which related to other than the ordinary administrative and routine duties of the Organization as, for example, those connected with special peace-keeping operations and operations of a similar

character initiated by either the General Assembly or the Security Council.

Thus, so it was asserted, in practice it had been considered a normal and usual procedure to include such operations in the regular budget which was financed in accordance with Article 17 (2) of the Charter. Though objections had from time to time been made to the inclusion of different items, the General Assembly had not hesitated to overrule such objections and the objecting States, it was claimed, had in the end acquiesced in the decisions by paying their contributions under Article 17 (2). It was also contended that the General Assembly and the Security Council had consistently pursued a practice of considering the General Assembly competent to deal with a matter transferred to it from the Security Council in the circumstances defined by the Uniting for Peace Resolution 377 (V).

These practices were called in aid as relevant considerations in interpreting both Article 17 (2) and Article 24 of the Charter. The proposition advanced was that it is a general principle that a treaty provision should be interpreted in the light of the subsequent conduct of the contracting parties—words which echo those to be found in the Advisory Opinion of the Permanent Court in *Interpretation of the Treaty of Lausanne* (P.C.I.J., Series B, No. 12, 1925, p. 24)—and that the uniform practice pursued by the organs of the United Nations should be equated with the "subsequent conduct" of contracting *parties* as in the case of a bilateral treaty.

Similar contentions were made by other States. The practice of the parties in interpreting a constitutive instrument, it was submitted, was a guide to that instrument's true meaning. The practice of the Security Council, as well as that of the General Assembly, demonstrated, it was said, that the power to approve and apportion the budget of the United Nations was recognized to be the province of the General Assembly alone. Furthermore, by adopting certain resolutions the Security Council and the General Assembly construed the Charter as granting the powers thus exercised, that these organs had the competence to interpret such parts of the Charter as were applicable to their respective and particular functions, and accordingly, that the interpretations such organs have in practice given to their respective powers are entitled to the greatest weight in any subsequent judicial review to determine the meaning and extent of those functions.

The contention of one State went further. The claim was made that any interpretation of the Charter by a United Nations organ

should be upheld so long as it is an interpretation which is not expressly inconsistent with the Charter and that since any such interpretation would reflect the support of the majority of the Member States, and considering the interpretation of the Charter which has been applied by the Assembly in regard to financing the operation of the UNOC and UNEF, the Court should give its advisory opinion in this case in the affirmative.

These contentions raise questions of importance which should not, I think, be passed over in silence, particularly having regard to the extent to which the Court itself has had recourse to practice within the United Nations from which to draw sustenance for its interpretation of Charter provisions.

* * *

It is of course a general principle of international law that the subsequent conduct of the parties to a bilateral—or a multilateral—instrument may throw light on the intention of the parties at the time the instrument was entered into and thus may provide a legitimate criterion of interpretation.

So the conduct of *one* party to such an instrument—or to a unilateral instrument—may throw light upon *its* intentions when entering into it whilst that of *both*—or *all*—parties may have considerable probative value in aid of interpretation.

There is, however, as the late Judge Sir Hersch Lauterpacht has pointed out, an element of artificiality in the principle, and care must be taken to circumscribe its operation. This element of artificiality is greatly magnified when the principle is sought to be extended from the field of bilateral instruments to that of multilateral instruments of an organic character and where the practice (or subsequent conduct) relied upon is that, not of the parties to the instrument, but of an organ created thereunder.

In any case subsequent conduct may only provide a criterion of interpretation when the text is obscure, and even then it is necessary to consider whether that conduct itself permits of only one inference (*Brazilian Loans Case*, P.C.I.J., Series A/B, Nos. 20/21, p. 119). Except in the case where a party is by its conduct precluded from relying upon a particular interpretation, with which type of case we are not presently concerned, it can hardly control the language or provide a criterion of interpretation of a text which is not obscure.

I find difficulty in accepting the proposition that a practice pursued by an *organ* of the United Nations may be equated with the

subsequent conduct of *parties* to a bilateral agreement and thus afford evidence of intention of the parties to the Charter (who have constantly been added to since it came into force) and in that way or otherwise provide a criterion of interpretation. Nor can I agree with a view sometimes advanced that a common practice pursued by an organ of the United Nations, though *ultra vires* and in point of fact having the result of amending the Charter, may nonetheless be effective as a criterion of interpretation.

* * *

The legal rationale behind what is called the principle of "subsequent conduct" is I think evident enough. In essence it is a question of evidence, its admissibility and value. Its roots are deeply embedded in the experience of mankind.

A man enters into a compact usually between himself and another. The meaning of that compact when entered into whether oral, or in writing, may well be affected, even determined, by the manner in which both parties in practice have carried it out.

That is evident enough. Their joint conduct expresses their common understanding of what the terms of their compact, at the time they entered into it, were intended to mean, and thus provides direct evidence of what they did mean.

That conduct on the part of both parties to a treaty should be considered on the same footing is incontestable. It provides a criterion of interpretation.

It is however evident enough—despite a flimsy and questionable argument based upon what appears in *Iranian Oil Company (I.C.J. Reports 1952*, pp. 106-107)—that the subsequent conduct of one party alone cannot be evidence in its favour of a common understanding of the meaning intended to be given to the text of a treaty. Its conduct could, under certain conditions to which I have in the *Case concerning the Temple of Preah Vihear (I.C.J. Reports 1962*, p. 128) made brief reference, preclude it as against the other party to the treaty from alleging an interpretation contrary to that which by its conduct it has represented to be the correct interpretation to be placed upon the treaty. Short of conduct on its part amounting to preclusion, it may also, if the other party to the treaty acknowledges that the interpretation so placed upon it by the first party is correct, provide evidence in favour of the first party, depending on the weight the acknowledgement merits, and thus also provide a criterion of interpretation.

As in the field of municipal law, multilateral compacts were a later development; as also were multilateral treaties in the field of international law, particularly those of the organizational character of the Charter.

In the case of multilateral treaties the admissibility and value as evidence of subsequent conduct of one or more parties thereto encounter particular difficulties. If all the parties to a multilateral treaty where the parties are fixed and constant, pursue a course of subsequent conduct in their attitude to the text of the treaty, and that course of conduct leads to an inference, and one inference only, as to their common intention and understanding at the time they entered into the treaty as to the meaning of its text, the probative value of their conduct again is manifest. If however only one or some but not all of them by subsequent conduct interpret the text in a certain manner, that conduct stands upon the same footing as the unilateral conduct of one party to a bilateral treaty. The conduct of such one or more could not of itself have any probative value or provide a criterion for judicial interpretation.

Even where the course of subsequent conduct pursued by both parties to a bilateral treaty or by all parties to a multilateral treaty are in accord and that conduct permits of only one inference it provides a criterion of interpretation only when, as has already been indicated, the text of the treaty is obscure or ambiguous. It may, however, depending upon other considerations not necessary to be here dealt with, provide evidence from which to infer a new agreement with new rights and obligations between the parties, in effect superimposed or based upon the text of the treaty and amending the same. This latter aspect of subsequent conduct is irrelevant for present consideration since no amendment of the Charter may occur except pursuant to Article 108 of the Charter.

When we pass from multilateral treaties in which the parties thereto are fixed and constant to multilateral treaties where the original parties thereto may be added to in accordance with the terms of the treaty itself we move into territory where the role and value of subsequent conduct as an interpretive element is by no means evident.

The Charter provides the specific case with which we are concerned. The original Members of the Charter number less than half the total number of Member States. If the intention of the original Members of the United Nations, at the time they entered into the Charter, is that which provides a criterion of interpretation, then it is the subsequent conduct of *those* Members which may be equated with the subsequent conduct of the parties to a bilateral or multilateral treaty where the parties are fixed and constant. This, it seems to me, could add a new and indeterminate dimension to the rights and obligations of States that were not original Members and so were not privy to the intentions of the original Members.

However this may be, it is not evident on what ground a practice consistently followed by a majority of Member States not in fact

accepted by other Member States could provide any criterion of interpretation which the Court could properly take into consideration in the discharge of its judicial function. The conduct of the majority in following the practice may be evidence against them and against those who in fact accept the practice as correctly interpreting a Charter provision, but could not, it seems to me, afford any in their favour to support an interpretation which by majority they have been able to assert.

* * *

It is not I think permissible to move the principle of subsequent conduct of parties to a bilateral or multilateral treaty into another field and seek to apply it, not to the *parties* to the treaty, but to an *organ* established under the treaty.

My present view is that it is not possible to equate "subsequent conduct" with the practice of an organ of the United Nations. Not only is such an organ not a party to the Charter but the inescapable reality is that both the General Assembly and the Security Council are but the mechanisms through which the Members of the United Nations express their views and act. The fact that they act through such an organ, where a majority rule prevails and so determines the practice, cannot, it seems to me, give any greater probative value to the practice established within that organ than it would have as conduct of the Members that comprise the majority if pursued outside of that organ.

The contention of the various States, that the practice followed by the General Assembly and the Security Council in interpreting their functions under the Charter has a particular probative value of its own, finds authority, it is claimed, in the jurisprudence of this Court and its predecessor.

It falls for consideration to what extent, if at all, this is so.

The cases which may be relied upon are few and, upon examination, they throw little light upon the matter. The extent to which a practice pursued by an organ of the United Nations may be had resort to by the Court, if at all, as an aid to interpretation, has, I think, yet to receive deliberate consideration by, and to be spelt out by, the Court.

In the Advisory Opinion of the Permanent Court in *Competence of the International Labour Organisation* (P.C.I.J., Series B, No. 2 (1922), pp. 40-41) when dealing with a question of interpretation arising out of Part XIII of the Treaty of Peace between the Allied

and Associated Powers and Germany, the fact that the competence of the International Labour Organisation to deal with the subject of agriculture had never been disputed by the Contracting Parties might, the Court observed, if there had been any ambiguity in the text (which the Court found did not exist), "suffice to turn the scale". The Court in point of fact had already arrived at its conclusion on the interpretation which should be given to the text; its observation was accordingly *obiter dicta*. Moreover it was dealing with the conduct of *parties* to the treaty. In any case from the nature of the Court's observation in that case it must be evident that it has little if any jurisprudential value on the matter presently being considered.

In the Advisory Opinion of the Permanent Court in *Treaty of Lausanne (Frontier between Turkey and Iraq)* (P.C.I.J., 1925, Series B, No. 12, p. 24) advice was sought by the Council of the League of Nations on Article 3, paragraph 2, of that Treaty. Although this was so, an examination of the case will reveal that what the Court was directing its attention to was in essence a dispute between Great Britain and Turkey in relation to the frontier between the lastmentioned State and Iraq. In that case the Court did concern itself with the subsequent conduct of the Parties but only with the conduct of the Parties to *that* dispute. It examined the conduct of Great Britain and Turkey. Again the Court in any case had already reached its conclusion on the interpretation it should place upon the Article upon which advice was sought. The meaning was "sufficiently clear" and thus what it had to say in relation to the subsequent conduct of Great Britain and Turkey was also *obiter dicta*.

The Court observed

> "The facts subsequent to the conclusion of the Treaty of Lausanne can only concern the Court in so far as they throw light upon the *intention* of the *Parties*[1]—at the time of the conclusion of the Treaty."

It considered that the "attitude adopted by the British and Turkish Governments" after the signature of the Treaty "is only valuable ... as an indication of *their* views regarding the clause in question". The fact that the British and Turkish representatives concurred in a certain unanimous vote of the Council of the League on a particular matter showed that there was no disagreement between "the Parties" as regards *their* obligation to accept as definitive and binding the decision or recommendation to be made by the Council. The fact that "the Parties" accepted beforehand the Council's decision might, the Court observed, be regarded as confirming the interpretation which in the Court's opinion flowed from the actual wording of the Article.

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[1] This is clearly a reference to Great Britain and Turkey.

It hardly needs exposition to establish that this case provides no foundation upon which to rest the contentions of the various States to which reference has previously been made.

Nor does the Advisory Opinion of the Court in *Status of South West Africa (I.C.J. Report 1950,* p. 128) where the Court said that

> "Interpretations placed upon legal instruments by the *parties* to them though not conclusive as to their meaning have considerable probative value *when* they contain recognition by a party of its *own* obligations under an instrument",

or the *Brazilian Loans Case* (P.C.I.J. (1929), Series A, Nos. 20/21, p. 119)—both of which cases were relied upon in support of the proposition that the interpretation given by the General Assembly and the Security Council to provisions of the Charter were entitled to the greatest weight in any subsequent judicial review—carry the matter any further. In the former case a common intention was found to exist—the interpretation that South Africa was said to have placed upon the Charter (or its mandate) by its conduct provided evidence *against* it. The latter case has little if any relevance. Having stated the principle of "subsequent conduct" in terms already indicated the Court went on to say that there was indeed no ambiguity in the text. The principle accordingly did not apply. The Court however, because of arguments advanced in the course of the proceeding before it, was induced to consider whether the bondholders' conduct provided any basis for an inference that they—the bondholders—were of the opinion that they were not entitled to payment on the basis of gold; in short whether their conduct could provide evidence *against* them.

Finally there is the Advisory Opinion of this Court in *Competence of the General Assembly regarding Admission to the United Nations (Article 4 of the Charter) (I.C.J. Reports 1950,* p. 9) which the Court in the present case accepts as authority for its reliance upon practice within the United Nations to sustain its reasoning and which is usually relied upon in support of the proposition that "subsequent conduct" is to be equated with a practice pursued by the organs of the United Nations.

In that Advisory Opinion the Court would appear to have found support for its conclusion already otherwise arrived at on the meaning of Article 4 of the Charter. It had found "no difficulty in ascertaining the natural and ordinary meaning of the words in question and no difficulty in giving effect to them". But it appears to have found sustenance or satisfaction for its conclusion in the fact that "the organs to which Article 4 entrusts the judgment of the Organization have consistently interpreted the text" in the manner

which it had concluded was its proper interpretation. Again, whatever is the significance to be attached to this purely factual observation on a coincidence, it was unnecessary and irrelevant to the Court's opinion. The Court had already made it abundantly clear that it was only when the words in their natural and ordinary meaning were ambiguous or led to an unreasonable result, that it was permissible to resort to other methods of interpretation. It thus confirmed the rule laid down in *Case of Brazilian Loans (ante)*, *Serbian Loans* (P.C.I.J., Series A, Nos. 20/21, p. 38) and *International Labour Organisation (ante)* that it is only where a treaty is ambiguous that resort may be had "to the manner of performance in order to ascertain the intention of the parties".

That being so it is not apparent what legal significance is to be attached to the Court's observation. The fact stated added nothing to the Court's reasoning. Whether the General Assembly and the Security Council had consistently interpreted Article 4 in the sense in which the Court did or had consistently interpreted it in a different sense was quite irrelevant to the Court's conclusion. On any rational examination of this case, it provides, I believe, no authority, at least none of any weight, for the proposition that the practice followed by an *organ* of the United Nations may be equated with the subsequent conduct of the *parties* to a treaty.

The jurisprudence of this Court and of the Permanent Court accordingly reveals, I believe, no support for the various contentions advanced by the States to which reference has been made and in particular lends none to the proposition that a pratice pursued by a majority of Member States in an organ of the United Nations has probative value in the present case.

* * *

Apart from a practice which is of a peaceful, uniform and undisputed character accepted in fact by all current Members, a consideration of which is not germane to the present examination, I accordingly entertain considerable doubt whether practice of an organ of the United Nations has any probative value either as providing evidence of the intentions of the original Member States or otherwise a criterion of interpretation. As presently advised I think it has none.

If however it has probative value, what is the measure of its value before this Court?

An organ of the United Nations, whether it be the General Assembly, the Security Council, the Economic and Social Council, the Secretariat or its subsidiary organs, has in practice to interpret its authority in order that it may effectively function. So, throughout the world, have countless governmental and administrative

organs and officials to interpret theirs. The General Assembly may thus in practice, by majority vote, interpret Charter provisions as giving it authority to pursue a certain course of action. It may continue to give the same interpretation to these Charter provisions in similar or different situations as they arise. In so doing action taken by it may be extended to cover circumstances and situations which had never been contemplated by those who framed the Charter. But this would not, for reasons which have already been given, necessarily involve any departure from the terms of the Charter.

On the other hand, the General Assembly may in practice construe its authority beyond that conferred upon it, either expressly or impliedly, by the Charter. It may, for example, interpret its powers to permit it to enter a field prohibited to it under the Charter or in disregard of the procedure prescribed in the Charter. Action taken by the General Assembly (or other organs) may accordingly on occasions be beyond power.

The Charter establishes an Organization. The Organization must function through its constituted organs. The functions and authorities of those organs are set out in the Charter. However the Charter is otherwise described the essential fact is that it is a multilateral treaty. It cannot be altered at the will of the majority of the Member States, no matter how often that will is expressed or asserted against a protesting minority and no matter how large be the majority of Member States which assert its will in this manner or how small the minority.

It is no answer to say that the protesting minority has the choice of remaining in or withdrawing from the Organization and that if it chooses to remain or because it pays its contributions according to apportionment under Article 17 (2) the Members in the minority "acquiesce" in the practice or must be deemed to have done so. They are bound to pay these contributions and the minority has a right to remain in the Organization and at the same time to assert what it claims to be any infringement of its rights under the Charter or any illegal use of power by any organ of the United Nations.

In practice, if the General Assembly (or any organ) exceeds its authority there is little that the protesting minority may do except to protest and reserve its rights whatever they may be. If, however, the authority purported to be exercised against the objection of any Member State is beyond power it remains so.

So, if the General Assembly were to "intervene in matters which are essentially within the domestic jurisdiction of any State" within the meaning of Article 2 (7) of the Charter, whatever be the meaning to be given to these words, that intervention would be the

entering into a field prohibited to it under the Charter and be beyond the authority of the General Assembly. This would continue to be so, no matter how frequently and consistently the General Assembly had construed its authority to permit it to make intervention in matters essentially within the domestic jurisdiction of any States. The majority has no power to extend, alter or disregard the Charter.

Each organ of the United Nations, of course, has an inherent right to interpret the Charter in relation to its authority and functions. But the rule that they may do so is not in any case applicable without qualification. Their interpretation of their respective authorities under the Charter may conceivably conflict one with the other. They may agree. They may, after following a certain interpretation for many years, change it. In any case, their right to interpret the Charter gives them no power to alter it.

The question of constitutionality of action taken by the General Assembly or the Security Council will rarely call for consideration except within the United Nations itself, where a majority rule prevails. In practice this may enable action to be taken which is beyond power. When, however, the Court is called upon to pronounce upon a question whether certain authority exercised by an organ of the Organization is within the power of that organ, only legal considerations may be invoked and *de facto* extension of the Charter must by disregarded.

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Once a request for an Advisory Opinion is made to this Court and it decides to respond to that request, the question on which the Opinion has been sought passes, as is claimed by the Republic of France in its written statement in this case, on to the legal plane and takes on a new character, in the determination of which legal considerations and legal considerations only may be invoked.

In the present case, it is sufficient to say that I am unable to regard any usage or practice followed by any organ of the United Nations which has been determined by a majority therein against the will of a minority as having any legal relevance or probative value.

(Signed) Percy C. SPENDER.