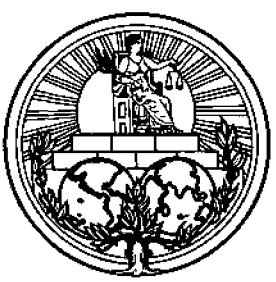
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

CERTAINES DÉPENSES DES NATIONS UNIES

(ARTICLE 17, PARAGRAPHE 2, DE LA CHARTE)

AVIS CONSULTATIF DU 20 JUILLET 1962



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1. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE DE HAUTE-VOLTA

22 janvier 1962.

Monsieur le Greffier,

Comme suite à la correspondance en référence, par laquelle la Cour internationale de Justice demande l'avis du Gouvernement de Haute-Volta à l'effet de savoir si les dépenses autorisées par diverses résolutions de l'Assemblée générale de l'Organisation des Nations relatives aux opérations de la Force d'urgence de l'O. N. U. au CONGO, constituent des « dépenses de l'Organisation » au sens du paragraphe 2 de l'article 17 de la Charte des Nations Unies, j'ai l'honneur de vous faire tenir ci-après les arguments exposés par mon Gouvernement:

Le paragraphe 2 de l'article 17 de la Charte de l'O. N. U. énonce: « Les dépenses de l'Organisation sont supportées par les Membres selon la répartition fixée par l'Assemblée générale »; en fait, il s'agit des dépenses inhérentes au fonctionnement normal des divers organismes relevant de l'Organisation. Il est regrettable que la Charte ne prévoit pas de discrimination entre les dépenses « ordinaires » et « extraordinaires ». Les dépenses de la Force d'urgence n'entrent pas dans les dépenses courantes, puisque destinées à subvenir aux besoins et au maintien d'un organe transitoire appelé à des opérations de caractère militaire à effets limités dans le temps.

La constitution d'une force d'urgence est prévue expressément par le paragraphe 5 de l'article 2 de la Charte, mais le paragraphe 4 du même article précise bien que « les Membres de l'Organisation s'abstiennent dans leurs relations internationales de recourir à la menace ou à l'emploi de la force, soit contre l'intégrité territoriale ou l'indépendance politique de tout État, *soit de toute autre manière incompatible avec les buts des Nations Unies* ».

Il est indéniable que les buts fixés par l'article 1 de la Charte « ... réaliser par des moyens pacifiques, conformément aux principes de justice et du droit international, l'ajustement ou le règlement de différends ou de situations, de caractère international, susceptibles de mener à une rupture de la paix », ne pouvaient être atteints par une intervention armée en contradiction avec les principes mêmes de la Charte.

L'intervention de la Force d'urgence au Congo n'a pas permis au peuple congolais de disposer de lui-même, et la poursuite d'opérations contre des fractions très importantes de la population constitue une violation flagrante du principe énoncé dans la résolution initiale de la Charte: « Résolus ... à accepter des principes et instituer des

méthodes garantissant qu'il ne sera pas fait usage de la force des armes, sauf dans l'intérêt commun. »

Le Gouvernement de la Haute-Volta estime pour toutes ces raisons que les dépenses de la Force d'urgence des Nations Unies au Congo ne constituent pas des dépenses de l'Organisation et devraient être laissées à la charge des États volontaires pour participer à la poursuite des opérations entreprises.

Veuillez agréer, etc.

(Signé) Lompolo KONE.

2. EXPOSÉ ÉCRIT DU GOUVERNEMENT DE LA RÉPUBLIQUE ITALIENNE

Le Gouvernement de la République italienne a l'honneur de soumettre à la Cour internationale de Justice le présent mémoire rédigé aux termes de l'art. 66 du Statut, et avec référence à la lettre du 27 décembre 1961 du Greffier de la Cour. Par cette lettre, Monsieur le Greffier a bien voulu informer le Gouvernement italien que Monsieur le Président de la Cour, avec son ordonnance en date du 27 décembre 1961, a fixé le terme du 20 février 1962 pour la présentation d'exposés écrits sur la question concernant la requête d'avis consultatif que l'Assemblée générale des Nations Unies lui a adressée par sa résolution du 20 décembre 1961.

Le Gouvernement italien estime que la requête d'avis consultatif de l'Assemblée générale concerne deux points essentiels qu'il sera opportun de traiter séparément.

A) *Les dépenses des Nations Unies pour l'UNEF et l'ONUC doivent-elles être considérées comme « dépenses de l'Organisation » au sens du paragraphe 2 de l'art. 17 de la Charte des Nations Unies?*

Une recherche tendant à établir si les dépenses en question sont effectivement comprises parmi celles qui sont propres aux Nations Unies doit être poursuivie, selon l'avis du Gouvernement italien, en tenant compte des buts fondamentaux de l'Organisation. Ces buts sont définis par l'art. 1 de la Charte. Le paragraphe 1 dudit article, en particulier, dispose:

> « Les buts des Nations Unies sont les suivants: 1. Maintenir la paix et la sécurité internationales et à cette fin: prendre des mesures collectives efficaces en vue de prévenir et d'écarter les menaces à la paix et de réprimer tout acte d'agression ou autre rupture de la paix et réaliser, par des moyens pacifiques, conformément aux principes de la justice et du droit international, l'ajustement ou le règlement de différends ou de situations, de caractère international, susceptibles de mener à une rupture de la paix. »

D'autre part, en vertu de l'art. 2, par. 5,

> « Les Membres de l'Organisation donnent à celle-ci pleine assistance dans toute action entreprise par elle conformément aux dispositions de la présente Charte et s'abstiennent de prêter assistance à un État contre lequel l'Organisation entreprend une action préventive ou coercitive. »

Par conséquent, tous les États Membres de l'Organisation sont également et sans aucune distinction obligés à coopérer afin que

l'Organisation des Nations Unies puisse atteindre ses buts institutionnels.

Il est hors de doute que les Nations Unies ont effectué les opérations UNEF et ONUC, respectivement au Moyen-Orient et au Congo, à la suite de délibérations régulières du Conseil de Sécurité et de l'Assemblée générale. La requête d'avis consultatif mentionne exactement toutes ces délibérations. L'activité des Nations Unies dont il est question n'est pas seulement fondée sur une procédure absolument correcte du point de vue formel, mais elle rentre, sans aucun doute, dans les pouvoirs des organes des Nations Unies. On doit, d'autre part, reconnaître que lesdites dépenses ont été qualifiées comme « dépenses de l'Organisation » par de nombreuses résolutions de l'Assemblée générale; en effet, celle-ci a affirmé plusieurs fois très clairement que « les dépenses entraînées par les opérations des Nations Unies au Congo pour l'année 1960 constituent des dépenses de l'Organisation »; cfr. résolution de l'Assemblée générale 1583 (XV).

Il s'agit de résolutions qui ont été adoptées à une grande majorité des Membres des Nations Unies. Il existe donc déjà un consentement général dans le sens que ces dépenses sont non seulement « de l'Organisation », mais qu'elles doivent être considérées comme des « dépenses ordinaires », puisqu'elles ont été autorisées pour la réalisation des buts des Nations Unies.

Il apparaît superflu d'ajouter que, à la suite d'une série de résolutions régulièrement approuvées par l'Assemblée générale, chacun des États Membres est obligé de réaliser la volonté des Nations Unies, telle qu'elle a été exprimée par son organe principal, l'Assemblée générale. Par conséquent, selon l'avis du Gouvernement italien, aucun des États Membres ne peut se soustraire à l'obligation de contribuer aux dépenses entraînées par l'activité des Nations Unies dans l'accomplissement de leur mission institutionnelle.

Le fait que les dépenses dont il est question se réfèrent à l'activité d'un organe, tel que la Force d'urgence, qui n'existait pas encore lorsque la Charte des Nations Unies a été conçue, n'empêche en rien d'aboutir aux conclusions que nous avons déjà indiquées.

En vertu de l'art. 22 de la Charte, « l'Assemblée générale peut créer des organes subsidiaires qu'elle juge nécessaires à l'exercice de ses fonctions ». C'est précisément sur cette base que l'UNEF a été instituée; or il est évident que, du fait même de son existence et de son rattachement direct à l'Assemblée, cet organe est couvert par la règle de l'art. 17, par. 2, de la Charte (cfr. CHAUMONT, « La situation juridique des États Membres à l'égard de la force d'urgence des Nations Unies », dans l'*Annuaire français de droit international*, 1958, p. 419).

Tenant compte des cas précédents, on arrive à la conviction que tous les États Membres doivent supporter les dépenses entraînées par la création et le fonctionnement d'organes subsidiaires, même dans l'hypothèse où il n'y a pas eu une décision unanime. On peut

mentionner le Comité *ad hoc* sur les territoires non autonomes, créé par la résolution du 4 décembre 1946, jugé illégal par les Puissances administrantes; la Commission intérimaire de l'Assemblée générale, créée en 1948, qui n'a pas été admise par l'URSS et les pays de démocratie populaire; la Commission des mesures collectives, formée en vertu de la résolution du 3 novembre 1950, dont l'existence légitime a été également contestée par lesdits pays; le Comité du Sud-Ouest africain, qui n'a pas été reconnu par l'Union sud-africaine. Malgré cela, tous ces organes ont été intégrés dans le budget de l'Organisation, et les États protestataires, en payant leur contribution annuelle, ont par là même participé à l'entretien de ces organes.

La pratique qui s'est ainsi développée au sein des Nations Unies confirme donc le principe que le Secrétaire général a énoncé dans son rapport du 9 octobre 1957 (Doc. A 3694, par. 106) en disant que « lorsque l'Assemblée elle-même prend des décisions qui ont d'importantes conséquences financières, ces décisions emportent, pour les Gouvernements de tous les États Membres, l'obligation de fournir les ressources ou autres moyens qu'exige leur mise en œuvre ».

B) *A quel organe des Nations Unies appartient la compétence en matière administrative et budgétaire*

Le Gouvernement italien croit avoir démontré la régularité formelle et substantielle de la procédure suivie par les Nations Unies lorsqu'elles ont décidé de prendre des mesures pour le maintien de la paix et de la sécurité internationales au Moyen-Orient et au Congo. Cela établi, on doit voir si, dans le système constitutionnel des Nations Unies, les délibérations financières relatives auxdites mesures ont été prises par l'organe compétent. La solution est très simple: la compétence relative à toute gestion financière des Nations Unies appartient à l'Assemblée générale. Il suffit de lire l'art. 17 (par. 1 et 2), qui est ainsi conçu:

> « 1. L'Assemblée générale examine et approuve le budget de l'Organisation.
> 2. Les dépenses de l'Organisation sont supportées par les Membres selon la répartition fixée par l'Assemblée générale. »

Il s'agit de la seule disposition de la Charte qui a pour objet la gestion financière de l'Organisation. Il faut encore remarquer que même les dispositions des règlements ne visent la compétence d'aucun autre organe des Nations Unies. En effet, le règlement de l'Assemblée générale spécifie les compétences de l'Assemblée générale dans ce domaine comme suit: « L'Assemblée générale arrête le règlement relatif à la gestion des finances de l'Organisation » (art. 153). D'autre part, l'art. 154 confirme que toute dépense doit être approuvée par l'Assemblée générale. Cette dernière a donc tous les pouvoirs en matière budgétaire, y compris le pouvoir de nommer des organes auxiliaires comme le Comité

consultatif pour les questions administratives et budgétaires et le Comité technique des contributions. Ces deux organes sont subordonnés dans leur activité à l'Assemblée générale.

La formule employée au paragraphe 1 indique clairement que toute décision obligatoire pour les États Membres en ce qui concerne le bilan de l'Organisation relève de la compétence de l'Assemblée générale. A vrai dire, quand on a voulu attribuer à l'Assemblée une compétence d'une autre nature, dépourvue d'efficacité décisoire, on l'a dit d'une façon expresse. Tel est le cas du paragraphe 3 dudit article 17, qui donne à l'Assemblée le pouvoir de faire aux institutions spécialisées de simples recommandations sur leurs budgets administratifs. Le paragraphe 2 de l'article 17 confirme sans possibilité de doute que l'Assemblée générale est compétente à fixer le barème des contributions aux dépenses de l'Organisation. Dans l'espèce, l'Assemblée a exercé ce pouvoir, car elle a dérogé en faveur de certains Membres au barème ordinaire établi pour les dépenses de l'Organisation. En effet, le par. 5 de la résolution 1583 (XV) dit que l'Assemblée générale:

> « Décide en outre que les contributions bénévoles déjà annoncées, en sus de celles qui sont mentionnées au par. 3 ci-dessus, seront employées, lorsque l'État Membre intéressé en aura fait la demande avant le 31 mars 1961, à réduire de 50 pour 100 au maximum:
>
> *a)* La contribution que les États Membres admis pendant la quinzième session de l'Assemblée générale doivent acquitter pour l'exercice 1960 conformément à la résolution 1552 (XV) de l'Assemblée, en date du 18 décembre 1960;
>
> *b)* La contribution de tous les autres États Membres bénéficiant en 1960 d'une assistance au titre du programme élargi d'assistance technique, en commençant par les États dont la quote-part est fixée au minimum de 0,04 pour 100 et en continuant, successivement, par les États versant une quote-part supérieure, jusqu'à ce que le total des contributions bénévoles ait été entièrement employé. »

A peu près de la même façon s'exprime la résolution 1732 (XVI) de la dernière Assemblée générale.

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

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

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

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

Sur la base des considérations qui précèdent, le Gouvernement italien résume son point de vue dans les termes suivants: l'article 17, paragraphe 2, de la Charte des Nations Unies doit être interprété dans le sens que les dépenses entraînées par le financement des opérations des Nations Unies au Congo et au Moyen-Orient, autorisées par les résolutions de l'Assemblée générale mentionnées dans la requête d'avis consultatif, constituent des « dépenses de l'Organisation » au sens dudit article.

Rome, le 14 février 1962.

3. LETTRE DU GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE AU GREFFIER DE LA COUR

15 février 1962.

Monsieur le Greffier,

Par lettre 34891 du 27 décembre 1961 vous avez voulu me rappeler que, par une résolution du 20 décembre 1961, l'Assemblée générale des Nations Unies avait demandé à la Cour un avis consultatif et que le Président avait fixé au 20 février 1962 le délai dans lequel les États Membres de l'Organisation des Nations Unies pourraient fournir des renseignements sur la question.

J'ai l'honneur de vous indiquer brièvement par la présente lettre les raisons pour lesquelles le Gouvernement de la République française n'a pris et ne peut prendre part à l'examen de la question posée à la Cour par la résolution du 20 décembre 1961.

Le 20 décembre 1961, au cours de l'Assemblée générale (procès-verbal provisoire A/PV 1086, p. 56), le délégué de la France a dit: « Le projet de résolution qui figure dans le document A/5062 a pour objet de demander à la Cour internationale de Justice un avis consultatif afin de déterminer si les dépenses autorisées par un ensemble de résolutions de l'Assemblée générale constituent des dépenses de l'Organisation au sens du paragraphe 2 de l'article 17 de la Charte. Ce texte a été adopté sans que la Sixième Commission de l'Assemblée ait pu être consultée comme elle aurait dû l'être conformément à la résolution 684 (VII), qui a été incorporée sous forme d'annexe au règlement intérieur de l'Assemblée générale.

« De l'avis de la délégation française, la question posée à la Cour ne permet pas à celle-ci de se prononcer en toute clarté sur la source juridique des obligations financières des États Membres. La Cour, en effet, ne peut pas apprécier la portée de ces résolutions sans déterminer quelles obligations celles-ci peuvent faire naître pour les États Membres d'après la Charte.

« C'est pour cette raison que la délégation française soumet à l'Assemblée l'amendement contenu dans le document A/L. 378, dont l'adoption permettrait à la Cour de déterminer si les résolutions de l'Assemblée ayant trait aux conséquences financières des opérations des Nations Unies au Congo et au Moyen-Orient sont ou non conformes à la Charte. Ce n'est que dans ces conditions que, si la Cour devait être saisie, elle le serait d'une manière qui tienne compte de l'étendue et de la nature des problèmes évoqués dans la proposition de demande d'avis. »

Selon l'amendement proposé par la délégation française (A/L. 378 — 16 décembre 1961), la question devenait: « Les dépenses auto-

risées, etc., *ont-elles été décidées conformément aux dispositions de la Charte, et dans l'affirmative* constituent-elles « des dépenses de l'Organisation » au sens du paragraphe 2 de l'article 17 de la Charte des Nations Unies? »

A la suite du rejet de cet amendement, le projet de résolution ayant été adopté par 52 voix contre 11 (dont la France) avec 32 abstentions, le représentant de la France a expliqué de la manière suivante le vote contre la demande d'avis: « La France a voté contre la demande d'avis à la Cour internationale de Justice parce que la question est posée d'une manière équivoque et que l'Assemblée a refusé l'amendement que nous avons proposé pour l'améliorer.

« Il est nécessaire que l'Assemblée saisisse clairement ce qu'il y a derrière la demande d'avis qui lui est proposée. On veut, par une procédure détournée, régler des questions fondamentales sur lesquelles la France prend les positions suivantes:

« Premièrement, l'Assemblée générale n'a pas le droit, par le simple vote d'un budget, d'étendre les compétences de l'Organisation, sinon, à elle seule, la compétence budgétaire de l'Assemblée conférerait à cet organe les pouvoirs d'un gouvernement mondial.

« Deuxièmement, pour tout organe des Nations Unies, le pouvoir d'adresser aux États Membres des recommandations ne suffit pas pour leur imposer, sous quelque forme que ce soit, des obligations.

« Troisièmement, le pouvoir juridique d'adresser aux États Membres des recommandations ne permet pas, par le détour d'une décision qui est adressée au Secrétaire général — comme dans le cas de la résolution S/4387 — de créer des obligations pour les États.

« Si la Cour était saisie de l'ensemble de ces problèmes, elle serait saisie des vraies questions; mais même dans cette hypothèse, la France éprouverait les plus grands doutes sur l'opportunité de mettre en jeu la procédure envisagée, qui n'est d'ailleurs que consultative. Toutefois, comme la question posée ne répond pas aux exigences de sincérité que mérite l'étude de tels problèmes, la délégation française n'a éprouvé aucune hésitation à voter contre. »

Ces deux déclarations permettront à la Cour de saisir les raisons graves pour lesquelles le Gouvernement de la République française a considéré qu'il devait s'opposer à la demande d'avis. La France ayant été partie à sept différends devant la Cour n'est pas de ces États dont la position générale vis-à-vis de la Cour et du droit international puisse être contestée. Mais il lui importe que sa position ne soit pas mal interprétée. Tel est le seul motif des explications déjà données à l'Assemblée générale et de celles que contient la présente lettre.

Les problèmes financiers sont, de manière générale, d'une importance considérable pour les Nations Unies; ces problèmes ont fait l'objet d'études approfondies par divers organismes des Nations Unies qui ont fait ressortir des divergences de vues entre les États Membres sans que, sur aucun point, une majorité constante ou importante se soit jamais dégagée. Il suffira d'appeler l'attention

de la Cour sur les rapports du groupe de travail des 15 pour l'examen des procédures administratives et budgétaires de l'Organisation des Nations Unies (A/4971, 15.XI.1961). Sur une question capitale telle que celle exposée au paragraphe 10 dudit rapport (p. 4) et intéressant le Conseil de Sécurité, deux membres permanents ont voté pour, deux autres ont voté contre et le cinquième a réservé sa position.

Ce groupe d'experts, qui n'a pu se mettre d'accord, a rendu le service d'exposer clairement les divergences d'opinions entre les États Membres sur tous les aspects du financement des opérations relatives au maintien de la paix. Les éléments d'étude de ce problème du financement ont été considérés sous huit chapitres différents (p. 3 du rapport). Sur aucun de ces chapitres un accord n'a été réalisé, et la lecture attentive des paragraphes 7 à 47 du rapport montre que le groupe « n'a pas pu trouver un terrain d'entente suffisamment étendu qui lui aurait permis de présenter à l'examen de l'Assemblée générale des recommandations. Il se rend compte que, en raison des divergences d'opinions existant entre ses Membres, le présent rapport n'a pas pu formuler des règles précises en vue d'une solution aux problèmes que pose le financement des opérations relatives au maintien de la paix entrepris par l'Organisation des Nations Unies » (§ 47, p. 15).

Le paragraphe 25 du rapport des experts des 15 est ainsi conçu:

> « L'Assemblée générale devrait demander à la Cour internationale de Justice un avis consultatif concernant la *divergence d'opinions qui se fait jour au sujet de la nature juridique des obligations financières* découlant des opérations relatives au maintien de la paix. »

Ainsi, lorsqu'un organisme spécialement désigné à cet effet a étudié les problèmes de financement, il a constaté des divergences d'opinions sur la nature juridique des obligations et sur quarante aspects du problème. Les questions qu'il était utile de poser à la Cour étaient donc éclaircies par les études faites par ce groupe spécial. La lecture des procès-verbaux de la 5me Commission (par exemple: 24.X.1961, procès-verbal provisoire AC5/SR.863, 900, 901, etc.) montre la diversité des opinions exprimées au sein des Nations Unies.

Pour certains États il n'y a pas de dépenses des Nations Unies, puisque la décision était irrégulière; pour d'autres États il peut bien y avoir dépenses des Nations Unies, mais à condition que ces mêmes États n'en prennent pas la charge, pour d'autres États enfin il s'agit de dépenses courantes des Nations Unies à répartir sur la base des barèmes.

Le Gouvernement de la République française voudrait tout d'abord rappeler qu'il ne convient certes pas d'attacher une trop grande importance à des déclarations votées sur un plan politique et au cours d'une longue étude d'une question difficile. De même que, dans une négociation entre États, la Cour a décidé que des

propositions successives par l'un des États ne peuvent être invoquées contre lui après la fin de cette négociation lorsque l'affaire passe sur le plan contentieux, de même le Gouvernement de la République française reconnaît qu'une affaire portée à la Cour à la suite d'une demande d'avis consultatif prend une physionomie nouvelle et que seuls les arguments de droit doivent et peuvent être désormais évoqués.

Puisqu'il s'agit donc de placer le problème du financement de certaines opérations sur un plan juridique, ce plan ne peut être que celui de la Charte. Les États Membres des Nations Unies ont souscrit, qu'ils soient Membres originaires ou non, aux engagements de la Charte, mais rien de plus. La Charte est un traité par lequel les États n'ont aliéné leur compétence que dans la stricte mesure où ils y ont consenti. Depuis le début du fonctionnement des Nations Unies, il n'a pu se créer de règles coutumières ou de pratiques contraires à la Charte que si ces règles coutumières ou ces pratiques ont été constantes et non controversées. Telles sont les règles juridiques selon lesquelles, d'après le Gouvernement de la République française, le problème du financement doit être étudié.

Ce n'est pas la première fois que, devant la Cour, la nature juridique de ce qu'on a appelé le pouvoir budgétaire de l'Assemblée a été évoquée. Les États Membres des Nations Unies n'ont pas accepté autre chose en 1945 que de permettre à l'Assemblée générale d'autoriser et d'évaluer raisonnablement toutes les dépenses dont le principe était posé par la Charte comme une obligation juridique pour les États, c'est-à-dire les dépenses administratives des Nations Unies.

Toutes dépenses autres ont fait l'objet, depuis le début de l'Organisation, de plans de financement particuliers réalisés par des contributions volontaires.

La résolution 57 (I) du 14 décembre 1946 sur le F. I. S. E. déclare: « Le fonds sera constitué à l'aide de tous les avoirs disponibles de l'UNRRA ainsi que de toute contribution volontaire des gouvernements... »

Pour le programme élargi d'assistance technique, la résolution 304 (IV) du 16 novembre 1949 « invite tous les gouvernements à apporter au compte spécial pour l'assistance technique une contribution volontaire aussi importante que possible ».

L'UNWRA fut établie par une résolution 302/IV du 8 décembre 1949 de l'Assemblée générale, sur la base de contributions volontaires, en espèces et en nature.

Le budget de l'UNKRA, créé par résolution de l'Assemblée générale pour rétablir l'économie coréenne, a atteint une somme de 140.800.000 dollars, fournie par 34 États, volontairement.

Le statut juridique des dépenses du Haut Commissariat pour les réfugiés est établi sur les mêmes bases: toutes dépenses autres que les dépenses administratives sont couvertes par des contributions volontaires.

Le Fonds spécial fut créé par la résolution 1240 (XIII) du 14 octobre 1958, dont la partie B, paragraphe 45, indique: «Les ressources financières du Fonds spécial proviendront de contributions volontaires des États Membres. »

Toute autre interprétation du rôle budgétaire de l'Assemblée générale conduirait à instituer un pouvoir législatif mondial. La Cour internationale de Justice a décidé dans son avis du 11 avril 1949, page 179, « que l'Organisation n'est certainement pas un État, que ses droits n'étaient pas les mêmes que ceux d'un État et encore moins que l'Organisation ne pouvait être un super-État ». Or les vraies questions n'ayant pas été exactement posées dans la demande d'avis, alors que ces questions avaient été énumérées soigneusement dans le rapport du groupe des 15, il est à craindre que l'on soit tenté de déduire de celles qui ont été soumises à la Cour l'existence d'un pouvoir budgétaire discrétionnaire et illimité de l'Assemblée générale.

Un tel pouvoir ne s'exercerait pas dans l'abstrait. Voter, c'est-à-dire accepter des dépenses, entraîne des obligations pour les États, celles d'imposer leurs citoyens, d'amener leurs parlements à voter les crédits décidés par l'Assemblée et les impôts nécessaires pour les payer.

Il suffit, de l'avis du Gouvernement de la République française, d'indiquer les conséquences d'une telle interprétation pour démontrer qu'elle est erronée. L'Assemblée générale n'aurait en effet qu'à donner à toutes ses résolutions une expression financière pour qu'elles comportent pour les États les mêmes suites que si l'Assemblée avait été dotée de compétences illimitées.

Cette manière de procéder serait d'ailleurs contraire à la pratique des Nations Unies elle-même. Sur le plan administratif, les Nations Unies ont assumé la gestion de nombreuses entreprises d'assistance humanitaire ou économique; mais les obligations financières qui en découlaient n'ont jamais pesé que sur les États qui les avaient acceptées et dans la mesure où ceux-ci les avaient acceptées; la question de savoir si, sur le plan de la technique financière, les procédures et mécanismes propres à l'Organisation étaient mis en œuvre n'a été d'aucune pertinence pour trancher la question de la responsabilité financière.

Lors de la mise en œuvre des opérations militaires en Corée, entreprises à la suite d'une recommandation du Conseil de Sécurité, ces principes ont été respectés, et il devait en être de même lors de cet accord entre États qui a pris la forme de la résolution 377 (V) si diversement appréciée par la suite suivant les circonstances. Toute autre conception conduirait à donner aux Nations Unies des pouvoirs que les États n'ont donnés à aucune organisation, même plus intégrée. Un tel abus de la personnalité internationale des Nations Unies conduirait à faire d'elles le super-État dont parlait la Cour en 1949.

En définitive, le Gouvernement de la République française estime que les conditions dans lesquelles la Cour est consultée ne permettent pas d'obtenir l'opinion de droit qui serait nécessaire. Il n'est pas question d'autre part d'aboutir à une revision de fait des règles constitutionnelles des Nations Unies qui irait au-delà de la lettre et de l'esprit de la Charte.

P. le Ministre et par son ordre,
Le Directeur des Affaires politiques,
(Signé) Charles LUCET.

4. WRITTEN STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF DENMARK

In pursuance of Article 66, paragraph 2, of the Statute of the International Court of Justice, and with reference to the Order of the President of the Court, dated 27 December 1961, the Royal Danish Government have the honour to submit this written statement relating to the question concerning Financial Obligations of Members of the United Nations, on which the General Assembly, by a resolution adopted on 20 December 1961, requested the Court to give an advisory opinion.

I. *Scope of the question submitted to the Court*

In order to clarify the issue before the Court in the present case, as the Danish Government understand it, it may be helpful, by way of introduction, to present a few observations concerning the scope of the question which the General Assembly has submitted to the Court.

The Assembly has asked whether or not expenses relating to the United Nations Emergency Force (UNEF) and the Operations of the United Nations in the Congo (ONUC) are "expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter". This paragraph provides that expenses of the Organization shall be borne by the Members as apportioned by the General Assembly, and the question therefore concerns the manner in which the expenses arising out of the two operations shall be covered. As a matter of fact, current expenses for these purposes have been defrayed up to now by the Secretary-General in his official capacity, and there is no question of casting doubt on the legality of this conduct, nor of attempting to determine any responsibility for the payment or to have the money recovered. The question submitted to the Court relates exclusively to the manner in which these expenses, which to a great extent have been drawn provisionally from various funds, shall be finally covered. In other terms, it is a question concerning the method of financing the operations in Gaza and the Congo.

An affirmative answer would mean that the expenses are among those to which the Member States are legally obliged to contribute according to a scale of assessments adopted by the General Assembly. It is generally agreed that Article 17, paragraph 2, empowers the General Assembly to take decisions which are binding on all Member States (cf. Blaine Sloan: "The binding force of a 'Recommendation' of the General Assembly of the United Nations", *British Year Book of International Law*, Vol. 25, 1948, pp. 4-5). Further-

more, as a consequence of an affirmative answer, it would follow that Article 19 of the Charter applied. Arrears in the payment of this contribution would deprive the faulty Member State of its right to vote in the General Assembly, provided they—alone or jointly with unpaid contributions to other expenses—equalled or exceeded two years' total contributions by that State.

A negative answer, on the other hand, would mean that the operations would have to be financed exclusively from other sources, in particular by voluntary contribution, or would have to be called off prematurely if the necessary means were not forthcoming from such other sources.

The question submitted to the Court does not concern the method of accounting. Whether or not the expenses in question should be incorporated in the regular budget of the United Nations or should be carried to one or more special accounts—which they have actually been—is outside the scope of the question. This does not necessarily mean, on the other hand, that the method of accounting is irrelevant to the opinion which the Court is asked to give. It is an open question, on which certain observations will be made below, whether or not any conclusion can be drawn from the fact that the General Assembly has decided to establish special accounts for the two operations.

Finally, it should be pointed out that the question submitted to the Court has nothing to do with the scale of assessments according to which Member States should bear the expenses, in case of an affirmative answer. Article 17 does not necessarily require that the same scale should be used for apportioning all categories of expenses among Member States. As a matter of fact, the scale of assessments under which expenses arising out of the regular budget of the Organization are apportioned has been applied with considerable modifications to the expenses arising out of the two operations in question, cf. resolution 1441 (XIV) (UNEF) and resolution 1619 (XV) (Operations in the Congo). An affirmative answer by the Court would in no way prejudge this issue, and would not establish a duty for the General Assembly to apportion all categories of expenses according to one and the same scale of assessments.

II. *The substance of the General Assembly resolutions concerning expenses of UNEF and ONUC*

A. *United Nations Emergency Force*

At the 596th plenary meeting on 26 November 1956 the General Assembly of the United Nations debated the financing of the United Nations Emergency Force (UNEF). Originally submitted by the Secretary-General as a draft resolution, it was adopted by the General Assembly later in the session and became resolution 1122 (XI). This resolution reads in part:

"The General Assembly,

. . . . . .

Having considered and provisionally approved the recommendations made by the Secretary-General concerning the financing of the Force in paragraph 15 of his report of 6 November 1956,

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

. . . . . .

4. Requests the Secretary-General to establish such rules and procedures for the Special Account and make such administrative arrangements as he may consider necessary to ensure effective financial administration and control of that Account;

5. Requests the Fifth Committee and, as appropriate, the Advisory Committee on Administrative and Budgetary Questions, to consider and, as soon as possible, to report on further arrangements that need to be adopted regarding the costs of maintaining the Force."

In his report (Document A/3302) the Secretary-General states (paragraph 15):

> "The question of how the Force should be financed likewise requires further study. A basic rule which, at least, could be applied provisionally, would be that a nation providing a unit would be responsible for all costs for equipment and salaries, while all other costs should be financed outside the normal budget of the United Nations."

While the resolution itself does not stipulate how the expenses relating to the Force should be met, the Secretary-General in his speech in the General Assembly stated the following:

> "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." (Cf. Official Records of the United Nations, Eleventh Session, 596th plenary meeting, paragraph 225.)

Immediately after the Secretary-General's speech the draft resolution was adopted by 52 votes to 9 with 13 abstentions.

It should be noted at the outset that the General Assembly cannot have been under any illusion as to how the expenses finally were to be covered, namely as expenses coming within the meaning of Article 17 of the Charter and consequently to be borne by all Member States.

Less than a month later the General Assembly expressed itself more clearly about the character of the expenses relating to the

Force by adopting, at its 632nd plenary meeting on 21 December 1956, resolution 1089 (XI), the fourth preambular paragraph of which reads:

> "Considering that the Secretary-General, in his reports dated 21 November and 3 December 1956, has recommended that the expenses relating to the Force should be apportioned in the same manner as the expenses of the Organization."

Furthermore, in the first operative paragraph of the same resolution the General Assembly explicitly

> "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." (Underlined here.)

In the opinion of the Danish Government this wording clearly indicates that the above-mentioned $10 million, covering the period up to 31 December 1957, were considered to be "Expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

At its 662nd plenary meeting on 27 February 1957, the General Assembly again debated administrative and financial arrangements for the United Nations Emergency Force. The debate was concluded by the adoption of resolution 1090 (XI) in which

> "The General Assembly,
>
> Recalling its resolution 1122 (XI) of 26 November 1956 authorizing the establishment of a United Nations Emergency Force Special Account in an initial amount of $10 million and its resolution 1089 (XI) of 21 December 1956 apportioning this initial $10 million among the Member States *in accordance with the scale of assessments* adopted by the General Assembly for contributions to the annual budget of the Organization for 1957, (Underlined here.)
>
> . . . . . .
>
> Noting the request of the Secretary-General for authority to enter into commitments for the Force up to a total of $16.5 million,
>
> 1. Authorizes the Secretary-General to incur expenses for the United Nations Emergency Force up to a total of $16.5 million in respect of the period of 31 December 1957;
>
> 2. Invites Member States to make voluntary contributions to meet the sum of $6.5 million so as to ease the financial burden for 1957 on the membership as a whole;
>
> . . . . . .
>
> 4. Decides that the General Assembly, at its twelfth session, shall consider the basis for financing any costs of the Force in excess of $10 million not covered by voluntary contributions."

The amount which was thus to be assessed against Member States totalled $15,028,988 up to 31 December 1957.

In its resolution 1151 (XII) adopted at the 721st plenary meeting on 22 November 1957, the General Assembly again took action concerning the financing of the United Nations Emergency Force.

Operative paragraph 3 of the above-cited resolution reads:

> "3. Authorizes the Secretary-General to expend an additional amount for the Force, for the period ending 31 December 1957, up to a maximum of $13.5 million and, as necessary, an amount for the continuing operation of the Force beyond that date up to a maximum of $25 million, subject to any decisions taken on the basis of the review provided for in paragraph 5 below",

and further

> "4. Decides that the expenses authorized in paragraph 3 above 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, such other resources as may have become available for the purpose in question being applied to reduce the expenses before the apportionment for the period ending 31 December 1957;" (Underlined here.)

In paragraph 5 the Fifth Committee, with the assistance of the Advisory Committee on Administrative and Budgetary Questions, is requested to examine the cost estimates.

For the purpose of the present case it is submitted that the amount which was to be assessed against Member States consequently had now risen to $25 million for the second financial period.

The examination of the cost estimates, which the Advisory Committee on Administrative and Budgetary Questions was asked to undertake, cf. paragraph 5 of resolution 1151 (XII), is found in Document A/3761. The Committee does not discuss the methods of financing, and resolution 1204 (XII) which "takes note with approval of the Committee's report" has no bearing on the question as to how the expenses shall be apportioned among Member States.

During its thirteenth session the General Assembly adopted resolution 1337 (XIII) at the 790th plenary meeting on 13 December 1958.

After having referred to resolutions previously adopted concerning the cost estimates for the maintenance of the United Nations Emergency Force, the resolution reads in part:

> "The General Assembly,
>
> . . . . . .
>
> 1. Confirms its authorization to the Secretary-General to expend up to a maximum of $25 million for the operation of the United Nations Emergency Force during 1958;
>
> 2. Authorizes the Secretary-General to expend up to a maximum of $19 million for the continuing operation of the Force during 1959;

. . . . . .

4. Decides that the expenses authorized in paragraph 2 above, less any amounts pledged or contributed by Governments of Member States as special assistance prior to 31 December 1958, shall be borne by the Members of the United Nations *in accordance with the scale of assessments* adopted by the General Assembly for the financial year 1959;" (Underlined here.)

For the year 1959 the amount to be apportioned among Member States was thus $19 million (maximum) less the voluntary contributions amounting to a total of $3,795,000. The amount to be assessed against all Member States for the year 1959 represented a total of $15,205,000.

As a result of arguments put forward by several Member States, the General Assembly, in its debate on the financing of the UNEF in the autumn of 1959, shaped its resolution on the subject so as to meet at least some of the suggestions advanced by those Member States which have the least capacity to contribute to the financing of the Force.

Resolution 1441 (XIV) adopted at the 846th plenary meeting on 5 December 1959 reads in part:

"The General Assembly,

. . . . . .

Considering that it is desirable to apply voluntary contributions of special financial assistance in such a manner as to reduce the financial burden on those Governments which have the least capacity, as indicated by the regular scale of assessments, to contribute towards the expenditures for maintaining the Force,

1. Authorizes the Secretary-General to expend up to a maximum of $20 million for the continuing operation of the United Nations Emergency Force during 1960;

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 provisions of paragraphs 3 and 4 below;

3. Decides that voluntary contributions pledged prior to 31 December 1959 towards expenditures for the Force in 1960 shall be applied as a credit to reduce by 50 per cent the contributions of as many Governments of Member States as possible, commencing with those Governments assessed at the minimum percentage of 0.04 per cent and then including, in order, those Governments assessed at the next highest percentages until the total amount of voluntary contributions has been fully applied;

. . . . . ." (Underlined here.)

As the voluntary contributions for 1960 totalled $3,475,000 the amount to be assessed against all Member States of the United Nations for the year 1960 represents a total of $20 million (cf. paragraph 3 of resolution 1441 (XIV)).

At its fifteenth session the General Assembly again debated the

financing of UNEF and the result was incorporated in resolution 1575 (XV), which reads in part:

"The General Assembly,

. . . . . .

Having considered the observations made by Member States on the financing of the United Nations Emergency Force,

. . . . . .

1. Authorizes the Secretary-General to expend up to a maximum of $19 million for the continuing operation of the United Nations Emergency Force during 1961;

2. Decides to assess the amount of $19 million *against all States Members of the United Nations on the basis of the regular scale of assessments*, subject to the provisions of paragraphs 3 and 4 below;

3. Decides further that the voluntary contributions pledged prior to 31 December 1960, including those already announced and referred to in the fourth preambular paragraph above, shall be applied, at the request of the Member State concerned made prior to 31 March 1961, to reduce by up to 50 per cent:

(a) The assessment that the Member States which were admitted during the fifteenth session of the General Assembly are required to pay for the financial year 1961 in accordance with Assembly resolution 1552 (XV) of 18 December 1960;

(b) The assessment of all other Member States receiving assistance during 1960 under the Expanded Programme of Technical Assistance, commencing with those States assessed at the minimum of 0.04 per cent and then including, in order, those States assessed at the next highest percentages until the total amount of the voluntary contributions has been fully applied;

4. Decides that, if Member States do not avail themselves of credits provided for in paragraph 3 above, the amounts involved shall be credited to section 9 of the 1961 budget for the Force;

. . . . . ." (Underlined here.)

For the purpose of the present case, it is particularly important to note that since resolution 1089 (XI) was adopted on 21 December 1956 the General Assembly has used the wording "Decides that the expenses ... shall be apportioned among Member States ... in accordance with the scale of assessments..." in its resolutions concerning the financing of the UNEF.

The legal implications hereof are developed in subsequent sections of this statement. In the present context the conclusion may be drawn that the wording of the resolutions adopted by the Assembly leaves no room for doubt. The terms of the resolutions clearly reflect the intention that expenses shall be assessed against Member States to the extent specified by each particular resolution.

B. *United Nations Operations in the Congo*

The first resolution which the General Assembly adopted concerning the financial implications of the United Nations operations

in the Congo was adopted at the 960th plenary meeting on 20 December 1960. The resolution 1583 (XV) reads in part:

"The General Assembly,

. . . . . .

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

. . . . . .

1. Decides to establish an *ad hoc* account for the expenses of the United Nations in the Congo;

. . . . . .

4. Decides that the amount of $48.5 million shall be *apportioned among the Member States on the basis of the regular scale of assessment*, subject to the provisions of paragraph 5 below;

5. Decides further that the voluntary contributions already announced, in addition to those referred to in paragraph 3 above, shall be applied, at the request of the Member State concerned made prior to 31 March 1961, to reduce by up to 50 per cent:

(a) The assessment that the Member States which were admitted during the fifteenth session of the General Assembly are required to pay for the financial year 1960 in accordance with Assembly resolution 1552 (XV) of 18 December 1960;

(b) The assessment of all other Member States receiving assistance during 1960 under the Expanded Programme of Technical Assistance, commencing with those States assessed at the minimum of 0.04 per cent and then including, in order, those States assessed at the next highest percentage until the total amount of the voluntary contributions has been fully applied.

. . . . . ." (Underlined here.)

The preambular paragraph cited above (which is the third of the resolution) states very clearly the opinion of the General Assembly as to how the expenses involved in the United Nations operations in the Congo should be considered, and operative paragraph 1, which provides for the establishment of an *ad hoc* account, does not contradict this opinion.

Resolution 1590 (XV), which the General Assembly adopted on the same day as resolution 1583 (XV), authorizes the Secretary-General to incur commitments for the operation in the Congo up to a total of $24 million for the period from 1 January to 31 March 1961, but does not deal with the question as to how the expenses shall be covered.

In continuation of resolution 1590 (XV), the General Assembly adopted resolution 1595 (XV) authorizing the Secretary-General to continue to incur commitments until 21 April 1961 at a level not to exceed $8 million per month.

Not until the adoption of resolution 1619 (XV) on 21 April 1961 did the General Assembly decide on the method of financing the United Nations operations in the Congo, bearing in mind the various suggestions put forward by Member States about the sharing of the costs.

The resolution reads in part:

"The General Assembly,

. . . . . .

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;

Bearing in mind that the permanent members of the Security Council have a special responsibility for the maintenance of international peace and security and therefore for contributing to the financing of peace and security operations;

. . . . . .

1. Decides to open an *ad hoc* account for the expenses of the United Nations operations in the Congo for 1961;

. . . . . .

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;

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, pending the establishment of a different scale of assessment to defray the extraordinary expenses of the Organization resulting from these operations;

. . . . . .

6. Appeals to all other Member States who are in a position to assist to make voluntary contributions.

. . . . . ." (Underlined here.)

Operative paragraph 8 of the above-cited resolution regulates the reduction to which certain Member States are entitled, but the principle that all Member States shall participate in the expenses in accordance with the scale of assessments is not waived.

Resolution 1633 (XVI) adopted on 30 October 1961 is a continuation of resolution 1595 (XV), with the modification that the Secretary-General is now authorized to incur commitments until 31 December 1961 at a level not to exceed $10 million per month.

It is clear from the General Assembly's resolutions concerning both the financing of the UNEF and the operations in the Congo,

cited in this section of the Statement, that the Assembly is of the opinion that all Member States should contribute to the expenses involved, and consequently that the expenses constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter. This is particularly clear in resolution 1441 (XIV) UNEF and, especially, in resolution 1583 (XV) ONUC.

On the other hand, the General Assembly has not stated that the scale of assessments used for expenses relating to the regular budget should necessarily be applied. Although the regular scale of assessments has been the point of departure when decisions regarding the assessment of shares were adopted, the Assembly has modified that scale in its application to these particular categories of expenses, to the extent that appears from the resolutions quoted above.

III. *Is the practice of the General Assembly in budgetary matters relevant to the question?*

Having examined the intentions of the General Assembly as reflected in the wording of the various resolutions concerning the financing of UNEF and ONUC, one might ask whether the conclusions resulting from this examination are compatible with the rules and principles on which the General Assembly acts in budgetary matters.

It might be argued that certain general usages have developed in the practice of the General Assembly with respect to the items of expenditure which are considered expenses of the Organization within the meaning of Article 17, paragraph 2, and that such usages, whether or not they have attained the character of customary legal principles, are relevant for the purpose of interpreting the scope and meaning of resolutions adopted by the Assembly concerning specific questions.

First, the question might be raised whether it has not been a general practice to confine the budget of the United Nations as adopted under Article 17, paragraph 1, to expenses arising out of ordinary administrative tasks and other routine duties of the Organization, in contradistinction to what has usually come to be called special peace-keeping operations. A brief glance at the regular budget will confirm that this is not so. Part VI of the budget for 1962 includes expenses for several peace-keeping operations initiated by the General Assembly or the Security Council in the exercise of their general powers with respect to the maintenance of international peace and security, namely the following:

1. UN Truce Supervision Organization in Palestine; established in accordance with resolution S/1376 adopted by the Security Council on 11 August 1949.
2. UN Conciliation Commission for Palestine; established by General Assembly resolution 194 (III) of 11 December 1948.

3. UN Military Observer Group in India and Pakistan; established following Security Council resolution S/1469 of 14 March 1950.
4. UN Representation for India and Pakistan; appointed under Security Council resolution S/1469 of 14 March 1950.
5. UN Commission for the Unification and Rehabilitation of Korea; established by General Assembly resolution 376 (V) of 7 October 1950.
6. Committee on South West Africa; established by General Assembly resolution 1568 (XV) of 18 December 1960.

An examination of earlier budgets will reveal that other operations of a similar character, which have since been called off, have also been financed in this way.

Far from supporting the argument that expenses relating to peace-keeping operations cannot be considered expenses of the Organization within the meaning of Article 17, paragraph 2, this practice indicates that over the years it has been considered a normal and usual procedure to include such operations in the regular budget which is financed according to the method provided for by Article 17, paragraph 2, that is by assessment against Member States. It is true that objections have been raised from time to time against the inclusion of one item or another in the regular budget, but the General Assembly has not hesitated to override such objections, and in the end the objecting States have acquiesced in the decision of the Assembly and paid their contributions according to the assessment adopted under Article 17, paragraph 2.

On the other hand, not all expenses have been included in the regular budget. Special Accounts have been established for a number of different purposes in cases where the General Assembly has decided to use other methods of financing than the assessment of expenses against Member States. Such Special Accounts have been established for the following programmes:

1. The Expanded Programme of Technical Assistance,
2. The United Nations Special Fund,
3. The United Nations Children's Fund (UNICEF),
4. The United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA),
5. The Programmes of the United Nations High Commissioner for Refugees.

In all these cases it has been found desirable or necessary to rely wholly or partially on voluntary contributions from Member States for the financing of the special activities. Every year since 1951 the Assembly has established a Negotiating Committee for Extra-Budgetary Funds for the purpose of consulting with Member

and non-member States as to the amounts which Governments may be willing to contribute on a voluntary basis to the programmes mentioned above,

> "and for such other programmes as may be approved by the General Assembly for which funds are not available through the regular budget of the United Nations and for which the Negotiating Committee is specifically requested by the General Assembly to obtain pledges of voluntary contributions from Governments" (resolution 693 (VII), cf. resolution 571 B (VI)).

Special Accounts have also been established in respect of expenses relating to UNEF and ONUC. This is clearly an indication of the intention that these expenses should not be included in the regular budget. The question is, however, whether it also indicates an intention that expenses should only be covered by voluntary contributions or other similar methods to the exclusion of assessments against Member States. In the absence of evidence to the contrary, the question might be doubtful. The use of a Special Account might create a presumption in favour of financing by voluntary contributions. In the circumstances of the present case, however, there is no doubt. The answer is clearly to the contrary.

It is significant, although it may not be considered important, that the Negotiating Committee for Extra-Budgetary Funds has not been requested to include the Special Accounts for UNEF and ONUC within the range of its activities. More important, and decisive, are the express terms adopted by the General Assembly in the various resolutions analysed in the preceding section, which clearly reveal the intention to provide the necessary funds not only through voluntary contributions but also, and to a very large extent, by assessment against Member States.

This procedure, although without precedent, is by no means incompatible with the legal rules and principles governing the financial problems of the United Nations. The establishment of Special Accounts for specified purposes is nothing more than an administrative convenience from which no legal conclusions can be drawn. Such accounts are not provided for by the Charter, nor are they ruled out by the Charter. Article 17 leaves a very wide measure of discretion to the General Assembly as to the budgetary system and the methods of accounting to be adopted. The usage of adopting the device of a Special Account for purposes to be financed through voluntary contributions is no more than a usage which does not reflect any juridical opinion to the effect that a Special Account could only be financed in that way. Consequently, this usage cannot have the effect of limiting the discretionary powers of the Assembly in its choice betweeen various budgetary techniques and accounting methods. The choice of the method of a Special Account does not prejudge the question as to what method should be selected for raising the funds which are necessary to cover the expenses charged against the Special Account.

In the present case there are perfectly good reasons for keeping the expenses of UNEF and ONUC outside the regular budget. In the first place, the Assembly has considered it desirable that part of the expenses should be covered by voluntary contributions. That policy has required a special accounting method, since it would be difficult to have only part of one separate item of the regular budget covered in that way. Secondly, the Assembly has found it desirable that, even with respect to the part of the expenses to be assessed against Member States, a particular scale of assessments should be applied, different from the scale according to which the regular expenses are apportioned. That again requires a special accounting method. It is submitted that the Special Account is a convenient instrument in these circumstances, but no particular legal conclusions can be drawn from the choice of that instrument.

The wording of the Charter is no obstacle to the adoption of such flexible methods. Paragraphs 1 and 2 of Article 17 are worded in such a way that their scope and field of application are not necessarily identical. The "expenses of the Organization" mentioned in paragraph 2 are not necessarily those arising out of the budget mentioned in paragraph 1, or what is called the regular budget. They may be expenses for which no budgetary provision has been made (such as emergency expenses provisionally charged against the Working Capital Fund), or they may be expenses for which special budgetary provisions have been made. On the other hand, it would be an unduly rigid interpretation of Article 17, paragraph 2, to maintain that all expenses of the Organization should necessarily be borne by Member States as apportioned by the General Assembly, to the exclusion of voluntary contributions in cases where such contributions are forthcoming. The purpose of Article 17, paragraph 2, is to provide for a sure and effective method of covering the expenses, and not to prevent that expenses which are essentially expenses of the Organization are defrayed out of funds collected in different ways, including a combination of voluntary contributions and compulsory assessment.

In conclusion, it is submitted that the establishment of Special Accounts for UNEF and ONUC is not a decisive element in the analyses of the legal problems at issue in the present case, and does not warrant the contention, against clear evidence to the contrary, that the General Assembly has thereby chosen to bring the expenses outside the scope of Article 17, paragraph 2.

IV. *The fiscal power of the Organization is vested in the General Assembly exclusively*

The next problem to be considered is the relationship existing under the Charter between the fiscal powers and the non-fiscal powers of the Organization in matters concerning international peace and security.

For the purpose of the following observations, the term "fiscal power" of the United Nations is understood to denote the power to adopt the budget of the Organization, to authorize expenditure, to make provision for the necessary revenue, and to assess against Member States such contributions as are deemed necessary to cover the expenses.

An examination of the Charter leaves no doubt that this fiscal power is vested in the General Assembly, and in that body only.

Articles 10-17 define the functions and powers of the General Assembly in various fields. In so doing, certain of these articles circumscribe the functions and powers of the Assembly in order to safeguard, and to avoid encroachments upon, the powers of other principal organs of the United Nations, in particular the Security Council. Thus, Articles 12 and 14 restrict the powers of the General Assembly to a certain extent in matters relating to international peace and security in order to allow the Security Council to exercise the functions which Article 24 confers upon it as the organ having "primary responsibility for the maintenance of international peace and security".

The fiscal power as defined by Article 17 is not subject to any similar limitation. No share of the fiscal power is left to any other organ of the United Nations. Even the most independent of all the principal organs, the International Court of Justice, is subject to the fiscal power of the General Assembly. It is true that this is not in all respects a free and discretionary power. In its Advisory Opinion of 13 July 1954 concerning the *Effect of Awards of Compensation made by the U.N. Administrative Tribunal*, the Court said:

> "... 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". (*I.C.J. Reports 1954*, p. 59.)

For this reason the Court stated

> "that the assignment of the budgetary function to the General Assembly cannot be regarded as conferring upon it the right to refuse to give effect to the obligations arising out of an award of the Administrative Tribunal". *(Ibidem.)*

There was no question, however, of denying that the budgetary function as such was vested exclusively in the General Assembly, or of considering this power as divided between the Assembly and the Tribunal. The budgetary power was in the Assembly which, however, was under a duty to exercise it in such a manner as to honour the obligations arising out of lawful acts or decisions by other organs of the United Nations.

In the present case the problem is different. It has never been alleged that the Assembly, in the exercise of its fiscal power with

respect to the expenses of UNEF and ONUC, has failed to honour any obligation incurred by the Organization. What has been argued by certain delegates in the General Assembly is that the Assembly, in assessing the expenses against Member States, has transgressed its powers and encroached upon those of the Security Council.

In the opinion of the Danish Government, this argument is not valid. Whatever organ is competent to adopt a decision of substance, the budgetary implications of such a decision is a matter for the General Assembly. No other organ has any share in the fiscal power, and as long as the Assembly respects the decision of substance it remains its own master with regard to the solution of any budgetary problem to which that decision may give rise. When the Security Council has decided to adopt a measure within its competence under the Charter, the General Assembly cannot nullify the effects of that decision by refusing any necessary appropriation. Subject to that, however, the Council has no authority to interfere with the solution which the Assembly chooses to adopt with regard to the financial aspects. The mere fact that the substance of the measure lies within the field of another organ does not give that other organ a share in the fiscal power.

This assertion concerning the exclusive character of the General Assembly's fiscal power is borne out not only by the wording of the Charter, but also by the genesis of Article 17. The history of that article can be traced back to one of the early American drafts. In 1942 the Secretary of State of the United States established an advisory committee on Post-War Foreign Policy, a sub-committee of which prepared a "Draft Constitution of International Organization", dated 14 July 1943. Article 5, paragraph 5, of that Draft was worded as follows:

> "The budgetary estimates of the International Organization and its constituent bodies shall be subject to examination and approval by the General Assembly and by the Council, which shall determine the method by which the necessary funds shall be provided and properly allocated among the Members." (*Post-War Foreign Policy Preparation 1939-45*, Washington, 1949, p. 475.)

The fundamental principle of this provision was to establish a concurrent authority of the two bodies on lines similar to those of a bicameral system. A later draft, written shortly afterwards by the Research Staff of the Department of State, modified that principle in so far as the General Conference should vote the appropriations for the various organs (Article 3, paragraph 3). The approval of the Council would be necessary only with respect to the basis on which the General Conference would apportion the expenses among Member States (Article 13, paragraph 1, *ibidem*, pp. 529-31).

The problem was further studied in Washington, and Russel and Muther, in their *History of the United Nations Charter*, write as follows:

> "When the budgetary provisions were reviewed by the Informal Political Agenda Group in early July 1944, some concern was expressed lest Assembly control of the budget might enable it to control decisions of the Executive Council. It was suggested that either direct or concurrent control by the Council of its own budget might be allowed. On the other hand, it was pointed out that the Executive Council would draw its funds from the total resources of the Organization contributed by all Member States, and they should therefore be entitled to decide the budgets of all organs through the General Assembly." (Ruth B. Russel and Jeanette E. Muther: *A History of the United Nations Charter*, Washington D.C., 1958, p. 378.)

Consequently, the "Tentative Proposals for a General International Organization" which the United States Government submitted to the Governments of China, the United Kingdom and the U.S.S.R. in preparation of the conference at Dumbarton Oaks gave the Council no share in the fiscal power. Among the principal powers of the General Assembly was listed as point II.B.2.f:

> "... to approve the budget of the organs and agencies of the organization, to determine a provisional and continuing basis of apportionment of expenses of the organization among the Member States together with the procedure of apportionment, and to review, make recommendations on, and take other action concerning the budgets of specialized agencies...". (*Post-War Foreign Policy Preparation*, p. 597.)

The Dumbarton Oaks Conference confirmed the principle that fiscal power should be vested exclusively in the Assembly (the problem of the budgetary authority over the specialized agencies is left out of consideration as irrelevant to the present case). Chapter V, section B, paragraph 5, of the proposals adopted at the Conference reads as follows:

> "The General Assembly should apportion the expenses among the Members of the Organization and should be empowered to approve the budgets of the Organization."

At the San Francisco Conference the principle underlying this provision gave rise to no serious controversy. Budgetary questions were included among the important questions on which decisions would require a two thirds majority under Article 18, and the obligation of Member States to pay their apportioned share of the expenses was stressed by a redrafting to the effect that expenses "shall be borne by the Members...". The exclusive fiscal power of the Assembly was accepted without dissent.

In a recent study by J. David Singer: *Financing International Organization, The United Nations Budget Process* (The Hague, 1961), the results of the San Francisco Conference in this field are summarized as follows:

> "... the deliberations at San Francisco, while avoiding detailed recommendations, did set forth certain important and basic prin-

ciples governing the fiscal process. In Article 17, three significant points were made. The Assembly, and no other body, would exercise the budgetary power; the Assembly itself would later determine the basis for apportionment, eliminating the dangers of a fixed, inflexible, and perhaps unworkable basis; and the Assembly would have (formally, at least) the final word on the budgetary arrangements of, and with, the specialized agencies. Article 18, by omission, precluded any weighted voting based upon the size of a Member's contribution, and made it clear that plenary sessions would require a two thirds majority for passage of budgetary matters. And Article 19 represented at least an effort to inhibit arrearage in payment of contributions. It can be said, without hesitation, that the framers of the United Nations Charter had successfully avoided three of the pitfalls which had so hamstrung the financial activities of the League: divided fiscal authority, an inflexible basis of apportionment and a requirement of unanimity on budgetary matters." (*Op. cit.*, p. 8.)

For the reasons set out above it is submitted that all fiscal power appertains exclusively to the General Assembly, even in matters the non-fiscal aspects of which are within the competence of another organ of the United Nations.

V. *Formal validity of the decisions by which UNEF and ONUC were established*

It may be argued—as indeed it has been—that the fiscal power of the General Assembly cannot be lawfully exercised in relation to any measure which has not been lawfully taken. More specifically, if it can be proved that the establishment of UNEF and ONUC was not validly adopted under the Charter, the conclusion may be drawn that the General Assembly cannot lawfully vote any appropriation for these operations, let alone impose upon Member States any obligation to share the expenses.

This argument, as such, is not entirely unreasonable. In certain contingencies it may be admitted that the fiscal power cannot be exercised in relation to an invalid decision by the competent organ. The following hypothetical case may be mentioned by way of illustration: The president of the Security Council declares a proposal adopted although less than seven members have cast an affirmative vote (e.g. 6 votes in favour—5 abstentions). It follows clearly from Article 27 of the Charter that no valid decision can be adopted by such a vote. The decision, if there is any decision at all, is null and void. Consequently, no effect can be given to a resolution which has been declared adopted in these circumstances, and the General Assembly cannot authorize any expenditure for measures taken on the basis of such a resolution. If, nevertheless, the General Assembly, invoking its autonomous fiscal power, approves the expense and assesses it against Member States, it seems justified to conclude that no Member State is under a legal obligation to pay its share.

From a legal point of view, a similar situation would exist if, say, the Economic and Social Council adopted a resolution within the field of competence of the Security Council.

In the present case, however, the circumstances are entirely different. The decisions by which the operations were initiated and have been carried on are perfectly valid under the Charter, having been adopted in due form by a competent body. This assertion seems so obvious as hardly to require any demonstration, but for the sake of completeness a few salient facts may be pointed out. It will be necessary to deal with the two operations separately.

A. *UNEF*. The establishment of this Force was decided by the General Assembly in the course of a Special Emergency Session, the first to be called under the General Assembly's resolution 377 (V) —"Uniting for Peace".

It has occasionally been asserted that the transfer of authority from the Security Council to the General Assembly resulting from this resolution violates the Charter, more specifically Article 24 under which primary responsibility for the maintenance of international peace and security is conferred upon the Security Council. The Danish Government do not share that opinion. For the purposes of the present case it will suffice to point out that the resolution by which the Security Council decided, on 31 October 1956, to call an Emergency Session of the Assembly, with explicit reference to resolution 377 (V), was adopted by a procedural vote of 7 in favour (China, Cuba, Iran, Peru, U.S.S.R., U.S.A. and Yugoslavia), 2 against (France and the United Kingdom), and 2 abstentions (Australia and Belgium), the affirmative votes including one permanent Member which on other occasions has contested the legality of resolution 377 (V). Whatever the general consequences of that vote may be, it seems justified to conclude that the Members which voted in favour are debarred from challenging the competence of the General Assembly in that particular case.

More generally it is submitted that Article 24 of the Charter cannot reasonably be interpreted to cast any doubt on the legality of resolution 377 (V) or on any decision adopted according to its terms. The special procedure laid down by that resolution, and the transfer of authority to the General Assembly which it involves, apply, in the words of the resolution, only "if the Security Council, because of lack of unanimity of the permanent Members, fails to exercise its primary responsibility for the maintenance of international peace and security". Furthermore, on the supposition that the text of the Charter might be considered to leave room for doubt as to the compatibility of the resolution with the Charter, developments subsequent to its adoption have dispelled any such doubt. Resolution 377 (V) has been acted upon in other cases presenting widely different political aspects (the question of Hungary, November 1956; the question of Lebanon, August 1958; the Congo question

September 1960). It is a general principle of interpretation, on which the International Court and its predecessor, the Permanent Court of International Justice, have consistently acted, that a treaty provision may be interpreted in the light of the subsequent conduct of the contracting parties. In its Advisory Opinion of 3 March 1950 concerning the *Competence of the General Assembly* regarding admission to the United Nations, the Court relied on the sense in which the Security Council and the General Assembly had "consistently interpreted the text" of Article 4 of the Charter (*I.C.J. Reports 1950*, p. 9). The late Sir Hersch Lauterpacht has drawn the following conclusion:

> "It would thus appear that the Court equated with 'subsequent conduct' the uniform practice pursued by the organs of the Organization established by the authors of the Charter and acquiesced in by them." (*The Development of International Law by the International Court*, London, 1958, p. 171.)

For the purposes of the present case it is submitted that the Security Council and the General Assembly have consistently pursued the practice of considering the General Assembly competent to deal with a matter transferred to it from the Security Council in the circumstances defined by resolution 377 (V).

As to the formal validity of resolution 1001 (ES-I) by which the General Assembly, having been validly seized of the matter, decided to establish the Emergency Force, it is sufficient to point out that the resolution was adopted by a vote of 57 to 0, with 19 abstentions.

In conclusion, it is submitted that the establishment of the UNEF was a measure adopted by the General Assembly in circumstances which do not affect the formal validity of the decision and which, consequently, do not prevent the Assembly, acting in the exercise of its fiscal power under Article 17, from assessing the ensuing expenses against Member States.

B. *ONUC*. For the purpose of the present case it is hardly necessary to go into the detailed history of the operations of the United Nations in the Congo. Suffice it to recall that the United Nations Force in the Congo was established by the Secretary-General under the authority of the resolution adopted by the Security Council on 14 July 1960. Apart from one particular phase of its development, the Congo problem has not been brought before the General Assembly, but has continuously been dealt with by the Security Council. The exception was the calling of an Emergency Session on 20 September 1960, after a resolution concerning the policy to be pursued in the Congo had been defeated in the Security Council by the negative vote of a Permanent Member. Since then, however, the problem has reverted to the Security Council which adopted important resolutions in the matter on 21 February and 24 Novem-

ber 1961. All later resolutions expressly recalled the previous resolutions, in particular the initial resolution of 14 July 1960, and the Secretary-General has continuously reported to the Security Council on the measures taken by him under the authority granted by Council resolutions. Consequently, there can be no reasonable doubt as to the formal validity of the decisions to undertake the operations of the United Nations in the Congo, and the General Assembly has been on solid legal ground in exercising its fiscal power with regard to these operations.

VI. *Is Article 43 of the Charter relevant to the question?*

In the course of the debates in the General Assembly certain delegates have expressed the opinion that Article 43 of the Charter precludes the General Assembly from levying contributions on Member States in order to cover the expenses arising out of military operations such as those of UNEF and the Force in the Congo. With respect to participation in, or assistance to, military operations for the preservation of international peace and security—so the argument runs—Article 43 embodies the principle that no Member State is under any obligation which has not been voluntarily contracted. From this principle it is concluded that expenses arising out of such operations cannot be apportioned by the General Assembly among Member States under Article 17, paragraph 2.

In the opinion of the Danish Government this argument is not relevant to the problem which is before the Court in the present case. It is true that Article 43 provides for the conclusion of special agreements between the Security Council concerning "armed forces, assistance and facilities" which shall be made available to the Security Council by Member States for the purpose of maintaining international peace and security. In the opinion of the Danish Government, however, it is doubtful whether the word "assistance" would cover financial contributions to expenses arising for the Organization in connection with action under Article 42. In the context of Article 43, the word "assistance" seems rather to refer to such matters as providing means of transport, logistics and supplies of various kinds in cases where expenses are borne directly by the States taking part in the operations. The problem of contributing financially to expenses which are taken over by the Organization as such seems to be quite a different matter. If the Security Council, in connection with any action under Article 42, were to decide that certain expenses should be borne by the Organization and not by particular Member States individually, Article 43 could not be understood to prevent such a decision, and it would be perfectly legitimate for the Assembly, in the exercise of its fiscal power, to apportion such expenses among Member States.

However that may be, it is submitted that Articles 42-47 do not apply to the operations which are the subject of the present case. It is the opinion of the Danish Government that neither the UNEF,

nor the ONUC, are governed by Articles 42-47 of the Charter. In order to substantiate this submission it will be necessary to examine in some detail the legal basis on which these operations were initiated.

A. *UNEF*. First, as far as the UNEF is concerned, no better guidance can be found in this respect than the Report, dated 6 November 1956, which the Secretary-General submitted to the General Assembly on the plan for an Emergency International United Nations Force (Document A/3302). The relevant parts of this Report were expressly approved by the General Assembly by resolution 1001 (ES-I), adopted on 7 November 1956.

As to the functions and task of the Force, there was no question of enforcement action of the character envisaged by Article 42 of the Charter. Paragraph 12 of the Report stated that

> "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 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."

This definition of the functions attributed to the Force was approved by resolution 1001 (ES-I) mentioned above, paragraph 2 of which reads as follows:

> "(The General Assembly,)
>
> . . . . . .
>
> 2. Concurs in the definition of the functions of the Force as stated in paragraph 12 of the Secretary-General's report."

Again, the same basic concept is reflected in the following passage, quoted from paragraph 8 of the Report:

> "... there is no intent in the establishment of the Force to influence the military balance in the present conflict and, thereby, the political balance affecting efforts to settle the conflict".

As to the guiding legal principles for the functioning of the Force, paragraph 9 is particularly important. It reads as follows:

> "Functioning, as it would, on the basis of a decision reached under the terms of the resolution 'Uniting for Peace', the Force, if established, would be limited in its operations to the extent that

consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to *establish* the force with the consent of those parties which contribute units to the force, it could not request the force to be *stationed* or *operate* on the territory of a given country without the consent of the Government of the 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 countries that this would entail, has been envisaged.*" (Underlined here.)

The endorsement by the General Assembly of this opinion is found in the first paragraph of resolution 1001 (ES-I), which reads as follows:

"Expresses its approval of the guiding principles for the organization and functioning of the emergency international United Nations Force as expounded in paragraphs 6-9 of the Secretary-General's Report."

The task assigned to the Force and the principles governing its operations and functioning have remained unchanged. At the thirteenth session of the General Assembly, the Secretary-General submitted a report containing a "Summary study of the experience derived from the establishment and operation of the Force", dated 9 October 1958 (Document A/3943). Various passages of this report confirm that the basic principles, as initially adopted, had been maintained. The following statements are particularly relevant:

"The Force was not used in any way to enforce withdrawals but, in the successive stages of the withdrawals, followed the withdrawing troops to the 'dividing line' of each stage." (Paragraph 149.)

"As the arrangements discussed in this report do not cover the type of force envisaged under Chapter VII of the Charter, it follows from international law and the Charter that the United Nations cannot undertake to implement them by stationing units on the territory of a Member State without the consent of the Government concerned." (Paragraph 153.)

Consequently, there is ample evidence to show that there was no doubt in the mind of the Secretary-General. There was no question of taking action under Chapter VII of the Charter. The General Assembly expressly approved this basic concept. Excluding Chapter VII, it excluded each and all of the articles contained in that Chapter, and the applicability of Article 43 is consequently ruled out.

B. *ONUC*. While the problem relating to UNEF gives rise to no doubt, the corresponding problem with respect to ONUC might at first sight appear to be less clear-cut. The decision to initiate the operations in the Congo was taken by the Security Council and not by the Assembly acting under the resolution "Uniting for Peace".

Furthermore, in its resolution of 9 August 1960, the Security Council expressly invoked one of the articles of Chapter VII, calling upon Member States, in accordance with Article 49 of the Charter, to afford mutual assistance in carrying out measures decided upon by the Security Council. Finally, the Security Council has expressly authorized the use of force beyond what is required for purposes of self-defence. The resolution adopted on 21 February 1961 calls for "all appropriate measures to prevent the occurrence of civil war in the Congo, including ... the use of force, if necessary, in the last resort", and the resolution adopted on 24 November 1961 authorizes the Secretary-General "to take vigorous action, including the use of requisite measure of force, if necesssay", for the apprehension, detention and deportation of certain groups of foreign personnel and mercenaries.

In various respects, therefore, the operations in the Congo present features which go beyond the very precise and narrow limits traced for the operations of UNEF. Nevertheless, it is submitted that these differences are not sufficiently important to bring the operations in the Congo within the scope of Articles 42-46 of the Charter, which have never been explicitly invoked as the legal foundation of the operation.

In the first place, it is important to recall the basic principles on which the operations in the Congo were initiated. In his opening statement before the Security Council on 14 July 1960 (Security Council, *Official Records*, 873rd meeting, paragraphs 18-29) the Secretary-General recommended to the Council to authorize him to provide the Government of the Congo with military assistance, and he stated that if the Council granted him such authority he would establish a United Nations Force based on the principles set out in his report of 9 October 1958 on the experience of the UNEF. He added:

> "It followed that the United Nations Force would not be authorized to action beyond self-defence. It follows further that they may not take any action which would make them a party to internal conflicts in the country." (Security Council, *Official Records*, 873rd meeting, 13/14 July 1960, paragraph 28.)

Although the resolution does not expressly mention the establishment of a force, the proceedings in the Council leave no doubt whatsoever that the authority granted to the Secretary-General was based on the same fundamental conception of the legal principles involved as in the case of the UNEF. Consequently, there was no intention of taking military measures under Article 42 of the Charter.

Secondly, the agreement between the Government of the Republic of the Congo and the United Nations concerning the presence and functioning of the United Nations Force in the Congo clearly reflects the same principles. In that agreement the Government states that

> "in exercise of its sovereign rights with respect to any question concerning the presence and functioning of the United Nations Force in the Congo it will be guided, in good faith, by the fact that it has requested military assistance from the United Nations and by its acceptance of the resolutions of the Security Council of 14 and 22 July 1960; . . . . . .
>
> The United Nations takes note of this statement of the Government of the Republic of the Congo and states that, with regard to the activities of the United Nations Force in the Congo, it will be guided, in good faith, by the task assigned to the Force." (Document S/4389/Add. 5, 29 July 1960.)

The reference to "the sovereign rights" of the Government indicates that the operation of the Force is not a military action within the meaning of Article 42 of the Charter. Under that article, enforcement measures can be taken even in derogation of the sovereign rights of the State against which the measures are directed.

Thirdly, the Secretary-General maintained this basic conception during subsequent stages of the operations. When the situation deteriorated in August 1960 because of the opposition by the local régime in Katanga, and the Security Council considered this new development on 8 August 1960, the Secretary-General introduced the debate by a statement setting forth the political and legal background of the problem before the Council. He referred to the obligations of Member States under Article 49 to render mutual assistance in the carrying out of the measures decided upon by the Security Council. He further quoted Article 40 about provisional measures for the protection of peace and security, and he also reminded the Council of Article 41 concerning measures not involving the use of armed force. He added:

> "The resolutions of the Security Council of 14 July and 22 July were not explicitly adopted under Chapter VII, but they were passed on the basis of an initiative under Article 99. For that reason I have felt entitled to quote three articles under Charter VII and I repeat what I have already said in this report: In a perspective which may well be short rather than long, the problem facing the Congo is one of peace or war—and not only in the Congo." (Security Council, *Official Records*, 884th meeting, 8 August 1960, paragraph 26.)

However serious the situation was, the Secretary-General did not rely on Article 42 concerning military measures of enforcement.

Along the same line of reasoning, the Secretary-General at a later meeting referred to the problem arising out of Article 2, paragraph 7. It is well known that this paragraph protects Member States against intervention in matters which are essentially within their domestic jurisdiction. The provision goes on to say, however, that this principle shall not prejudice the application of enforcement measures under Chapter VII. Speaking about the attitude of the United Nations Force towards the revolting provincial authorities in Katanga, the Secretary-General said:

"Moreover, in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 or 42 of Chapter VII." (Security Council, *Official Records*, 887th meeting, paragraph 44.)

These principles have been maintained throughout the subsequent developments of the Congo question. No decision has been taken by the Security Council which expressly or implicitly invoked—or could reasonably be interpreted as invoking—Article 42 of the Charter. The use of force which has been authorized by the resolutions of 21 February and 24 November 1961 does not serve the purpose of enforcing decisions of the United Nations against national authorities which are internationally responsible for their conduct, but the much more limited purposes of preserving law and order in the Republic of the Congo, of preventing civil war, and of apprehending certain groups of individuals whose activities were particularly prejudicial to the maintenance of law and order. This is far short of the military action envisaged by Article 42.

Finally, if further substantiation of this thesis were necessary, it might be found in the provisions and arrangements concerning the direction of the Force. Article 47, paragraph 3, provides, in the most specific and unambiguous terms, that the Military Staff Committee—consisting of the Chiefs of Staff of the permanent members of the Security Council—shall be responsible for the strategic direction of any armed forces placed at the disposal of the Security Council. The provision is categorical and not subject to any exception. It is well known that the United Nations Force in the Congo—like the UNEF—operates under the authority and direction of the Secretary-General who, in turn, acts under the instructions and direction of the Council and the Assembly. It has been a point of principle for the Secretary-General not to associate the permanent members of the Security Council with the operations of the Force, and the Council and the Assembly have approved this principle. For present purposes it is not necessary to go into the reasons for this policy; they are fairly obvious. What matters in the present context is the line of conduct consistently pursued by the organs of the United Nations. The essential elements of this conduct are clearly incompatible with the principle laid down by the Charter for the direction of military forces which are made available to the Security Council for the purpose of action under Article 42. The only reasonable conclusion to be drawn from this finding is that the action taken has not been envisaged as enforcement measures under Article 42, and that none of the articles relating to such action apply in the present case. More specifically, the inescapable conclusion is that Article 43 does not apply.

VII. *What is the substantive legal basis of the action taken?*

Having discarded Articles 42-47 as the legal basis of the operations in the Congo, one might reasonably ask: What is the basis on which these operations have actually been undertaken? For the purpose of the present case it seems hardly necessary to examine this question in any detail. Indeed, it would be meaningless to maintain that action taken with the active support of an overwhelming majority of the Member States in a situation of extreme gravity should be considered illegal. For the sake of completeness, however, the following observations are made.

The legal basis of the action may be found in Article 40 concerning provisional measures, or it may be found in the implied powers of the Security Council. It is well known that the system of enforcement action envisaged by Articles 42-47 of the Charter has never materialized because of fundamental divergences between the permanent members. Maintaining, in those circumstances, that the responsibility of the Security Council for the preservation of international peace and security can only be discharged under the conditions and modalities laid down in Chapter VII would be tantamount to reducing the United Nations to an extremely inefficient instrument for the realization of the purposes and principles to which Member States are committed under Article 1. In its Advisory Opinion of 11 April 1949 concerning *Reparation for Injuries suffered in the Service of the United Nations* the Court said:

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

It is submitted that this fundamental principle is relevant also to the present case. The conclusion that Articles 42-47 are inapplicable does not leave the operations in the Congo suspended in the air. They are firmly based upon the implied powers of the United Nations, if not in any specific article of the Charter. In discarding Article 43 and the other provisions of Chapter VII relating to military enforcement action, one may safely rely on these implied powers to justify the action taken by the Security Council in situations of the gravity described by the Secretary-General in his several statements before the Council and the Assembly.

The preceding observations concerning the action of the Security Council in the Congo apply *mutatis mutandis* to the action taken by the General Assembly in instituting the UNEF. It has been argued above that the resolution "Uniting for Peace" established the competence of the Assembly to deal with the matter. The power to set up a military force such as the UNEF may be derived from the general powers of the Assembly in matters relating to international peace and security, or from the right of the Assembly under Article

22 to establish such subsidiary organs as it deems necessary for the performance of its functions, or it may finally be considered as appertaining to those implied powers without which the Assembly could not discharge its heavy and far-reaching responsibilities in the present world situation.

VIII. *The perspective in which the case should be seen*

At first glance the uninitiated observer might gain the impression that this is a case about a few hundred million dollars. That would not in itself be an unimportant subject-matter, and Denmark, being a small country of limited resources, cannot remain indifferent to financial problems of that order. But it would be a mistake to take this to be the only issue of the case. Something much more far-reaching and important is at stake. It is no exaggeration to say that the future rôle and functions of the United Nations as a peace-preserving instrument depend upon the answer which the Court will give to the question before it.

The immediate question concerns two distinct and separate operations, each of which, in their respective geographic areas, has contributed essentially—and continues to contribute—to the stabilization of delicate situations pregnant with grave risks to international peace. It is a matter of course that these operations are not intended to be carried on indefinitely. They should be brought to an end at the earliest possible date. The determination of that date, however, should depend exclusively upon the political evaluation of the situation by the competent organs of the United Nations. The operations should not be discontinued prematurely for reasons extraneous to their purpose. In particular, financial factors should not be allowed to prejudice the decision. History would condemn those who allowed essential peace-keeping operations like UNEF and ONUC to be hamstrung or suffocated by lack of funds. The only sure and effective method of financing these operations is to levy the expenses upon Member States. The United Nations has no other reliable source of revenue. A negative answer to the question before the Court would invariably deprive the Organization of an indispensable means to an imperative end.

The issue, however, reaches beyond the two operations actually in progress. Situations may very well arise which will require similar action. The exact nature and scope of such action cannot be determined in advance. In each particular case the competent body of the United Nations will have to decide the question in the light of specific circumstances. Whatever the scope and character of the measures adopted, any action would be paralysed at the very outset if the competent organ could not rely on effective methods to cover the expenses involved. Indeed, in order to ensure a bare minimum of effectiveness, it must be justifiable to claim that the General Assembly, acting by a two thirds majority, should be legally entitled, if it so chooses, to levy upon Member States the

necessary contributions to an operation which the Assembly itself or the Security Council has initiated in the urgent interests of international peace.

It might be argued that there is an alternative solution. Experience seems to indicate that voluntary contributions to such operations will in the end come forth to save the Organization from bankruptcy. This, however, is a most unsatisfactory alternative. Quite apart from the uncertainty it involves and the unreasonable strain it places upon those who are entrusted with the execution of decisions taken by the political organs, it introduces an undesirable element of instability into the functioning of the Organization. It is tantamount to making the execution of any important operation contingent upon voluntary support from financially strong States. Operations may tend to become operations of certain States rather than of the United Nations. The pursuit of particular national interests may become the predominant motive, and the general common interest of the United Nations in the maintenance of peace and security may recede into the background. The value and effectiveness of the United Nations as an instrument of peace will be reduced, and the trend of developments which has characterized the Organization through recent years will be reversed.

The Court ought not to leave such factors out of consideration. Consistent with its jurisprudence, the Court should interpret the provisions of the Charter in such a way as to ensure a maximum of effectiveness with a view to the fullest possible realization of the aims and purposes to which Members of the United Nations are committed by the Charter. The late Sir Hersch Lauterpacht found that

> "in relation to the interpretation of the Charter of the United Nations the Court has repeatedly and on a large scale acted upon the principle of effectiveness". (*The Development of International Law by the International Court*, pp. 274-75.)

It is respectfully submitted that the circumstances of the present case are such as to justify once again the reliance upon that principle. Furthermore, the application of the principle to the problem at issue in the present case requires no departure from even the most cautious judicial method, because there is really no room for doubt. As pointed out in the preceding sections of this memorial, there is solid legal ground for an affirmative answer to the question on which the Court is asked to give its advisory opinion.

IX. *Conclusion*

For the reasons developed in the preceding sections the Danish Government respectfully submit that the question before the Court should be answered in the affirmative on the basis of the following considerations:

The General Assembly has clearly expressed its intention that the expenses relating to the UNEF and the ONUC should be assessed against Member States to the extent specified in each particular resolution.

In so deciding, the Assembly has lawfully exercised its fiscal power under the Charter and has not encroached upon the powers of the Security Council. No provision of the Charter, and particularly not the budgetary provisions or Article 43, affords any basis for challenging the validity of these decisions.

In apportioning the expenses among Member States the General Assembly has acted under Article 17, paragraph 2, which is the only provision of the Charter authorizing this procedure. Consequently, these expenses must be considered expenses of the Organization within the meaning of Article 17, paragraph 2.

5. WRITTEN STATEMENT OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

1. The Netherlands Government desire to submit for the consideration of the International Court of Justice certain observations with respect to the question, referred to the Court for an advisory opinion by the General Assembly of the United Nations, concerning the financial obligations of Member States.

2. In its resolution adopted on 20 December 1961 (1731 (XVI)) the General Assembly expresses 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.

3. By its resolutions 1583 (XV) and 1619 (XV) the General Assembly *decided* to apportion certain specified expenses of the Organization, relating to the UN operations in the Congo, among the Member States. By its resolutions 1089 (XI), 1151 (XII), 1337 (XIII), 1441 (XIV) and 1575 (XV) the General Assembly *decided* to apportion certain specified expenses of the Organization, relating to the operations of the United Nations Emergency Force in the Middle East, among the Member States.

4. The aforementioned General Assembly resolutions were adopted under Article 17, paragraph 2, of the Charter of the United Nations. They intended to create—and, in the submission of the Netherlands Government, actually do create—financial obligations of all Member States towards the United Nations Organization, to the amount, resulting from the figures mentioned in the resolutions, in conjunction with the scale of assessment and further particulars, referred to in those resolutions.

5. It has been contended that the resolutions referred to above are contrary to the provisions of the United Nations Charter, and, as such, do not create financial obligations of the Member States, or, at least, that the General Assembly cannot, in the future, apportion, under Article 17 (2), further expenses relating to United Nations operations undertaken in pursuance of the Security Council and General Assembly resolutions, mentioned in the request for an advisory opinion, or relating to United Nations operations of a similar character, to be undertaken in pursuance of comparable Security Council and General Assembly resolutions.

6. With all due respect it would seem doubtful whether the International Court of Justice, by way of an advisory opinion, could declare that the resolutions, mentioned under 3 above, were

a nullity and therefore did not create financial obligations of the Member States towards the UNO. This point may, however, be left aside, since the question submitted to the Court is couched in the general terms of the interpretation of Article 17 (2) of the Charter and does not refer to the *validity* of decisions already taken by the General Assembly under Article 17 (2).

7. According to Article 17 (2) of the United Nations Charter, "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". It has been contended that there is an *implied exception* to this general rule, which exception would result from Article 43 of the Charter. Under Article 43, para. (1), "all Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities ... necessary for the purpose of maintaining international peace and security".

Apparently the contention is that, since the Member States have already, by virtue of Article 43, undertaken to provide the "assistance and facilities ... necessary for the purpose of maintaining international peace and security", they cannot, either alternatively or cumulatively, be under an obligation to pay financial contributions under Article 17 (2), in so far as those contributions are meant to cover expenses of the Organization, resulting from its operations for the purpose of maintaining international peace and security.

This contention seems to be contrary to generally accepted canons of interpretation. The undertaking, provided for in Article 43, is subject to an agreement or agreements to be concluded between the Security Council and Members or between the Security Council and groups of Members. Under paragraph 2 of the article "such agreement ... shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and general location, and the nature of the facilities and assistance to be provided". It is obvious that if such agreements were concluded, and *if* they would provide that all costs relating to the use of the forces and to the facilities and assistance provided are borne by the Member States concerned, and *if* all the help provided by the Member States under such agreements would be sufficient to enable the United Nations to fulfil its purpose of maintaining international peace and security, the Organization could accomplish its task under Article 1 of the Charter without incurring considerable expenses. Even then there would be some expenditures of the Organization itself, relating more specifically to the operations for the maintenance of international peace and security, which could only be covered by contributions of the Member States under Article 17 (2) of the Charter.

As it is, however, no agreement, as referred to in Articles 32 and

44 of the Charter, has ever been concluded, and, though several Member States have voluntarily assisted the United Nations in its peace-keeping operations, either by providing the necessary personal services and material at their own cost, or by providing financial assistance, the Organization has had to incur heavy expenses in order to fulfil its tasks in this field.

Articles 43 and 44 of the Charter do *not* prescribe that the Member States with which the agreements are concluded shall bear all the costs relating to both the maintenance and the employment of the forces, facilities and other assistance provided. Those articles do not specifically refer to financial implications. The agreements may provide that the Organization shall bear the costs of employment, or even all the costs—including those of maintenance—of the forces made available. If only for this reason, there is no room for the interpretation according to which the method of agreements between the Security Council and Member States would be the *only* possible one to cover the expenses relating to peace-keeping operations of the United Nations, and, consequently, would exclude the normal method of covering the expenses, made by the Organization itself, by apportionment among its Members under Article 17 (2). There can, therefore, be no doubt that the authorized expenditures of the Organization itself, made in connection with its peace-keeping operations—such as those referred to in the request for an advisory opinion—shall, just like other expenses of the Organization, be borne by the Members as apportioned by the General Assembly under Article 17 (2) of the Charter.

8. Another argument, based on Articles 43 and 44 of the Charter, has sometimes been advanced, to the effect that it appears from those Charter provisions, in conjunction with others, that the Charter allows the peace-keeping *operations* themselves to be undertaken only by way of action through the use of forces, facilities and assistance, made available under these articles and the agreements provided therein. Obviously this interpretation would result in a complete "immobility" of the Organization, since, up till the present moment, no such agreement has ever been concluded. But even apart from that, this argument clearly does not bear on the question whether or not certain *expenditures*, provided for in the budget of the Organization, considered and approved by the General Assembly under Article 17 (1), are "expenses of the Organization" in the sense of Article 17 (2). The argument rather refers to the question of the validity and effect of the resolutions *in pursuance of which* the Organization has undertaken its operations. It is submitted that the latter question is irrelevant for the present request for an advisory opinion. Indeed the request deals with certain expenditures already *authorized by the General Assembly* through the adoption of the budget of the Organization. The approval of the budget by the General Assembly vests in the Secretary-General

the authority to incur obligations and make payments for the purposes for which the appropriations contained in the budget were voted and up to the amount so voted. There is clearly a direct link—both in the text of Article 17 of the Charter and in the general principles of law in respect of public finance—between the power to authorize expenditure and the power to levy charges covering this expenditure. The power of the General Assembly to consider and approve the budget of the Organization would be meaningless if the General Assembly could not at the same time decide, with binding force in respect of the Member States, on the contributions to be paid by each Member State in order to cover the expenses authorized in the budget.

In view of the above it is clear that *expenditures* made or ordered by the Secretary-General under his authority derived from the approval of the budget are "expenses of the Organization" under Article 17 (2) of the Charter, irrespective of the nature of the *operations* which entail these expenditures (provided, of course, that they correspond to the appropriations contained in the budget) and, *a fortiori*, irrespective of the validity and effect of the *resolutions* of the various organs of the United Nations which request or order such operations.

In other words, whenever the General Assembly, by approving the budget of the Organization, has authorized expenditures in accordance with specified appropriations, these expenditures are expenses of the Organization, to be borne by the Member States. Whether the operations, which entail these authorized expenditures, meet or do not meet with the approval of one or more Member States is legally irrelevant for the *financial* obligations of such Member States, resulting from the apportioning of those expenses by the General Assembly. The question whether or not a Member State is legally obliged to admit or to assist those operations within its jurisdiction is completely separate from the obligation of that Member State to pay its contribution to the United Nations.

Accordingly, it is equally irrelevant for the obligation to pay contributions whether the United Nations *operations* are effected in pursuance of a task of the United Nations, entrusted to it directly by the Charter, or by a resolution of a United Nations organ and, if so, by which United Nations organ, provided always that the *expenditure* is authorized by the budget approved by the General Assembly.

9. Now it might perhaps be argued that the General Assembly *should not authorize* expenditures relating to operations of the Organization which are not allowed under the provisions of the Charter. Again, it would seem that the request for an advisory opinion does not imply a prayer to the Court to declare whether or not the General Assembly rightly exercized its power to authorize —in its resolutions referred to in the request—expenditures relating

to United Nations operations in the Congo and the Middle East.

The request rather starts from the fact that these expenditures *are* authorized. However, in view of possible discussions on the legality of these authorizations, a few words may be devoted to this question, without implying in any way its relevancy in respect of the interpretation and application of Article 17 (2) of the Charter and in respect of the financial obligations of Members of the United Nations resulting from that provision.

10. It is no doubt true that the General Assembly, in the exercise of its budgetary power under Article 17 (1) of the Charter, is bound by some legal rules. As the Court stated in its advisory opinion of 13 July 1954, "... 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" (*I.C.J. Reports 1954*, p. 59).

In the case which gave rise to that advisory opinion, the Court held that the General Assembly was legally bound to *approve* a certain item of the budget which had been proposed to it. In the present case, the question might be raised whether the General Assembly is legally bound *not* to authorize the expenditures relating to United Nations operations in the Congo and in the Middle East. It may be repeated that an affirmative answer to this question would not necessarily imply the "nullity" of the authorizations made, nor deprive the apportioning, effected on the basis thereof, from its legal effect of creating a financial obligation of the Member States to pay contributions.

But quite apart from that the question must clearly be answered in the negative. There is no provision in the Charter which could be held legally to prevent the General Assembly from approving the items of the budget relating to either the United Nations operations in the Congo or to operations of the United Nations Emergency Force.

Legal limitations of the power of the General Assembly to authorize expenditures of the Organization cannot be presumed; they should result from express and unequivocal provisions of the Charter. In this connection it should be noted that under Article 18 (2) of the Charter all decisions of the General Assembly on budgetary questions are made by a two-thirds majority of the Members present and voting. Furthermore, such decisions, while vesting in the Secretary-General the power to effect the *expenditures* authorized do not oblige the Secretary-General to do so. Neither do such decisions purport to imply a binding statement on the legality of the *operations* or any part thereof.

Under those circumstances it is in itself already highly improbable that the Charter would provide for any limitation in the General Assembly's power to *approve* the budget proposed to it.

11. But let us assume, for the sake of argument, that the Charter forbids the General Assembly to approve a proposed item of the budget, if the appropriation proposed to it relates to activities of the United Nations, which are considered by some Members to be incompatible with the Charter provisions. Then the question could arise whether the United Nations operations corresponding to the authorized expenditures, mentioned in the request, are prohibited by the Charter or incompatible with its provisions.

12. The United Nations operations in question are undertaken in pursuance of certain Security Council resolutions and certain General Assembly resolutions, mentioned in the request for an advisory opinion.

In the submission of the Netherlands Government, the General Assembly cannot be considered to be *legally* obliged *not* to approve expenditures of the Organization resulting from the implementation of resolutions of the Security Council and the General Assembly, whatever the criticism to which such resolutions might be subjected in respect of their contents or the way in which they might have been adopted.

In other words, even if it could be doubted whether such *resolutions* were in full conformity with the provisions of the Charter, and irrespective of the consequences such doubt might entail as to the validity and legal effects of these resolutions *in other respects*, such resolutions, once adopted, empower the General Assembly to vote —with the required two-thirds majority—the expenditures of the Organization necessary for their implementation by the Organization, and to apportion the resulting expenses of the Organization between the Member States.

The Charter of the United Nations provides for safeguards against activities of the United Nations, whether resolutions or operations, which would infringe legitimate interests of Member States. Such safeguards are laid down in various provisions relating to the powers of the United Nations organs, to the substantive rules to be observed in the exercise of these powers and to the procedure to be followed. Generally speaking, most, if not all, actual and alleged legal limitations of the activities of the United Nations are discussed before a decision is taken by any United Nations organ. Such discussion does not necessarily lead to a conclusion which corresponds to the legal views of all the Member States concerned. Now obviously the fact that a decision is taken by a United Nations organ (other than the Court) is not necessarily conclusive in respect of the express or implied interpretation of the Charter provisions for all other United Nations organs and for all Member States. On the other hand, it is equally obvious that the United Nations as a whole would be doomed to complete failure if any and every decision of its organs could, *in all respects*, be treated as a nullity by other organs and by one or more Member States on the account that the

underlying interpretation of the Charter provisions did not correspond to the legal views of such other organ(s) or Member State(s).

In connection with the present request for an advisory opinion, it is not necessary to enter into a detailed consideration of the exact balance between the requirements of an effective world organization and the legitimate interests of Member States in this field.

It may be sufficient to note that, in this respect, a distinction should be made between the legal effects of a decision of a United Nations organ within the framework of the Organization itself (internal legal effects) and the legal effects of such decisions within the jurisdiction of a Member State and on its legal relationships with other States (external legal effects). The effect of justifying the authorization of expenditures and the collateral effect of the financial obligations of Member States to pay contributions to the Organization clearly fall under the first category, i.e. the internal legal effects of a decision of the Security Council or the General Assembly to undertake peace-keeping and other operations. Whatever views a Member State might be entitled to hold in respect of the legal validity of such resolutions and of the operations of the United Nations in pursuance thereof, the authorization of expenditures in the budget, the apportioning of the resulting expenses between the Member States and the obligation of Member States to pay contribution are unassailable in law.

13. Though—even if the legal validity of the Security Council and General Assembly resolutions in pursuance of which the operations in the Congo and the Middle East were undertaken could be questioned—the reply to the question submitted by the General Assembly should be in the positive sense, some remarks may be made with regard to these resolutions.

Some of these resolutions are Security Council resolutions, others resolutions of the General Assembly. The opinion has been advanced that United Nations operations which intend to serve the cause of maintenance of international peace and security and involve the use of armed forces may be undertaken only in pursuance of a binding decision to that effect of the Security Council under the provisions of Chapter VII of the Charter. According to this opinion, United Nations operations involving the use of armed forces could only be undertaken *on the strength of* a decision of the Security Council under Article 42 of the Charter and only *by means of* armed forces made available to the Security Council under agreements with Member States, as provided for in Articles 43 and 45 of the Charter. Both elements of this opinion seem to be legally unwarranted. In itself there is no validity in the argument that the fact that the Charter *provides for* particular United Nations operations "involving the use of armed force" in Articles 42, 43 and 45, means that the Charter *excludes* all other United Nations operations

"involving the use of armed force". Once again it is necessary to distinguish between the various legal questions involved in this matter.

First of all, the question may be put whether the United Nations operations undertaken in pursuance of the resolutions mentioned in the request for an advisory opinion are the type of "action" in respect of which Chapter VII of the Charter contains certain rules. Now it is significant that Chapter VII of the Charter deals with measures to be applied *by Member States* or through armed forces *of a Member State;* furthermore, those measures are preventive or enforcement measures *against a State*. In other words, the provisions of Chapter VII, relevant here, are dealing with the conditions under which an armed conflict between States is "legalized" by way of decisions of the Security Council. The operations undertaken in pursuance of the resolutions mentioned in the request for an advisory opinion are of a different kind; they are United Nations operations, undertaken by the Secretary-General in the performance of the functions entrusted to him by other United Nations organs (cf. Article 98); they are *not* directed against a State.

In view of the dissimilarity between the two types of "action", there does not seem to be any ground for holding that the second type is excluded by the Charter because the first type is expressly mentioned in the Charter.

Since the second type of "action" does not involve an armed conflict between States, there is no need for a decision of the Security Council binding on the States taking part in such armed conflict. The United Nations operations undertaken by the Secretary-General may involve the establishment of subsidiary organs and other organizational measures. In respect of *such* measures the distinction between "binding decisions" and "recommendations" is irrelevant. The same goes for resolutions indicating the aims to be pursued and the policies to be followed by the Secretary-General by and in the course of the United Nations operations. From the strictly legal point of view, such resolutions do not create any other obligation than one incumbent upon the Secretary-General towards the other United Nations organ which has adopted the resolution. Both the organizational measures and the instructions given are, therefore, internal decisions of the Organization, which as such are neither decisions "binding" the Member States nor "recommendations" addressed to Member States.

Another argument has been advanced to the effect that under Articles 11, para. 2, *in fine*, and 12, para. 1, the General Assembly is *not* competent to deal with questions "on which action is necessary", nor to make recommendations with regard to a dispute or situation "while the Security Council is exercising the functions assigned to it in the Charter" in respect of such dispute or situation.

Here again it is submitted by the Netherlands Government that the aforementioned provisions of the Charter are not applicable

to the General Assembly resolutions referred to in the request for an advisory opinion.

The provisions of Article 12, para. 1, tend to avoid a conflict between resolutions of the General Assembly and resolutions of the Security Council. In theory such conflict might arise in three cases: (1) if the General Assembly decided to intervene and the Security Council decided not to intervene, (2) if the General Assembly decided not to intervene and the Security Council decided to intervene, and (3) if both the General Assembly and the Security Council decided to intervene but in contrary directions.

In order to avoid these three contingencies, Article 12 of the Charter provides that, while the Security Council is still in the course of considering whether to decide to intervene or to decide not to intervene, the General Assembly shall not decide to intervene. In other words, as stated in Article 24 of the Charter, the Security Council has *primary* responsibility for the maintenance of international peace and security. The implication is, of course, that once the Security Council has taken a decision—to intervene or not to intervene—the General Assembly shall not pass a resolution in a contrary sense. If the Security Council has not taken a decision in respect of a dispute or situation submitted to it, the General Assembly is free to deal with the matter, either on the request of the Security Council (Article 12, para. 1, *in fine*) or under its general powers (Articles 10 and 11). Article 11, para. 1, *in fine*, does no more than state the obvious fact that if the General Assembly is of the opinion that the dispute or situation calls for the "action" of the Security Council, expressly provided for in the Charter, it should refer this matter to the Security Council. Actually this is nothing else but an application of Article 10, which empowers the General Assembly to make recommendations to the Security Council.

The General Assembly resolutions, mentioned in the request for an advisory opinion, in pursuance of which the United Nations operations were undertaken, do in no way conflict with any Security Council decision; neither were they adopted while the Security Council was exercising its functions in respect of the situations they deal with. Therefore, Articles 10 to 12 of the Charter cannot be invoked to challenge the legal validity of the General Assembly resolutions authorizing the United Nations operations in the Congo and in the Middle East.

14. The submissions of the Netherlands Government, as elaborated above, may be summarized as follows:

—legal obligations of the Member States of the United Nations to pay contributions result from resolutions of the General Assembly adopted under Article 17, para. 2, of the Charter; such resolutions could only be challenged on the ground *(a)* that they were not

adopted with the required majority, or *(b)* that they apportion expenses not in fact provided for in the budget of the Organization;

—such resolutions, and, consequently, the resulting financial obligations, cannot be challenged on the ground that the General Assembly should not have *authorized* any particular type of expenditure which was in fact authorized by it under Article 17, para. 1, of the Charter;

—even if the financial obligation could be challenged on the ground that it is based on the apportioning of expenses which should not have been authorized, there is no legal foundation for the statement that the authorization of the expenditures, referred to in the request for an advisory opinion, was contrary to the provisions of the Charter;

—those expenditures relate to United Nations *operations*, undertaken in pursuance of certain Security Council and General Assembly resolutions; whatever legal objections a Member State might have against these United Nations operations as such, the authorized expenditures relating to those operations are in any case expenses of the Organization, to be borne by the Member States;

—there is no provision in the Charter which prohibits the General Assembly to authorize expenditures relating to United Nations operations, undertaken in pursuance of resolutions of the Security Council or the General Assembly, even if the validity of those *resolutions* might be challenged by one or more Member States;

—even if the validity of the resolutions, in pursuance of which United Nations operations were undertaken, could be considered relevant for the question whether the General Assembly was competent to authorize expenditures relating to such operations, the reply to the question submitted to the Court should be positive, since the Security Council and General Assembly resolutions, mentioned in the request, and relating to operations in the Congo and the Middle East, are legally valid under the Charter;

—in particular the fact that according to express provisions of the Charter the Security Council may decide on action to be taken by military forces of the Member States, made available to the Security Council, does not exclude United Nations operations, such as those undertaken in the Congo and the Middle East;

—neither are the General Assembly resolutions, mentioned in the request, contrary to Articles 10 to 12 of the Charter, since they were not taken while the Security Council was exercising its functions in respect of the situations to which those General Assembly resolutions referred, and since they did not provide for an "action" in the sense of Article 11, para. 2, *in fine*, of the Charter.

15. In conclusion, the Netherlands Government may remark that the foregoing is completely without prejudice to the scale of assessment of expenses of the Organization to be adopted by the General Assembly in respect of the expenditure relating to United Nations operations of the kind referred to in the request for an advisory opinion. There may perhaps be good reasons for distinguishing, for the purpose of apportioning the expenses of the Organization, between the various types of expenditure. These considerations are, however, not germane to the issue submitted to the Court, since they do not relate to the power of the General Assembly to apportion the expenses of the Organization but to the use the General Assembly might make of its discretion in this respect.

The Hague, February 16, 1962.

6. WRITTEN STATEMENT OF THE GOVERNMENT OF THE CZECHOSLOVAK SOCIALIST REPUBLIC

With reference to the letter of the Registrar of the International Court of Justice No. 34891 of 27 December 1961, the Legation of the Czechoslovak Socialist Republic, upon instructions from its Government, has the honour to advise the Court of the following position on the subject of the proceedings for advisory opinion instituted in pursuance of General Assembly resolution 1731 (XVI) of 20 December 1961:

The question of financing the operations of the United Nations referred to 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, 1599 (XV), 1600 (XV) and 1601 (XV) of 15 April 1961, as well as that of financing the operations referred to 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, must be considered in strict accordance with the provisions of the United Nations Charter relating to the functions and powers of the United Nations in the matters of the maintenance of international peace and security. The financial implications of all operations undertaken by the United Nations are inseparably linked with the legal basis on which each of the operations undertaken by it rests.

Under Article 24, paragraph 1, of the Charter, the primary responsibility for the maintenance of international peace and security is entrusted to the Security Council. From the responsibility resting on the Security Council in this respect there ensues its exclusive power to take decisions under Chapter VII of the Charter for the maintenance and restoration of peace and security, including the use of armed forces. All measures connected with the use of armed forces on behalf of the United Nations fall, of necessity, under Chapter VII and, accordingly, also the measures connected with

providing the material and financial coverage of armed actions fall under this Chapter. The pertinent provisions of the Charter, in particular Articles 43 and 48, provide the basis for the assistance to be made available by Member States in all operations undertaken in the name of the Organization. Only the Security Council may decide the nature and extent of assistance requested from Member States, and conclude agreements with them governing their duties including their financial obligations involved in the operation in question. The negotiating of every such agreement necessitates the approval by the Security Council of the terms of the agreement. Under Article 43, paragraph 3, these terms must be accepted by the countries providing such assistance.

Any other way of undertaking actions by the Organization with the use of armed forces goes beyond the principles of international co-operation in the efforts for the preservation of peace and security, enunciated by the United Nations Charter, and can in no way establish legal obligations binding the Member States under Article 2, paragraphs 2 and 5, of the Charter.

In adopting the respective resolutions concerning the establishment of the United Nations Emergency Force (UNEF) and the United Nations Operations in the Congo (UNOC) and in approving the method of their financing, the General Assembly acted *ultra vires* and in disregard of the imperative provisions of Chapter VII of the Charter stipulating that issues of this kind fall under the exclusive authority of the Security Council.

The Czechoslovak Government holds a firm opinion, based on a distinct differentiation between financing of normal expenditures of the Organization and financing of actions undertaken in pursuance of Chapter VII of the Charter, that the costs for the maintenance of the United Nations units in the Middle East and in the Congo cannot be regarded as "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

The expenses referred to in Article 17, paragraph 2, are the normal, current expenses of the United Nations included in the regular budget mentioned in paragraph 1 of the same article. On the other hand, the expenses connected with the maintenance of armed forces employed in the Organization's actions for the maintenance or restoration of peace represent, by their very nature and way of coverage, expenses of a different character, and their approval is governed by the procedure set forth in Chapter VII of the Charter.

In this connection the interpretation offered at the San Francisco Conference in 1945 is not without legal importance. The pertinent reports clearly differentiate between expenses falling under the present Article 17 of the Charter and expenses involved in enforcement actions undertaken by the Security Council. The report of the rapporteur of Committee II/1 says that "the Committee therefore recommends that the General Assembly be empowered to apportion the expenses among the Members and to approve the budget of the

Organization" (U.N.C.I.O. Documents, Vol. 8, p. 453). The report of Rapporteur M. Paul Boncour deals with the other group of expenses, and in the chapter entitled "*Economic Problems of Enforcement Action*" reads as follows: "In conclusion ... the Committee declared itself satisfied with the provisions of paragraphs 10 and 11 (the present Articles 49 and 50—*note*). A desire however was expressed that the Organization should, in the future, seek to promote a system aiming at the fairest possible distribution of expenses incurred as a result of enforcement action." (U.N.C.I.O. Documents, Vol. 12, p. 513.)

Similar differentiation between the current expenses of the United Nations apportioned by the General Assembly and the expenses authorized by the Security Council for actions undertaken with the use of armed forces is made also by the commentators of the Charter, MM. L. M. Goodrich and E. Hambro, who expressed their opinion that "expenses referred to in this paragraph (i.e. paragraph 2, Article 17 of the Charter—*note*) do not include the cost of enforcement action" (*Charter of the United Nations, Commentary and Documents*, Second Revised Edition, Boston, 1949, p. 184).

The latter category of expenses is different from the former not only because of its different nature but also because of the different method of their coverage to be determined by the Security Council in full conformity with the relevant provisions of Chapter VII of the Charter and according to the specific conditions of each individual case. It should be noted that international responsibility of the country which through its illegal acts brought about the situation which prompted intervention on the part of the United Nations is one of the important factors that must be taken into account in the consideration of the question of financial coverage of the Organization's operations. Attention should be paid in this connection to the aforementioned report of Rapporteur M. Paul Boncour which declares that "the expenses of enforcement action carried out against a guilty State should fall upon that State" (U.N.C.I.O. Documents, Vol. 12, p. 513).

The fact that the Organization's actions falling by their nature under the authority of the Security Council pursuant to Chapter VII of the United Nations Charter were, in contravention to the Charter, undertaken on the basis of General Assembly resolutions, cannot in legal way change the nature of expenses related to them. Such expenses cannot be regarded as "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, and the General Assembly therefore is not authorized to consider and approve them within the framework of the Organization's budget.

Proceeding from all the aforementioned reasons, the Czechoslovak Government recommends that the question formulated in the General Assembly's resolution No. 1731 (XVI) of 20 December 1961 *should be answered in the negative.*

The Hague, 20 February 1962.

7. WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA

February 1962.

The question

The question presented to the Court is whether assessments made by the General Assembly to meet the costs of the United Nations Emergency Force and United Nations Operations in the Congo are "expenses of the Organization" within the meaning of Article 17 (2) of the Charter, and are, therefore, legally binding upon the States Members of the United Nations. It is a question of fundamental importance to the fiscal authority of the United Nations, and thus to the capacity of the Organization to carry out the responsibilities laid upon it by the Charter.

The issue comes before the Court by virtue of the request for an advisory opinion contained in General Assembly Resolution 1731 (XVI) of 20 December 1961. 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 United Nations operations in the Congo and in the Middle East", submitted the question in the following terms:

> "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?"

Despite its important ramifications, the question presented is limited and precise. It asks whether the designated resolutions,

imposing assessments upon States Members, have the effect of creating financial obligations binding upon those States.

The jurisdiction of the Court

The jurisdiction of the Court is founded on Article 96 (1) of the Charter, which provides that:

> "The General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question."

Article 65 of the Statute of the Court authorizes the Court to respond to such a request.

The question presented is a "legal question". It concerns the legal consequences of assessment resolutions of the General Assembly in the light of Article 17 of the Charter. The question is whether the expenditures authorized by these resolutions are "expenses of the Organization" within the meaning of the Charter, and therefore give rise to a legal obligation of States Members to pay these expenses "as apportioned by the General Assembly". The question clearly falls within the jurisdictional ambit marked out by this Court in earlier opinions. See *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion: I.C.J. Reports 1948*, p. 57; *Competence of Assembly regarding admission to the United Nations, Advisory Opinion: I.C.J. Reports 1950*, p. 4; *Interpretation of Peace Treaties, Advisory Opinion: I.C.J. Reports 1950*, p. 65.

Statement of Facts

A. *The United Nations Emergency Force (UNEF)*

On 29 October 1956, Israeli armed forces advanced into Egyptian territory, and large-scale hostilities broke out between Israel and Egypt. On 30 October, the Governments of the United Kingdom and France issued an ultimatum to Israel and Egypt to cease military operations and to withdraw their forces to a distance of ten miles from the Suez Canal. The Security Council met urgently in response to these developments. Resolutions were introduced calling for a cease-fire and withdrawal of Israeli forces and calling on all parties to refrain from the use or threat of force in the area. These resolutions were not adopted because of the negative votes cast by two permanent members of the Council, the United Kingdom and France. Meanwhile, the Anglo-French ultimatum was rejected, and British and French forces intervened militarily.

On 31 October, the Security Council adopted a resolution submitted by Yugoslavia, which recited that the lack of unanimity of the permanent members had prevented the Council from exercising its responsibility for the maintenance of international peace, and called an emergency special session of the General Assembly

pursuant to General Assembly Resolution 377 (V) ("Uniting for Peace").

The General Assembly convened on 1 November. Early the following morning, it adopted a resolution urging that "all States" immediately cease fire, withdraw behind the armistice lines, cease border raids, observe scrupulously the armistice agreement, and halt the movement of military forces into the area. It also called for reopening of the then blocked Suez Canal. U.N. Doc. No. A/RES/997 (ES-I) (1956). On 3 November, the Secretary-General reported that Egypt and Israel were prepared to accept a cease-fire. He later reported that the United Kingdom and France appeared willing to stop military action provided that, among other things, the Egyptian and Israeli Governments agreed to accept a United Nations force capable of achieving the objectives of the cease-fire resolution.

On 4 November, the General Assembly reiterated its resolution of 2 November. Then, by a vote of 57 in favor, 0 opposed, with 19 abstentions, the Assembly adopted a Canadian resolution requesting the Secretary-General to submit within forty-eight hours "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...". U.N. Doc. No. A/RES/998 (ES-I) (1956).

The same day, the Secretary-General submitted his first report on the creation of the United Nations Emergency Force, or, as it came to be known, UNEF. U.N. Gen. Ass. Off. Rec. 1st Emergency Spec. Sess., Annexes, Agenda Item No. 5, at 14 (A/3289) (1956). On 5 November, the Assembly, acting upon the Secretary-General's report, adopted by a vote of 57-0-19 resolution 1000 (ES-I), which, by its own terms, established a United Nations Command for an emergency international force. The resolution appointed a Chief of Command of the Force, and asked the Secretary-General to take the necessary administrative measures for prompt execution of its resolution. By midnight of 6-7 November, a cease-fire was achieved.

On 7 November, the Secretary-General submitted his second report on the plan for UNEF. *Id.* 1st Emergency Spec. Sess., Annexes, Agenda Item No. 5, at 19 (A/3302) (1956). By the terms of his proposal, the deployment and operations of the Force would be subject to the consent of the Governments concerned. Thus, the Force would be designed to induce and facilitate a cease-fire and withdrawal of troops, rather than to impose withdrawal.

UNEF was conceived, from the outset, as a subsidiary organ of the General Assembly within the terms of Article 22 of the Charter. This was expressly confirmed by the Secretary-General in his summary study of the experience derived from the establishment and operation of the Force. *Id.* 13th Sess., Annexes, Agenda Item No. 65, at 24 (A/3943) (1958). It is also reflected in the Regulations of the Force. U.N. Doc. No. ST/SGB/UNEF/1, at 2 (1957). The

Agreement between the United Nations and Egypt concerning the status of UNEF in Egypt equally specifies that UNEF is an organ of the General Assembly established in accordance with Article 22. *Id.* 11th Sess., Annexes, Agenda Item 66, at 52-53 (A/3526) (1957). UNEF was to be an international organ, with its responsible officers appointed by the United Nations. It was to be a United Nations instrument fully independent of the policies of any one nation. UNEF was to fulfil a dual role: supervising the cease-fire and withdrawal of foreign armed forces from Egyptian territory, and maintaining peaceful conditions in the area by its deployment along the armistice line and international frontier.

The Assembly approved the guiding principles set out in the Secretary-General's report for the organization and functioning of UNEF on 7 November by a vote of 64-0-12. U.N. Doc. No. A/RES/1001 (ES-I) (1956). By July 1957, UNEF had grown to a complement of some 6,000 officers and men voluntarily contributed by ten Member States. From the outset, it has discharged its duties with conspicuous success. It continues to make an essential contribution to peace in the Middle East.

B. *United Nations Operations in the Congo (ONUC)*

On 30 June 1960, the Republic of the Congo (Leopoldville) was proclaimed independent. Rioting broke out two days later. Congolese soldiers mutinied on 5 July, and by 8 July serious disorder had spread, accompanied by violence against the European population. More than 1,300 women and children, principally Belgians, fled to Brazzaville. That day, Belgian paratroopers were flown into Leopoldville to reinforce Belgian bases in the Congo. More Belgian troops followed with the mission of protecting Belgian lives and property.

On 11 July, Premier Lumumba requested technical assistance from the United Nations to aid in organizing and developing the Congolese army. On the same day, the Congolese province of Katanga issued a claim of independence. Both the President and the Premier of the Congo on 12 July 1960 cabled the Secretary-General of the United Nations requesting the "urgent dispatch" of United Nations military assistance in response to "the unsolicited Belgian action". The appeal stated that "The essential purpose of the requested military aid is to protect the national territory of the Congo against the present external aggression which is a threat to international peace". U.N. Doc. No. S/4382 (1960). United Nations technical assistance of a civil character was also requested. For its part, the Belgian Government made clear that it would welcome United Nations troops to keep order in place of the Belgian forces.

Acting under Article 99 of the Charter, the Secretary-General convoked an immediate meeting of the Security Council in response to the Congolese plea. That meeting culminated in the

adoption of a Tunisian-sponsored resolution, based on the Secretary-General's recommendation, which called upon Belgium to withdraw its troops from Congolese territory and authorized the Secretary-General to provide the Congolese Government with the necessary military assistance until its national security forces were able to meet fully their tasks. U.N. Doc. No. S/4387 (1960). That military assistance—the United Nations Operations in the Congo (ONUC)—was organized and dispatched with great speed. It quickly became, in Dag Hammarskjöld's words, the "biggest single effort under United Nations colours, organized and directed by the United Nations itself". U.N. Security Council Off. Rec. 15th year, 877th meeting 4 (S/PV. 877) (1960). That effort has since been endorsed, sustained and broadened by the Security Council and General Assembly in a series of resolutions, carried by very large majorities. U.N. Docs. Nos. S/4405 (1960), S/4426 (1960), S/4741 (1961), S/5002 (1961), A/RES/1474 (ES-IV) (1960), A/RES/1599 (XV) (1961) and A/RES/1600 (XV) (1961).

When, in September 1960, the Security Council reached an impasse, the General Assembly was seized of the problem, pursuant to Resolution 377 (V), in emergency special session. The Assembly reaffirmed the resolutions of the Security Council and requested the Secretary-General to

> "continue to take vigorous action in accordance with the terms of the aforesaid resolutions and to assist the Central Government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity, territorial integrity and political independence in the interests of international peace and security..." U.N. Doc. No. A/RES/1474 (ES-IV) (1960).

The vote on that resolution was 70 in favor, none opposed, with 11 abstentions.

The Congo situation continues to command the Organization's attention. Large numbers of United Nations troops—some 15,000 on 1 January 1962—and United Nations civilian and technical assistance personnel are being devoted to a bold enterprise, the attitude towards which, in the words of the late Secretary-General, is of "decisive significance ... not only for the future of this Organization, but also for the future of Africa. And Africa may well, in present circumstances, mean the world." U.N. Security Council Off. Rec. 15th year, 877th meeting 4 (S/PV. 877) (1960).

C. *Financial consequences*

The forces established in response to the Middle East and Congo crises plainly had to be paid for. The scale of the requisite financing, in comparison with traditional United Nations budgeting, was and is large. In fact, the combined annual assessment for UNEF and ONUC has amounted to more than twice the cost of the remainder

of the United Nations budget. Payments of UNEF and ONUC assessments by States Members have been variable and irregular. Certain Members have refused to pay their assessments, asserting political or legal justifications for default. Others, without contesting their legal obligation to pay such assessments, have pleaded inability to pay. Still others have made no plea at all.

The result has been a large accrual of arrears. As of the end of 1961, the Acting Secretary-General estimated the Organization's unpaid obligations to total $107.5 million (a figure later actually found to total $113.9 million). He estimated that, by 30 June 1962, "the gap between the debts of the Organization and its available net cash resources will have increased to approximately $170 million...". The Organization's cash position he pronounced to be "critical". The Acting Secretary-General, on 11 December 1961, summarized the outlook in these terms:

> "Mr. Chairman, the United Nations will be facing imminent bankruptcy, if, in addition to earliest possible payment of current and, particularly, of arrear assessments, effective action is not promptly taken for the purpose of (i) enabling outstanding obligations to be settled; (ii) improving the cash position; and (iii) providing needed financing for approved continuing activities." U.N. Doc. No. A/C.5/907 at 3-4 (1961).

It was in the light of this financial crisis that the General Assembly voted to request the Court's opinion on an issue vital to the Organization's solvency, its credit, its capacity for accomplishing what it has undertaken and what, in the future, its responsibilities for the peace of the world may require it to undertake.

Summary of argument

I

In adopting the assessment resolutions before the Court, the General Assembly invoked its authority under Article 17 of the Charter to apportion "expenses of the Organization" among the Members. The language of the first ONUC resolution expressly characterizes the Assembly's action in this fashion. Most of the other UNEF and ONUC resolutions repeat the language of Article 17, thus manifesting the intention to act under that article. Special accounts were established for each operation as a matter of accounting convenience rather than as an expression of intention to modify the binding character of the assessments. These conclusions are borne out by the debates preceding adoption of the resolutions—particularly by the statements of the Secretary-General—and by the budgetary procedures employed in their preparation and consideration.

II

A. The consequence of such General Assembly action is to create binding legal obligations upon the Member States. The language of Article 17 is mandatory: "expenses *shall* be borne". (Emphasis added.) It answers the prescription of the Advisory Committee of Jurists at the San Francisco Conference for a "clear statement of the obligations of Members to meet the expenses of the Organization". The Charter adopts the language of the corresponding article of the Covenant of the League of Nations, which has been authoritatively construed to empower the League Assembly to create a binding legal obligation.

B. This power to create binding obligations by assessment extends to assessments for expenditures relating to operations for the maintenance of international peace and security. Although the Security Council has "primary responsibility" in this field, it has no budgetary or fiscal authority under the Charter. The practice of the League, the budgetary and financial practice of the United Nations and the applicable judicial decisions all bear out the conclusion that the Assembly's fiscal power is exclusive.

C. Finally, the same authorities lead to the conclusion that the Assembly may create binding obligations to finance operational expenditures, even though, as regards contributions of troops, the substantive resolutions are only recommendatory for the Member States.

D. To construe the General Assembly's fiscal power more narrowly than is here suggested would seriously limit the capacity of the Organization for effective action in pursuit of its paramount purpose the maintenance of international peace and security.

III

The question submitted to the Court, as framed, is not directed to the validity of the underlying resolutions establishing UNEF and UNOC. The question can be answered without addressing those issues. For, at a minimum, the Secretary-General could make commitments to States and third parties in the execution of the directives laid upon him by those resolutions, absent an authoritative determination invalidating them. The General Assembly has power to raise money to discharge the financial obligations arising from such commitments. Indeed, "to this extent [it] has no alternative but to honour these engagements". Moreover, in any event, the underlying resolutions are valid. They were adopted by the General Assembly and Security Council in the exercise of the authority, expressly granted in the Charter, to consider and deal with questions involving the maintenance of international peace and security.

IV

Miscellaneous contrary arguments are not persuasive.

ARGUMENT

I. THE GENERAL ASSEMBLY, IN THE ASSESSMENT RESOLUTIONS BEFORE THE COURT, UNMISTAKABLY MANIFESTED ITS INTENTION TO TREAT EXPENDITURES FOR ONUC AND UNEF AS "EXPENSES OF THE ORGANIZATION" UNDER ARTICLE 17 OF THE CHARTER, TO BE APPORTIONED AMONG THE STATES MEMBERS OF THE UNITED NATIONS

A. *Assessment resolutions relating to UNEF*

During the first days of the life of UNEF the most pressing questions concerning the Force were questions of action—recruitment, command and staff problems, transportation, and the details of supervising, on the scene in the Middle East, a cease-fire and withdrawal of troops. Financial problems were secondary, and at this stage were treated in a provisional fashion. By 26 November, three weeks later, the Force was operating successfully and the General Assembly was able to turn its attention to definitive arrangements for financing the enterprise.

On 21 December 1956, after an exhaustive debate, the General Assembly adopted, by a vote of 62-8-7, resolution 1089 (XI) levying assessments for the Force in the amount of $10 million. The relevant operative paragraph of that resolution provides:

> "*The General Assembly,*
>
> . . . . . .
>
> 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."

It will be seen that the resolution adopts the language of Article 17 (2) of the Charter, which provides: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." In an unmistakable parallelism, the resolution prescribes that "the expenses of the United Nations Emergency Force" shall be "borne by the United Nations" and shall be "apportioned among the Member States" in accordance with a defined formula. Thus, the language of the resolution at the same time invokes and exercises the authority of Article 17 (2).

The intention to act under Article 17 emerges equally clearly from the record of General Assembly consideration which preceded adoption of the resolution. The resolution appeared first in draft form as an annex to the Secretary-General's report of 21 November 1956 on administrative and financial arrangements for the United Nations Emergency Force. U.N. Gen. Ass. Off. Rec. 11th Sess.,

Annexes, Agenda Item No. 66, at 13 (A/3383) (1956). The resolution was drafted to embody the position set forth by the Secretary-General in that report. He expressed this position in categorical and unmistakable terms:

> "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 of 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." *Id.*, 11th Sess., Plenary 343 (A/PV. 596) (1956).

The Controller, as well, speaking in the Fifth Committee on behalf of the Secretary-General, reiterated that "the operation was necessarily and essentially a United Nations responsibility and the Special Account must therefore be regarded as coming under Article 17 of the Charter...". *Id.*, 11th Sess., 5th Comm. 32 (A/C.5/SR.538) (1956).

Resolution 1089 (XI) established the pattern for the successive resolutions adopted by the General Assembly annually thereafter to provide for the expenses of the Force. U.N. Docs. Nos. A/RES/1151 (XII) (1957), A/RES/1337 (XIII) (1958), A/RES/1441 (XIV) (1959) and A/RES/1575 (XV) (1960). Of these, resolutions 1151 (XII) and 1337 (XIII) repeat in almost identical language the formula of the first resolution, 1089 (XI), which, as has been shown, uses the very language of the Charter. Like it, they provide that the expenses of the Force are to be borne by the Members as apportioned by the Assembly. The last two annual resolutions, 1441 (XIV) and 1575 (XV), demonstrate the same intention in different language. Thus, the operative paragraph of resolution 1441 (XIV) reads:

> "*The General Assembly*,
>
> . . . . . .
>
> 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..."

The Assembly's use of voluntary contributions as a supplementary means of financing UNEF emphasizes that the assessments levied by the foregoing resolutions were intended to be obligatory. In resolution 1090 (XI), adopted 27 February 1957, the General Assembly took note of its earlier authorization of expenditures in the amount of $10 million to be apportioned among Member States, and authorized the Secretary-General "to incur expenses for the United Nations Emergency Force up to a total of $16.5 million" in respect of the period ending 31 December 1957. The additional $6.5 million was not to be assessed at that time. Instead, because of the "grave unanticipated financial burden for many Governments" resulting from the financial obligations created by the previous assessment, the Assembly decided to "*Invite[s]* Member States to make volun-

tary contributions to meet the sum of $6.5 million so as to ease the financial burden for 1957 on the membership as a whole...". Thus the General Assembly distinguished sharply, in a single resolution dealing with the financing of UNEF, those expenses that were assessed under Article 17 from the additional sums to be solicited through voluntary contributions.

The distinction between assessed expenses and voluntary contributions was reiterated in resolution 1441 (XIV). By the terms of that resolution, the General Assembly decided "to assess the amount of $20 million against all Members of the United Nations on the basis of the regular scale of assessments...". The scale of apportionment was qualified by a proviso under which voluntary contributions pledged by 31 December 1959 would be applied to reduce by one-half the assessments of as many governments as possible, beginning with those assessed at the minimum percentage of 0.04 per cent. Resolution 1575 (XV), adopted on 20 December 1960, made similar provision for the application and use of voluntary contributions. These actions of the General Assembly in providing specially for voluntary contributions, and showing their relationship to assessments intended to be obligatory, demonstrate the Assembly's concern with the unusual financial burden being imposed on Member States by the Article 17 assessments. The very vividness of this concern makes unmistakably clear that those assessments were intended and conceived as creating legally binding obligations.

The provisional consideration of the financial problems of UNEF, in the weeks before the adoption of the basic financial resolution, 1089 (XI), discussed above, is consistent with, and indeed tends to confirm, the foregoing analysis. The Secretary-General's report of 6 November 1956 made his first reference to financing the Force. He said:

> "The question of how the Force should be financed likewise requires further study. A basic rule which, at least, could be applied provisionally, would be that a nation providing a unit would be responsible for all costs for equipment and salaries, while all other costs should be financed outside the normal budget of the United Nations. It is obviously impossible to make any estimate of the costs without a knowledge of the size of the corps and the length of its assignment. The only practical course, therefore, would be for the General Assembly to vote a general authorization for the cost of the Force on the basis of general principles such as those here suggested." U.N. Gen. Ass. Off. Rec. 1st Emergency Spec. Sess., Annexes, Agenda Item No. 5, at 21 (A/3302) (1956).

In resolution 1001 (ES-I), the General Assembly approved provisionally "the basic rule concerning the financing of the Force laid down in ... the Secretary-General's Report". Three weeks later, the Assembly implemented those principles by authorizing the Secretary-General "to establish a United Nations Emergency Force Special Account to which funds received by the United Nations, outside

of the regular budget, for the purpose of meeting the expenses of the Force shall be credited...". U.N. Doc. No. A/RES/1122 (XI) (1956).

As the Secretary-General later pointed out, the proposal for a special account was made not in order to qualify the obligation of Members to support the Force, but as an accounting convenience. A special account was desirable to avoid the delay that might have occurred had the Force been financed from accounts within the regular budget. Moreover, it was uncertain how long the Force would be needed. There was disagreement among Members over whether the normal scale of apportionment should apply. And there were special bookkeeping problems involved in the management of such a large force. These considerations are set forth in the Secretary-General's summary of the experience derived from the establishment and operation of the Force. U.N. Gen. Ass. Off. Rec. 13th Sess., Annexes, Agenda Item No. 65, at 21 (A/3943) (1958).

In addition to setting up a special account, resolution 1122 (XI) authorized the Secretary-General to draw on the Working Capital Fund in order to meet expenses chargeable to the Special Account, pending the receipt of funds for that account. The Working Capital Fund of the United Nations is a fund of $25 million to be used for meeting unforeseen and extraordinary expenses. Assessments to replenish the Working Capital Fund are levied on Members of the United Nations in the same manner and at the same time as other parts of the budget. Thus, the General Assembly authorization to the Secretary-General to draw on the Working Capital Fund gives a further indication of the Assembly's view that the costs of UNEF were expenses of the Organization to be apportioned among the Members in accordance with Article 17.

Finally, it is to be noted that the budgetary processes followed by the General Assembly in dealing with the expenditures of UNEF have been the same as those employed for approving the regular budget in accordance with Article 17 (1). The financial regulations prepared by the Secretary-General for UNEF are analogous to the Organization's Financial Regulations and Rules for the regular budget. U.N. Doc. No. ST/SGB/Financial Rules/1 (1950). In each case, estimates of expenditures are prepared by the Controller on behalf of the Secretary-General. These estimates are examined by the Advisory Committee on Administrative and Budgetary Questions. Subsequently, they are considered in the Fifth Committee, and finally in Plenary Session of the General Assembly.

In summary, the resolutions of the General Assembly, the parliamentary history leading to their adoption, and the consistent practice of the Assembly demonstrate that the assessed expenditures for UNEF were intended by the Assembly to be "expenses of the Organization" within the meaning of Article 17.

B. *Assessment resolutions relating to ONUC*

The first of the Congo financial resolutions recognizes expressly that "the expenses involved in the United Nations operations in the Congo for 1960 constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the United Nations Charter...". It stipulates that "the assessment thereof against Member States creates binding legal obligations on such States to pay their assessed shares". U.N. Doc. No. A/RES/1583 (XV) (1960). Thus the Assembly articulated its conclusion that its characterization of expenditures as "expenses of the Organization" has the legal consequence that assessments to meet those expenditures create binding obligations on the Member States.

The Assembly's decision was made as a matter of deliberate choice among available alternatives. Discussions in the Fifth Committee preceding Assembly consideration of that basic financial resolution disclosed that Member States had varying views about the method by which the expenses of the Congo Force should be met. The rapporteur of the Fifth Committee summarized these views as follows:

> "During the discussion many delegations made statements of policy in relation to United Nations operations in the Congo. In addition, delegations proposed various methods of financing the operation, as follows:
>
> *(a)* The expenses should be included in the regular budget and apportioned among the Member States in accordance with the 1960 scale of assessments for Members' contributions;
>
> *(b)* The expenses should be entered in a special account and apportioned among the Member States in accordance with the 1960 scale of assessments for Members' contributions to the regular budget; voluntary contributions should be applied, at the request of the Member State concerned, to reduce the assessments of Members with the least capacity to pay;
>
> *(c)* The expenses should be met under special agreements concluded in accordance with Article 43 of the Charter between the Security Council and the countries providing troops;
>
> *(d)* The expenses should be borne in larger part by the permanent members of the Security Council, as having a major responsibility for the maintenance of peace and security;
>
> *(e)* The expenses should be borne in larger part by the former administering Power;
>
> *(f)* The expenses should be financed entirely out of voluntary contributions." U.N. Gen. Ass. Off. Rec. 15th Sess., Annexes, Agenda Items Nos. 49/50, at 11 (A/4676) (1960).

Thus the Assembly had before it a variety of views for the financing of ONUC. Drawing on the experience with UNEF, it chose, in resolution 1583 (XV), to establish a special account for the Congo Force, in this case designated an *ad hoc* account. This action, in

the context of a resolution specifying that the expenses to be charged to the special account are "expenses of the Organization", confirms the position taken above that the establishment of a special account is a matter of accounting convenience rather than a choice qualifying the character of the obligation to pay.

The Congo resolution, like those financing UNEF, provides for voluntary contributions in addition to assessments. It specifies that such contributions shall be applied to relieve the burden of compulsory assessments on States less able to pay. Again, the intention of the Assembly to create a binding obligation is manifested in its concern about the burdens which such obligations create for some Members.

Furthermore, the General Assembly established, in September 1960, a voluntary United Nations Fund for the Congo, designed to provide for economic and administrative development. In establishing this Fund, the General Assembly adopted a resolution saying it: "*Appeals* to all Member Governments for urgent voluntary contributions..." U.N. Doc. No. A/RES/1474 (ES-IV) (1960). Thus, again, the General Assembly distinguished a Fund to be based on voluntary contributions from expenses intended to be assessed against the United Nations membership pursuant to Article 17.

The financial burden imposed by ONUC led to an exhaustive and lengthy debate at the resumed session of the Fifteenth General Assembly. The essential issue debated was the apportionment of the Congo expenses, not whether those expenses should be assessed under Article 17. At the 839th meeting of the Fifth Committee on 17 April 1961, the Secretary-General stated that:

> "He himself ... had come to the conclusion that Article 17 of the Charter, the wording of which was perfectly clear, must apply to the expenses in question; the records of the San Francisco Conference left the matter in no doubt.
>
> Several representatives had emphasized the exceptional magnitude of the expenditure in question and its 'extraordinary' character; but those factors could not lead to the conclusion that the expenses were not expenses of the Organization or that the provisions of the Charter must be disregarded." U.N. Gen. Ass. Off. Rec. 15th Sess., 5th Comm. 59 (A/C.5/SR.839) (1961).

In the same statement, the Secretary-General pointed out that this conclusion:

> "would in no way restrict the right of the Fifth Committee and the General Assembly to apportion ONUC expenditure among the Member States as it considered equitable, within the framework of Article 17, and without departing from the provisions of the Charter". *Ibid.*

The resolution adopted at the end of the debate was designed to give effect to both conclusions which the Secretary-General had

reached. Like the UNEF resolutions, the operative paragraph of resolution 1619 (XV) employs the very words of Article 17:

> *"The General Assembly,*
>
> . . . . . .
>
> *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 altered the scale of assessment to reduce sharply the compulsory assessment on States less able to bear the financial burden. But the modifications in the apportionment of expenses leave untouched the proposition that the costs of ONUC were intended to be "expenses of the Organization" within the meaning of Article 17.

II. The legal consequence of the General Assembly assessment resolutions, invoking and exercising the Assembly's authority under Article 17, was to create binding legal obligations on Member States

A. *The General Assembly is empowered to create legally binding financial obligations on Member States by levying assessments for "expenses of the Organization" under Article 17 of the Charter*

The previous section has shown that the General Assembly unequivocally manifested its intent to make payment of UNEF and ONUC assessments a matter of binding legal obligation. It will now be demonstrated that the legal effect of such an expression is to create a binding obligation.

1. *The language of the Charter*

This conclusion flows from the grant of power to the General Assembly in the single governing text, Article 17 of the Charter of the United Nations. The meaning and effect of the language of the article are confirmed by the *travaux préparatoires*.

Article 17 (2) provides: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." The language of the provision is mandatory: expenses "*shall* be borne". (Emphasis added.) Accordingly, the General Assembly's adoption and apportionment of the Organization's expenses create a binding international legal obligation on the part of States Members to pay their assessed shares.

The history of the drafting of Article 17 (2) demonstrates that it was the design of the authors of the Organization's constitution that the membership be legally bound to pay apportioned expenses. The draft that emerged from the Dumbarton Oaks Conference provided, in Chapter V, Section B, paragraph 5: "The General Assembly should apportion the expenses among the Members of

the Organization and should be empowered to approve the budgets of the Organization." Doc. No. 1, G/1, 3 U.N. Conf. Int'l Org. Docs. 5 (1945).

It will be noted that the Dumbarton Oaks text did not explicitly state that the expenses "shall be borne" by the membership. Committee II/1 of Commission II at the San Francisco Conference corrected this deficiency by approving a revised text of the Dumbarton Oaks proposal which ultimately was embodied in Article 17 (2): "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." The summary report of the 15th meeting of that Committee declares: "In taking this action, the Committee considered the view of the Advisory Committee of Jurists that a clear statement of the obligation of Members to meet the expenses of the Organization should be found in the Charter." Doc. No. 1094, II/1/40, 8 U.N. Conf. Int'l Org. Docs. 487 (1945). When, during the debate on the Committee text, the Chairman of the Committee suggested that "allocated" would be a better term than "borne", his suggestion was rejected in express reliance on the opinion of the Jurists. Doc. No. WD 427, CO/191, 17 U.N. Conf. Int.'l Org. Docs. 198 (1945). See also Doc. No. WD 431, CO/195, *id.*, at 236, and Doc. No. WD 268, CO/110, *id.*, at 406. Article 17 (2) of the Charter is the "clear statement of the obligation of Members to meet the expenses of the Organization" called for by the Advisory Committee of Jurists.

The mandatory character of the English text of Article 17 (2) is confirmed by a study of the Charter in its other authentic texts. The provision in the French that "Les dépenses de l'Organisation sont supportées par les Membres", in the Spanish that "Los Miembros sufragarán los gastos de la Organización", and in the Russian that "члены Организации несут ее расходы", carry the precise obligatory character so forcefully stated in the English rendering. Equally the Chinese text,

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conveys mandatory force, importing the meaning of obligation on the part of Members.

2. *Previous usage*

In using these words, the framers of the Charter chose language illuminated by a history of construction and practice. The very same words were used in the Covenant of the League of Nations. Originally the Covenant provided: "The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union." League of Nations Covenant Art. 6, para. 5. Article 6 was later amended to read: "The expenses of the League shall be borne by the Members of the League in the propor-

tion decided by the Assembly." In both texts, there appears the injunction that expenses "shall be borne by the Members".

While the provision was in its earlier form, the Government of El Salvador disputed its obligation to pay certain assessments. In response to this contention, the First Committee of the Assembly of the League appointed a distinguished Sub-Committee of Jurists, on which Sir Cecil Hurst, M. Henri Rolin, M. G. Noblemaire and M. A. H. Struycken sat. The Sub-Committee held, contrary to the contention of El Salvador, that Article 6 imposed a binding obligation to pay the assessments. In construing the Article, the Sub-Committee relied on

> "the general principle, a principle applicable to all associations, that legally incurred expenses of an association must be borne by all its members in common". *Contribution of the State of Salvador to the Expenses of the League*, Report presented to the Assembly by the First Committee, League of Nations, 3rd Ass., Plenary, Vol. II, at 193 (A. 128. 1922. V) (1922).

The Sub-Committee pointed out that the practice of the League Assembly, as expressed in its Rules of Procedure, confirmed this interpretation of the financial provisions of the Covenant.

B. *The power of the General Assembly to create legally binding financial obligations is not limited by the fact that the UNEF and ONUC assessments were levied to finance activities of the Organization for the maintenance of international peace and security*

It can hardly be contended that the United Nations, as an organization, lacks power to finance activities in pursuit of its paramount purpose, the maintenance of international peace and security. The most that is suggested is that this power is not vested in the General Assembly. Rather, it has been maintained that, since the Security Council has primary responsibility for the maintenance of peace and security, the General Assembly lacks power to provide funds to meet expenses in this sphere.

The proposition is an obvious *non sequitur*. Moreover, it contradicts the terms of the Charter, the practice of the Organization, and available judicial precedents.

1. *The language of the Charter*

The fiscal power of the General Assembly is exclusive. Article 17 (1) of the Charter provides: "The General Assembly shall consider and approve the budget of the Organization." It is the General Assembly alone which is referred to in paragraphs 2 and 3 of Article 17. No article of the Charter allots fiscal powers to any other organ. While the powers of other organs are set forth in the Charter in some detail—particularly those of the Security Council—there is no mention of any power over finance, except in Articles 17, 18 and 19. All of these articles are found in Chapter IV of the Charter, titled: "The General Assembly."

Article 18, by requiring a voting majority of two-thirds in the General Assembly on budgetary questions, further emphasizes that it is the General Assembly which is concerned with the Organization's fiscal affairs. There is no comparable provision in the article of the Charter which is concerned with the voting of the Security Council, Article 27, nor indeed in the voting provisions for any other organ established by the Charter. See Article 67 (Economic and Social Council); Article 89 (Trusteeship Council). The several official elaborations of the Security Council's voting provisions make no mention of fiscal authority. There is no mention of finance in the Statement of the Four Sponsoring Governments on Voting Procedure in the Security Council, made at the San Francisco Conference. The Provisional Rules of Procedure of the Security Council do not advert to budgetary questions. The Report of the Interim Committee of the General Assembly on the Problem of Voting in the Security Council (U.N. Gen. Ass. Off. Rec. 3d Sess., Supp. No. 10, at 1 (A/578) (1948)), and the resolution of the General Assembly adopted in response to that Report, Resolution 267 (III), make no reference to budgetary questions.

2. *The practice of the League of Nations*

The exclusive power of the General Assembly in regard to budgetary matters builds on the experience of the League of Nations in fiscal affairs. In the Covenant of the League as originally adopted, Article 6 (5), providing for approval of the budget and apportionment of expenses, did not expressly assign this function either to the League Assembly or to the Council. At first the League Council asserted fiscal authority. The Rules of Procedure of both the Council and the Assembly reflected an arrangement under which each organ had a financial role. *Rules of Procedure of the Council*. Arts. 11, 12, League of Nations Off. J., Council, 6th Sess. 274 (1920); *Rules of Procedure of the Assembly*, rule 4 (2) *(f)*, League of Nations Doc. No. 20/48/143, at 3 (1921). Budget estimates were prepared by the Secretariat and submitted first to the Council; ultimate decision was taken by the Assembly.

Divided authority did not long survive in practice, and in 1924 Article 6 (5) of the Covenant was amended to read: "The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly." The change confirmed that it was the Assembly which had exclusive power to determine the budget of the League and the manner in which its expenses would be apportioned among the Members. The United Nations Charter was written against the background of this history.

3. *The practice of the United Nations*

As this Court and its predecessor have held, the practice of the parties in interpreting a constitutive instrument is a guide to that instrument's true meaning. *International Status of South-West*

Africa, Advisory Opinion: I.C.J. Reports 1950, p. 128; *cf. Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949*, p. 4; *Brazilian Loans Case*, P.C.I.J., Ser. A, Nos. 20/21, at 119 (1929); see also *Contribution of the State of Salvador to the Expenses of the League*, Report presented to the Assembly by the First Committee, League of Nations, 3d Ass., Plenary, Vol. II, at 191 (A. 128. 1922. v) (1922). The practice of the United Nations fully bears out the exclusive character of the fiscal authority of the General Assembly.

The first official interpretation of Article 17 of the Charter was by the Executive Committee of the Preparatory Commission of the United Nations. That Committee's draft of the provisional agenda for the first part of the first session of the General Assembly included an item entitled: "The provisional budget, financial organization and methods of assessing and collecting contributions from Members." U.N. Doc. No. PC/EX/113/Rev. 1, at 18 (1945). The provisional agenda which it proposed for the first meetings of the Security Council contained no such item. The portion of the Report of the Executive Committee dealing with budgetary and financial arrangements provides: "[T]he Secretary-General, as chief administrative officer, [shall] formulate and present to the General Assembly the Budget of the United Nations..." *Id.*, at 96. The Report of the Preparatory Commission itself contains identical provisions with respect to agenda and presentation of the budget. U.N. Doc. No. PC/20, at 8, 24, 104 (1945).

The General Assembly, acting pursuant to the recommendations of the Preparatory Commission, subsequently adopted its Rules of Procedure, U.N. Doc. No. A/520 (1948) (subsequently revised), and the Financial Regulations of the United Nations. U.N. Doc. No. ST/SGB/Financial Rule/1 (1950). Rule 13 of the Rules of Procedure stipulates that the provisional agenda of a regular session shall include: "All items pertaining to the budget for the next financial year and the report on the accounts for the last financial year." U.N. Doc. No. A/4700, at 3 (1960). Rule 153 provides: "The General Assembly shall establish regulations for the financial administration of the United Nations." *Id.*, at 27.

Pursuant to this latter provision, the General Assembly adopted the Organization's Financial Regulations by a unanimous vote. U.N. Gen. Ass. Off. Rec. 5th Sess., Plenary 384 (A/PV.305) (1950). In accordance with those Regulations, the Secretary-General has promulgated Financial Rules. Regulation 1.1 provides that: "These Regulations shall govern the financial administration of the United Nations..." U.N. Doc. No. ST/SGB/Financial Rules/1, at 5 (1950). Regulation 3.4 provides that the budget estimates shall be submitted by the Secretary-General to the General Assembly. *Id.*, at 6. Regulation 3.7 provides: "The budget for the following financial year shall be adopted by the General Assembly after consideration and report on the estimates by the Administrative and Budgetary Committee of the Assembly." *Id.*, at 7. A rule annotating that

regulation provides that, apart from the annual budget estimates, revised estimates may be submitted to the General Assembly when, *inter alia*, "approval is required as a matter of urgency in the interests of peace and security...". *Ibid.* That same rule provides for the submission to the General Assembly of such estimates "in respect of decisions of the Security Council, the Economic and Social Council or the Trusteeship Council...". *Ibid.* Finally, Regulations 13.1 and 13.2 restate the exclusive fiscal power of the General Assembly in these terms:

> "*Regulation 13.1:* No council, commission or other competent body shall take a decision involving expenditure unless it has before it a report from the Secretary-General on the administrative and financial implications of the proposal.
>
> *Regulation 13.2:* Where, in the opinion of the Secretary-General, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the General Assembly has made the necessary appropriations, unless the Secretary-General certifies that provision can be made under the conditions of the resolution of the General Assembly relating to unforeseen and extraordinary expenses." *Id.*, at 33.

As the *Repertory of Practice of United Nations Organs* put it, "any resolution involving expenditures" considered by the Security Council, the Economic and Social Council, the Trusteeship Council, and committees of the General Assembly "is subject to the budgetary control set out in the Financial Regulations". 1 Repertory of Practice of United Nations Organs 522 (1955).

The foregoing practice embraces expenditures "in the interests of peace and security" as much as other expenditures. Peace and security operations have always loomed large in the Organization's activities. They include operations in Palestine, U.N. Doc. No. S/1376 (1949), Kashmir, U.N. Doc. No. S/1469 (1950), and Lebanon, U.N. Doc. No. S/4023 (1958), to name the most notable. Some were authorized by the Security Council, some by the General Assembly, and some by both Council and Assembly action. Nevertheless, in each case the expenses were included in the regular budget, processed according to the Financial Regulations, approved by the General Assembly, and assessed as a matter of obligation against the Member States. E.g., U.N. Doc. No. A/RES/1338 (XIII) (1958), U.N. Gen. Ass. Off. Rec. 13th Sess., Supp. No. 5B, at 4 (A/4079) (1959).

The General Assembly is, and always has been, the organ of the United Nations which approved and assessed all such expenditures as "expenses of the Organization". One searches the records of the Security Council in vain to find a single resolution which has ever purported to assess States Members for the expenses of action authorized by the Council or of other organs of the Organization. In fact, of all the resolutions adopted by the Security Council, research has disclosed only three which in any way relate to financial

expenditure, and these say nothing of assessment. Indeed, they imply that financing of the activities in question is to be sought elsewhere. On 15 July 1948, the Council adopted a resolution ordering the parties to the Palestine dispute to cease fire, in which the Council: "*Requests* that the Secretary-General make appropriate arrangements to provide necessary funds to meet the obligations arising from this resolution." U.N. Doc. No. S/902 (1948). On 18 September 1948, the Council, recording its shock at the death of Count Bernadotte, resolved: "to authorize the Secretary-General to meet from the Working Capital Fund all expenses connected with the death and burial of the United Nations Mediator". U.N. Doc. No. S/1006 (1948). On 28 January 1949, in dealing with the Indonesian question, the Council adopted a resolution concerning the United Nations Commission for Indonesia which: "*Requests* the Secretary-General to make available for the Commission such staff, funds and other facilities as are required by the Commission for the discharge of its functions." U.N. Doc. No. S/1234 (1949).

It will thus be seen that, in two cases, the Council confined its reference to funds to a request to the Secretary-General to provide such funds. These evidently were to be secured in the customary fashion: either by a charge against sums already allotted to pertinent items of the budget which the General Assembly had adopted, or by a draft on the Working Capital Fund. In the third case, that concerning the death of Count Bernadotte, the Council expressly referred to the Working Capital Fund which is authorized and assessed by the General Assembly "to meet unforeseen and extraordinary expenses".

It may be added that the Military Staff Committee, established to advise and assist the Security Council, did not deal with financial expenditures in its recommendations on the basic principles to govern the organization of armed forces under Article 43. U.N. Security Council Off. Rec. 2d year, Spec. Supp. No. 1 (S/336) (1947).

In short, the practice of the Security Council, as well as of the General Assembly, demonstrates that the power to approve and apportion the budget of the United Nations is recognized to be the province of the General Assembly alone.

4. *Judicial precedent*

This Court has confirmed that, without the action of the General Assembly, "there can be no budget". In *Effect of awards of compensation made by the U.N. Administrative Tribunal, Advisory Opinion of July 13th, 1954: I.C.J. Reports 1954*, p. 47, 59, it said:

> "The Court notes that Article 17 of the Charter appears in a section of Chapter IV relating to the General Assembly, which is entitled 'Functions and Powers'. This Article deals with a function of the General Assembly and provides for the consideration and approval by it of the budget of the Organization. Consideration of the budget is thus an act which must be performed and the same is

true of its approval, for without such approval there can be no budget."

Judge Hackworth's dissenting opinion is wholly consonant on this point with the opinion of the Court. He elaborated the fiscal prerogative of the General Assembly as follows:

> "The functions of the General Assembly as they were stated in the Dumbarton Oaks proposals were revised and elaborated at the San Francisco Conference. But throughout the discussions from Dumbarton Oaks to the signing of the Charter at San Francisco, the General Assembly was recognized as the organ of the United Nations to which should be entrusted the overall control of the fiscal affairs of the Organization. It was given authority to 'consider and approve' the budget, and to apportion among the Member States the 'expenses of the Organization' (Article 17). It is both the taxing authority and the spending authority. In its relationship to the Organization it occupies a status of a *quasi* fiduciary character.
>
> In the performance of these dual functions of raising and disbursing revenue, the General Assembly acts for and on behalf of the Organization...
>
> . . . . . .
>
> Various methods of supervising fiscal affairs of national and lesser organizations with their checks and counter-checks have been devised. In the case of the United Nations, control over both the raising of revenue and of its expenditure is vested in the General Assembly ..." *Id.*, at 83-84.

C. *The power of the General Assembly to create legally binding financial obligations is not limited by the fact that the UNEF and ONUC assessments were for the purpose of financing expenditures under resolutions which, with respect to contributions of forces, are recommendatory rather than obligatory for Member States*

"It has been demonstrated that the General Assembly has the power to create binding legal obligations by assessment and that this power is not shared with any other organ of the Organization. It is equally clear that this power extends to operational expenses, regardless of whether Member States are legally bound to contribute forces or equipment to the operation. Indeed, it is irrelevant that, as is the case with UNEF, the basic resolution imposes no binding obligations on Member States whatsoever. Historically, the bulk of expenditures for United Nations operations has related to operations which depend for their execution on the co-operation, rather than the obligation, of Member States.

The expenditures to maintain UNEF and ONUC fall within this class. It is inexact to characterize the resolutions establishing these Forces as purely recommendatory. It is true that these resolutions impose no binding obligation on Members to contribute forces. But it does not follow from this fact that the Assembly is powerless to

impose binding financial obligations to defray expenses incurred in carrying out the resolutions. For those resolutions did include directives to the Secretary-General as authorized in Article 98. And they did include decisions to establish subsidiary organs as authorized in Articles 22 and 29. As such, they engage the responsibility of the Organization as a whole. Hence financial expenditures incurred in carrying out such directives and in maintaining such organs, even though execution depends on the co-operation of Member States, become obligations of the Organization. The General Assembly's power to levy assessments to defray "expenses of the Organization" extends to such operational obligations and is not confined to administrative expenditures of the Organization.

Article 17 (1) refers to "the budget of the Organization". This means the whole budget without any limitation, as is seen by comparison with Article 17 (3), which limits the Assembly's fiscal power over specialized agencies to examination of "the administrative budgets of such specialized agencies". The practice of the United Nations is equally relevant to this issue. The financial procedures, the Regulations and the rules implementing them make no distinction between administrative and operational items. Similarly, the practice, prior to the UNEF operation, of including the expenses of peace-keeping operations within the regular budget is instructive.

Again, the report of the Sub-Committee of Jurists of the First Committee of the Assembly of the League in the Salvador case is illuminating. It will be recalled that, at the relevant period, Article 6 (5) of the League Covenant provided: "The expenses of the *Secretariat* shall be borne by Members of the League..." (Emphasis added.) El Salvador, as has been said, disputed that it was obliged to pay assessments for items which were not expenses of the Secretariat. Despite the apparent limitation in the governing language of Article 6, the Sub-Committee decided against El Salvador. It dismissed the issue, saying:

> "It is difficult to understand why the Covenant mentions only the expenses of the Secretariat when dealing with the distribution of expenses. At the same time, the restricted expression employed in the Covenant cannot be an obstacle to the application of the general principle ... that legally incurred expenses of an association must be borne by all its members in common." *Contribution of the State of Salvador to the expenses of the League*, Report presented to the Assembly by the First Committee, League of Nations, 3d Ass., Plenary, Vol. II, at 193 (A. 128. 1922. v) (1922).

If the assessing power of the League Assembly extended to all expenses of the Organization, despite the restrictive language of Article 6 (5), the power of the United Nations General Assembly surely has a similar scope under governing language which is in terms comprehensive.

D. *Summary*

The discussion in Part II of this statement has been directed to establishing the following propositions:

A. The General Assembly is empowered to create legally binding financial obligations on Member States by levying assessments for "expenses of the Organization" under Article 17 of the Charter.

B. The power of the General Assembly to create legally binding financial obligations is not limited by the fact that the UNEF and ONUC assessments were levied to finance activities of the Organization for the maintenance of international peace and security.

C. The power of the General Assembly to create legally binding financial obligations is not limited by the fact that the UNEF and ONUC assessments were for the purpose of financing expenditures under resolutions which, with respect to contributions of forces, are recommendatory rather than obligatory for Member States.

These conclusions are based on the language of the Charter, on the history of its drafting, on the practice of the United Nations under the Charter, on the experience of the League of Nations, and on the relevant judicial opinions. And these conclusions are required if the General Assembly is to have a fiscal power capable of providing financial support for the entire range of operations of the world Organization under its Charter.

The alternatives to recognizing that the General Assembly has such power are two: First, it might be contended that the Organization must finance what is its paramount function by solicitation rather than assessment. The most important means by which the Organization has thus far contributed to the maintenance of international peace and security has not been through mandatory decisions of the Security Council, but through recommendations of the Council and of the Assembly. If the implementation of such recommendations, and the functioning of the necessary subsidiary organs, were to be made dependent on voluntary contributions, the possibilities for effective action of this kind would be drastically curtailed.

Second, it might be contended that the Security Council is the organ which must authorize and levy assessments for peace-keeping activities, either alone or acting jointly with the General Assembly. As has been shown, this contention has no foundation in the provisions of the Charter, or in history, or in practice. Moreover, to adopt that contention would extend the veto and give the permanent members of the Security Council not only the intended opportunity to exert their will at the stage of substantive decision in the Council

but recurrent opportunities to hobble and undercut enterprises already authorized and undertaken by the Organization.

In the view of the Government of the United States, such a result cannot be attributed to the dispositions made in the Charter for a living and growing world Organization, the United Nations. It is a cardinal rule of interpretation that an instrument should be given the meaning necessary to make it effective.

> "International jurisprudence—and particularly that of the Permanent Court of International Justice and its successor—has constantly acted upon the principle of effectiveness as the governing canon of interpretation." Lauterpacht, *Restrictive interpretation and the principle of effectiveness in the interpretation of treaties*, 26 Brit. Yb. Int'l L. 48, 68 (1949).

This is especially so when the instrument being construed is a constitutional document like the Charter of the United Nations. When the Court was called upon to determine whether the United Nations has capacity to maintain an international claim, it declared:

> "It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged." *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, pp. 174, 179.

Equally, in this case, the Court should hold that the Members have clothed the Organization with the fiscal competence required to enable its functions to be effectively discharged.

III. The validity of the resolutions establishing UNEF and ONUC is not in issue and, in any case, is clearly established

The question which the General Assembly has addressed to the Court does not put in issue the validity of the resolutions establishing UNEF and ONUC. An analysis of the structure of the question makes this clear. The Court is asked: "Do the expenditures authorized" in certain General Assembly resolutions "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations?" Thus phrased, the question is directed to the effect of the assessing resolutions.

This construction of the question is borne out by the record of the consideration leading to the adoption of resolution 1731 (XVI), which requested the advisory opinion. France proposed an amendment to the resolution which would have revised the question submitted to the Court as follows:

> "*Were* the expenditures authorized in General Assembly resolutions 1583 (XV) ... [etc.] and 1263 (XIII) of 14 November 1950 *decided on in conformity with 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?" U.N. Doc. No. A/L. 378 (1961). (Amendatory language in italics.)

The delegate of France declared that adoption of the amendment would "make it possible for the Court to determine whether the resolutions of the Assembly, relating to the financial consequences of the operations of the United Nations in the Congo and the Middle East, are or are not in conformity with the Charter".

In opposing the amendment, the delegate of the United Kingdom said it

> "would complicate the clear and exact question ... framed in the draft resolution for submission to the Court. In addition, my delegation does not believe that at this juncture in the affairs of the United Nations this Assembly will wish to frame its question to the International Court in such a way as to compel the Court to consider the validity of a large number of resolutions adopted by the General Assembly itself at successive sessions and over a period of the past several years." *Id.*, at 62-65.

The French amendment was rejected by a vote of 47 opposed, 5 in favor, and 38 abstentions.

In responding to the question put by the Assembly the Court need not address itself to the issue of the validity of the resolutions establishing UNEF and ONUC. The Security Council and the General Assembly, acting upon a considered judgment of their power under the Charter, authorized the Secretary-General to incur financial commitments to governments and contractors for the requirements of UNEF and ONUC. In the absence of a determination invalidating those actions, the Secretary-General was bound to execute them and third parties were justified in dealing with the Organization in reliance upon them. These dealings gave rise to lawful debts, and the Assembly must have power to assess Members to discharge those debts. Indeed, "to this extent the General Assembly has no alternative but to honour these engagements". *Effect of awards of compensation made by the U.N. Administrative Tribunal, Advisory Opinion of July 13th, 1954: I.C.J. Reports 1954*, pp. 47, 59. To hold otherwise would be to impose the risk of loss upon innocent third parties dealing with the United Nations, or upon States which have advanced goods and services in reliance upon reimbursement.

Even if the Court should believe that issues going to the validity of the underlying resolutions are germane to the question posed by the Assembly, these issues need to be approached in the light of the history of consideration and action upon the resolutions by the General Assembly and the Security Council, the political organs of the United Nations. The history is a long one. In the case of UNEF it begins in 1956; and ONUC has been in the field for almost two years. During these periods, the respective Forces have been

the subject of intensive and sometimes almost continuous debate in the halls of the United Nations. The gravity of the issues and the intensity of the Organization's preoccupation with them is a measure of the seriousness of these deliberations.

UNEF was established pursuant to resolutions of the General Assembly, ONUC by action of the Security Council. In each case, the constitutive resolution was adopted by a heavy majority and without a single negative vote. At the time, neither the General Assembly nor the Security Council considered that any issue concerning their power to act should be put to this Court. By adopting the resolutions in these circumstances, the Council and the Assembly construed the Charter as granting the power thus exercised. As the Commission on Judicial Organization at the San Francisco Conference stated:

> "In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council, or the International Court of Justice." Doc. No. 333, IV/2/42, 13 U.N. Conf. Int'l Org. Docs. 709 (1945).

The interpretation that such a body gives to its own powers in practice is entitled to the greatest weight in any subsequent judicial review.

Even apart from these applicable canons of construction, the validity of resolutions establishing UNEF and ONUC is so clear as not to warrant extended analysis. The resolutions were adopted in the exercise of powers expressly granted by the Charter. The establishment of UNEF and ONUC as subsidiary organs is authorized by Articles 22 and 29 of the Charter. In the case of ONUC, which was established by Security Council resolution, substantive authority is found in the Council's "primary responsibility for the maintenance of international peace and security, ...". U.N. Charter Art. 24, para. 1. In the case of UNEF, which was established by resolution of the General Assembly, the Charter is equally explicit. Article 11 (2) provides:

> "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 ... and, except as provided in Article 12, may make recommendations with regard to any such questions 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."

Indeed, Article 10 is even broader, providing:

> "The General Assembly may discuss *any* questions or *any* matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter..." (Emphasis added.)

The same article authorizes the Assembly to "make recommendations to the Members ... on any such questions or matters".

The sole limitation on this power is specified in Article 12, which precludes the Assembly from making recommendations with regard to any dispute, "while the Security Council is exercising ... the functions assigned to it in the present Charter" with respect to that dispute. It is not contended and could not be contended that the exception is applicable in this instance.

Nor does the last sentence of Article 11 (2) operate to limit the Assembly's power in this situation. That sentence specifies that any question relating to the maintenance of international peace and security "on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion". Paragraph 4 of Article 11 states expressly that that article is complementary to rather than a limitation upon Article 10. Accordingly, the sentence in question can only be read as requiring reference to the Security Council where, in the judgment of the General Assembly, the dispute cannot be dealt with by a resolution of the Assembly but would require action of a mandatory character, and therefore a decision of the Security Council. Both as to UNEF and ONUC, the constitutive resolutions, in so far as they are directed to Member States, are essentially recommendatory in character. The contributions of troops and supporting equipment are voluntary. The presence of those forces in the field is with the consent of the host countries. U.N. Gen. Ass. Off. Rec. 13th Sess., Annexes, Agenda Item No. 65 at 8 (A/3943) (1958), U.N. Security Council Off. Rec. 15th year, 873d meeting 5 (S/PV. 873) (1960).

IV. Contrary contentions advanced in discussions of the General Assembly and its subordinate organs are unpersuasive

In the course of United Nations debates, a minority of Members have advanced miscellaneous arguments against the legally binding character of the assessments which have been levied to finance UNEF and ONUC. Some of these arguments have been dealt with above. It may be useful at this juncture, however, to summarize and dispose of these contentions.

(1) It has been said that UNEF and ONUC assessments are distinct from the "regular" United Nations budget and that, accordingly, they fall outside the mandatory scope of Article 17 (2).

To recapitulate what has been said above, first, UNEF and ONUC assessments, while not part of the so-called "regular" budget, are part of the budget of the Organization. They are simply distinct

accounts of that budget established for accounting convenience. They are as much "expenses of the Organization" as is the Working Capital Fund which is also assessed by special resolution, apart from the "regular" budget. Second, the resolutions appropriating funds for UNEF and ONUC prescribe, in the case of UNEF, that its expenses "shall be borne by the United Nations", and, in the case of ONUC, explicitly recognize that its expenses are "expenses of the Organization" within the meaning of Article 17.

(2) A second argument against the binding character of the assessments in question is this: The Assembly, it is said, is not authorized to adopt binding decisions. It may only adopt recommendations. Recommendations lack legally binding force. Accordingly, it is contended, the Assembly cannot adopt binding assessment resolutions to finance recommendations that are not binding.

In reply, it should first be noted that the General Assembly is authorized to adopt binding resolutions in some spheres. A resolution of the General Assembly admitting, suspending, or expelling a Member is binding. A resolution of the General Assembly electing a member of the Security Council or other Councils is binding. A resolution of the General Assembly appointing the Secretary-General is binding. A resolution of the General Assembly giving directions to the Secretary-General is binding. Most pertinently, budgetary resolutions of the General Assembly are binding, as the mandatory language of Article 17 (2) demonstrates. As one commentator has put it:

> "Perhaps the most important group of resolutions [that have binding force] falling within this first category of specifically enumerated powers are those authorized under Article 17 of the Charter which establishes the General Assembly as the financial authority of the United Nations with the power to consider and approve the budget of the Organization and apportion expenses among the Member States. Resolutions adopted within the purview of this article not only create obligations binding upon Member States, but are sanctioned by the denial of the right to vote in the General Assembly to a Member which is in arrears in the payment of its financial contributions. Authority over the budget, in addition, offers to the General Assembly the possibility of effective control over the activities of the Organization." Sloan, *The Binding force of a "Recommendation" of the General Assembly of the United Nations*, 25 Brit. Yb. Int'l *L.* 1, 4-5 (1948). (Footnote omitted.)

Second, the budgetary provisions of the Charter make no distinction between expenses occasioned by recommendatory resolutions and other expenses. In pursuance of Article 17, the Assembly has regularly approved items in its budget to finance recommendatory resolutions. If the United Nations lacked that authority, it is difficult to see how most of its customary activity under the Charter could be supported.

(3) A third argument has been put in the form of the following

syllogism which purports to demonstrate that expenses arising from UNEF and ONUC are not "expenses of the Organization" within the meaning of Article 17 (2):

(a) All "expenses of the Organization" within the meaning of Article 17 (2) are subject to the sanction provided for in Article 19.

(b) Expenditures such as those arising from UNEF and ONUC were excluded by the San Francisco Conference from the sanction provided by Article 19.

(c) Accordingly, these expenditures are not "expenses of the Organization" within the meaning of Article 17 (2).

The syllogism fails because its minor premise is wholly erroneous. The sole support for this premise is an amendment introduced by Australia in Committee II/1 at the San Francisco Conference, which read:

> "A Member shall have no vote if it has not carried out its obligations as set forth in Chapter VIII, Section B, paragraph 5 [of the Dumbarton Oaks proposals]." Doc. No. 808, II/1/34, 8 U.N. Conf. Int'l Org. Docs. 470 (1945).

Chapter VIII, Section B, paragraph 5, corresponds to Article 43 of the Charter. Committee II/1 postponed discussion of the Australian amendment and the amendment was later withdrawn. The syllogism presupposes that it was the function of Chapter VIII, Section B, paragraph 5 (now Article 43 of the Charter), to provide for the financing of such operations as UNEF and ONUC. In fact, Article 43 serves no such function. That article calls on Members of the United Nations

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

The Australian amendment was, in reality, an attempt to extend the sanction which Article 19 provided for the failure of a State to meet its financial obligations to a wholly different area, namely, the failure of a State to meet the obligations imposed on it by an agreement under Article 43.

Moreover, the syllogism depends, for its efficacy, on the assumption that the failure to act on the Australian amendment, and its subsequent withdrawal, was tantamount to a rejection of the amendment. But the assumption is unsound. The unexplained withdrawal of an amendment, without action having been taken on it, does not give rise to any inference as to the meaning of the text adopted.

Lastly, it should be noted that the Government of Australia has officially affirmed that its position at San Francisco was that all United Nations expenses arising out of decisions of United Nations organs were to be borne by the Members, and created binding

obligations upon them. U.N. Gen. Ass. Off. Rec. 15th Sess., Fifth Comm. 60 (A/C.5/SR.839) (1961).

(4) Still another argument that has been advanced in opposition to the binding character of UNEF and ONUC expenses is that, in the case of UNEF, its costs should be met by the so-called "aggressors", and, in the case of ONUC, by parties having a particular interest in the Congo.

The reply to this argument is plain. The Charter provides that the expenses of the Organization "shall be borne by the Members as apportioned by the General Assembly". The language contemplates a policy judgment by the Assembly. Arguments as to the considerations bearing on that judgment, therefore, should be addressed to the Assembly and not to this Court.

(5) One last argument may be recapitulated and rebutted. It is that UNEF and ONUC represent "action" for the maintenance of international peace and security which is exclusively within the competence of the Security Council under Articles 11, 43, and 48; that the General Assembly lacks competence in the sphere of peace and security; that the financial procedures of the United Nations must conform to this alleged distribution of substantive powers; and that, consequently, the authority of the General Assembly under Article 17 (2) does not extend to the financing of such operations.

To this contention there are three answers. First, the Security Council does not have exclusive competence in the field of maintaining peace and security. Article 11 (2) expressly gives the General Assembly power to discuss questions and make recommendations in this field. The reference in the last sentence of Article 11 (2) is to "action" having mandatory force, if and when such action is needed, as determined by the General Assembly. No such "action" is involved in these cases. Second, as has also been shown above, the establishment of UNEF by the General Assembly and the directions given to ONUC by the Assembly are within the Assembly's powers. Accordingly, their financing is within the Assembly's power. Third, while the right of the Security Council to take decisions under Articles 43 and 48 is unquestioned, once the Council has taken a valid decision under these or any other articles which gives rise to financial obligations, these costs are "expenses of the Organization" within the meaning of Article 17 (2). Accordingly, they must be approved and apportioned by the General Assembly.

Conclusion

For the reasons advanced in this statement, the Government of the United States of America respectfully submits that the expenditures authorized in the resolutions of the General Assembly enumerated in the question submitted to the Court "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations".

8. WRITTEN STATEMENT OF THE GOVERNMENT OF CANADA

February 16, 1962.

Part I

Introductory remarks

The General Assembly of the United Nations, by a resolution adopted at its 1086th meeting held on 20 December 1961 in connection with its consideration of the report of the working group appointed under General Assembly resolution 1620 (XV) of 21 April 1961 to examine the administrative and budgetary procedures of the United Nations, requested 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?"

2. By an Order of the President of the International Court of Justice dated 27 December 1961 issued under paragraph 2 of Article 66 of the Statute of the International Court of Justice, the President indicated that States Members of the United Nations were being invited to submit written statements in relation to this question and the Order fixed 20 February 1962 as the time-limit within which such statements should be filed. The terms of this Order were communicated by the Registrar of the Court to Mr. C. P. Hébert, Ambassador of Canada to The Hague in Note No. 34891 dated December 27, 1961.

3. In accordance with the right thus made available to Member States, the Government of Canada wishes to present this statement setting forth its views regarding this question.

Part II

Article 17 (2) of the Charter applies to the expenses of ONUC and UNEF by virtue of the fact that these expenses form part of the United Nations Budget

(a) *General principles applicable*

4. The key provisions of the Charter relating to the U.N. budget are paras. 1 and 2 of Article 17, which are 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."

5. U.N. practice has established that the term "expenses" in para. 2 of Article 17 means the expenses of the U.N. Organization as authorized by the approved U.N. budget [1]. The U.N. budget itself consists of the estimates of U.N. expenditures and of miscellaneous income received by the Organization as approved by the Assembly, the budget being financed from the contributions of the Members and from the revenue derived by miscellaneous income [2]. Approval of the budget by the Assembly vests in the Secretary-General the authority to incur obligations and make payments for the purposes for which the appropriations contained in the budget were voted and up to the amounts so voted [3].

6. In determining the method by which the expenses of the Organization should be apportioned amongst the Members, the Assembly recognized from the outset that the expenses of the Organization should be apportioned amongst the Members "broadly according to their capacity to pay" and the scale of assessments of the amount of each Member's contribution to the budget is based on this principle [4].

7. While the normal continuing programmes of the U.N. are financed from the U.N. budget, there are, however, a number of programmes approved by the Assembly which have been financed in whole or in part by voluntary contributions from Member States

[1] In U.N. budgetary practice the cost estimates for special accounts relating to UNEF and ONUC have been presented separately from the annual estimates which cover the normal programmes and administrative costs of the Organization.

[2] See Repertory of Practice of U.N. Organs, Vol. I, para. 5, p. 516—see also Art. III of the Financial Regulations of the U.N. as contained as an annex to G. A. Resolution 456 (V) of 16 Nov. 1950.

[3] See *ibid.* U.N. Repertory, para. 19, p. 519; see *ibid.* Financial Regulations of U.N., Article IV.

[4] See *ibid.* U.N. Repertory, para. 5, p. 533; see *ibid.* Financial Regulations of U.N., Article IV.

or from other sources. These voluntary contributions are not included in the budget of the U.N. and have been designated as extra-budgetary funds. In some cases these voluntary contributions have been used to extend the programmes initiated under the regular U.N. budget [5].

8. There have also been programmes which have been financed by the U.N. budget with assistance from voluntary funds. The projects involving the establishment and maintenance of ONUC and UNEF fall into this category.

(b) *Analysis of financial aspects of resolutions relating to UNEF*

9. The General Assembly resolution 1000 (ES-I) adopted on 5 November 1956 established a U.N. Command for an Emergency International Force to secure and supervise the cessation of hostilities in the Middle East connected with the 1956 Suez crisis. By resolution 1001 (ES-I) of 7 November 1956 the General Assembly approved provisionally the basic rule concerning the financing of the Force laid down in para. 15 of the Secretary-General's Report to the General Assembly dated 6 November 1956 [6]. Para. 15 of this Report provided in part as follows:

> "The question of how the Force should be financed likewise requires further study. A basic rule which, at least, could be applied provisionally would be that a nation providing a unit would be responsible for all costs for equipment and salaries, while all other costs should be financed outside the normal budget of the U.N. It is obviously impossible to make any estimate of the costs without a knowledge of the size of the corps and the length of its assignment. The only practical course, therefore, would be for the General Assembly to vote a general authorization for the cost of the Force on the basis of general principles such as those here suggested."

10. By resolution 1122 (XI) of 26 November 1956, the General Assembly authorized the Secretary-General to establish a U.N. Emergency Force Special Account for an initial amount of $10 million to which funds received by the U.N. outside the regular budget for the purpose of meeting the expenses of the Force "shall be credited from which the payments for this purpose shall be made". This resolution also 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".

11. However, by G. A. resolution 1089 (XI), dated 21 December 1956, the General Assembly indicated that the expenses for UNEF would be financed in part out of the U.N. budget. In this resolution the General Assembly also noted that the Secretary-General had

[5] See *ibid.* U.N. Repertory, p. 527.

[6] See Doc. A/3302 as contained in Official Records of the General Assembly First Emergency Special Session, 1-10 Nov. 1956.

recommended that the UNEF expenses should be apportioned in the same manner as the expenses of the Organization, and that several divergent views, not yet reconciled, have been held by various Member States on contributions or on the method suggested by the Secretary-General for the payment of such contributions. The Resolution also indicated that the matter of all expenses of UNEF beyond the $10 million already authorized in the resolution necessitated further study in all its aspects.

12. By G. A. resolution 1090 (XI) dated 27 February 1957 the General Assembly authorized the Secretary-General to incur expenses for UNEF up to a total of $16.5 million in respect of the period of 31 December 1957 and invited Member States to make voluntary contributions to meet the sum of $6.5 million so as to ease the financial burden for 1957 on the membership of the United Nations as a whole.

13. The Secretary-General in a Report [7] dated 9 October 1957 to the General Assembly expressed grave doubts as to the workability of the method of financing UNEF as set out in G. A. resolution 1090 (XI). He reaffirmed a view previously expressed to the General Assembly

> "that decisions which are taken by the Assembly itself and which have important financial consequences carry with them an obligation on the part of all Member Governments to make available the requisite resources of other means for their implementation. In the light, however, of the extremely limited response to date by Member States to the appeal for voluntary contributions and of the complexity and scope of the operations in which UNEF is involved, he is constrained to question whether it is either feasible or prudent to place any undue reliance for the future on this method of obtaining the necessary budgetary provision. The Secretary-General is bound to stress the grave risks inherent in the present inadequate and uncertain basis of UNEF's finances. Unless indeed the possibility of UNEF successfully completing its mission is to be seriously jeopardized, it is essential that this vital U.N. undertaking be assured of the same degree and certainty of financial support as afforded to other U.N. activities which have as their purpose the maintenance of security and peace."

14. Resolution 1151 (XII) of 22 November 1957 provided a solution to the problem which had been raised by the Secretary-General by giving greater certainty to the procedures for financing the UNEF budget. In this resolution, the General Assembly authorized the Secretary-General to expend the sums as therein mentioned for the continuing operation of UNEF. It also decided that the expenses so authorized "shall be borne by the Members of the United Nations in accordance with the scale of assessments adopted by the General Assembly for the financial years 1957 and

[7] See Official Records of the General Assembly, 12th Session, annexes, Agenda item 65, Document A/3694, para. 106.

1958 respectively, such other resources as may become available for the purpose in question being applied to reduce expenses".

15. By resolution 1337 (XIII) dated 13 December 1958 the General Assembly, after confirming its authorization to the Secretary-General to expend up to a maximum of $25 million for the operation of UNEF during 1958 and after authorizing the Secretary-General to expend up to a maximum of $19 million for continuing operation of the Force during 1959 stated that the expenses so authorized "less any amounts pledged or contributed by Governments of Member States as special assistance prior to 31 December 1958 shall be borne by the Members of the U.N. in accordance with the scale of assessments adopted by the General Assembly for the financial year 1959".

16. By resolution 1441 (XIV) dated 5 December 1959, the General Assembly noted with satisfaction that special financial assistance in the amount of $3,475,000 had been pledged voluntarily towards the expenditures of the Force in 1960. In this resolution, the General Assembly also indicated that "it is desirable to apply voluntary contributions of special financial assistance in such a manner as to reduce the financial burden on those governments which have the least capacity, as indicated by the regular scale of assessments, to contribute towards the expenditure for maintaining the Force".

17. This resolution then went on to authorize the Secretary-General to expend up to a maximum of $20 million for the continuing operation of UNEF during 1960 and 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 following conditions:

(1) "Voluntary contributions pledged prior to 31 December 1959 towards expenditures for the Force in 1960 shall be applied as a credit to reduce by 50% contributions of as many governments and Member States as possible commencing with those governments assessed at the minimum percent of 0.04% and then including in order those governments assessed at the next highest percentages until the total amount of voluntary contributions has been fully applied."

(2) "If the governments of Member States do not avail themselves of the credits provided for under condition (1) above, these amounts involved shall be credited to the 1960 budget for the Force."

18. By G. A. resolution 1575 (XV) dated 20 December 1960, the General Assembly introduced for 1961 further refinements to the pattern for financing the Force as developed for 1960 under the terms of G. A. resolution 1441 (XIV).

19. It reaffirmed the principle that the Force should be financed from the U.N. budget, making clear at the same time that voluntary contributions of special financial assistance should be applied in such a manner as to reduce the financial burden on those governments which have the least capacity to contribute towards the expenditures for maintaining the Force.

(c) *Analysis of financial aspects of resolutions relating to ONUC*

20. The U.N. Force in the Congo was created under the authority of the resolution adopted by the Security Council on 14 July 1960 concerning the situation in the Republic of the Congo[8]. In approaching the problem as to how the Congo U.N. Force should be financed, the General Assembly proceeded on the only premise that had proved workable in relation to financing the UNEF operation, namely, on the basis that the Congo Force should also be financed from the U.N. budget, subject to having certain assessments reduced through voluntary contributions on a similar basis to that established in relation to UNEF.

21. Thus by General Assembly resolution 1583 (XV) of 20 December 1960, the General Assembly 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, para. 2, of the U.N. Charter and that the assessment thereof against Member States creates binding legal obligations on such States to pay their assessed shares".

22. This resolution also recognized "that in addition to expenses for the regular and continuing expenses of the Organization, the extraordinary expenses arising from U.N. operations in the Congo will place a severe strain on the limited financial resources of a number of States".

23. By this resolution there is, however, established an *ad hoc* account for the expenses of the U.N. in the Congo and the resolution goes on to indicate that the amount of $48.5 million should be apportioned among Member States on the basis of the regular scale of assessment subject to voluntary contributions being applied to reduce by up to 50% the assessment of Member States falling within the special category set out in the resolution. Member States falling within this category included those which were admitted during the 15th Session of the General Assembly and all others receiving assistance during 1960 under the Expanded Programme of Technical Assistance.

24. The pattern established by General Assembly resolution 1583 (XV) of 20 December 1960 is further refined by General Assembly resolution 1619 (XV) of 21 April 1961 and by resolution

[8] 873rd Meeting, see Doc. S/4387.

1732 (XVI) adopted by the General Assembly on 20 December 1961. It should be particularly noted that in both resolution 1619 (XV) and resolution 1732 (XVI) the principle was stated that "the extraordinary expenses for the U.N. 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". These two resolutions also state that the "permanent members of the Security Council have a special responsibility for the maintenance of international peace and security and therefore for contributing to the financing of peace and security operations".

25. While both these resolutions underline that the extraordinary expenses of the U.N. operations are essentially different in nature from the expenses of the Organization under the regular budget, nevertheless at the same time they state in express terms that the amounts being assigned to finance these operations are regarded "as expenses of the Organization" [9] to be apportioned among the Member States in accordance with the scale of assessment for the regular budget subject to reducing by the percentages set out in the resolutions the assessment of Members States which have the least capacity to contribute towards the expenditures for these operations.

Part III

The resolutions adopted by the General Assembly concerning the establishment of UNEF are resolutions which the General Assembly has the full power and competence to enact under the Charter of the United Nations

(a) *Analysis of the General Assembly "Uniting for Peace" Resolution*

26. The General Assembly resolutions concerning the establishment of UNEF were adopted in accordance with the master plan set out in G. A. resolution 377 (V) dated 11 March 1950, otherwise known as the "Uniting for Peace" resolution [10].

27. The Assembly in this resolution categorically asserted its competence to consider any case "where there appears to be a threat to the peace, breach of the peace or act of aggression" with respect to which the Security Council "because of lack of unanimity

[9] G. A. resolution 1619 (XV), para. 4, G. A. resolution 1732 (XVI), 20 December 1961, para. 4.

[10] For a discussion of the "Uniting for Peace" resolution and the relative competence of the Security Council and the General Assembly in regard to collective measures, see page 428 and subsequent of "The United Nations and General Assembly" by L. M. Goodrich and P. Simons published by the Brookings Institute, Washington, D.C., and "Recent trends in the United Nations" by Hans Kelsen, which also deals with the "Uniting for Peace" resolution, Chapter 4, page 953 and subsequent, with particular reference to pages 959 and subsequent, 962 and subsequent, 967 and subsequent, 970 and subsequent, 974 and subsequent and 980 and subsequent.

of the permanent Members, fails to exercise its primary responsibility". The Assembly would act with a view to making appropriate "recommendations" of collective measures to maintain or restore international peace and security, "including in the case of a breach of the peace or act of aggression the use of armed force when necessary" [11].

28. In taking this action, the General Assembly was authorized to do so by reason of the broad powers of discussion and recommendation that the Assembly possesses under Article 10 of the Charter, qualified only by the provision of Article 12 that the Assembly could not make a recommendation with respect to a dispute or situation where the Council was exercising its function in relation to that dispute or situation. In this regard, it is perhaps significant to note that this limitation in reality affects not the competence of the Assembly "but the time when that competence could be exercised" [12].

29. To maintain or restore the peace by use of force if necessary is a function conferred by the Charter upon the Organization as a collective body [13]. Thus Article 24 of the Charter gives the Security Council only the primary, not the exclusive responsibility for the maintenance of international peace. The General Assembly has a secondary responsibility for the maintenance of international peace and security which it has not only the power but the obligation to perform in accordance with its powers as set out in Chapter IV of the Charter, with particular reference to Article 10. In addition the Assembly has been vested with particular powers in relation to the maintenance of international peace and security which are at the same time covered under Article 10. These particular powers are set out in Articles 11 and 14.

30. The claim has been frequently made that the last sentence of paragraph 2 of Article 11 reading "any such question (i.e. any question relating to the maintenance of peace and security brought before the General Assembly in the manner indicated in Article 11, paragraph 2) on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion" places a further restriction on the Assembly's powers under Article 10.

31. It is submitted, however, that this portion of paragraph 2, Article 11 may not be interpreted in this fashion. This is clear from the wording of Article 10 itself which states that the only article

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[11] Pt. A Sec. (A) I.

[12] This was an agreed interpretation reached during discussions of the "Uniting for Peace" resolution. See page 432 of "The United Nations and the Maintenance of International Peace and Security", by Layman M. Goodrich and P. Simons.

[13] See in particular the following articles of the Charter: Article 1, paras. 1 and 2, Article 2, paras. 2, 3, 4, 5 and 6, Articles 10, 11, 12, 14, 24, 39, 42, 43, 44, 45, 47, 51 and 106.

to which it is made subject is Article 12. This interpretation is further confirmed by paragraph 4 of Article 11 which reads: "the powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10".

32. This view is also confirmed by Article 14, which re-emphasizes that Article 12 is the only article to which the powers of the General Assembly in Article 10 are made subject.

33. The plan envisaged by Article 43 of the Charter for the recruitment of armed forces for Member States for use by the Security Council and for the Transitional Security Arrangements that may be taken under Article 106 pending the coming into force of such plan do not in any way place a restriction on the Assembly's right to take action under its broad powers as set out in Chapter IV, having in mind, in particular, Article 10. This is made clear from the fact that the only article to which Article 10 is subject is Article 12 [14].

34. Undoubtedly a case might be made for saying that the framers of the Charter intended that the only method of organizing an armed force of the United Nations was that provided for in Article 43 as supplemented by a number of other articles, including Article 106. But for the reasons already given the wording of the Charter does not exclude an interpretation which does not correspond to this intention [15].

35. While the Assembly's powers are only at most of a recommendatory nature, there is no restriction on the content of such recommendations other than those set out in Article 10. The position taken by the Assembly that the "Uniting for Peace" resolution is in accordance with these powers is of course only one of a number of interpretations that the Assembly might have adopted. Undoubtedly, other interpretations of a more restrictive character which are consistent with the Charter can be advanced to the effect that the "Uniting for Peace" resolution or important parts of it should be held to be *ultra vires* the powers of the Assembly.

36. The decisive factor is that the General Assembly did not decide on a more restrictive course of action. Considering the wide latitude the General Assembly has in regard to the manner in which it may interpret its functions and powers, it is submitted that it was clearly within the competence of the Assembly to enact the "Uniting for Peace" resolution [16].

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[14] For a detailed discussion of the Assembly powers, see paras. 28 and subsequent.

[15] See "Recent Trends in the United Nations" (Kelsen), page 980.

[16] See also Part V dealing with the interpretation of the Charter as set out on page 167 and subsequent of this statement.

(b) *The General Assembly resolutions relating to the UNEF operations are consistent with the "Uniting for Peace" resolution*

37. The "Uniting for Peace" resolution is careful in its language to restrict action to considering any case where there appears to be a breach of the peace or act of aggression with a view to making appropriate recommendations to Members for collective measures including in the case of a breach of the peace or act of aggression the use of armed force when necessary to maintain or restore international peace and security. In line with the "Uniting for Peace" resolution, the General Assembly resolutions concerning the establishment of UNEF are strictly limited to making recommendations.

38. Thus by resolution 998 (ES-I) of 4 November 1956, the General Assembly requests as a matter of priority that the Secretary-General submit to it "within 48 hours a plan for the setting up *with the consent of the nations concerned* [17] of an international emergency force to secure and supervise the cessation of hostilities in accordance with all the terms of the aforementioned resolution" [18].

39. Again, by resolution 1000 (ES-I) of 5 November 1956 the General Assembly established a United Nations Command for an emergency international force, with this force having been recruited voluntarily by Members States on the basis solely of General Assembly recommendations.

40. Having in mind that the resolution relating to the establishment of UNEF is within the framework provided by the "Uniting for Peace" resolution and that the General Assembly had the competence to adopt the "Uniting for Peace" resolution, it follows that the General Assembly had also the necessary competence to adopt the specific UNEF resolutions.

Part IV

The General Assembly Resolutions concerning the financing of U.N. operations in the Congo were enacted in implementation of Security Council resolutions

41. The U.N. Force in the Congo was created by the Secretary-General under the authority of the resolution adopted by the Security Council on 14 July 1960, concerning the situation in the Republic of the Congo [19]. By this resolution, the Security Council authorized 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 until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national

[17] Underlining supplied for emphasis.
[18] (I.e. Resolution 997 (ES-I) of 2 November 1956.)
[19] See Doc. S/4387.

security forces may be able, in the opinion of the Government, to meet fully their tasks".

42. The Security Council subsequently adopted a series of further resolutions designed to reinforce in appropriate fashion the purpose and objectives set out in its above-cited resolution of 14 July 1960 [20].

43. The General Assembly has in turn adopted a series of resolutions regarding the financial arrangements required to implement the directives of the Security Council.

44. Having in mind the unquestioned competence of the Security Council to act in the way it did concerning the situation in the Congo [21], it is clear that the General Assembly was both competent and had the duty to enact the resolutions it did for the purpose of establishing the necessary financial arrangements required to implement the directives of the Security Council.

Part V

In interpreting the Charter of the United Nations, the General Assembly, as a principal organ of the U.N., has the competence to interpret such parts of the Charter as are applicable to its particular functions

45. Many international treaties and agreements contain special stipulations regarding their interpretation. This was true, for instance, of the constitution of the International Labour Organisation, though not of the Covenant of the League of Nations. Article 423 of the I.L.O. constitution provided that "any question or dispute relating to the interpretation" of the constitution should be referred for decision to the Permanent Court of International Justice. This provision proved, however, in practice to be largely a dead letter, though questions of interpretation did come before the Court under the advisory opinion procedure [22].

46. The framers of the Charter decided as a deliberate act not to include in the Charter any provision regarding how the Charter should be interpreted [23].

47. The question of interpretation of the Charter was discussed at considerable length at the United Nations Conference at San

[20] See Sec. Council resolution of 22 July/60—879th Meeting, Doc. S/4405. Sec. Council resolution of 9 Aug./60—886th Meeting, Doc. S/4426. Sec. Council resolution, of 21 Feb./61—942nd Meeting, Doc. S/4741. Sec. Council resolution of 24 Nov./61—982nd Meeting, Doc. S/5002.

[21] See in particular in this connection the functions and powers of the Security Council as set up in Chapters 5, 6 and 7 of the Charter.

[22] See page 548 of Goodrich and Hambro's Revised Edition of the Charter of the U.N.

[23] See UNCIO Report of Rapporteur of Committee IV/2, Doc. 933 IV/2/42 (2), pp. 7-8 (Doc. XIII, pp. 709-10).

Francisco, and a most significant statement was included in the final report of Committee IV/2 [24].

48. The salient points in this report may be summarized as follows:

(1) Each organ of the United Nations must necessarily interpret such points of the Charter as are applicable to its particular functions. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving a normal operation of this principle.

(2) If there is a dispute as to how the Charter should be interpreted, recourse may be had to various expedients in order to obtain an appropriate interpretation including of course the International Court of Justice, and it would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients.

(3) If an interpretation "made by any organ of the Organization or by a committee of jurists is not generally acceptable, it will be without binding force".

[24] The following is an excerpt from the statement (for document reference, see footnote 23 on page 220):

"In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council, or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle."

"Difficulties may conceivably arise in the event that there should be a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter. Thus, two organs may conceivably hold and may express or even act upon different views. Under unitary forms of national government the final determination of such a question may be vested in the highest court or in some other national authorities. However, the nature of the Organization and of its operation would not seem to be such as to invite the inclusion in the Charter of any provision of this nature. If two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Should the General Assembly or the Security Council prefer another course, an *ad hoc* committee of jurists might be set up to examine the question and report its views, or recourse might be had to a joint conference. In brief, the Members of the Organization might have recourse to various expedients in order to obtain an appropriate interpretation. It would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients."

"It is to be understood, of course, that if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable, it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment."

49. In line with what the framers of the Charter foresaw would happen as a result of not including in the Charter any specific provision concerning how it should be interpreted, the practice has been developed for each United Nations organ to interpret for itself the portions of the Charter which relate to its functions and powers.

50. The interpretation powers vested in each organ of the United Nations are incidental to the wide discretionary powers necessarily vested in each organ by the Charter regarding the manner in which it should perform its functions. By implication, this includes giving each organ a wide discretion to interpret such parts of the Charter as are applicable to its particular functions.

51. On this basis, any interpretation placed on the Charter by a United Nations organ should be upheld as long as it is an interpretation of the Charter which is not expressly inconsistent with the Charter, bearing in mind always that any such interpretation would reflect the support of the majority of the Member States required for the adoption of the resolution or other decision concerned. Considering the interpretation of the Charter which has been applied by the Assembly in regard to the financing of the operations of ONUC and UNEF more than fulfil these requirements, it is submitted that the Court should give an advisory opinion which would answer in the affirmative the question put to the Court in the Assembly request for an advisory opinion as contained in the resolution adopted at its 1086th meeting held on 20 December 1961 [25].

[25] For text of relevant portion of this resolution, see paragraph 1 of this statement.

9. WRITTEN STATEMENT OF THE GOVERNMENT OF JAPAN ON THE QUESTION OF FINANCING ONUC AND UNEF

I. The question on which an advisory opinion is asked

The question on which an advisory opinion of the International Court of Justice is asked by the General Assembly pursuant to its resolution 1731 (XVI) of December 20 1961 is, in substance, whether or not the expenses relating to ONUC and UNEF constitute the "expenses of the Organization" under paragraph 2 of Article 17 of the Charter, that is, the expenses which the General Assembly is empowered by the Charter to apportion among the Member States.

The question put to the Court is not as to whether the establishment of ONUC and UNEF is in itself a violation of the Charter.

II. Jurisdiction of the Court

Under paragraph 1 of Article 96 of the Charter and paragraph 1 of Article 65 of the Statute, the Court may give an advisory opinion on any legal question at the request of the General Assembly. As the subject-matter of the present request concerns the interpretation and application of paragraph 2 of Article 17 of the Charter, it is evident that the Court is competent to give an advisory opinion thereon.

III. Applicability of paragraph 2 of Article 17 of the Charter to the expenses of ONUC and UNEF

1. *Interpretation of paragraph 2 of Article 17*

Under the Charter all the financial questions of the Organization, including consideration and approval of the budget of the Organization and apportionment of the expenses, come within the exclusive powers of the General Assembly. The provisions of paragraphs 1 and 2 of Article 17 govern all the expenses required for performance of the functions of the Organization, which, in accordance with Article 7, comprises all the principal and subsidiary organs.

Therefore, none of the following arguments seems valid either from the language *(a)* of the Charter or practices of the Organization *(b)*:

(1) that the expenses are to be divided into regular or special, general or *ad hoc*, etc., and that Article 17 deal only with the regular or general expenses so that the General Assembly has no power to take decision under Article 17 on special or *ad hoc* expenses;

(2) that the expenses are to be divided according to the objectives for which they are used and that the power of making a decision on the expenses for maintenance of peace belongs to the Security Council;

(3) that the expenses necessitated as a result of the measures taken in pursuance of a recommendation of the General Assembly cannot be included among the expenses under Article 17.

(a) There are no provisions in the Charter governing the expenses for the U.N. Organization except those paragraph 1 and paragraph 2 of Article 17.

Under paragraph 2 of Article 18, budgetary questions are enumerated among important questions requiring decisions of the General Assembly by a two-thirds majority, while Article 19 stipulates for the measures to be taken in case of failure in payment of the financial contributions to the Organization. If the Charter envisaged the possibility of any other financial questions than those provided for in Article 17, provisions for such possibilities would naturally have been laid down together with measures in case of failure of payment.

In the course of drafting the Charter, it was never questioned that the General Assembly has the power to approve the budget of the Organization and to apportion the expenses among the Member States. There was a unanimous agreement at the San Francisco Conference on the proposal to that effect, as drafted at the Dumbarton Oaks Conference.

(Note) Dumbarton Oaks Conference Proposal. Chapter V (General Assembly) B (Functions and Powers), Paragraph 5.

"The General Assembly should apportion the expenses among the Members of the Organization and should be empowered to approve the budgets of the Organization."

(b) The past practice of U.N. shows that the questions relating to financing of the Organization have always been decided by the General Assembly.

For example, the expenses of the subsidiary organs established by the Security Council for maintenance of peace have always been apportioned among the Member States by decisions of the General Assembly in accordance with the regular procedure under paragraph 2 of Article 17.

2. *Case where certain expenses incurred* ultra vires *are in question*

The provisions of paragraph 2 of Article 17 that "the expenses of this Organization shall be borne by the Members as apportioned by the General Assembly" presuppose that the General Assembly has the power to decide whether certain expenses are the expenses of the Organization.

It follows that the General Assembly has the power to apportion any expense among the Member States by a vote of two-thirds

majority under paragraph 2 of Article 18, over and above any objection which might be raised by some Member States that such an expense has been incurred *ultra vires* or in violation of the Charter, unless the General Assembly itself decides to the effect that the action which has entailed such an expense is *ultra vires* or a violation of the Charter. Admittedly, the General Assembly is competent to decide on the constitutionality of the establishment of ONUC or UNEF at the request of a Member State raising the objection, but, unless such a decision has been made, the General Assembly has the power to apportion the expenses upon the Member States in accordance with paragraph 2 of Article 17.

(a) It is theoretically correct that if certain expenses accrued to the Organization on account of activities *ultra vires* or in violation of the Charter, such expenses do not come within "the expenses of the Organization" under paragraph 2 of Article 17, in which cases the General Assembly is not empowered to apportion the expenses among the Member States pursuant to paragraph 2 of Article 17. However, in order to conclude, on this line of reasoning, that the expenses of ONUC and UNEF do not constitute the "expenses of the Organization", the illegality of ONUC and UNEF or the invalidity of the consequent actions of the Secretary-General as *ultra vires* has to be established by the competent organ of U.N.

The objections of this kind against ONUC and UNEF have always been rejected by the General Assembly.

(b) In fact, in apportioning expenses of ONUC and UNEF, the General Assembly has acted on the interpretation that the General Assembly is empowered not only to apportion the expenses of the Organization but also to take decision, as logical pre-requisite to such power, as to whether certain expenses constitute the expenses of the Organization.

(Note) (i) Resolution 1583 (XV), Preamble, paragraph 3, reads:

> "*Recognizing* that the expenses involved in the U.N. operations in the Congo for 1960 constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the U.N. Charter..."

(ii) Statement of Mr. Turner, Controller, Dec. 3, 1956. 5th Committee.

(c) Were the provisions of paragraph 2 of Article 17 to mean that the General Assembly is empowered only to apportion the expenses among the Members but not to decide whether such expenses constitute the expenses of the Organization, it would follow that, whenever an objection is raised by a Member State, the decision of the General Assembly on the assessments of the expenses loses its validity automatically, thus paralyzing the effective functioning of the U.N.

For a satisfactory performance of U.N. functions, the Organization must enjoy an autonomy concerning the fiscal matters. For this purpose, it is essential that the Organization and its organs should be independent of its Member States, in this respect. This principle of independence of the Organization and its organs has clearly been recognized by the International Court of Justice in its advisory opinions on the *Reparation for Injuries suffered in the Service of the United Nations* (1949) and the *Effect of Awards of Compensation made by the United Nations Administrative Tribunal* (1954).

(d) A precedent in the U.N. can be cited to illustrate the point that the General Assembly has been empowered to make decision on whether certain expenses constitute the "expenses of the Organization" within the meaning of the Charter. At the 9th session of the General Assembly, Byelo-Russia demanded in the 5th Committee the deletion of the expenses for the U.N. Tribunal in Libya from the budget of U.N. on the ground that creation of the Tribunal was a violation of the Charter. The proposal by Byelo-Russia was rejected as unfounded by a vote of 5-37-1. Although the question was related to the budget of the Organization, the same result would have been obtained in case of apportionment.

15 February 1962.

10. EXPOSÉ ÉCRIT DU GOUVERNEMENT PORTUGAIS

Le Gouvernement portugais est d'avis que les dépenses effectuées par les Nations Unies en exécution de décisions du Conseil de Sécurité, et par conséquent les dépenses relatives aux opérations des Nations Unies au Congo, ne constituent pas des « dépenses de l'Organisation » au sens de l'article 17, § 2, de la Charte des Nations Unies.

L'opinion du Gouvernement portugais est basée sur les raisons suivantes, qui sont exposées en une forme synthétique, mais qui pourraient être développées, si nécessaire, dans les termes de l'article 66, § 4, du Statut de la Cour:

1) La Charte des Nations Unies prévoit pour la couverture des dépenses qui dérivent des activités de l'Organisation deux systèmes totalement distincts: l'un, d'une portée générale, prévu dans l'article 17; l'autre, qui s'applique aux dépenses qui résultent des actions entreprises par suite des résolutions du Conseil de Sécurité, et qui est défini par l'article 49.

2) L'article 17 fait partie du chapitre qui s'occupe de l'Assemblée générale; entre les pouvoirs de celle-ci il y a le pouvoir d'examiner et d'approuver le budget de l'Organisation (art. 17, § 1). L'article 17, § 2, prévoit la forme de couverture des dépenses mentionnées au paragraphe premier. La comparaison des deux paragraphes permet donc de conclure sans doute que les « dépenses de l'Organisation » (§ 2) sont celles du « budget de l'Organisation » (§ 1).

3) Or le « budget de l'Organisation » au sens du paragraphe premier est naturellement le budget ordinaire. Les opérations décidées par le Conseil de Sécurité conformément aux articles 39 et suivants sont par définition des opérations imprévues, des opérations d'urgence, qui ne sauraient être prévues dans un budget ordinaire. C'est pour cette raison que la Charte a prévu une forme spéciale de couverture des dépenses décidées par le Conseil de Sécurité, en déclarant dans l'article 49 que ces opérations devaient être exécutées à travers « l'association et l'assistance mutuelle » des États Membres.

4) Le système prévu par la Charte pour la couverture des dépenses des opérations décidées par le Conseil de Sécurité est donc leur exclusion du budget ordinaire — qui seul est obligatoire aux termes de l'article 17, § 2 — et la déclaration de principe que les États Membres doivent volontairement s'associer et se prêter assistance mutuelle pour en assurer l'exécution. C'est ainsi que l'un des plus distingués commentateurs de la Charte, M. Hambro, très

distingué Greffier à la Cour internationale de Justice, affirme dans son commentaire que les dépenses prévues dans l'art. 17, § 2, ne comprennent pas les mesures de coercition décidées par le Conseil de Sécurité, qui sont réglées par l'art. 49 (Goodrich and Hambro, « Charter of the United Nations — Commentary and Documents », 2nd edition, page 184): « Expenses referred to in this paragraph (17, § 2) do not include the cost of enforcement action—see Article 49 and comment. »

5) Ainsi, les dépenses des opérations décidées par le Conseil de Sécurité ne sont pas comprises par le paragraphe 2 de l'article 17. Et en effet tout le système de la Charte impose cette solution. Le pouvoir d'approuver le budget est un pouvoir de contrôle sur toutes les activités prévues par le budget, tout comme il arrive à l'intérieur des États pour le contrôle parlementaire des budgets. Et la Charte prévoit que l'Assemblée générale doit approuver le budget et surveiller les dépenses de toutes les activités dont elle a le contrôle, c'est-à-dire des activités ordinaires de l'Organisation, afin de donner plus d'efficacité à ce contrôle. « The power to approve the budget carries with it, of course, the important power of reviewing the work of the Organization, and controlling its activities. » (Goodrich and Hambro, *op. cit.*, page 183.) Or parmi les organes des Nations Unies l'Assemblée générale exerce un pouvoir de contrôle sur le Conseil économique et social (art. 63, § 1, et art. 66, § 2) et sur le Conseil de Tutelle (art. 87). *Mais elle n'a aucun pouvoir de contrôle sur le Conseil de Sécurité.* Au contraire, celui-ci a la « responsabilité principale pour le maintien de la paix et de la sécurité internationales » (art. 24), et sa compétence a la préférence, en cas de conflit, sur celle de l'Assemblée générale (art. 12, § 1). Donc, l'Assemblée générale, qui n'a aucun pouvoir de contrôle sur le Conseil de Sécurité, ne peut être amenée à exercer le contrôle indirect qu'est l'approbation du budget. Toute autre interprétation amènerait en fait l'Assemblée à exercer une domination sur le Conseil qui serait contraire à la lettre et à l'esprit de la Charte.

6) Cette interprétation de la Charte est la seule possible d'après les textes; et cela peut aussi être prouvé d'une façon indirecte. Comme l'Assemblée n'exerce pas de pouvoir de contrôle sur les agences spécialisées, elle n'a pas le pouvoir d'approuver leur budget, mais seulement celui de faire des recommandations sans force obligatoire (art. 17, § 3). A quel titre est-ce qu'elle aurait un pouvoir plus étendu sur les opérations décidées par le Conseil de Sécurité?

7) Finalement, la règle de l'article 19 prouve également que la thèse du Gouvernement portugais est la seule valable. En effet, cet article, qui se rapporte évidemment aux dépenses prévues par l'article 17, prévoit que l'État Membre qui n'aura pas payé sa part des dépenses de l'article 17 peut en certaines conditions être privé du vote à l'Assemblée générale – mais à l'Assemblée générale

seulement, et pas au Conseil de Sécurité, car il n'y a pas dans la Charte de règle analogue pour celui-ci. Donc, d'après la thèse qui prétend que les dépenses qui sont dues à l'exécution de décisions du Conseil de Sécurité rentrent dans la catégorie prévue par l'article 17, § 2, un Membre qui n'aurait pas payé sa part se verrait privé de vote dans l'Assemblée générale, mais continuerait, le cas échéant, de voter au Conseil de Sécurité! Il apparaît au Gouvernement portugais que l'absurde d'une telle situation est évident, et que si le Membre qui n'a pas payé sa part des dépenses de l'article 17, § 2, ne se voit pas privé de vote au Conseil de Sécurité, c'est parce que les dépenses décidées par le Conseil ne rentrent pas dans la catégorie de l'article 17, § 2; et d'un autre côté, s'il n'y a pas dans la Charte de règle pour le Conseil de Sécurité analogue à celle de l'article 19, c'est parce que les contributions prévues à l'article 49 sont totalement volontaires.

C'est pour ces motifs qu'il se réserve de développer, si nécessaire, que le Gouvernement portugais considère que les dépenses relatives aux opérations des Nations Unies au Congo, entreprises en exécution des résolutions du Conseil de Sécurité du 14 juillet et 9 août 1960, et du 21 février et 24 novembre 1961, rentrent dans la catégorie des dépenses dues à l'exécution de mesures arrêtées par le Conseil de Sécurité au sens de l'article 49 de la Charte, et non dans la catégorie des « dépenses de l'Organisation » au sens de l'article 17, § 2, de la Charte des Nations Unies.

11. WRITTEN STATEMENT OF THE GOVERNMENT OF AUSTRALIA

The Government of Australia is of opinion that the question stated in the Request for Advisory Opinion should be answered 'Yes'. The Government accordingly submits that the expenditures authorized by the resolutions specified in the Request, and relating respectively to the operations of the United Nations in the Congo and to the operations of the United Nations Emergency Force likewise specified in the Request, do constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter of the United Nations.

2. The submissions to be made in this Statement are—

(a) positively, that the financial provisions of the Charter of the United Nations, interpreted in the light of established legal principles and given their ordinary natural meaning, plainly include within the category of "expenses of the United Nations" expenditures of the kind authorized by the relevant resolutions;

(b) negatively, that the *travaux préparatoires* at the United Nations Conference on International Organization at San Francisco in 1945 (even if it be proper for present purposes to take them into consideration, which is not conceded) afford no reason for giving to Article 17, paragraph 2, of the Charter an artificially restricted meaning, so as to exclude expenditures of the kind authorized by the relevant resolutions.

3. The budgetary provisions of the Charter are few and simple. Article 17 imposes on the General Assembly the duty to "consider and approve" the budget of the Organization. No budgetary authority is conferred on any other organ of the United Nations. "Budgetary questions", that is to say, *all* budgetary questions, are listed among the "important questions" which by virtue of Article 18 are to be decided by a two-thirds majority in the General Assembly. The importance of this provision is emphasized by the terms of Article 17, paragraph 2, which not only authorizes the General Assembly to apportion among the Members "the expenses of the Organization" but itself directly imposes on the Members the legal obligation to bear their respective shares of the expenses so apportioned.

4. Article 17 of the Charter is in the following terms:

"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.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned."

5. In many matters, responsibility under the Charter of the United Nations is shared between the General Assembly and the Security Council, or between other organs of the United Nations. Illustrations are to be found in such matters as membership of the Organization; the pacific settlement of disputes; the maintenance of international peace and security; international economic and social co-operation, and the international trusteeship system. In all these instances where functions and responsibilities are shared by more than one of the principal organs, the Charter explicitly delimits the functions and responsibilities of each. This characteristic of the Charter strikingly reinforces the inferences which would naturally be drawn from the fact that no organ other than the General Assembly is vested with any explicit authority to make budgetary decisions. The inference is that the budgetary authority of the General Assembly is both complete and exclusive.

6. It follows, and must follow, that the budget to be considered and approved by the General Assembly under Article 17 of the Charter must be the whole budget of the Organization, and the expenses to be apportioned by the General Assembly under that Article must be *all* the expenses of the United Nations, unless of course some other means of meeting them, such as voluntary contribution, is approved. The Charter draws, and knows, no distinction between "ordinary" and "special" or "extraordinary" budgets or expenses. Such distinctions, as a matter of administrative practice or accounting procedure, are appropriate enough, and have in fact been adopted in the United Nations. But they cannot and do not derogate from the comprehensive and unqualified budgetary authority of the General Assembly, not only in the authorizing of expenditures but in apportioning them among the Members.

7. In the making of an apportionment, the Government of Australia observes, the Charter leaves to the General Assembly a plenary and unfettered discretion. In respect of certain extraordinary expenses, for example, it may decide to make an apportionment on the same scale as that currently laid down by it to cover the ordinary annual expenditure of the Organization. But equally the General Assembly may make a quite different apportionment, and draw up a special scale *ad hoc*.

8. In ascertaining what "expenses" may be apportioned among the Members in pursuance of Article 17, paragraph 2, of the Charter, it may on one view be sufficient to ask what in any particular case

has been done by the General Assembly in pursuance of Article 17, paragraph 1, in considering and approving the budget of the Organization. In order to "consider and approve the budget" the General Assembly must at least decide to authorize certain expenditures in connection with the operations of the United Nations, and must determine also the manner in which the necessary moneys are to be obtained—ordinarily, of course, by apportionment among the Members. On this view of the article, the very act of the General Assembly, under Article 17, paragraph 1, in authorizing the relevant expenditures will give to the expenses so authorized the character of "expenses of the Organization" within the meaning of Article 17, paragraph 2, and will thus suffice to answer in the affirmative the question for opinion.

9. It cannot seriously be argued in the present matter that the expenses authorized by the resolutions specified in the Request for Advisory Opinion are not properly described as "expenses of the Organization", if those words are to be given their ordinary natural meaning. In substance, the expenditures authorized are those incurred or to be incurred by the Secretary-General, in the exercise of functions entrusted to him by one or other of the principal organs of the United Nations (Charter, Article 98).

10. The functions authorized by the resolutions specified in the Request for Advisory Opinion, however, are for the most part known as "peace-keeping" in character. In so far as activities of this kind are not only concerned with the maintenance of international peace and security but are undertaken in pursuance of Chapter VII of the Charter, it is necessary to examine certain contentions that special rules apply. For instance, the learned authors of Goodrich and Hambro on "The Charter of the United Nations" state categorically, in a footnote to page 184, that "expenses referred to in this paragraph—i.e. Article 17, paragraph 2—do not include the cost of enforcement action". For the reasons stated above, the Government of Australia submits that no warrant for excluding expenses under Chapter VII can be found in the wording of the Charter itself, if the text is to be understood according to its ordinary natural meaning, and that the suggested limitation must be rejected.

11. It is scarcely necessary to adduce in detail authority for the fundamental rule of interpretation that ordinarily "particular words and phrases are to be given their normal natural and unstrained meaning in the context in which they occur". This rule has been authoritatively formulated by the Court itself. Reference may be made in particular to the second "*Admissions*" case (*I.C.J. 1950*, p. 8). More generally reference may be made to an article by Sir Gerald Fitzmaurice in (1957) British Yearbook of International Law, pp. 210 *et seq.*

12. At this point, the Government of Australia turns to the

negative limb of its contentions, as stated in paragraph 2 above. For it has been suggested—by the learned authors Goodrich and Hambro on one ground and by the Government of Mexico in the General Assembly on a partly different ground—that the proceedings of the San Francisco Conference in 1945 supply reasons for concluding that what may compendiously be called "Chapter VII, expenses" were understood not to fall within the apportionment and obligatory contribution provisions of Article 17, paragraph 2.

13. The Government of Australia submits that in interpreting Article 17, paragraph 2, of the Charter of the United Nations no warrant at all can be found in the established rules of interpretation for a resort to the *travaux préparatoires* at San Francisco. The text of the Charter is, in the submission of the Government of Australia, clear and unambiguous, and, as the Court said in the *Ambatielos* case (1st Phase):

> "In any case where ... the text to be interpreted is clear, there is no occasion to resort to preparatory work." (*I.C.J. 1952*, p. 45.)

14. The San Francisco discussions having been canvassed, however, during the debates at the Fifteenth Session of the General Assembly, and in order that the matter may be fully considered by the Court and that certain erroneous impressions arising from those debates may be removed, the Government of Australia further submits that when the San Francisco records are closely examined they do not in any event warrant any inferences as to the intention of the Charter which depart from the ordinary natural meaning of the expressions used in the text.

15. Dr. Goodrich and Dr. Hambro, as stated above in paragraph 10, state that the expenses referred to in Article 17, paragraph 2, do not include the cost of enforcement action. They elaborate this statement in a passage at pp. 295-296 (Second Edition) in commentary upon Article 49 of the Charter. That Article is in the following terms:

> "The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

With regard to this article, the learned authors say:

> "In the course of the discussion of this principle in Committee III/3 of the United Nations Conference, concern was expressed by the Delegation of the Union of South Africa with regard to the sharing of expenses of enforcement action. Although accepting the view that no specific provision should be put into the Charter covering this point, the Committee expressed the desire that the Organization should in the future seek to promote a system aiming at the 'fairest possible distribution' of expenses incurred as a result of enforcement action."

16. In the submission of the Australian Government, the discussion at San Francisco is not correctly represented by the passage

cited above. What the Delegation of the Union of South Africa proposed was an amendment by virtue of which the costs of enforcement action would be borne exclusively by the aggressor State. This proposed amendment was defeated, and the text of Articles 49 and 50 was left without alteration. The discussion, in the submission of the Australian Government, was wholly consistent with, if not indeed really based on, the view that, unless some other arrangement is made *ad hoc*, the expenses of enforcement action undertaken by or on behalf of the United Nations would fall to be apportioned, like any other expenses of the Organization, by the General Assembly according to the views of the majority. The report of the learned rapporteur of the Committee as quoted by Dr. Goodrich and Dr. Hambro, namely that the Committee desired the Organization to promote in future a system aiming at "the fairest possible distribution" of expenses incurred as a result of enforcement action, did no more than record the view that enforcement expenses might well in many cases be apportioned differently from the apportionment adopted for the ordinary running expenses of the Organization and indeed might conceivably fall more heavily on a member which had been in default in its military obligations.

17. The Government of Australia does not of course deny that in a special agreement for the purposes of Article 43 of the Charter, or for that matter in any other agreement by virtue of which a Member makes available to the United Nations, for the purposes of peace-keeping activities, armed contingents or military equipment or the like, the Member may voluntarily agree to meet, in whole or in specified part, the expenses of maintaining its own units. Indeed the Security Council, or in relation to the operations relevant for present purposes the Secretary-General, may be in a strong enough position to accept assistance only on the condition that the Member providing it will agree to meet the costs of maintaining the facilities provided. To whatever extent Members providing military units agree to meet the costs of such maintenance, or any other costs of the operations concerned, there will necessarily be a smaller sum, *pro tanto*, to be debited to the account of the United Nations, and therefore to be apportioned by the General Assembly in pursuance of Article 17. But the clear submission of the Government of Australia is that the expenses incurred by the United Nations in any operations of the United Nations undertaken, under whatever provision of the Charter, in pursuance of decisions of the appropriate organs will constitute "expenses of the Organization", for the purposes of Article 17, paragraph 2, notwithstanding that by reason of voluntary contributions or of other arrangements they may not be the full costs of those operations.

18. The resolutions specified in the Request for Advisory Opinion supply clear illustrations of the point made in paragraph 17 above. Reference may be made, for example, to General Assembly Resolu-

tion 1441 (XIV) on the United Nations Emergency Force, which for the sake of convenience is here set out in full:

"The General Assembly,

Recalling its resolutions 1089 (XI) of 21 December 1956, 1151 (XII) of 22 November 1957 and 1337 (XIII) of 13 December 1958,

Having considered the observations made by Member States concerning the financing of the United Nations Emergency Force,

Having examined the budget estimates for the Force submitted by the Secretary-General for the year 1960 and the observations and recommendations of the Advisory Committee on Administrative and Budgetary Questions thereon in its eleventh and twenty-eighth reports to the General Assembly at its fourteenth session,

Having noted with satisfaction that special financial assistance in the amount of about $3,475,000 has been pledged voluntarily towards the expenditures for the Force in 1960,

Considering that it is desirable to apply voluntary contributions of special financial assistance in such a manner as to reduce the financial burden on those Governments which have the least capacity, as indicated by the regular scale of assessments, to contribute towards the expenditures for maintaining the Force,

1. Authorizes the Secretary-General to expend up to a maximum of $20 million for the continuing operation of the United Nations Emergency Force during 1960;

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 provisions of paragraphs 3 and 4 below;

3. Decides that voluntary contributions pledged prior to 31 December 1959 towards expenditures for the Force in 1960 shall be applied as a credit to reduce by 50 per cent the contributions of as many Governments of Member States as possible, commencing with those Governments assessed at the minimum percentage of 0.04 per cent and then including, in order, those Governments assessed at the next highest percentages until the total amount of voluntary contributions has been fully applied;

4. Decides that, if Governments of Member States do not avail themselves of credits provided for in paragraph 3 above, then the amounts involved shall be credited to section 9 of the 1960 budget for the Force."

To the same effect is resolution 1619 (XV) on the United Nations operations in the Congo. There is no need to itemize further. The two resolutions cited are merely illustrations of the ordinary practice of the General Assembly in considering and approving the budget for the peace-keeping activities of the Organization.

19. The representative of the Government of Mexico, in a statement made at the 837th meeting of the Fifth Committee of the General Assembly on 13 April 1961 (document A/C. 5/862), contended that an analysis of the records of the San Francisco Conference led to three conclusions, as follows:

"Firstly, at the San Francisco Conference all expenses of the Organization within the meaning of Article 17, paragraph 2, were subject without exception to the sanction provided for in Article 19. Secondly, expenses of the character of those arising from the Congo operations were deliberately and advisedly excluded by the San Francisco Conference from the sanction provided for in Article 19. Thirdly, in consequence, the expenses of the Congo operation are not expenses of the Organization within the meaning of Article 17, paragraph 2."

20. With the first of these conclusions the Government of Australia is in full accord. The second conclusion, however, rests basically on inferences drawn from certain amendments proposed by the Delegation of Australia at the San Francisco Conference. The Government of Australia submits that the Mexican statement misunderstands the legal effect of the Australian proposal, and draws from it an altogether erroneous inference as to the interpretation of Article 17, paragraph 2. The contention of the Australian Government may be most broadly stated by simply saying that the proposed Australian amendment in question was not directed at the question of expenses at all, and that no inference whatever can be drawn from it as to the scope of Article 17. The Government of Australia submits accordingly that the second conclusion of the Government of Mexico should be rejected; that this rejection leaves without foundation the third conclusion; and that the Committee discussions at San Francisco do not justify the writing into Article 17 of any implied exclusion of expenses of the kind specified in the Request for Advisory Opinion.

21. The Delegation of Australia initially submitted two related but distinct proposals for the amendment of the Dumbarton Oaks text in respect of voting rights at the General Assembly. The first was designed to supply an effective sanction for failure by a Member to pay its apportioned share of the expenses of the Organization. The second was designed to supply the like sanction for failure to enter into a special agreement in accordance with the provisions which now appear as Article 43 of the Charter.

22. The text of the two Australian amendments was as follows:

(a) to add to paragraph 2 of chapter V, section C (voting in the General Assembly), of the Dumbarton Oaks text the following paragraph—

"(3) A member of the United Nations shall be disqualified for voting in the election to fill the non-permanent seats in the Security Council if—

(a) under paragraph (4) of Section (A) of Chapter VI it is itself ineligible for election to the Security Council; or

b) its contribution to the expenses of the United Nations is in arrears beyond a period to be prescribed by the General Assembly."

(b) to add to chapter VI, section A (composition of the Security Council), of the Dumbarton Oaks text the following paragraph—

"(4) No member shall be eligible for election to a non-permanent seat unless it has, within two years of the coming into force of this Charter, or such period as the Security Council may deem reasonable, entered into a special agreement in accordance with the provisions of paragraph (5) of Section *(b)* of Chapter VIII."

23. Part *(b)* of the first of these amendments was adopted in principle by the Committee, and is now to be found, in rather wider form, as Article 19 of the Charter. It need not, for present purposes, be further considered. The history of part *(a)* of that amendment, however, does require analysis. At the outset it is necessary to recall that part *(a)*, which had to be read with the second of the two Australian amendments set out in the preceding paragraph, was considered by the Committee in the form stated above, and not in the form quoted by the representative of Mexico. The revised form to which the representative refers did not come before the Committee till a month later, and was then withdrawn, though with a right (never exercised) to reinstate it if desired. As considered by the Committee, therefore, the Australian text was concerned, and concerned exclusively, with failure to enter into a "special agreement" within the meaning of what is now Article 43 of the Charter. There is nothing whatever in Article 43 which, either expressly or by necessary implication, requires such a special agreement to deal with the expenses of the military units and facilities to be provided by a Member.

24. Article 43 of the Charter is in the following terms:—

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

2. 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.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory States in accordance with their respective constitutional processes."

It will be noted that this article imposes, though in rather an unusual form, two distinct and specific obligations. The first, in point both of time and of logic, is imposed by paragraph 3 of the

article. It is to negotiate as soon as possible, and on the initiative of the Security Council, a special agreement with regard to the forces and facilities to be provided by the Member. The second, again in point both of time and of logic, is to make available to the Security Council, on its call, the military assistance specified in the special agreement so negotiated. The Australian amendment, in its initial form, dealt exclusively with the first of these obligations. The revised form caught up both the obligation to enter into a military agreement and the obligation to provide, as required, the assistance agreed upon. Neither in its initial nor in its revised form, however, was the Australian amendment directed to any question of failure to pay the expenses of operations under Article 43. The proposal was equally consistent with the view that the expenses of operations under Article 43 were budgetable and apportionable under Article 17 and with the contrary view that they were not. In short, no inference can legitimately be drawn from the Committee discussion at San Francisco of the Australian amendment as to the scope of Article 17, paragraph 2, of the Charter.

25. Inasmuch as neither of the operations to which the Request for Advisory Opinion relates answers the description of operations in pursuance of Article 43 of the Charter, conclusions as to the budgetary position of expenses incurred under that article can scarcely determine the status under Article 17 of expenses of the kind now relevant. This point was cogently made by the late Secretary-General at the 839th meeting of the Fifth Committee on 17 April 1961; see document A/C.5/864. Further examination however of the San Francisco records makes it possible to deal with the matter on even broader grounds, and shows that the proposed Australian amendment cannot properly be used to exclude from Article 17, paragraph 2, any expenses whatever of the United Nations.

26. The view that expenses of the kind specified in the Request for Advisory Opinion fall outside the scope of Article 17, paragraph 2, of the Charter not only finds no support in the *travaux préparatoires* at San Francisco; it is also radically inconsistent with the uniform practice of the General Assembly itself, as evidenced in particular by the two series of resolutions specified in the Request for Advisory Opinion. If the proper interpretation of Article 17, paragraph 2, were left in doubt by an examination of the ordinary meaning of the words used, in their context, and by any necessary and permissible resort to *travaux préparatoires*, which in the submission of the Government of Australia it is not, the practice of the General Assembly itself, in the exercise of its budgetary powers, should suffice to resolve in the affirmative the answer to the question stated in the Request for Advisory Opinion.

12. WRITTEN STATEMENT SUBMITTED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

I. *Introduction*

By Resolution 1731 (XVI), adopted on December 20, 1961, the General Assembly of the United Nations decided to request an Advisory Opinion from the International Court of Justice on the question whether the expenditures authorized in a number of resolutions of the General Assembly relating to (i) operations in the Congo, undertaken in pursuance of certain resolutions of the Security Council and of the General Assembly, and (ii) operations of the United Nations Emergency Force (hereinafter referred to as UNEF), undertaken in pursuance of certain resolutions of the General Assembly, constitute "expenses of the Organization" within the meaning of paragraph 2 of Article 17 of the United Nations Charter.

2. By a letter No. 34891 dated December 27, 1961, from the Registrar to Her Britannic Majesty's Ambassador to the Netherlands at The Hague, the Government of the United Kingdom was informed that the States Members of the United Nations had so far been considered by the President of the Court as likely to be able to furnish information on the question and that the Court would be prepared to receive written statements relating to the question within a time-limit to be fixed by the President. In accordance with this information the British Government respectfully submit the following observations to this honourable Court.

II. *The Background to the Question*

3. The question relates to expenses incurred by the Organization for two particular purposes, the operation of UNEF on the borders between Israel and the United Arab Republic and the operation of armed units of troops in the Congo. In the submission of the British Government it should be borne in mind that the advisory opinion of the Court is sought only with regard to the expenses incurred in relation to these two operations and it is submitted that the Advisory Opinion of the Court should be directed specifically and exclusively to this question.

4. In each case it was with the consent of the Governments of the territories concerned that national contingents of troops placed at the disposal of the United Nations were stationed and operated in those territories. In each case, national contingents of troops have been provided by Governments voluntarily. It is consequently

not necessary for the Court to consider what would be the position if expenses were incurred by the United Nations, in stationing and operating troops in a territory without the consent of the Government of that territory; nor is it necessary to consider the position where it is contended that the expenses were incurred in relation to an operation which ran counter to the Charter.

5. With respect to UNEF, the point was made by the late Secretary-General, in paragraph 15 of his Summary Study of the Experience Derived from the Establishment and Operation of UNEF (A/3943 of October 9, 1958), as follows:—

> "The first emergency special session of the General Assembly, at which it was decided to establish an emergency force, had been called into session under the terms of the 'Uniting for Peace' resolution. Thus, UNEF has been necessarily limited in its operations to the extent that consent of the parties concerned is required under generally recognized international law. It followed that, while the General Assembly could establish the Force, subject only to the concurrence of the States providing contingents, the consent of the Government of the country concerned was required before the Assembly could request the Force to be stationed or to operate on the territory of that country. The Force has no rights other than those necessary for the execution of the functions assigned to it by the General Assembly and agreed to by the country or countries concerned."

6. With respect to the Congo, the same point is made by the terms of the cable sent to the United Nations by the Government of that country on the 12th July, 1960 (Document S/4382 of July 13, 1960), the resolutions of the Security Council (S/4387 of July 13, 1960, S/4405 of July 22, 1960, S/4426 of August 9, 1960, S/4741 of February 20/21, 1961), the Agreement between the United Nations and the Congolese Government of the 17th April, 1961, and the resolutions of the General Assembly (1474/Rev.1 (ES-IV) of September 16, 1960, 1600 (XV) of April 17, 1961). In the view of the British Government, it is clear from these documents that the United Nations force was sent to the Congo at the express request of the Government of the Republic of the Congo, remained there with the consent of that Government and operated with due respect for Congolese sovereignty.

7. In these circumstances, in the view of the British Government, no question arises as to the financial obligations of Members of the United Nations in regard to expenses incurred in connexion with operations initiated and carried out otherwise than at the request or with the consent of the Government of the territory in which the operations are carried out. The British Government submit the following observations on the assumption that, in the case of UNEF and the Congo operation, the United Nations forces have acted with the consent of the Governments concerned. They therefore reserve their view, in case it should appear that any steps have

been taken against the will of any of the Governments concerned, although it is the belief of the British Government that this has not happened in either case.

8. The validity of the relevant Security Council and General Assembly resolutions authorizing the UNEF and the Congo operations is not in terms submitted to the Court. However, if and so far as the answers to the question referred to it by the General Assembly may depend on the validity of those resolutions, the British Government would support their validity on the assumptions and to the extent that (i) they were within the purposes of the United Nations as expressed in the Charter, and (ii) they required the consent of the Governments concerned.

III. *General Observations*

9. On the basis of the foregoing considerations, the British Government submit that the question put to the Court should be answered in the affirmative. The second paragraph of Article 17 of the United Nations Charter provides that "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". These words should be interpreted in their natural and ordinary meaning in the context in which they occur. As the Court held in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations (I.C.J. Reports 1950* at p. 8) the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur, and "when the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning".

10. In the view of the United Kingdom, these principles apply in the present case. No limitation is placed on the words "expenses of the Organization" by Article 17, or by any other provisions of the Charter. For the purpose of determining what expenses are "expenses of the Organization" so as to be subject to apportionment among the Member States, no distinction is made in that article or elsewhere in the Charter between normal and exceptional expenses, or between the administrative expenses of the Organization and expenditures of other kinds which the Secretary-General is authorized to incur in pursuance of the purposes of the United Nations. In the view of the United Kingdom, all expenditures duly authorized for the purpose of giving effect to valid resolutions of the Security Council and the General Assembly are expenses of the Organization within the meaning of paragraph 2 of Article 17 of the Charter.

11. It is believed that all the expenditures to which the question before the Court relates were authorized by the General Assembly

of the United Nations for the purpose of giving effect to such resolutions. Accordingly, in the view of the British Government, both the provisions of the Charter and the practice of the United Nations support the conclusion that these expenditures constitute "expenses of the Organization" within the meaning of the second paragraph of Article 17 of the Charter.

IV. *The Provisions of the Charter*

12. The Charter leaves no doubt that one of the basic purposes of the United Nations is the maintenance of international peace and security. It is, indeed, stated in Article 1 as the first of the Purposes of the United Nations. Article 24 of the Charter confers on the Security Council primary responsibility for the maintenance of international peace and security "in order to ensure prompt and effective action by the United Nations", but it is clear that the maintenance of peace and security is a matter also within the competence of the General Assembly. Where steps are validly taken by the Organization for the maintenance of peace and security under resolutions of the Security Council or of the General Assembly, the latter is competent under Article 17 (1) of the Charter to authorize the necessary expenditure. If such expenditure is authorized by the General Assembly there can be no doubt, in the submission of the British Government, that it forms part of the expenses of the Organization to be borne by Members as apportioned by the General Assembly.

V. *The Practice of the United Nations*

A

United Nations Emergency Force

13. The General Assembly has always recognized that unforeseen and extraordinary expenses might arise in relation to the maintenance of peace and security, and has authorized such expenses on behalf of the Organization. Authority has been conferred on the Secretary-General by Annual General Assembly resolutions relating to unforeseen and extraordinary expenses, to finance commitments (up to a total of U.S. $2 million and larger sums with the consent of the General Assembly's Advisory Committee on Administrative and Budgetary Questions) with respect to the maintenance of international peace and security.

14. In the case of the UNEF operations, it would have been within the power of the General Assembly to increase the amount appearing in this annual resolution, and thereby to include UNEF expenses in the normal budget of the United Nations. For a number of reasons (which are set out in the Report of the Secretary-General dated October 9, 1958, on the United Nations Emergency Force—A/3943, p. 43) it was considered preferable to finance UNEF'S initial expenses on an *ad hoc* and separate basis. On November 20,

1956, the General Assembly authorized the Secretary-General to establish a special account "in an initial amount of $10 million" (resolution 1122 (XI)). Successive resolutions increased the expenditures authorized. These expenses were apportioned by the General Assembly among the Member States. This could only have been in the exercise of its powers under Article 17, paragraph 2, of the Charter and on the basis that they were regarded as "expenses of the Organization" within the meaning of that paragraph.

15. In fact, by resolution 1151 (XII), it was decided by the General Assembly that these authorized expenses should be borne by Member States in accordance with the scale of assessments adopted by the General Assembly for the financial year 1957/58. This was in accordance with the view expressed by the Secretary-General (A/3943, paragraph 189) that the costs of United Nations operations such as UNEF, based on resolutions of the General Assembly or the Security Council, should be allocated amongst all Members of the Organization on the normal scale of contributions to the budget of the Organization. Subject to adjustment having regard to special circumstances, the current regular scale of assessments was also used as the basis of apportionment of UNEF expenses in 1959, 1960 and 1961 in General Assembly resolutions 1337 (XIII), 1441 (XIV) and 1575 (XV).

B

United Nations Operations in the Congo

16. The precedent established in the case of UNEF was followed by the General Assembly in the case of the operations in the Congo. Under resolution 1583 (XV) the General Assembly decided to establish an *ad hoc* account for expenses in the Congo, and decided that, subject to the provisions of paragraph 5 of that resolution, the amount of $48.5 million "shall be apportioned among the Member States on the basis of the regular scale of assessment". The second preambular paragraph of that resolution expressly 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".

17. Although resolution 1619 (XV) adopted on April 21, 1961, was prefaced by the preambular statement "that the extraordinary expenses of 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", it was decided in the operative part of the resolution to appropriate an amount of $100

million for the operations of the United Nations in the Congo from 1 January to 31 October 1961 and to apportion that amount "as expenses of the Organization" among the Member States.

C

Budgetary Procedures

18. The treatment of UNEF and ONUC expenses which thus appears in the operative parts of the resolutions quoted above is reflected in the procedures which have applied to budget estimates for UNEF and Congo operations. Like the annual estimates for the regular budget, these estimates have been:

(a) prepared and submitted by the Secretary-General;

(b) examined and reported on by the Advisory Committee on Administrative and Budgetary Questions of the General Assembly, which is appointed under and performs the functions prescribed in Rules 156 to 158 of the General Assembly's Rules of Procedure;

(c) considered, debated and reported on by the Fifth (Administrative and Budgetary) Committee of the General Assembly;

(d) adopted as the basis for resolutions appropriating finance and authorizing the incurring of obligations and the making of payments by the Secretary-General, subject to the relevant financial regulations and rules.

VI. *Conclusions*

19. Having regard to the foregoing considerations, in the submission of the British Government, the expenditures authorized by the General Assembly mentioned in the question referred to the Court constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter of the United Nations.

13. LETTRE DU GOUVERNEMENT ESPAGNOL AU PRÉSIDENT DE LA COUR

La Haye, le 20 février 1962.

Monsieur le Président,

Le Gouvernement espagnol, vu la faculté offerte dans le dernier paragraphe de la communication adressée par le Greffier de la Cour que vous avez l'honneur de présider à l'ambassadeur d'Espagne aux Pays-Bas en date du 27 décembre 1961 concernant l'avis demandé par l'Assemblée générale des Nations Unies dans sa résolution du 20 décembre, désire porter à la connaissance de Votre Excellence ce qui suit.

L'Assemblée générale demanda à la Cour si les frais autorisés par ses résolutions relatives aux opérations des Nations Unies au Congo d'une part, et aux forces d'intervention des Nations Unies, d'autre part, constituent des frais de l'Organisation dans le sens du paragraphe 2 de l'article 17 de la Charte des Nations Unies.

Le Gouvernement espagnol entend que les frais de manutention des Forces en question ne peuvent être considérés comme frais ordinaires de l'Organisation, puisque d'après leur propre nature il est évident qu'il s'agit de frais extraordinaires dus à des circonstances spéciales et transitoires.

Si la phrase « dans le sens du paragraphe 2 de l'article 17 de la Charte des Nations Unies » veut dire que quoiqu'il s'agisse de sommes qui figurent dans des comptes spéciaux *ad hoc* et n'ont jamais figuré dans le budget ni ordinaire ni extraordinaire des Nations Unies elles doivent être homologuées (aux seuls effets du paiement des quotes-parts respectives par tous les États Membres) aux sommes que ceux-ci doivent verser comme étant leur participation dans la distribution des frais budgétaires (autant en ce qui concerne les conséquences du défaut volontaire de paiement qu'au prorata des quotes-parts correspondant à chaque État Membre), le Gouvernement espagnol ne peut être d'accord avec une telle interprétation.

Considérant que les frais extraordinaires dont il s'agit dans cette note ont été faits dans le but de maintenir la paix et la sécurité et que d'après les articles 24, 39 et suivants de la Charte des Nations Unies il est admis que certaines Puissances se réservent un rôle prépondérant avec des droits différents et supérieurs à ceux des autres États Membres de l'Organisation et ceci précisément dans le but de maintenir la paix et la sécurité internationales, il est également logique que de tels États aient des obligations majeures lorsqu'on demande une action spécifique de l'Organisation pour accomplir les buts susmentionnés.

Par conséquent, le Gouvernement espagnol estime (tout en réservant sa position en ce qui concerne les conséquences que le défaut de paiements de certaines contributions extraordinaires puisse entraîner pour les États qui n'acceptent pas le critère suivi pour le prorata des sommes dont il s'agit) que le critère à suivre pour ladite distribution ne peut être celui d'appliquer les mêmes coefficients utilisés pour le budget des Nations Unies et que, pour qu'il soit équitable, il doit tenir compte des droits et devoirs spéciaux des membres permanents du Conseil de Sécurité, de la situation spéciale des États directement mêlés ou impliqués à l'origine et au développement des questions dont il s'agit, et de la capacité de paiement des autres Membres des Nations Unies.

Le Gouvernement espagnol attire l'attention de Votre Excellence sur le fait que son point de vue coïncide avec celui qui se trouve exposé aux paragraphes 3 et 4 de la partie expositive de la résolution n° 1619 (XV) de l'Assemblée générale des Nations Unies du 21 avril 1961, et se permet de rappeler que le paragraphe 4 de la partie dispositive de ladite résolution soulignait que la répartition de cent millions de dollars conformément à l'échelle des quotes-parts du budget ordinaire se faisait «en attendant que soit établie une échelle de quotes-parts différente pour subvenir aux frais extraordinaires des Nations Unies à l'occasion de telles opérations ».

Le Gouvernement espagnol croit ainsi remplir son devoir d'exposer à Votre Excellence son opinion sur la question qui concerne la demande d'avis que l'Assemblée générale des Nations Unies a adressée à la Cour.

Veuillez agréer, etc.

(Signé) Comte DE MONTEFUERTE,
Chargé d'affaires *a. i.*

14. WRITTEN STATEMENT OF THE GOVERNMENT OF IRELAND

By resolution adopted at its 1086th meeting the General Assembly of the United Nations on the 20th December, 1961, decided to request the International Court of Justice to give an advisory opinion respecting expenditures in connection with operations undertaken in pursuance of certain resolutions of the Security Council and of the General Assembly; and by order of the 27th December, 1961, the Court fixed the 20th February, 1962, as a time-limit for the submission of written statements. The Government of Ireland accordingly submits the following observations:—

1. *The Request*

The question on which the Court is requested to give an advisory opinion is as follows:—

> "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. *The Purposes of the United Nations*

In order to decide whether any particular expenses can be said to be "expenses of the Organization" it is obviously necessary to have regard to the purposes of the Organization. Expenses incurred by an organization in furtherance of the purposes for which it was established may, in the fullest sense, be said to be expenses of the organization. The purposes of the United Nations are set out clearly and explicitly in Article 1 of the Charter, the first of these purposes

being to take effective collective measures to maintain international peace and security. The article reads as follows:—

"The purposes of the United Nations are:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

(2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

(3) To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

(4) To be a centre for harmonizing the actions of nations in the attainment of these common ends."

It will thus be apparent that the first stated purpose of the United Nations is to preserve international peace and that the first duty imposed on the Member States is to take collective measures for the prevention and removal of threats to the peace and for the suppression of breaches of the peace. The Member States for their part undertake that in order to ensure to all of them the rights and benefits resulting from membership they shall fulfil in good faith the obligations assumed by them in accordance with the Charter (Article 2 (2)).

3. *Financing the United Nations*

The Charter, in Article 17, makes explicit provision for meeting expenditure. It provides 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.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned."

This is the only provision in the Charter for meeting expenditure; no other article contains any express reference to "expenses", "expenditure" or budgetary matters (except Articles 18 and 19 which follow Article 17 and bear directly on it). The only powers given to the

Assembly to take decisions on expenditure are contained in Article 17 (and 18 and 19). It has never purported to act under any other article and none of the other principal organs of the United Nations has claimed for itself the right to take decisions on questions of expenditure or suggested that other provisions of the Charter gave it power to do so.

The terms of Article 17 (2) are quite clear. They make no distinction between "administrative" and "other" expenses. Article 17 (3) however does, in contrast, make such a distinction in the case of the budgets of the Specialized Agencies by giving power to the Assembly to "examine the *administrative* budgets" of those Agencies. The General Assembly is given the power under Article 17 (1) to consider and approve the budget of the Organization. This paragraph, read in conjunction with paragraphs 2 and 3 of Article 17, clearly indicates that the Assembly has the power (and the obligation) to decide what expenditures constitute expenses of the Organization. It may validly be contended that "expenses of the Organization" are such expenditures duly incurred as the Assembly in exercise of its mandatory budgetary powers may decide are to be apportioned among the Members. By authorizing the expenditures and apportioning them among the Members, the Assembly exercises these powers, and the expenditures in question may therefore be said to constitute "expenses of the Organization".

4. *Resolutions referred to in the Request*

Two categories of resolutions are referred to in the request to the Court for an advisory opinion, namely resolutions relating to ONUC and resolutions relating to UNEF. It is convenient to deal separately with these resolutions.

O.N.U.C.

The expenditures in connection with the United Nations operations in the Congo were authorized by the following resolutions of the General Assembly:—

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.

The operations in question were undertaken in pursuance of the following resolutions of the Security Council and the General Assembly.

Security Council

Resolutions of 14 July, 22 July and 9 August 1960
and 21 February and 24 November, 1961.

General Assembly

Resolutions 1474 (ES-IV) of 20 September 1960,
1599 (XV),
1600 (XV) and
1601 (XV) of 15 April 1961.

The initial decision of the Security Council in relation to the operations in the Congo is contained in its resolution of 14 July 1960. In adopting this resolution the Security Council was exercising its functions in full conformity with the Charter and with the concurrence of all its members. The operation thus initiated was continued by further Security Council resolutions of the 22 July and 9 August 1960 and 21 February and 24 November 1961. In beginning and continuing the action in the Congo, the Security Council has been acting in the proper discharge of the primary responsibility for the maintenance of international peace and security conferred on it by Article 24 (1) of the Charter. The decisions of the Assembly in relation to the operation in the Congo, undertaken in pursuance of the Security Council resolutions, have recommended support for those resolutions and continuation of the action taken. Thus the Assembly by resolution of the 20th September 1960 confirmed its support for the action taken and requested the Secretary-General to continue to take action in accordance with the terms of the Security Council resolutions. On the 15th April 1961, it re-affirmed its own earlier resolution of the 20th September and previous Security Council resolutions. The earliest of the General Assembly resolutions came after the initial decisions of the Security Council; the latest came before the later decisions of the Council. By adopting these resolutions the Assembly was exercising its functions under Articles 10 to 15 of the Charter. It is clear that action in the Congo was authorized initially and is continued by decisions of the Security Council.

There can be no question that expenditures incurred in pursuance of decisions properly taken by the Security Council in the exercise of its powers and duties under the Charter constitute "expenses of the Organization" within the meaning of Article 17 (2) of the Charter. References to Article 43 of the Charter are irrelevant in the context of the ONUC operations since the Security Council was not acting under this article, nor have the "special agreements" referred to therein been drawn up.

U.N.E.F.

The expenditures in connection with the United Nations Emergency Force were authorized by the Assembly in the following 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
1575 (XV) of 20 December 1960.

The expenditures thus authorized related to operations undertaken in pursuance of the following resolutions of the General Assembly:

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 (XV) of 24 November 1956 and
1263 (XIII) of 14 November 1958.

The sequence of events which led to the establishment of UNEF in 1956 was as follows:—

The Security Council, charged with the primary responsibility for the maintenance of the peace, considered a situation in the Middle East. For lack of unanimity among its permanent members it could take no action; hostilities in the Middle East continued. The Security Council thereupon called the General Assembly into emergency special session. In accordance with the (Uniting for Peace) resolution (377 (V)) of 3 November 1950, the Assembly—facing a situation where the Security Council, because of lack of unanimity of the permanent members, had failed to exercise its primary responsibility for the maintenance of international peace and security—then considered the matter "with a view to making appropriate recommendations to members for collective measures including, in the case of a breach of the peace or an act of aggression, the use of armed force..." (resolution 377 (V)).

Employing the powers to "recommend measures" and "make recommendations" which it enjoys under Articles 10 to 15 of the Charter, the Assembly then urged a cease-fire. The Assembly then went on to establish under resolution 1000 (ES-I) of 5 November 1956 a subsidiary organ—the United Nations Emergency Force—to supervise the cessation of hostilities which it had urged in its previous resolutions. This the Assembly was empowered to do under Article 22 of the Charter, which reads: "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." The subsequent Assembly resolutions listed above have maintained the Force thus established.

The United Nations, in addition to the powers expressly provided for in the Charter, must be recognized as having by implication those powers which are necessary for it to discharge its duties. This

position was recognized by the International Court of Justice in the *Reparations* case, when the Court stated that:

> "Under international law, the Organization must be deemed to have those powers which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. This principle of law was applied by the Permanent Court of International Justice to the International Labour Organisation in its advisory opinion No. 13 of July 23, 1926 (Series B, No. 13, p. 18), and must be applied to the United Nations." (Advisory Opinion—*Reparation for Injuries suffered in the Service of the United Nations—I.C.J. Reports 1949*, p. 182.)

The argument in relation to the expenditures incurred in connection with UNEF has been well summarized in the following extract from an article by Professor Chaumont in the *Annuaire français de Droit international*:—

> "Cet article 17, après avoir donné (par. 1) à l'Assemblée générale le pouvoir d'approuver le budget, stipule (par. 2) que 'les dépenses de l'Organisation sont supportées par les membres selon la répartition fixée par l'Assemblée générale'. Le langage est impératif: il s'agit ici, non d'un pouvoir de recommandation, mais d'un pouvoir de décision de l'Assemblée. En vertu de ce langage, non seulement les membres doivent participer aux dépenses, mais cette obligation n'est pas affectée par le mode de répartition choisi par l'Assemblée, puisque ce choix est une décision de l'Assemblée. Donc même les États qui figurent dans la minorité (c'est-à-dire qui ne figurent pas dans les 2/3 de votants exigés par l'article 18 de la Charte pour les questions budgétaires) sont liés par le principe de la contribution, et par les modalités fixées par l'Assemblée. Il en est ainsi dans la mesure bien entendu où l'on considère la Force d'urgence comme un organe subsidiaire de l'Organisation, créé conformément à l'article 22 de la Charte. La création d'un tel organe n'est pas une recommandation mais une décision et, par suite, du fait même de son existence, cet organe est couvert par la stipulation de l'article 17, par. 2, de la Charte. C'est d'ailleurs bien ainsi que les choses se sont passées pour des organes qui, à des moments et à des degrés divers, ont été créés dans des conditions qui ont soulevé les protestations de certains États: par exemple le Conseil de Tutelle (il est vrai organe principal) a été constitué en 1946 d'une manière que l'U. R. S. S. a jugée irrégulière et qui a motivé son absence à la première session du Conseil; le Comité *ad hoc* sur les territoires non autonomes, créé par la résolution du 14 décembre 1946, a été jugé illégal par les Puissances administrantes; l'U. R. S. S. et les pays de démocratie populaire n'ont pas admis la Commission intérimaire de l'Assemblée générale, créée en 1948, et la Commission des mesures collectives, formée en vertu de la résolution Acheson du 3 novembre 1950; l'Afrique du Sud n'a pas admis le Comité du Sud-Ouest africain, etc. Tous ces organes ont cependant été intégrés dans le budget de l'Organisation, et les États protestataires, en payant leur contribution annuelle, ont par là même participé à l'entretien de ces organes.

Le Secrétaire général et l'Assemblée générale ont donc appliqué à la Force d'urgence un principe qui est normalement admis dans l'Organisation et qui est la conséquence, à la fois du pouvoir qu'ont les organes principaux de créer des organes subsidiaires de l'Organisation, et de la règle posée dans l'article 17, par. 2, de la Charte."*

5. *General*

It has been shown that the operations referred to in the Request are, in the strictest sense, United Nations operations. They were embarked upon as a result of, and solely as a result of, deliberations within the United Nations, proposals advanced in the course of the deliberations and resolutions which reflected the opinion of all or of a substantial majority of the Member States. The countries participating in the operations did so in response to an invitation addressed to them to help in achieving the purposes of the United Nations. The units supplied became and constituted the United Nations forces and their activities were therefore activities of the Organization. It therefore follows that the expenditures involved in these operations must be held to be expenditures of the body from which the operations spring, that is the United Nations, and, that being the case, they must necessarily be paid for by the United Nations in accordance with the only provision of the Charter dealing with expenditure, namely, Article 17 (2). To hold otherwise would imply that, although the United Nations as an entity may initiate certain activities, the component elements of the Organization, apart from which it does not in fact exist, are free to shed one inevitable consequence of such activities, i.e. the financial consequence.

By definition, every organization, at every level, consists of a number of component parts. And it is an accepted principle that the decisions of an organization, as a unit, in the absence of express provision to the contrary, bind each of its parts whether or not the decisions are equally acceptable to all. Obviously the degree of agreement within any group on a particular course of action will vary widely as between its members from complete acceptance, through acquiescence, to direct opposition. But the collectively binding nature of decisions remains valid as long as the organization subsists.

At least one of the resolutions referred to in the Request specifies that the expenses to which it refers were being apportioned as "expenses of the Organization within the meaning of Article 17, paragraph 2" (resolution 1583 (XV)—Preamble). It is considered that this recital was merely declaratory of the position under the Charter and that no real doubt can exist that all the expenditures in question constitute "expenses of the Organization" within the meaning of Article 17 (2).

* *Annuaire français de Droit international*, 1958, page 419.

6. *Conclusion*

It is submitted that for the foregoing reasons the answer to the Request transmitted to the Court under the resolution of the General Assembly of 20 December 1961 should be "yes".

20 February 1962.

15. WRITTEN STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

1. The question submitted for an advisory opinion by General Assembly resolution of 20 December 1961 included the question whether expenditures authorized in certain General Assembly resolutions relating to the United Nations operations in the Congo constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter of the United Nations.

2. These expenditures were authorized by several General Assembly resolutions relating to operations undertaken in pursuance of several Security Council and General Assembly resolutions. The resolutions in question are referred to in the General Assembly resolution of 20 December 1961.

3. General Assembly resolution 1583 (XV) of 20 December 1960 was the only resolution which recognized that the expenses connected with the Congo operation were "expenses of the Organization" in terms of Article 17, paragraph 2 [1]. The other resolutions do not mention this Article. When General Assembly resolution 1619 (XV) of 21 April 1961 was considered in the Fifth Committee, doubts were raised as to the desirability of referring to Article 17.2 [2]. Although the various resolutions authorizing and apportioning expenses followed basically the same method of apportionment as in the regular budget, there were some marked deviations from the usual apportionment in that States which qualified according to a certain formula had their contributions reduced by 50 or 80 per cent [3]. The General Assembly decided thus "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". This resolution did not mention Article 17. As the Indian delegate said in the Fifth Committee [3a]: "Any reference to an article of the Charter would be likely to create a precedent which some might consider undesirable."

4. By specifically calling expenditures connected with Congo operations "expenses of the Organization" in terms of Article 17.2,

[1] This resolution was adopted by a roll-call vote of 45 to 15, with 25 abstentions (including South Africa).

[2] *G. A., O. R., Fifteenth Sess., Fifth Comm.*, 844th Meeting, 20 April 1961, p. 85.

[3] *G. A. Resolution* 1619 (XV), 21 April 1961.

[3a] *G. A., O. R., Fifteenth Sess., Fifth Comm.*, 844th Meeting, 20 April 1961, p. 85.

as was done in General Assembly resolution 1583 (XV), or by apportioning them in the same manner as expenses falling under Article 17.2, the question as to whether they are to be regarded in that light is not necessarily answered. If the General Assembly apportions expenses among Member States, the only effect that a reference to Article 17.2 may have is to render it clear that the intention was that the contributions should be obligatory and not voluntary. Even if Article 17.2 is not mentioned, however, the intention that this Article shall apply may be gathered from the tenor of the text of a resolution or surrounding circumstances. But although the General Assembly can apportion the expenses of the Organization in terms of Article 17.2, it cannot apportion anything other than the "expenses of the Organization", nor can it increase its powers by simply labelling expenditure as "expenses of the Organization" and authorizing it, if the expenditure is not in fact what is understood by "expenses of the Organization". For the purpose of determining the meaning of this term, resolution 1583 (XV) need not, therefore, be considered until it is clear that such expenses can potentially fall under Article 17.2. Were the position otherwise, the Assembly would not be bound by the provisions of the Charter, but would be a body which could define its own powers, irrespective of these provisions. It is clear that this was not the intention of the Charter.

5. Only after it is established that specific expenditures fall within the definition of "expenses of the Organization" can General Assembly resolutions become relevant in order to ascertain whether the Assembly, in passing the resolution, regarded such expenditures as "expenses of the Organization" or as costs to be met from voluntary contributions.

6. It may well be argued that, if the General Assembly had for a long period of time regarded certain expenditures as falling under Article 17.2, and all Member States had acquiesced therein, expenses which the Charter had not intended to fall under that Article might be said to fall thereunder, either by tacit consent of Member States, or by custom. But even if there were substance in this argument, neither tacit consent nor custom arises in this case. There was, in fact, considerable opposition to General Assembly resolution 1583 (XV) and it cannot, therefore, be regarded as having received tacit consent of Member States.

7. The question whether certain costs were intended by the Charter to be "expenses of the Organization" will therefore have to be determined objectively. The General Assembly's powers are limited to the apportionment of expenditures which fall within that term and do not include the power to determine that costs which would not otherwise be included thereunder are nevertheless to be regarded as "expenses of the Organization".

8. It is clear that the term "expenses of the Organization" will include the ordinary administrative expenses arising from the functioning of the United Nations as an organization. It is submitted that the word "of" should be interpreted as "pertaining to", *not* as "authorized by", "supervised by", "recommended by the General Assembly of", "pertaining to subsidiary organs of", nor as "pertaining to measures taken by Members in consequence of Security Council resolutions of". Since Article 17.2 imposes a financial obligation on Members of the United Nations, it should not be thus extensively interpreted. Only such expenses as would normally pertain to the United Nations, taking its Charter into account, can be regarded as "expenses of the Organization".

9. In answering the question in respect whereof an advisory opinion has been requested, it will be necessary to determine in the first place under what provisions of the Charter the relative resolutions were adopted. There is, however, no clear answer on this point. The relative resolutions do not state under what article or articles they were adopted and their wording does not give sufficient indications in this respect. Various opinions were expressed in this connexion. So, for instance, the representative of the U.S.S.R. stated that "expenditure incurred by the United Nations in connexion with the situation in the Republic of the Congo should ... be considered under (Article 43) of the Charter and possibly others such as Article 59, but not in the context of the regular United Nations budget" [4]. On the other hand, the Secretary-

[4] Mr. Roshchin in the Fifth Committee (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 803rd Meeting, 29 November 1960, p. 247). *Vide* also 841st Meeting, 18 April 1961, pp. 70-72, and 995th Plenary Meeting, 21 April 1961. Another article of the Charter which, according to Mr. Roshchin in the Fifth Committee on 29th November, 1960, might be applicable was Article 59. See also: the statement of the Indian delegate (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 817th Meeting, 13 December 1960, p. 321):—

> "... the obligations of Member States derived from the Charter of the United Nations. The Assembly could not require States to assume obligations which went beyond those provided for in the Charter unless those obligations were willingly accepted by States. While the activities of the United Nations in the Congo undoubtedly came within the scope of Chapter VII of the Charter, certain provisions of that Chapter had not been complied with. Article 43, for example, provided for special agreements between the Security Council and United Nations Members when the Council took certain measures for the maintenance of international peace and security. The fact that no special agreement had been concluded strengthened the argument that the Charter could not be cited as authority for imposing the financial responsibility for ONUC on the Member States. Under Article 25, the Members of the United Nations agreed to accept and carry out the decisions of the Security Council, 'in accordance with the present Charter'. That meant that decisions which had not been taken in accordance with the Charter were not binding."

The Indian delegate thereupon pointed out that financial regulation 13.1 and rule 154 of the rules of procedure should have been complied with.

The statement of the Bulgarian delegate (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 838th Meeting, 14 April 1961, p. 56):—

General denied that these Articles applied. He stated that resolutions relating to the operations in the Congo "could be considered as having been implicitly adopted under Article 40, but certainly not under Articles 41 or 42" [5]. (Article 40 empowers the Security Council to "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable" in "order to prevent an aggravation of the situation" before measures provided for in Article 39 (which includes action under Articles 41 and 42) are decided upon.)

The Canadian delegate, again, expressed the view that Articles 24 and 25 of the Charter applied to United Nations' action in the Congo [6].

10. In considering the provisions of the Charter under which the relative resolutions were said to have been or could have been adopted, the following points arise:

11. If Security Council action was taken under Articles 42 and 43, Articles 44, 48 and 49 would also apply.

Article 43 provides that Members undertake to make armed forces available to the Security Council in accordance with a special agreement or agreements. According to Article 44, a Member which has been called upon to provide armed forces shall be invited to sit in the Security Council to participate in decisions concerning the employment thereof.

Article 48 provides that:—

> "1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
>
> 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are Members."

Article 49 provides that:—

> "The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

"The financing of action to maintain peace and security should be governed by the special agreements concluded under Article 43, paragraph 2, of the Charter between the Security Council and the Member States which were to carry out the Council's decisions."

[5] *G. A., O. R., Fifteenth Sess., Fifth Comm.*, 839th Meeting, 17 April 1961, p. 59. See also: The statement of the Pakistani delegate in the Fifth Committee to the effect that Article 106 showed that Articles 42 and 43 could not apply to the Congo operations inasmuch as Article 106 prescribed that, pending the special agreements under Article 43, the five permanent Members of the Security Council should consult with a view to joint action and this was not done (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 811th Meeting, 7 December 1961, p. 288).

[6] *G. A., O. R., Fifteenth Sess., Fifth Comm.*, 808th Meeting, 5 December 1960, p. 270.

12. Leaving aside for the moment the point that all measures decided upon by the Security Council must be measures consonant with the Charter in order to qualify for the mutual assistance mentioned in Article 49, there is no reason to suppose that assistance does not also include financial assistance in order to meet expenses of action under Security Council resolutions.

13. The inference to be drawn from the above provisions is that action undertaken under Security Council resolutions is action directly undertaken by the individual Members in accordance with agreements with the Security Council. Member States have to assist each other in this connection (Article 49). The Security Council's own functions are to call upon Members to provide the armed forces and indicate what measures such armed forces have to take "with the assistance of the Military Staff Committee" (Articles 45 and 46) established under Article 47. Even assuming that expenses relating to the functioning of the Military Staff Committee could be regarded as expenses of the United Nations, the costs of the military forces employed would not be such expenses. Such armed forces as are provided by individual Members, although acting in pursuance of Security Council resolutions, would still be the financial responsibility of the relevant Member States, and action taken by them would still be action of units of armed forces of Member States. Their expenses could not, therefore, be regarded as expenses of the "international organization to be known as the United Nations" (Preamble) [7].

14. It is to be noted that the costs of United Nations action in Korea were not regarded as "expenses of the Organization" and were not paid from United Nations' funds. On the contrary, the costs of the action were borne by those States which responded to the call of the Security Council in its resolution of 20 June 1950 for

[7] As was said by the South African delegate in the Fifth Committee (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 807th Meeting, 2 December 1960, p. 267): "the authors of the Charter had regarded the cost of peace and security actions as constituting a separate type of expense, not to be included in the regular budget...". Including the cost of such activities in the regular financial budget would lead to grave difficulties.

The Indian delegate stated (*G. A., O. R., Fifteenth Sess., Fifth Comm.*, 817th Meeting, 13 December 1960, pp. 321 and 322):—

> "Ordinary expenses were, of course, those which related to the current operations of the United Nations. According to the *Repertory of Practice*, the normal continuing functions of the Organization were financed from the regular budget. The activities of the United Nations in the Congo and the measures taken at the time of the Suez crisis were not, however, normal continuing activities. ONUC, like UNEF, could therefore be financed by voluntary contributions but not through the regular budget. If all Member States were automatically required to participate in peace and security operations, those among them whose financial capacities were limited would eventually come to regard membership in the United Nations as an expensive luxury."

assistance to repel an armed attack on the Republic of Korea and "to restore international peace and security in the area".

15. The view that expenses of military action in consequence of Security Council resolutions cannot be regarded as "expenses of the Organization" is supported by what happened at San Francisco when the Charter was drafted. On 18 May 1945, the Australian delegate proposed at the United Nations Conference on International Organization that a Member should be deprived of his voting rights in the General Assembly if he failed to carry out his obligations under provisions which were subsequently to become Article 43 of the Charter [8]. This proposal was made during the discussion of the financial obligations of Members and would not have been made had financial obligations under Article 43 been regarded as "expenses of the Organization" within the meaning of Article 17.2. The opposition to a provision applying the sanction of Article 19 to financial obligations under provisions which subsequently became Article 43 was such that the proposal was withdrawn on 8 June 1945, after discussion on it was deferred several times [9]. As the Mexican delegate stated in the Fifth Committee [10]:—"Expenses resulting from operations involving the use of armed forces, as in the case of the Congo operations, were deliberately and intentionally excluded by the San Francisco Conference from the application of the penalty provided for in Article 19."

16. During the discussions relating to the nature of the Congo costs, the Secretary-General denied a statement made by the representative of the U.S.S.R. to the effect that United Nations action in the Congo was in pursuance of Articles 42 and 43. The Secretary-General stated that Congo action "could be considered as having been implicitly adopted under Article 40" [11], which empowers the Security Council to "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable" in order to prevent an aggravation of the situation before, *inter alia*, measures under Article 42 are decided upon.

17. It is to be noted that the Secretary-General did not assert unequivocally that measures relating to the Congo fell under

[8] *U.N.C.I.O. Docs.*, Vol. 8, pp. 364 and 365; see also the statement of the Mexican delegate (*G. A., O. R., 15th Sess., Fifth Comm.*, 837th Meeting, 14 April 1961, Doc. A/C.5/862) and the answer by the Secretary-General to the effect that the Australian amendment "had not referred in any general sense to operations involving the use of armed forces but had referred specifically and exclusively to obligations under Article 43 of the Charter". (*G. A., O. R., 15th Sess., 5th Comm.*, 839th Meeting, 17 April 1961, p. 59.)

[9] *U.N.C.I.O. Docs.*, Vol. 8, pp. 453, 469 and 476.

[10] The Mexican statement of 14 April 1961, *supra* at p. 33.

[11] *G. A., O. R., Fifteenth Sess., Fifth Comm.*, 839th Meeting, 17 April 1961, p. 59. The Secretary-General stated that he had quoted Article 40 in this connection before without contradiction, but did not categorically assert that Article 40 applied.

Article 40, but merely that they "could be considered as having been implicitly adopted" under that Article. Nevertheless Article 40 hardly seems applicable to the two Security Council resolutions of 21 February and 24 November 1961. The resolution of 21 February 1961 urged "that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the preventing of clashes, and the use of force, if necessary, in the last resort...". The resolution of 24 November 1961 "strongly deprecates the secessionist activities illegally carried out by the provincial administration of Katanga, with the aid of external resources and manned by foreign mercenaries", and "authorizes the Secretary-General to take vigorous action, including the use of requisite measures of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and para-military personnel and political advisers not under the United Nations Command, and mercenaries...". It might possibly be said that the Security Council acted under Article 40 when it called "upon the Government of Belgium to withdraw their troops from the territory of the Republic of the Congo" in the resolution of 14 July 1960. But it is difficult to see how Article 40 could have applied when the Security Council decided in the same resolution "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, until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their task".

18. The provisional measures contemplated by Article 40 seem to have been directions of the Security Council to disputing parties, not action by that body and certainly not military action by the United Nations. Article 40 provides that the parties had to "comply" *("conformer")* with measures which the Security Council deems necessary or desirable. In other words, the parties themselves had to take the active steps. That the United Nations was to give the Republic of the Congo military assistance could hardly be regarded as a "measure" with which parties had to "comply" within the terms of Article 40. In any event, the provisional measures provided for in Article 40, if deemed necessary by the Security Council, must be taken before making recommendations or deciding upon measures provided in Article 39. The type of situation contemplated by Article 40 must have been a dispute between States, and the provisional measures contemplated must have been measures to be taken by the disputing States in order to prevent such dispute from leading to any hostilities, e.g. withdrawal of armed forces, aircraft or ships from frontiers, cessation of mobilization of fifth

column activities in another State, etc. Withdrawal of Belgian troops from the Congo might, assuming that a dispute existed, be regarded as such a provisional measure under Article 40, inasmuch as it was an active step which had to be taken by one of the parties to the dispute. If, however, active steps to be taken, *not* by the parties, but by the United Nations, were to be implicitly included under the provisional measures with which the parties had to comply under Article 40, this Article would be given a wide meaning deviating from the ordinary meaning of the words used. But even assuming that Article 40 was intended to have such a wide meaning and that the sending of United Nations forces to the Congo could be included under the provisional measures of Article 40, there is no reason to assume that the costs thereof should be regarded in a different light from costs incurred under Articles 42 and 43. The provisional measures were to be taken pending action under Articles 41, 42 and/or 43. An anomalous position, which could not have been contemplated when the Charter was drafted, would have arisen if the costs of provisional measures were "expenses of the Organization" for which Members were liable, whereas costs of action undertaken thereafter were not to be regarded as such.

19. And it seems clear from Article 43, other articles of the Charter and the proposals and discussions at San Francisco, that costs of armed forces made available under Article 43 are to be met by means of special agreements or mutual assistance under Article 49, but shall not be "expenses of the Organization" under Article 17.2. The Secretary-General, in stating that the Australian proposal at San Francisco referred "specifically and exclusively to obligations under Article 43 of the Charter" and not "in any general sense to operations involving the use of armed forces", and that the Congo operations "did not constitute sanctions or enforcement action as contemplated by Articles 42 and 43 of the Charter" [12], did not seem to dispute that the costs of action under Article 43 fell outside the provisions of Article 17.2.

20. The above remarks are specifically directed to Security Council action under Chapter VII. What would the position be if the Security Council action relating to the Congo can be said to have been taken in pursuance of Articles 24 and 25 of the Charter?

Article 24.1 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 and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."

21. In the case of Article 24.1 the Security Council acts because United Nations Members confer on it "primary responsibility for

[12] *Ibid.*

the maintenance of international peace and security" and as such "the Security Council acts on their behalf". In other words, the Security Council is authorized in Article 24.1 to act on behalf of Members of the United Nations and not on behalf of the United Nations. But when the Security Council acts in pursuance of Article 24, its action must at the same time be governed by some provision specifically "laid down in Chapters VI, VII, VIII and XII", as provided for in Article 24.2. The only chapter which seems relevant in the case of action in the Congo would seem to be Chapter VII. Consequently, authority for the activities engaged in in the Congo must again be found in Chapter VII. It has already been argued above that expenditures relating to the operations in the Congo under Chapter VII do not constitute "expenses of the Organization".

22. It is submitted that, in view of the above, all the expenditures relating to the United Nations operations in the Congo do not constitute "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter.

23. But, even if the Court were to hold that expenditures authorized in General Assembly resolutions relating to the operations in the Congo may constitute "expenses of the Organization" within the meaning of Article 17.2, the matter is not thereby concluded. Before the Court can find that all the expenditures authorized by the resolutions quoted are "expenses of the Organization", it must also be established that such expenditures are legal and valid and arose from legal and valid activities. It is patent that decisions and activities which are *ultra vires* the Charter cannot constitute obligations on Members and expenditures resulting therefrom cannot therefore fall within the terms of Article 17.2. The United Nations can only engage in activities which are sanctioned by the Charter. Activities outside the scope of, in conflict with or prohibited by the Charter, whether expressly or by implication, cannot be regarded as valid activities of the United Nations. The fact that such activities are expressly or impliedly authorized by Security Council or General Assembly resolutions does not render them valid.

24. It will therefore still have to be determined whether the activities to which such expenditures relate are valid activities falling within the provisions of the Charter. In cases where a Security Council or General Assembly resolution is necessary in order to ensure the validity of any activity engaged in by the United Nations, the following requirements would be essential:

(a) The resolution must be valid in that it must be within the terms of the Charter;

(b) The activity must be covered by and not exceed the terms of such resolution; and

(c) The activity must be consonant with and not exceed the provisions of the Charter.

In other words, although expenditures may have been authorized by a resolution of the General Assembly, the expenditures may still be invalid, because the *causa* for such expenditures is not a *iusta causa*. Only if there is a *iusta causa* for them can the expenditures and the resolutions which authorized them be valid. In the case of the Congo operations, the *iusta causa* can only be constituted by activities in pursuance of valid resolutions within the terms of the Charter.

25. It is submitted, however, that there is justifiable reason to question the validity of certain resolutions in pursuance whereof activities in the Congo were undertaken in that they exceeded and were in conflict with the provisions of the Charter. Furthermore, it is submitted that there is justifiable doubt as to the validity of certain activities engaged in by the United Nations in the Congo in that they may well have exceeded and conflicted with the terms of the relevant resolutions and the provisions of the Charter.

26. One of the resolutions in pursuance whereof activities in the Congo were undertaken was the Security Council resolution of 24 November 1961, which provides *inter alia*:—

> *"The Security Council,*
>
> . . . . . .
>
> *Deploring* all armed action in opposition to the authority of the Government of the Republic of the Congo, specifically secessionist activities and armed action now being carried on by the Provincial Administration of Katanga with the aid of external resources and foreign mercenaries, and *completely rejecting* the claim that Katanga is a 'sovereign independent nation', ...
>
> *Recognizing* the Government of the Republic of the Congo as exclusively responsible for the conduct of the external affairs of the Congo, ...
>
> '1. *Strongly deprecates* the secessionist activities illegally carried out by the provincial administration of Katanga, with the aid of external resources and manned by foreign mercenaries;
>
> '2. *Further deprecates* the armed action against United Nations forces and personnel in the pursuit of such activities;
>
> '3. *Insists* that such activities shall cease forthwith, and *calls* upon all concerned to desist therefrom;
>
> '4. *Authorizes* the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and para-military personnel and political advisers not under the United Nations Command, and mercenaries...'
>
> . . . . . .

8. *Declares* that all secessionist activities against the Republic of the Congo are contrary to the *Loi fondamentale* and Security Council decisions and specifically *demands* that such activities which are now taking place in Katanga shall cease forthwith;

9. *Declares* full and firm support for the Central Government of the Congo, and the determination to assist that Government in accordance with the decisions of the United Nations to maintain law and order and national integrity, to provide technical assistance and to implement those decisions;

10. *Urges* all Member States to lend their support, according to their national procedures, to the Central Government of the Republic of the Congo, in conformity with the Charter and the decisions of the United Nations."

27. The question arises as to whether this resolution does not exceed the powers conferred by the Charter, in the letter and the spirit, and whether it does not also contravene Article 2 (7) by e.g. "completely rejecting the claim that Katanga is a 'sovereign independent nation' ", deprecating "the secessionist activities illegally carried out by the provincial administration of Katanga", insisting "that such activities shall cease forthwith", declaring that "all secessionist activities" of this nature "are contrary to the *Loi fondamentale*" and finally demanding "that such activities ... shall cease forthwith".

28. If this resolution is to be interpreted in accordance with the provisions of the Charter, it must be held only to justify measures taken in order to prevent foreign interference and not to justify measures to suppress internal political activities by the people of the Congo.

29. The Charter certainly did not intend that United Nations activities should be utilised for the purpose of maintaining the internal unity of a State or of maintaining the *status quo* artificially, as the Holy Alliance did during the first half of the nineteenth century. To quote extreme examples: if the United Nations had existed in the first half of the nineteenth century, it would have been against the letter and the spirit of the Charter to "deprecate" and authorize action against "secessionist activities" in Belgium (against the Union of the Netherlands and Belgium of 1815-1830), Poland, Ireland, Italy and the Balkans, and "*completely reject* the claims" that "such States are sovereign independent nations". Similar examples can be given in respect of the twentieth century, even in recent times.

30. But apart from this, the Charter expressly provides that the United Nations is not authorized to intervene in "matters which are essentially within the domestic jurisdiction of any State". Endeavouring to force peoples to submit to a particular form of government is typical intervention in matters essentially within

the domestic jurisdiction of a State [13]. The exception mentioned in Article 2.7 as regards enforcement measures under Chapter VII would not be applicable to the cases in connection with which the present advisory opinion is being requested, because the only intervention in domestic affairs thus authorized by the Charter would be that which would be naturally bound up with enforcement measures. In other words, even if action were taken under Chapter VII, this does not mean that any type of intervention in a State's internal affairs is authorized by the exception in Article 2.7. Only

[13] The South African Minister of Foreign Affairs, Mr. Eric Louw, speaking on resolution 1474 (XV), stated in September 1960 (*G. A., O. R., 4th Emergency Special Sess.*, 862nd Plenary Meeting, 19 September 1960, p. 72):—

"Coming now to the draft resolution which is before the General Assembly, I wish to say that quite apart from the doubts which rightly or wrongly exist as to whether action taken by the United Nations primarily for the purpose of restoring internal order was in all respects justified or was, shall we say, perhaps over-hasty, there is the important question as to whether the United Nations has the right to intervene—and I quote the words of the draft resolution—in the 'internal conflicts' of the Congo or in the 'political conditions' in the country. Also, in this draft resolution, there are repeated references to what is termed the unity of the Republic. This raises the further question as to whether the type of State which will eventually emerge in the Congo is any concern of this Organization. For instance, I have in mind the intention already expressed by leaders of Katanga province to have a different constitutional arrangement. This surely is a matter for the Congolese themselves, whose decision I submit should not be influenced either by resolutions of this Organization or by the actions of this Organization or by any other State."

And in October, 1961, he stated (*G. A., O. R., Sixteenth Sess.*, Verbatim records, 1033rd Plenary Meeting, 11 October 1961):—

"When this matter was discussed at the special session of the General Assembly last year, I warned against precipitate action. The history of the United Nations actions in the Congo is not a happy one, and no one knows where it is going to end.

Recently, there has also been the action taken by the United Nations Forces against President Tshombe of Katanga. Conditions in Katanga have been relatively stable, both politically and economically. Instead of appreciating those conditions, the United Nations military forces, acting under the Security Council resolution of 21 February 1961, swooped down on Katanga, thereby creating those very conditions which the Organization was supposed to prevent.

At last year's special session, I stated from this rostrum that, quite apart from the doubts which existed as to whether action taken by the United Nations primarily for the purpose of restoring internal order, was in all respects justified, there was the important question whether the United Nations had the right to intervene in the internal conflicts of the Congo or in political conditions in the Congo, as provided for in the resolution before the Assembly last year. I said at that time:

'This raises the further question as to whether the type of State which will eventually emerge in the Congo is any concern of this Organization.' *(Official Records of the General Assembly, 862nd plenary meeting, para. 120.)*

I referred to the fact that the leaders of Katanga had expressed the desire to have a different constitutional arrangement, and I then said:

'This surely is a matter for the Congolese themselves, whose decision, I submit, should not be influenced either by resolutions of this Organization or by the actions of this Organization or any other State.' *(Ibid.)*"

such intervention can be authorized as is necessary for the proper execution of the relative enforcement measures. In any event, it is not clear whether the Congo operations can be considered as enforcement measures under Chapter VII. Only if the Congo operations can be regarded as such need the exception to Article 2.7 be taken into consideration at all.

31. Similar comment may be made in respect of General Assembly resolution 1474 (XV) which provides, *inter alia*, that the General Assembly—

> "1. *Fully supports* the resolutions of 14 and 22 July and 9 August 1960 of the Security Council;
> 2. *Requests* the Secretary-General to continue to take vigorous action in accordance with the terms of the aforesaid resolutions and to assist the Central Government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity, territorial integrity and independence in the interests of international peace and security."

32. The provisions quoted seem to exceed measures for dealing with the situation contemplated in the Security Council resolutions of 14 and 22 July and 9 August 1960. Admittedly, the Security Council resolution which was quoted above and which was adopted more than a year later, namely on 21 November 1961, even exceeds General Assembly resolution 1474 (XV) in the nature of its provisions. But this General Assembly resolution also authorizes interference in the internal affairs of the Congo by requesting the Secretary-General to take vigorous action to safeguard the unity of the Republic of the Congo.

33. It is accordingly submitted that activities in pursuance of those parts of the abovenamed resolutions which exceed or are in conflict with the provisions of the Charter are invalid and that expenditures made in connection with such activities are consequently also invalid and can under no circumstances be "expenses of the Organization".

34. But irrespective of the validity of provisions of resolutions, United Nations activities themselves, in order to be valid, must not exceed or be in conflict with either the terms of the relevant resolutions or the provisions of the Charter. And expenditures made in respect of invalid activities cannot be valid expenditures which may be "expenses of the Organization".

35. The resolutions authorizing various expenditures, as quoted in the request for an advisory opinion, as well as the other resolutions quoted, furnish insufficient information as to whether the activities in respect whereof costs are incurred are within the powers conferred by the Charter or the resolution(s) in pursuance of which the activities were undertaken. Only the amounts which the Secre-

tary-General may spend and the apportionment thereof are mentioned, but no indication is given in the request for an advisory opinion as to how amounts are arrived at or as to the purpose of the expenditures or as to the activities to which they relate. Information in this regard will have to be obtained, and it is assumed that the necessary details will be furnished by the Secretary-General in a statement to the Court. The Court may, however, require further information. In order to determine whether all the expenditures authorized by the General Assembly resolutions requesting an advisory opinion are in respect of valid activities within the Charter, the Court will have to have full information before it. It cannot be assumed that all the activities were valid merely because the General Assembly authorized the relative expenses. The purpose of the request for an advisory opinion must have been that the Court will go into the whole question, including the question whether the General Assembly resolutions authorizing certain expenditures are valid.

36. Despite the absence of detailed information on United Nations activities and operations in the Congo, certain of these activities and operations have become known and cast grave doubt as to their validity under the Charter. The available information as to United Nations activities, especially in Katanga, therefore indicates the necessity of a full investigation in order to ascertain whether and to what extent the activities in the Congo are in conformity with the provisions of the Charter and the relative Security Council resolutions.

In making these submissions the Government of the Republic of South Africa wishes to stress that, as indicated, certain factual information was not available to it. This and the time-limit makes it difficult for the Government of South Africa to prepare and submit all its contentions to the Court.

The Government of the Republic of South Africa is loath to request any extension of the time-limit, especially since these submissions are already to be accepted some days after the closing date, a fact which is much appreciated.

37. It is therefore submitted that

(a) the expenditures authorized by the various General Assembly resolutions relating to the United Nations operations in the Congo are *not* "expenses of the Organization" within the meaning of Article 17.2 of the Charter;

(b) in any event, not all expenditures resulting from the operations in the Congo are valid "expenses of the Organization" and that the Court should determine whether and to what extent activities engaged in in the Congo were valid both in terms of valid resolutions and the terms of the Charter; and

(c) the whole question submitted for an advisory opinion could only be answered if the Court is fully informed as to the *causa* of the expenditures authorized by the relative General Assembly resolutions.

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16. MEMORANDUM OF THE USSR GOVERNMENT ON THE PROCEDURE OF FINANCING THE OPERATIONS OF THE UNITED NATIONS EMERGENCY FORCE IN THE MIDDLE EAST AND THE UNITED NATIONS OPERATIONS IN THE CONGO

[Unofficial translation supplied to the Registry by the Embassy of the USSR in the Netherlands]

The USSR Delegation to the Sixteenth Session of the United Nations General Assembly has stated the position of the Soviet Union on the procedure of financing the operations of the United Nations Emergency Force in the Middle East and the United Nations operations in the Congo.

The purpose of this reply to a request by the Secretariat of the International Court of Justice is to clarify once again the position of the Soviet Union on this question.

1. The Soviet Government is of the view that the operations of the United Nations Emergency Force in the Middle East, as well as the United Nations operations in the Congo, impose no financial obligations on the Members of the United Nations, since those operations are carried out not in accordance with the requirements of the United Nations Charter.

(a) *The question of financing the United Nations Emergency Force in the Middle East*

For the establishment of Emergency Force in the Middle East the UN Secretary-General used as a pretext the resolutions adopted at the first Extraordinary Session of the General Assembly on November 3, 1956 (resolution 998/ES-I), and on November 5 (resolution 1000/ES-I) in connection with the armed aggression of Britain, France and Israel against Egypt, that is in connection with the violation of international peace and security.

From the very moment the Emergency Force had been established the Soviet Government has thought and continues to think that it is not within the General Assembly's competence to take decision on the setting up of international armed forces.

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

In this connection it would be relevant to refer to the provisions of Article 39 of the Charter, which reads: "The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

In so far as the General Assembly is concerned, it "may consider the general principles of co-operation in the maintenance of international peace and security" (paragraph 1, Article 11); "may discuss any questions relating to the maintenance of international peace and security"; "may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both" (paragraph 2, Article 11).

But the General Assembly is not competent to take decisions on the carrying out of any action to maintain international peace and security. Paragraph 2, Article 11 of the Charter reads: "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

Being guided by these Charter provisions the representative of the Soviet Union, speaking on the decision to create an Emergency Force, stated at the 567th meeting of the first Extraordinary Session of the General Assembly on November 7, 1956, that, as for the creation and stationing in the territory of Egypt of international armed forces, the Soviet Delegation deemed necessary to point out that those forces were created in violation of the United Nations Charter, that the resolution of the General Assembly on the basis of wich it was proposed to form those armed forces was in contradiction to the United Nations Charter; that Chapter VII of the Charter envisaged that it was the Security Council alone and not the General Assembly that may set up international armed forces and take such action as might be necessary to maintain or restore international peace and security, including the use of such armed forces.

Thus, as the Emergency Force for the Middle East was set up in violation of the United Nations Charter, circumventing the Security Council, their financing cannot be regarded as an obligation which lies upon the Member States of the United Nations under the Charter.

(b) *The United Nations operations in the Congo*

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

Under the United Nations Charter the Security Council determines which States are to participate in carrying out its decisions which involve the maintenance of international peace and security.

Paragraph 1, Article 48 of the Charter reads: "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine."

States participate in implementing the above-mentioned decisions of the Security Council on the basis of special agreements to be concluded between the Security Council and Members of the Organization. Under such agreements Member States of the United Nations "make available to the Security Council, on its call ... armed forces, assistance and facilities, including rights of passage, necessary..." (paragraph 1, Article 43). Such 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" (paragraph 2, Article 43).

The above-mentioned requirements of the Charter have not been met with regard to the United Nations operations in the Congo, which fact has been repeatedly pointed out by the Soviet Union's representative on the Security Council.

Contrary to the United Nations Charter the UN Secretary-General, in disregard of the Security Council, himself determined the list of States which were invited to participate with their armed forces or otherwise in the United Nations operations in the Congo. Neither were observed the provisions of the United Nations Charter as regards the manner in which the UN operations in the Congo have been directed, for they were directed by the Secretary-General alone.

Regardless of the Security Council the Secretary-General addressed the General Assembly for appropriations to defray the expenses involved in the United Nations operations in the Congo; and the General Assembly, in its turn, without being so entitled by the Charter, adopted a resolution on allocations for those operations and on the distribution of the expenses among Member States on the basis of the scale of contibutions which is operative with regard to the allocations under the regular budget of the Organization.

It is precisely due to these considerations that the Soviet Delegation to the United Nations voted against the resolutions of the General Assembly on the appropriations for the United Nations operations in the Congo and stated that, since those resolutions were in a direct contradiction with the most important provisions of the United Nations Charter, it would consider such resolution illegitimate, and the Soviet Union would not deem itself committed in any extent by such unlawful resolutions.

2. The resolution of the General Assembly of December 20, 1961, poses before the International Court of Justice the question whether the expenses involved in the operations in the Congo and in the Middle East are "the expenses of the Organization", within the meaning of Article 17, paragraph 2, of the Charter.

Article 17 of the UN Charter provides for appropriations and the manner of their reimbursement only in the regular budget of the United Nations. Paragraph 1, Article 17 reads: "The General Assembly shall consider and approve the budget of the Organization", and paragraph 2: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly", i.e. they bear expenses in the Organization's budget.

This is the meaning which was put in the Article 17 of the UN Charter at the San Francisco Conference which was convened to work out the United Nations Charter. It can be seen from the documents related to the working out of the Article's provisions that in the First Committee of the second Commission of the Conference the expenses of the Organization which fall under Article 17 of the Charter were considered as different in their nature from the expenses under Article 43 of the Charter. In particular, this is attested to by the fact that the San Francisco Conference did not approve the Australian amendment to Article 19 of the Charter, which proposed to extend the provisions of that Article to the expenses connected with the fulfilment by the UN Member States of their obligations for practical implementation of measures for keeping the peace. So, the above-mentioned Committee of the San Francisco Conference was of the view that the Australian amendment referred to the obligations connected with the expenses which were not "the expenses of the Organization" as is stipulated in paragraph 2, Article 17 of the Charter.

As to the General Assembly it has never considered the expenses of the UN Emergency Force as the expenses of the Organization within the meaning of paragraph 2, Article 17 of the UN Charter. Regarding the UN operations in the Congo it is stated outright in the General Assembly resolution of December 20, 1961, 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".

The financial obligations of the UN Member States concerning the actions for holding the universal peace and security, which include the UN operations in the Congo and in the Middle East, can be determined only on the basis of special agreements to be concluded by the Security Council and the Member States of the Organization. As it is stated in the UN Charter those agreements become binding only after "ratification by the signatory States in accordance with their respective constitutional processes" (Article 43 of the Charter). No such agreement is known to have been concluded.

It should be added that the resolutions of the UN General Assembly, as it is stipulated in Article 10 of the Charter, are of the nature of recommendations and are not binding upon States. The

UN Member States themselves determine their attitude to these resolutions. All measures that follow from the General Assembly resolutions are also of only recommendatory nature and cannot establish legal obligations for the Member States of the Organization.

* * *

Being guided by the above-said considerations the USSR Government believes that the operations of the UN Emergency Force in the Middle East as well as the UN operations in the Congo impose no financial obligations on the UN Members both for the reason these operations were carried out not in compliance with the requirements of the UN Charter and because the expenses for these operations are not the expenses referred to in paragraph 2, Article 17 of the Charter.

17. LETTER FROM THE GOVERNMENT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC TO THE PRESIDENT

[Unofficial translation supplied to the Registry by the Embassy of the USSR in the Netherlands]

Minsk, February 16, 1962.

Dear Mr. President,

Replying to your esteemed letter of December 27, 1961, No. 34891, I have the honour to inform you, that the U.N. Emergency Force, operating in the Middle East, as well as the operations by the UNO Force in Congo, from their very beginning have been financed in defiance of the existence of the Security Council.

This fact represents a most flagrant violation of the Charter of the United Nations, particularly of that Charter's Artt. 43 and 48.

The standpoint the Byelorussian Soviet Socialist Republic has been taking and is now taking in this issue is well-known. This standpoint has repeatedly been set forth by the representatives of the Byelorussian Soviet Socialist Republic in their speeches, held at the sessions of UNO's General Assembly.

In the opinion of the Government of the Byelorussian Soviet Socialist Republic the operations, undertaken by the Emergency Force in the Middle East, as well as those exercised by the UNO in Congo cannot impose any financial obligation on the Members of the UNO, considering that these operations are being carried through not in accordance with the stipulations of the UNO Charter and having regard to the fact that the expenditures, made on behalf of these operations, do not represent expenses in the sense of the wording of paragraph 2 of Article 17 of UNO's Charter.

Respectfully yours,

(Signed) A. GURINOWITCH,
Deputy Minister of Foreign Affairs of the Byelorussian Soviet Socialistic Republic.

18. NOTE DU MINISTÈRE DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE POPULAIRE DE BULGARIE AU PRÉSIDENT DE LA COUR

(REÇUE AU GREFFE DE LA COUR LE 14 MAI 1962)

Au sujet de la discussion à la Cour internationale de Justice de la question des obligations financières des États Membres de l'Organisation des Nations Unies, le ministère des Affaires étrangères de la République populaire de Bulgarie estime nécessaire de déclarer qu'il est d'avis que les opérations des Forces d'urgence des Nations Unies dans le Proche-Orient et celles de l'ONU au Congo n'imposent pas d'obligations financières aux Membres des Nations Unies vu que lesdites opérations n'ont pas été effectuées en conformité avec les dispositions de la Charte des Nations Unies.

Les représentants de la République populaire de Bulgarie aux Nations Unies ont souligné dans leurs interventions au sujet des opérations des Forces d'urgence de l'ONU dans le Proche-Orient que seul le Conseil de Sécurité a compétence pour prendre des décisions quant à la création de forces armées internationales et non l'Assemblée générale. Ceci est clairement indiqué au paragraphe 2 de l'art. 11 ainsi qu'à l'art. 39 de la Charte.

Des violations de la Charte des Nations Unies ont été commises également lors de l'application de la résolution S/4387 du 14 juillet 1960 du Conseil de Sécurité, relative aux opérations de l'ONU au Congo. Conformément à l'art. 48 de la Charte, c'est au Conseil de Sécurité qu'appartient le choix des États Membres qui devraient prendre part aux opérations visant l'application des décisions prises par lui, tandis que d'après l'art. 43 cette participation est réglée par des arrangements spéciaux conclus entre lesdits États et le Conseil de Sécurité.

De pareils arrangements cependant n'ont point été conclus et le Secrétaire général de l'ONU a nommé seul les pays qui devaient prendre part aux opérations et seul il a assumé la direction des opérations au Congo.

Il n'y a aucun doute que les frais des opérations au Congo et dans le Proche-Orient ne sauraient être considérés comme des frais de l'Organisation dont il est question à l'art. 17, paragraphe 2, de la Charte, d'autant plus que l'Assemblée générale, dans sa résolution du 20 décembre 1961, ne les considère pas comme tels. Aussi ne saurait-on pas les inclure dans le budget ordinaire de l'ONU.

Il faut également avoir en vue le fait que les résolutions de l'Assemblée ne peuvent créer d'obligation juridique pour les États Membres de l'ONU vu que d'après la Charte elles ont le caractère de recommandations.

Sofia, le 11 mai 1962.

[Cachet du ministère des Affaires étrangères, SOFIA.]

19. LETTRE DU MINISTRE ADJOINT DES AFFAIRES ÉTRANGÈRES DE LA RÉPUBLIQUE SOCIALISTE SOVIÉTIQUE D'UKRAINE AU PRÉSIDENT DE LA COUR

(REÇUE AU GREFFE DE LA COUR LE 21 MAI 1962)

Kiev, le 14 mai 1962.

Cher Monsieur le Président,

En réponse à votre lettre n° 34891 du 27 décembre 1961 j'ai l'honneur de vous communiquer que la position de la République socialiste soviétique d'Ukraine au sujet du financement des opérations d'urgence des Nations Unies au Moyen-Orient et au Congo a été à maintes reprises exposée dans les discours des représentants de l'Ukraine aux sessions de l'Assemblée générale de l'ONU.

Aux termes de la Charte des Nations Unies la décision des questions du financement des opérations de ce genre est uniquement de la compétence du Conseil de Sécurité. Tel est justement le sens qui est donné à l'article 11 de la Charte selon lequel toute question se rattachant au maintien de la paix et de la sécurité internationales est renvoyée au Conseil de Sécurité par l'Assemblée générale, avant ou après discussion.

Les articles 43 et 48 de la Charte fixent le droit exclusif du Conseil de Sécurité de prendre des décisions sur les questions concernant la participation de tel ou tel État aux actions ou aux opérations de l'ONU visant à maintenir la paix et la sécurité ainsi que sur l'étendue et les conditions de la participation de tout Membre de l'ONU à ces opérations.

L'article 43 de la Charte ne prévoit aucunement la création de forces armées de l'ONU, il énonce seulement la mise à la disposition du Conseil de Sécurité des forces armées des États Membres des Nations Unies en vertu d'accords spéciaux.

Aucun accord de ce genre ayant trait aux questions susnommées n'a été conclu par le Conseil de Sécurité, pour autant qu'on le sache. Guidés par les considérations qui précèdent, nous sommes d'avis que les opérations de la Force d'urgence des Nations Unies dans le Moyen-Orient ainsi que l'opération de l'ONU au Congo n'imposent aucune obligation financière aux Membres de l'ONU étant donné que ces opérations sont effectuées en violation des obligations de la Charte des Nations Unies.

C'est précisément en raison de ces considérations que la délégation d'Ukraine aux Nations Unies a voté contre la proposition touchant les contributions pour l'application de ces opérations. Quant à la question de savoir si les dépenses entraînées par les opérations de l'ONU au Congo et au Moyen-Orient sont des « dépenses de l'Organisation » au sens de l'article 17, paragraphe 2, de la Charte, nous

devons nous référer à la réponse non équivoque que contient la résolution du 20 décembre de l'Assemblée générale au sujet des opérations des Nations Unies au Congo, résolution indiquant très nettement que « la nature des dépenses extraordinaires afférentes aux opérations des Nations Unies au Congo est essentiellement distincte de celle des dépenses de l'Organisation inscrites au budget ordinaire, si bien qu'il faut appliquer, pour les couvrir, une procédure différente de celle qui est appliquée dans le cas dudit budget ».

Nous pouvons nous référer également aux résolutions antérieures de l'Assemblée générale: aucune d'elles ne considère les dépenses de la Force d'urgence de l'ONU comme les dépenses de l'Organisation au sens de l'article 17, paragraphe 2, de la Charte de l'ONU.

Je vous prie d'agréer, etc.

(Signé) S. SLIPTCHENKO,
Ministre adjoint des Affaires étrangères
de la R. S. S. d'Ukraine.

20. LETTRE DE LA LÉGATION DE LA RÉPUBLIQUE POPULAIRE ROUMAINE EN BELGIQUE ET AU LUXEMBOURG AU PRÉSIDENT DE LA COUR

(REÇUE AU GREFFE DE LA COUR LE 22 MAI 1962)

Bruxelles, le 21 mai 1962.

Monsieur le Président,

En réponse à la lettre n° 34891 du 27 décembre 1961 de la Cour internationale de Justice, relative à la résolution n° 1731 (XVI) du 20 décembre 1961 de l'Assemblée générale de l'ONU, en vertu de laquelle un avis consultatif a été demandé à la Cour concernant le financement des opérations de la force d'urgence des Nations Unies au Moyen-Orient et des opérations des Nations Unies au Congo, j'ai l'honneur de porter à votre connaissance ce qui suit:

La République populaire roumaine réaffirme la position que sa délégation a maintes fois exprimée à cet égard aux sessions de l'Assemblée générale de l'ONU, à savoir que les dépenses en question ne peuvent pas être considérées comme s'encadrant dans les prévisions du paragraphe 2 de l'article 17 de la Charte. En effet, ce paragraphe prévoit que: « Les dépenses de l'Organisation sont supportées par les Membres selon la répartition fixée par l'Assemblée générale. » Dans le paragraphe 1 du même article il est précisé de quelles « dépenses de l'Organisation » il s'agit: « l'Assemblée générale examine et approuve le budget de l'Organisation ». De la rédaction même de ces textes il résulte qu'il s'agit des dépenses ordinaires de l'Organisation, qui constituent le budget annuel de celle-ci. Les dépenses pour les actions nécessaires au maintien de la paix et de la sécurité internationale sont réglementées par le chapitre VII de la Charte et en particulier par son article 43, qui prévoit pour elles un régime différent de celui des dépenses ordinaires et une procédure spéciale. Conformément aux prévisions de cet article, les Membres de l'ONU, à la demande du Conseil de Sécurité, concluent avec celui-ci des accords spéciaux afin de réglementer tous les problèmes qui ont trait aux actions susvisées. Conformément aux prévisions du paragraphe 3 de l'article 43 de la Charte, ces accords spéciaux deviennent obligatoires après leur ratification par les États signataires selon leurs règles constitutionnelles respectives. Les dépenses afférentes à l'exercice des attributions réservées exclusivement au Conseil de Sécurité concernant le maintien de la paix et de la sécurité internationale sont donc des dépenses extraordinaires et n'ont pas le caractère des dépenses ordinaires du budget annuel de l'Organisation. L'existence de deux catégories de dépenses dans le cadre de l'ONU — les dépenses ordinaires, prévues dans le budget annuel de l'Organisation et liées à l'exercice de l'activité courante,

habituelle de celle-ci, et les dépenses extraordinaires liées à d'autres activités — est un fait qui a été reconnu dès la création de l'Organisation. Ce fait a été reconnu même dans la résolution n° 1732 (XVI) du 20 décembre 1961 de l'Assemblée générale, qui dit que « la nature des dépenses extraordinaires afférentes aux opérations des Nations Unies au Congo est essentiellement distincte de celle des dépenses de l'Organisation inscrites au budget ordinaire » et que, pour les couvrir, il faut « une procédure différente » de celle qui est appliquée dans le cas dudit budget. Bien que — ainsi qu'il a été montré plus haut — cette « procédure différente » existe, étant expressément prévue par l'article 43 de la Charte, qui la réserve exclusivement au Conseil de Sécurité, l'Assemblée générale a approuvé et réparti illégalement les dépenses extraordinaires en question, malgré l'opposition de ceux des États Membres qui ont fait valoir leurs arguments politiques et juridiques pour le respect de la Charte. La création, par une résolution de l'Assemblée générale, d'un « budget *ad hoc* » pour les dépenses extraordinaires afférentes aux actions pour le maintien de la paix et de la sécurité internationale constitue donc une violation des dispositions de l'article 43 de la Charte. En conclusion, de ce qu'il a été dit plus haut, il ressort que les dépenses occasionnées par les actions nécessaires pour le maintien de la paix et de la sécurité internationale sont des dépenses extraordinaires, de la compétence exclusive du Conseil de Sécurité, et qu'elles sont réglementées par l'article 43 de la Charte, qui prévoit pour elles un régime différent de celui prévu pour les dépenses ordinaires et une procédure spéciale. Il en résulte indubitablement que ces dépenses ne sont et ne peuvent pas être réglementées par le paragraphe 2 de l'article 17, qui a trait exclusivement au budget ordinaire de l'Organisation. Dans ces conditions et étant donné l'illégalité des décisions de l'Assemblée générale en la matière, la République populaire roumaine ne saurait admettre — ainsi que sa délégation l'a clairement exprimé aux sessions de l'ONU — l'inclusion de ces dépenses extraordinaires de l'Organisation des Nations Unies dans le budget ordinaire de celle-ci.

Ministre de la
République populaire roumaine,

(Signé) P. BABUCI.