

DISSENTING OPINION OF JUDGE MORENO QUINTANA

[Translation]

I greatly regret that I am unable to concur in the advisory opinion given by the majority of my colleagues concerning the financial obligations of Members of the United Nations. It would have been for me a matter of great satisfaction to contribute in the exercise of my judicial function to the most effective realization of the essential purpose of the Organization. But I cannot depart from certain legal concepts which to my mind are of cardinal importance for the interpretation of the Charter; they are those which, in the present case, preclude the Court from giving the opinion requested of it.

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By its resolution 1731 (XVI) of 20 December 1961 the General Assembly of the United Nations requested of the International Court of Justice an advisory opinion which raises an important question, that of the obligations of Member States in the matter of financing the United Nations operations in the Congo and in the Middle East.

On 12 February 1962 the Secretary-General transmitted to the Court an Introductory Note. Seventeen written statements by Member States were also received by the Court on the question of whether the various expenses incurred by the United Nations in financing its operations in the Congo and in the Gaza strip constitute expenses within the meaning of Article 17, paragraph 2, of the Charter. Four other written statements were later presented to the Court. A voluminous dossier consisting of five parts was also transmitted to the Court. This dossier contains a large number of documents and two notes which inform the Court of decisively important facts and circumstances, with a view to enabling it to pronounce on the question submitted to it. Such matters are the debates in organs of the United Nations which led the General Assembly to ask the Court for an advisory opinion; the operations undertaken by the United Nations in the Congo (ONUC); the operations of the United Nations Emergency Force in the Middle East (UNEF), the drafting and adoption by the San Francisco Conference in 1945 of Article 17, paragraph 2, of the Charter; and the procedure and practice of the organs of the United Nations in applying that provision.

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At the origin of the request for an advisory opinion are the discussions which took place between the fifteen members of the Working Group set up on 21 April 1961 by the General Assembly to examine the administrative and budgetary procedures of the United Nations. A number of views were expressed by these members and by the Secretary-General in the Working Group on the legal nature of the financial obligations arising from peace-keeping operations. Having regard to their divergence, the Working Group advised the General Assembly to ask the Court for an advisory opinion, and the General Assembly decided on the wording of the question.

The question was put in a concrete way by that organ, which recognized that it had need for authoritative legal guidance and listed the General Assembly resolutions on the expenditures incurred through the operations undertaken in pursuance of various resolutions of the Security Council and of the General Assembly itself. The wording of the question, from the standpoint of its legal scope, may be reduced to the following: Do the expenditures authorized by the General Assembly with regard to the operations undertaken by the United Nations in the Congo and Middle East constitute expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter?

The Court has already, from 1948 to 1955, devoted six Advisory Opinions to its task in connection with the interpretation of the Charter. These Opinions were, in a sense, at the foundation of the legal implementation of that instrument. They dealt with the admission of new Members to the United Nations, reparation for injuries suffered in the service of the United Nations, the competence of the General Assembly for the admission of a State to the United Nations, the international status of South West Africa, the effect of awards of compensation made by the United Nations Administrative Tribunal and the voting procedure of the General Assembly with regard to the aforementioned territory. The exercise of the Court's advisory jurisdiction which derives from Article 96 of the Charter and from Article 65 of the Statute of the Court—the *interpretatio legis* of the Roman jurists—is growing from year to year. It may soon perhaps become more important than the Court's jurisdiction in contentious proceedings, which does not always satisfy the aspirations of those who would have preferred the tribunal with international jurisdiction to be established on other bases. To say that this new advisory opinion might decide the fate of the United Nations in the years to come would certainly be rash, but it may at least be affirmed that its effects would be far-reaching. It relates to a matter as decisive as that of the financing of the Organization for the achievement of its purpose of maintaining international peace and security.

An egalitarian solution, taking the financing of operations mainly based on military action as being a normal expense of the

Organization to be apportioned among all Member States, seems an attractive one from the point of view of the cause served by the purpose in question. But it does not seem to be very desirable in the light of the small financial resources of a great number of Member States, many of which are under-developed countries. On the other hand, a qualified solution which made such financing an exclusive responsibility of the members of the Security Council would be directed at the States directly committed to that cause. It would perhaps have the disadvantage of limiting all action in this connection out of concern for the financial consequences. That then is the setting today of the question put to the Court. But the latter has to examine the question from the point of view of law and not from the political point of view.

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To situate the context in which the question submitted to the Court arises, it is necessary to go back to the origins of the financial difficulties encountered by the United Nations when it had to assist Member States which asked for the Organization's support with a view to the maintenance of the principal purpose assigned to it by the Charter. A short historical account would seem in any case to be necessary.

In October 1956, an act of aggression was launched against Egypt, a Member State of the United Nations, by three other Member States, two of which were permanent members of the Security Council. Since the lack of agreement among the permanent members prevented the Security Council from fulfilling its essential task, the General Assembly set up an international emergency force (UNEF) and adopted the necessary measures. Seven resolutions of that organ adopted between 1956 and 1958 dealt with the matter. Eight other resolutions, from 1956 to 1960, dealt with the financing of the related operations. The request for an opinion lists these. In short, having regard to the views expressed on several occasions in the competent organs of the United Nations by the Secretary-General, the General Assembly finally took up the position indicated in its resolution 1575 (XV) of 20 December 1960, according to which the amount authorized for the financing of the expenditure on the operations in the Middle East for 1961 would be met by all Member States on the basis of the regular scale of assessment.

Soon after, as a result of the state of anarchy into which the Congo, a new Member of the United Nations, seemed to be falling, in 1960 and 1961 the Security Council adopted five resolutions which decided on operations by the Organization in that country (ONUC); and, in the same years, the General Assembly in its turn adopted four resolutions on the subject. The financing of these operations was the subject, also in 1960 and in 1961, of five resolutions by the General Assembly. All these resolutions are indicated

in the request for opinion. Although the Security Council adopted measures, in the case of the Congo, which it could not take in the case of the Middle East, it did not consider the question of financing them. Lengthy debates began in the Fifth Committee, where various views on the subject were expressed. On 20 December 1960, the General Assembly declared in its resolution 1583 (XV) that the expenses involved in the operations in the Congo constituted expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter, and that the assessment thereof against Member States created binding legal obligations on them to pay their assessed shares.

This historical account shows how, faced with divergent opinions, the General Assembly acted to assure the efficacy of the measures taken by itself or by the Security Council in pursuance of the lofty mission to maintain international peace and security. Are the decisions taken by the General Assembly on the financing of operations in the Middle East and in the Congo binding or not binding on all the Member States of the United Nations and, if they are binding, in what degree? That is what should be examined.

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The Court has received twenty-one written statements by Member States of the United Nations on the question referred to it, in addition to the ample account which the Secretary-General has given in his Introductory Note for the Court. It has also heard oral statements by the representatives of nine States which confirmed the position set forth in their written statements. A further indication of the various positions taken up is also given by the views more than once expressed by the Secretary-General in the Fifth Committee and the Advisory Committee, in his reports to the General Assembly, in the opinions expressed by various delegations at the meetings of the competent organs, and in the legal tone itself of the resolutions of the General Assembly. It is now necessary to extract the substance of the various views, reduce them to common denominators so as to arrive at a summary and a synthesis, and strike the balance.

All this material could be simplistically classified by establishing whether the answer to the question is *yes* or *no*. But such a method would be quite inadequate for the purposes which must be sought. Only a concrete exegesis of the different positions taken up and the grounds on which they are based can furnish a reasonable working basis. From this point of view, and without taking into account certain variants or reservations which have been expressed, four principal contentions can be discerned: an affirmative contention, another contention apparently affirmative but subject to certain definite conditions, a negative contention, and lastly, the contention according to which it is not possible for the Court to pronounce on the question.

As an ideological position, the affirmative contention is the most attractive. It remains to be seen whether it is correct from the legal point of view. It takes the view that the expenses involved in the operations of the United Nations in the Middle East and in the Congo are expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter. Although of a different nature from those covered by the administrative budget, they are normal expenses to ensure the maintenance of international peace and security, the Organization's principal purpose. They are to be borne by all the Member States and should be apportioned among them; all the States are under a legal obligation to pay their share according to the scale of assessment laid down for that budget. The collection of the payments in question is a technical matter of book-keeping which should be solved in some appropriate way: incorporation in the ordinary budget, setting up of an additional budget, or the opening of a special account. Apart from questions of detail, such is the contention upheld by the Secretary-General and adopted, presumably, by the resolutions of the General Assembly, in particular by resolution 1583 (XV) of 20 December 1960. This view is also upheld, in their written statements, by the Governments of Italy, Denmark, the Netherlands, the United States of America, Canada, Japan, Australia, the United Kingdom and Ireland; and also, in the oral proceedings, by the Norwegian Government.

The other affirmative contention nevertheless makes its effectiveness dependent on the fulfilment of certain conditions. It does not dispute the legal basis of the reply to be made to the question, but it attributes a voluntary character to the contributions requested for military operations, and subordinates them to the capacity of the Governments concerned to pay or to the authorization required by their constitutional processes. These various positions were taken in 1959 by certain delegations in the Fifth Committee.

The negative contention derives its main strength from prescriptions concerning the distribution of functions. It comes from the fact that under Articles 11, 39, 41, 42, 43 and 48 of the Charter, any action involving force or the use of armed forces comes within the competence of the Security Council. The General Assembly may make recommendations as to the maintenance of international peace and security, but may not take measures with regard to them. It is therefore for the Security Council and not for the General Assembly to make the necessary financial arrangements for the fulfilment of its specific function. Any decision taken on such a matter should be based on the special agreements between the Security Council and the Member States of the United Nations to which Article 43 of the Charter refers. The expenses referred to in Article 17, paragraph 2, of the Charter are only those of the budget drawn up for the normal activities of the Organization and not

expenses for other activities. It is on those Member States whose action brought about the establishment of a military force that the obligation to contribute to financing it falls. And Member States which have not agreed to the establishment of the force do not have that obligation. This contention was advanced in the Fifth Committee and in various written statements. It is the view taken, in different forms, by the Governments of the Soviet Union, Mexico, India, Upper Volta, Czechoslovakia, Portugal, Spain, South Africa, Byelorussia, Bulgaria, the Ukraine and Romania. It may be deduced from it, in particular as regards the position taken up by the States of the Soviet group, that the legal non-obligation to pay the expenses in question is based not only on the invalidity of the resolutions under which the operations were undertaken, but also on the fact that the expenses are not those referred to in Article 17, paragraph 2. This last argument, as an established fact, would straightway suffice to furnish the reply to the question submitted in the request for an advisory opinion.

A fourth contention is that advanced by France, and deals with a fundamental question of procedure in this matter. In this view the question put to the Court by the request for an opinion was put in an equivocal way. The circumstances in which the Court is being consulted are not such as to make it possible to obtain the legal opinion which is expected of it. These circumstances would tend to involve, by means of a devious procedure, a revision *de facto* of the constitutional rules of the Charter, which would go beyond its letter and spirit. The same point of view was also put forward by South Africa.

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The legal problem for the Court's consideration is, therefore, that of the interpretation of Article 17, paragraph 2, of the Charter, which runs: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." To decide the question, it is necessary to consider various elements of appreciation. These include the general principles which governed the adoption of the text, the scope and significance of the resolutions by which it has been applied, the administrative procedures and practices followed in the matter, the preparatory work which preceded the adoption of the text, and, finally, the exegesis of the text itself. Last of all—unless it is done *ab initio*, that is a question of method—the problem of the competence of the Court to reply to the question as it has been submitted to it must be dealt with.

Does the provision in question, whose scope seems to be of a general nature, apply to *all the expenses* of the Organization or *only to the expenses* related to its normal activities? The phraseology used is ambiguous and leaves ample room for doubt. The provision must clearly have a meaning because it is "within the mean-

ing of Article 17, paragraph 2, of the Charter" that the General Assembly submits the question to the Court. With this provision must also be linked that of paragraph 1 of the same Article, which refers to the "budget of the Organization". Is by this budget to be understood that relating to normal activities or one including all the expenses, both current and extraordinary, of the Organization? For there is a technical relationship of cause and effect between the budget which authorizes the necessary appropriations and the resulting expenditure. No single conclusion can be drawn from the successive positions adopted by the General Assembly and by the Secretary-General on this problem. For, although the final position adopted by both one and the other seems to be that which has already been put forth, from other documents a different position emerges. In the Secretary-General's Report of 6 November it is stated that every nation providing a unit for UNEF 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. In its turn the General Assembly, by its resolution 1619 (XV) of 21 April 1961, recognized 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".

It might be considered in the first place, as a starting point for formulating an advisory opinion on the matter, whether an international Organization such as the United Nations does or does not enjoy the financial independence necessary to implement the purposes and principles which are at the basis of its existence. The reply is at once seen to be in the affirmative. This solution was confirmed, though from different situations, in the Advisory Opinions which the Court gave in 1949 on the reparation for injuries suffered in the service of the United Nations, and again in 1954 on the effect of awards made by the United Nations Administrative Tribunal. It is the necessary consequence of the establishment of an international organization, but it does not however imply that any specific organ should take certain measures, nor that all the expenses must necessarily be borne by all the Members. Nothing stands in the way of an appropriate distribution of responsibilities, obligations and powers. That depends not only upon the degree of interest involved but also on the degree of intervention assigned to each category of Members by the constitutive instrument of the Organization. Each organ has its due function. The implied powers which may derive from the Charter so that the Organization may achieve all its purposes are not to be invoked when explicit powers provide expressly for the eventualities under consideration. The problem, thus stated, seems to focus on the

specific provisions which govern the functioning of the organs and the financial arrangements of the United Nations and not on those provisions laying down its general purposes.

The validity of the resolutions by which the General Assembly and the Security Council undertook operations in the Middle East and in the Congo in the name of the United Nations has been questioned by several delegations, in particular those of Czechoslovakia, the Soviet Union and Byelorussia. Consequently, the expenditure incurred by these operations (authorized by resolutions of the General Assembly) would, in this view, involve no financial obligation for Members of the Organization. From this standpoint it may be inferred that, even if the expenditures in question might by their nature be binding on all the Member States, the latter would nonetheless be relieved from all obligation by virtue of the invalidity of the resolutions at their base. An opposite reasoning is to be found in the opinion expressed in the Fifth Committee in 1961 by the Secretary-General—and this is the opinion of the Netherlands also—namely, that this obligation does exist in view of the fact that the expenditures in question did not relate to action involving force under Article 41 of the Charter, nor to the use of armed forces provided for in Articles 42 and 43, but were expenses for the normal activities of the Organization. The payment of these expenses would thus be an obligation to be borne by all the Members of the United Nations, even when the expenditure involved by the action in question was of an extraordinary nature.

This distinction does not however seem to be well founded. There is no warrant for it in the Charter. Any use of armed forces intended for whatever purpose implies by definition enforcement action, and all expenses other than those in support of the use of such forces—even those for activities which are non-military but which relate to the operation undertaken—partake of the same character. The case of Katanga, which from the end of 1961 until the beginning of the present year has been the scene of events which are a matter of public knowledge, is particularly revealing in this connection. It would be difficult to infer therefrom a conclusion that the United Nations forces did not undertake enforcement action, or that, even if coercive in nature, it did not fall within the purview of Article 11 of the Charter which refers to a "State". When there have been dead and wounded, bombardments on both sides, when civilian populations have paid the price, when a cease-fire and other military agreements have been negotiated between two belligerent groups, it is not easy to evade the analysis of the question of enforcement action by restricting the interpretation to a purely grammatical construction discountenanced in previous decisions of the Court. Nor is it possible to disregard in such a case the action of a belligerent community recognized under international law as possessing a legal personality. And what would be the position if tomorrow Israeli armed forces, renewing the aggression unleashed in 1956 against

Egypt, attacked the Gaza strip and obliged the United Nations forces to repel them? Would this be enforcement action or would it not? The facts would speak the answer for themselves. It is then, as laid down in Article 24 of the Charter, for the Security Council and not the General Assembly to exercise the specific powers derived from the maintenance of international peace and security.

The problem discussed by the delegations referred to and by the Secretary-General is in every way of the greatest legal interest with respect to the interpretation of the Charter. In its written statement the French Government makes it an important question from the point of view of the expenses involved. South Africa's written statement makes the same point. This question could have been submitted to the Court as an integral part of the request for an advisory opinion, and as a preliminary question to the one submitted in the present request. But the General Assembly did not see things that way, and has not asked the Court to pronounce on the validity of the resolutions in question nor to say whether the operations launched by the United Nations in the Middle East and in the Congo are a consequence of the normal activity of the Organization, or whether they constitute action involving force or the use of armed forces as provided for in the Charter. The reply to the request which is made to the Court has been restricted and comes exclusively within the ambit of Article 17, paragraph 2. This is a great pity, for it prevents the Court from bringing its judgment to bear on the legally decisive factor in the case and hence perhaps from solving the problem which is put to it for consideration.

As to the procedure and practice followed in budgetary matters by organs of the United Nations in pursuance of the above-mentioned provision of the Charter, it is not to be denied that they are of definite technical importance. They show in what way the regular budget of the Organization is drawn up, how the estimates are approved, and in what way the financial administration is carried out. Important information is also given on other book-keeping aspects and particularly on those concerning the special accounts opened for the United Nations operations in the Middle East and in the Congo. A consequence may be the adoption of an actual stand on the problem at issue; which was the case in respect of the relevant resolutions of the General Assembly. Certainly none of these procedures and practices constitute an application of the law, but they do nonetheless make clear the necessity for a technical separation between the normal administrative expenses of the Organization and those called for by exceptional circumstances.

The preparatory work leading to the adoption of a given text can certainly be very useful when the text is not sufficiently clear. That is obviously not the case with respect to Article 17, paragraph 2, of

the Charter, which deals without any doubt with the expenses of the Organization. But to what expenses does it refer, since it does not limit them to certain expenses only nor does it include them all? For it was stressed in the debates of the special committee of the San Francisco Conference that the General Assembly was the only organ of the United Nations authorized to approve the budget of the Organization, that the expenses were to be borne by its Members, that the General Assembly should fix the scale of contributions, etc. None of these arguments however constitutes a decisive factor for solving the present case. They may be used to support either a liberal or a restrictive construction. From the work of the San Francisco Conference, a conclusion *a contrario sensu* might however be inferred from what was said as to the application of the sanction provided for by Article 19 of the Charter, namely that if expenditures of the kind under discussion do not involve the application of the sanction in question they are not the expenses mentioned in Article 17, paragraph 2. The reply requested from the Court remains essentially a question of interpretation and, therefore, of legal exegesis.

What did Article 17, paragraph 2, of the Charter intend to mean when it laid down that the expenses of the Organization shall be borne by its Members? This paragraph certainly did not intend to make any innovation in the matter, but rather to lay down a rule common to almost all types of international organization. It would be difficult to find any international organization where all the members benefited and only some of them bore the expenses. The Article has a general bearing which does not seem to discriminate between different types of expenditure, and the saying *ubi lex non distinguit, nec nos distinguere debemus* would in any case be applicable to it. But the least expert mind is inclined to understand that only normal expenses are meant, that is to say those that are indispensable in any organization—in other words, the administrative expenses which are those that could not be dispensed with without the organization disappearing. For, if it were not so, and if all the Member States of the United Nations were obliged to bear burdens over and above the responsibility to which they had committed themselves, then the financial power of the Organization would be substituted for the national powers of each of its Members. It is established that the United Nations is not a super-State, as the Court affirmed in its Advisory Opinion on the reparation for injuries suffered in the service of the United Nations (see *I.C.J. Reports 1949*, p. 179). The Organization is an association of States with a view to the achievement of certain common purposes, and of which the constitutive instrument recognizes the sovereign equality. All other expenditure, such as that deriving from the exercise of functions proper to each organ of the United Nations, has its own particular regulations governing it, and does not appear to have been con-

sidered in the request for an advisory opinion. This point is particularly applicable to the circumstances under which the special agreements mentioned in Article 43 of the Charter are drawn up.

In Article 23 the Charter provides for two categories of Members in the composition of the Security Council: the permanent Members and the non-permanent Members. The permanent Members have a seat on the Council *ad vitam societatis*; the non-permanent Members act for the duration of their mandate as though they were permanent Members, apart from the right of *veto*. According to Article 24 of the Charter, the Security Council has the "primary responsibility for the maintenance of international peace and security". The responsibility is conferred by all the other Members on whose behalf the Security Council acts and it supposes a mandate of honour which cannot be renounced or revoked as far as the permanent Members are concerned; it is at the very basis of the United Nations. Article 106 of the Charter makes this point particularly clear: it lays on the parties to the 1943 Four-Nation Declaration, and France, pending the coming into force of the special agreements referred to in Article 43, the responsibility for "such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security". This task is incumbent, first of all, upon this limited group of States, next on the Members of the Security Council and not on the other Members of the Organization. The reference could not be clearer. But such a privilege would seem also to have its counterpart. The exercise of the right to administer world affairs goes together with the duty of furnishing the necessary means for the accomplishment of that duty. It is therefore the obligation of the Members of the Security Council to pay the expenses incurred by such operations as those in the Middle East and the Congo.

Hence, a legal interpretation of the provision in question leads to the view that the expenses referred to in Article 17, paragraph 2, of the Charter are the current administrative expenses of the Organization, and not other expenditure such as that resulting from the undertaking of operations by military forces.

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With regard to the request which is made for an advisory opinion from the Court there are three solutions which the Court may consider. For the circumstances in which the matter has been referred to the Court require a prior decision as to its competence in the case. It cannot be denied that an advisory opinion by the Court must be of utility to the United Nations. The request in fact excludes from the opinion requested the question of the validity of the basic resolutions in which the General Assembly decided to undertake the operations in the Middle East and in the Congo, and

that of the resolutions authorizing the relevant expenditures. That can clearly constitute a serious obstacle to the fulfilment of its judicial task by the Court. The Court might therefore deliver its opinion in a purely formal fashion in view of the limited frame of reference of the request; deliver an opinion on the substance while nonetheless analysing the validity of the resolutions in question; or, again, might say that the circumstances in which the request has been made prevent the Court from delivering the opinion which is expected of it. This is a question of procedure which, connected with the much more important problem of the Court's competence in the matter, must be solved at the outset.

If the Court should deliver in a formal manner the Opinion requested, it should, as it were, start from the idea that the expenditures in question were validly authorized by the General Assembly. Their validity derived from the vote of two thirds of the Members would dispense the Court from deciding the question of the validity of the resolutions which were at the base of the military operations. In that case the question would be a clearly defined legal one. In its Advisory Opinion on the conditions of admission of a State to membership in the United Nations the Court stated: "To determine the meaning of a treaty provision—to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein—is a problem of interpretation and consequently a legal question" (see *I.C.J. Reports 1947-1948*, p. 61). But this would be in any case a very incomplete background for a judgment, owing to the absence of the legal analysis required by the circumstances of the case. An opinion given under these conditions would also be of a nature to distort the legal aspects of the case. The Court would, despite itself, be making itself the intermediary for an affirmative or a negative solution, which would however rest on a hypothetical basis only. Its opinion would therefore be of but trifling help to the United Nations in the fulfilment of its purposes. The Court's prestige would suffer, and the Organization would derive no practical benefit.

If the Court chose to deliver a reply of substance, it would have to pronounce on both the intrinsic and formal validity of the resolutions involved. That would amount to passing judgment on a politico-legal phenomenon by virtue of which the General Assembly, naving in view the effectiveness of the pacifist system of the Charter, has in recent years substituted itself for the function assigned to the Security Council. Although Article 18 of the Charter lists the "important questions" which are the subject of "decisions" of the General Assembly, such decisions, when concerned with the question of the maintenance of international peace and security, merely assume the form of "recommendations"; nor is there any international organ which, by its decisions approving recommendations, can alter their intrinsic character, which is non-obligatory. No type of action other than enforcement action for the maintenance of international peace and security, which is the exclusive prerogative

of the Security Council, is provided for by the Charter as the function of any other organ. The Court might perhaps in that case accord an extra-legal, if not legal, character to the resolutions by which the General Assembly, faced with the paralysis of the Security Council, took over the function which the Charter allots to the latter body with a view to securing the primary purpose of the Organization to maintain international peace and security. Such a process of adaptation of the original provisions of the Charter to the new circumstances of international life is in any case beyond the Court's scope of interpretation of the Charter. It would assume the exercise by that organ, by indirect means, of an activity *de lege ferenda* which is assigned to it neither by the Charter nor by its Statute.

There thus remains for the Court only the third course as an adequate solution; namely, to inform the General Assembly, as the organ of the United Nations which has requested the opinion, that the Court is prevented from delivering an opinion in view of the limitation imported into the request. Such a procedure would be absolutely consistent and in accordance with the right that the Court possesses, under Article 65 of its Statute, to accede or not accede to a request made to it. It is unnecessary to recall the use in this Article of the word *may*—"the Court may give an Advisory Opinion...". Here, no injunction or order is laid down, as would have been the case if the word *must* had been used. Furthermore this interpretation has been confirmed by the Court in previous decisions. "The permissive provision of Article 65 of the Statute"—the Court stated in its Advisory Opinion on Reservations to the Genocide Convention—"recognizes that the Court has the power to decide whether the circumstances of a particular case are such as to lead the Court to decline to reply to the request for an opinion" (see *I.C.J. Reports 1951*, p. 19). This interpretation was also applied in the Advisory Opinion requested of the Permanent Court on the question of Eastern Carelia, where the Court said: "It appears to the Court that there are other cogent reasons which render it very inexpedient that the Court should attempt to deal with the present question" (see P.C.I.J., Series B, No. 5, p. 28).

In its Opinion on Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against UNESCO, the Court referred to the "compelling reasons" which would cause the Court to decline to give an advisory opinion requested within the framework of the indispensable collaboration with the organs of the United Nations (see *I.C.J. Reports 1956*, p. 86). The present case, in my opinion, furnishes compelling reasons militating against the possibility of its fulfilling with the necessary effectiveness and indeed expediency the advisory function assigned to it.

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In conclusion, it will be appropriate to summarize the relevant points of view as follows:

(1) The Charter of the United Nations gave the Organization the financial independence required for the fulfilment of its purposes, but this does not mean that all the Members are under the obligation to contribute to all the expenses which may result;

(2) The question of the legal nature of the resolutions by which the General Assembly and the Security Council undertook the operations in the Middle East and in the Congo constitutes the decisive element in the present case;

(3) The budgetary procedures and practices of the organs of the United Nations, which are of a technical and not of a legal character, do not on that account prevent a clear separation being made between two categories of expenses;

(4) The preparatory work of the San Francisco Conference does not indicate in any precise fashion which of the Members of the United Nations are required to contribute to the financing of specific operations, but they enable the reply to the question raised to be inferred *a contrario sensu*;

(5) The exegesis of Article 17, paragraph 2, leads to giving to its words the legal construction which seems to proceed from it, in the sense that the expenses it refers to are the administrative expenses of the Organization and not those expenses which, by their nature, are the exclusive responsibility of the Members of the Security Council;

(6) The circumstances in which the question put to the Court in the request for an advisory opinion is worded do not, in view of the resulting limitation of its competence, permit the Court conscientiously to accomplish its task in the present case.

(Signed) Lucio M. MORENO QUINTANA.