

CERTAIN EXPENSES OF THE UNITED NATIONS (ARTICLE 17, PARAGRAPH 2, OF THE CHARTER)

Advisory Opinion of 20 July 1962

The question of certain expenses of the United Nations (Article 17, paragraph 2, of the Charter) had been put to the Court for an advisory opinion by a resolution adopted by the General Assembly of the United Nations of 20 December 1961.

By nine votes to five the Court declared that the expenditures authorized in certain General Assembly resolutions enumerated in the request for opinion, relating to the United Nations operations in the Congo and in the Middle East undertaken in pursuance of Security Council and General Assembly resolutions likewise enumerated in the request, were "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter of the United Nations.

Judges Sir Percy Spender, Sir Gerald Fitzmaurice and Morelli appended to the Opinion of the Court statements of their Separate Opinions. President Winiarski and Judges Basdevant, Moreno Quintana, Koretsky and Bustamante y Rivero appended to the Opinion of the Court statements of their Dissenting Opinions.

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The President of the Court, in pursuance of Article 66, paragraph 2, of the Statute, having considered that the States Members of the United Nations were likely to be able to furnish information on the question, fixed 20 February 1962 as the time-limit within which the Court would be prepared to receive written statements from them. The following Members of the United Nations submitted statements, notes or letters setting forth their views: Australia, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Denmark, France, Ireland, Italy, Japan, the Netherlands, Portugal, Romania, South Africa, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Upper Volta. At hearings held from 14 to 21 May the Court heard oral statements by the representatives of Canada, the Netherlands, Italy, the United Kingdom of Great Britain and Northern Ireland, Norway, Australia, Ireland, the Union of Soviet Socialist Republics and the United States of America.

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In its opinion the Court first recalled that it had been argued that the Court should refuse to give an opinion, the question put to it being of a political nature, and declared that it could not attribute a political character to a request which invited it to undertake an essentially judicial task, namely the interpretation of a treaty provision. In this connection the Court recalled the principles previously stated by the Permanent Court of International Justice in the Advisory Opinion concerning the *Status of Eastern Carelia* and by the present Court in the Advisory Opinions concerning the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*

(*First Phase*) and *Judgments of the Administrative Tribunal of the ILO upon Complaints made against Unesco*, and found no "compelling reason" why it should not give the advisory opinion which the General Assembly had requested of it.

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The Court then examined the view that it should take into consideration the rejection of a French amendment to the request for advisory opinion. The amendment would have asked the Court to give an opinion on the question whether the expenditures related to the indicated operations had been "decided on in conformity with the provisions of the Charter".

On this point the Court observed that the rejection of the French amendment did not constitute a directive to the Court to exclude from its consideration the question whether certain expenditures were "decided on in conformity with the Charter", if the Court found such consideration appropriate. Nor could the Court agree that the rejection of the French amendment had any bearing upon the question whether the General Assembly had sought to preclude the Court from interpreting Article 17 in the light of other articles of the Charter, that is, in the whole context of the treaty.

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Turning then to the question which had been posed, the Court found that it involved an interpretation of Article 17, paragraph 2, of the Charter, and that the first question was that of identifying what are "the expenses of the Organization".

The text of Article 17, paragraph 2, referred to "the expenses of the Organization" without any further explicit definition. The interpretation of the word "expenses" had been linked with the word "budget" in paragraph 1 of that Article and it had been contended that in both cases the qualifying adjective "regular" or "administrative" should be understood to be implied. According to the Court this would be possible only if such qualification must necessarily be implied from the provisions of the Charter considered as a whole.

Concerning the word "budget" in paragraph 1 of Article 17, the Court found that the distinction between "administrative budgets" and "operational budgets" had not been absent from the minds of the drafters of the Charter since it was provided in paragraph 3 of the same Article that the General Assembly "shall examine the administrative budgets" of the specialized agencies: if the drafters had intended that paragraph 1 should be limited to the administrative budget of the United Nations organization itself, the word "administrative" would have been inserted in paragraph 1 as it had been in paragraph 3. Actually, the practice of the Organization had been from the outset to include in the budget items which would not fall within any of the definitions of "administrative budget" which had been advanced. The General Assembly had consistently included in the annual budget resolu-

tions provision for "unforeseen and extraordinary expenses" arising in relation to the "maintenance of peace and security". Every year from 1947 through 1959 the resolutions on these unforeseen and extraordinary expenses have been adopted without a dissenting vote, except for 1952, 1953 and 1954, owing to the fact that in those years the resolution included the specification of a controversial item—United Nations Korean war decorations. Finally, in 1961, the report of the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations had recorded the adoption without opposition of a statement that "investigations and observation operations undertaken by the Organization to prevent possible aggression should be financed as part of the regular budget of the United Nations." Taking these facts into consideration, the Court concluded that there was no justification for reading into the text of Article 17, paragraph 1, any limiting or qualifying word before the word "budget".

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Turning to paragraph 2 of Article 17, the Court observed that, on its face, the term "expenses of the Organization" meant all the expenses and not just certain types of expenses which might be referred to as "regular expenses". Finding that an examination of other parts of the Charter showed the variety of expenses which must inevitably be included within the "expenses of the Organization", the Court did not perceive any basis for challenging the legality of the settled practice of including such expenses in the budgetary amounts which the General Assembly apportioned among the Members in accordance with the authority which was given to it by Article 17, paragraph 2.

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Passing then to the consideration of Article 17 from the standpoint of its place in the general structure and scheme of the Charter, the Court found that the general purposes of that Article were the vesting of control over the finances of the Organization and the levying of apportioned amounts of the expenses of the Organization. Replying to the argument that expenses resulting from operations for the maintenance of international peace and security were not "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, inasmuch as they fell to be dealt with exclusively by the Security Council, and more especially through agreements negotiated in accordance with Article 43 of the Charter, the Court found that under Article 24 the responsibility of the Security Council in the matter was "primary", not exclusive. The Charter made it abundantly clear that the General Assembly was also to be concerned with international peace and security. Under paragraph 2 of Article 17 the General Assembly was given the power to apportion the expenses among the Members, which created the obligation of each to bear that part of the expenses which was apportioned to it. When those expenses included expenditures for the maintenance of peace and security, which were not otherwise provided for, it was the General Assembly which had the authority to apportion the latter amounts among the Members. None of the provisions determining the respective functions and powers of the Security Council and the General Assembly supported the view that such distribution excluded from the powers of the General Assembly the power to pro-

vide for the financing of measures designed to maintain peace and security.

Replying to the argument that with regard to the maintenance of international peace and security the budgetary authority of the General Assembly is limited by Article 11, paragraph 2, under which "any such 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", the Court considered that the action referred to in that provision was coercive or enforcement action. In this context, the word "action" must mean such action as was solely within the province of the Security Council, namely that indicated by the title of Chapter VII of the Charter: "action with respect to threats to the peace, breaches of the peace, and acts of aggression". If the interpretation of the word "action" in Article 11, paragraph 2, were that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the General Assembly might make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article 11, paragraph 2, had no application where the necessary action was not enforcement action.

The Court found therefore that the argument drawn from Article 11, paragraph 2, to limit the budgetary authority of the General Assembly in respect of the maintenance of international peace and security was unfounded.

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The Court then turned to the examination of the argument drawn from Article 43 of the Charter which provides that Members shall negotiate agreements with the Security Council on its initiative, for the purpose of maintaining international peace and security. The argument was that such agreements were intended to include specifications concerning the allocation of costs of such enforcement actions as might be taken by direction of the Security Council, and that it was only the Security Council which had the authority to arrange for meeting such costs.

After stating that Article 43 was not applicable, the Court added that even if it were applicable, the Court could not accept such an interpretation of its text for the following reasons. A Member State would be entitled, during the negotiation of such agreements, to insist, and the Security Council would be entitled to agree, that some part of the expense should be borne by the Organization. In that case such expense would form part of the expenses of the Organization and would fall to be apportioned by the General Assembly under Article 17. Moreover, it followed from Article 50 of the Charter that the Security Council might determine that an overburdened State was entitled to some financial assistance. Such financial assistance, if afforded by the Organization, as it might be, would clearly constitute part of the "expenses of the Organization". Furthermore, the Court considered that it could not be said that the Charter had left the Security Council impotent in the face of an emergency situation when agreements under Article 43 had not been concluded. It must lie within the power of the Security Council to police a situation even though it did not resort to enforcement action against a State. The costs of actions which the Security Council was authorized to take therefore constituted "expenses of the Organization within the meaning of Article 17, paragraph 2".

Having considered the general problem of the interpretation of Article 17, paragraph 2, in the light of the general structure of the Charter and of the respective functions of the General Assembly and the Security Council, with a view to determining the meaning of the phrase "the expenses of the Organization", the Court proceeded to examine the expenditures enumerated in the request for the advisory opinion. It agreed that such expenditures must be tested by their relationship to the purposes of the United Nations in the sense that if an expenditure were made for a purpose which was not one of the purposes of the United Nations, it could not be considered an "expense of the Organization". When the Organization took action which warranted the assertion that it was appropriate for the fulfilment of one of the purposes of the United Nations set forth in Article 1 of the Charter, the presumption was that such action was not *ultra vires* the Organization. If the action were taken by the wrong organ, it was irregular, but this would not necessarily mean that the expense incurred was not an expense of the Organization. Both national and international law contemplated cases in which the body corporate or politic might be bound by an *ultra vires* act of an agent. As the United Nations Charter included no procedure for determining the validity of the acts of the organs of the United Nations, each organ must, in the first place at least, determine its own jurisdiction. If the Security Council adopted a resolution purportedly for the maintenance of international peace and security and if, in accordance with such resolution, the Secretary-General incurred financial obligations, those amounts must be presumed to constitute "expenses of the Organization". Recalling its Opinion concerning *Effects of Awards of Compensation made by the United Nations Administrative Tribunal*, the Court declared that obligations of the Organization might be incurred by the Secretary-General acting on the authority of the Security Council or of the General Assembly, and that the General Assembly "has no alternative but to honour these engagements".

This reasoning, applied to the resolutions mentioned in the request for the advisory opinion, might suffice as a basis for the opinion of the Court. The Court went on, however, to examine separately the expenditures relating to the United Nations Emergency Force in the Middle East (UNEF) and those relating to the United Nations operations in the Congo (ONUC).

As regards UNEF, the Court recalled that it was to be set up with the consent of the Nations concerned, which dismissed the notion that it constituted measures of enforcement. On the other hand, it was apparent that the UNEF operations were undertaken to fulfil a prime purpose of the United Nations, that is, to promote and maintain a peaceful settlement of the situation. The Secretary-General had therefore properly exercised the authority given him to incur financial obligations; the expenses provided for by such obligations must be considered "expenses of the Organization". Replying to the argument that the General Assembly never, either directly or indirectly, regarded the expenses of UNEF as "expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter", the Court stated that it could not agree with this interpretation. Analyzing the resolutions relating to the financing of UNEF, the Court found that the establishment of a special account did not necessarily mean that the funds in it were not to be derived from contributions of Members as apportioned by the General Assembly. The resolutions on this matter, which had been adopted by the requisite two-thirds majority, must have rested upon

the conclusion that the expenses of UNEF were "expenses of the Organization" since otherwise the General Assembly would have had no authority to decide that they "shall be borne by the United Nations" or to apportion them among the Members. The Court found therefore that, from year to year, the expenses of UNEF had been treated by the General Assembly as expenses of the Organization within the meaning of Article 17, paragraph 2.

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Turning next to the operations in the Congo, the Court recalled that they had been initially authorized by the Security Council in the resolution of 14 July 1960, which had been adopted without a dissenting vote. The resolution, in the light of the appeal from the Government of the Congo, the report of the Secretary-General and the debate in the Security Council, had clearly been adopted with a view to maintaining international peace and security. Reviewing the resolutions and reports of the Secretary-General relating to these operations, the Court found that in the light of such a record of reiterated consideration, confirmation, approval and ratification by the Security Council and by the General Assembly of the actions of the Secretary-General, it was impossible to reach the conclusion that the operations in the Congo usurped or impinged upon the prerogatives conferred by the Charter of the Security Council. These operations did not involve "preventive or enforcement measures" against any State under Charter VII and therefore did not constitute "action" as that term was used in Article 11. The financial obligations which the Secretary-General had incurred, in accordance with the clear and reiterated authority of both the Security Council and the General Assembly, constituted obligations of the Organization for which the General Assembly was entitled to make provision under the authority of Article 17, paragraph 2, of the Charter.

In relation to the financing of the operations in the Congo, the Court, recalling the General Assembly resolutions contemplating the apportionment of the expenses in accordance with the scale of assessment for the regular budget, concluded therefrom that the General Assembly had twice decided that even though certain expenses were "extraordinary" and "essentially different" from those under the "regular budget", they were none the less "expenses of the Organization" to be apportioned in accordance with the power granted to the General Assembly by Article 17, paragraph 2.

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Having thus pointed out on the one hand that the text of Article 17, paragraph 2, of the Charter could lead to the conclusion that the expenses of the Organization were the amounts paid out to defray the costs of carrying out the purposes of the Organization, and on the other hand that the examination of the resolutions authorizing the expenditures referred to in the request for the advisory opinion had led to the finding that they had been incurred with that end in view; and having also analyzed and found unfounded the arguments which had been advanced against the conclusion that the expenditures in question should be considered as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter of the United Nations, the Court arrived at the conclusion that the question submitted to it by the General Assembly must be answered in the affirmative.