

WORLD LAW

CERTAIN EXPENSES OF THE UNITED NATIONS: ADVISORY OPINION

THE first purpose expounded by the United Nations Charter is the maintenance of international peace and security.¹ In recent years, however, the increasing expense of United Nations peace-keeping operations in the Suez and Congo areas has caused the organization serious financial difficulties.² The problem stems from the failure of several members to pay their apportioned shares of the costs.³ These nations, most notably the Soviet Union, have contended that the Suez and Congo activities were not undertaken in conformity with the Charter, and consequently, members of the United Nations are not bound by the resulting obligations.

In an effort to resolve the dispute, the General Assembly requested an Advisory Opinion from the International Court of Justice.⁴ On July 20, 1962, the Court issued such an opinion,⁵ stating that the Suez and Congo expenses were "expenses of the Organization" within the meaning of the Charter.

The Court first considered 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." It had been contended that the phrase "expenses of the Organization" should be construed to encompass only "regular" or "administrative" expenses. Such an interpretation would render the General Assembly powerless to apportion the Suez and Congo expenditures, since these allegedly were of an irregular or non-administrative nature. In rejecting this argument, the court followed traditional methods of statutory construction. The express use of the word "administrative" in a subse-

¹ U.N. CHARTER art. 1, para. 1.

² In an attempt to finance these operations, the General Assembly has authorized the issuance of \$200,000,000.00 in bonds. U.N. GEN. ASS. RES. No. 1739 (XVI) (1961).

³ Over 50% of the U.N. members are in arrears in their contributions to the Suez and Congo operations. U.N. SECRETARIAT, STATEMENT ON THE COLLECTION OF CONTRIBUTIONS AS AT 22 FEBRUARY 1963 (ST/ADM/SER.B/170) (1963).

⁴ Advisory Opinions are obtained pursuant to U.N. CHARTER art. 96; STAT. INT'L Ct. JUST. art. 65. Such opinions are not binding upon U.N. members.

⁵ Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151.

quent paragraph⁶ was held indicative of the drafters' intent not to so limit article 17 (2). The Court concluded that the phrase "expenses of the Organization" refers to *all* expenses incurred by the United Nations in the furtherance of purposes enunciated in its Charter. Because the Suez and Congo operations were conducted pursuant to Charter purposes, that is, the maintenance of international peace and security,⁷ the costs were apportionable by the General Assembly. The actual practice of the United Nations was found to be consistent with this view, since from 1947 through 1959, the General Assembly had made provision for peace-keeping activities in the same manner as for other expenses.

The Soviet Union also claimed that the Suez and Congo expenditures were not "expenses of the Organization," inasmuch as they were not dealt with exclusively by the Security Council. Since the General Assembly's power was allegedly limited to discussing, studying, and recommending, the Soviets argued that it could not impose an obligation to pay the expenses resulting from the implementation of its recommendations. In analyzing this contention, the court construed relevant provisions of the Charter⁸ as giving the Security Council primary but not exclusive responsibility for the maintenance of international peace and security. The Charter was found to have conclusively demonstrated that the General Assembly was also to be concerned with such matters.⁹ In essence, the Court concluded that, absent specific restrictions, the General Assembly could exercise peace-keeping powers equivalent to those of the United Nations as a whole. In the present case the only relevant restriction was article 11 (2), which provides that when "action" is necessary the General Assembly must refer the question to the Security Council. In this context, the majority interpreted "action" to mean coercive or enforcement action.¹⁰ On the other hand, the Suez and Congo operations were set up with the consent of the nations concerned and involved solely peace-keeping functions. Therefore, the Court concluded that the operations did not constitute enforcement action prohibited by article 11 (2).

⁶ U.N. CHARTER art. 17, para. 3.

⁷ U.N. CHARTER art. 2.

⁸ U.N. CHARTER arts. 24, 43.

⁹ U.N. CHARTER arts. 10, 14.

¹⁰ [1962] I.C.J. REP. at 164. Enforcement action is action with respect to threats to the peace, breaches of the peace, and acts of aggression. U.N. CHARTER Ch. VII.

The Court's broad interpretation of the functions and powers of the General Assembly represents a highly significant development in international law. In effect, legal sanction has been given to a shift of responsibility for maintenance of peace from the Security Council to the General Assembly.¹¹

Unfortunately, the opinion was rendered in an advisory capacity and will not have the binding effect of domestic judgments. Even though the General Assembly has accepted the majority decision,¹² total compliance by delinquent members is not assured. Conceivably, a member two full years in arrears could lose its vote under article 19, but it is not clear whether this provision is self-executing or requires a majority or two-thirds vote. The opinion will be of immense practical value, however, in influencing the attitudes toward payment and perhaps the votes of United Nations members.

¹¹ This view is in accordance with the principles of the Uniting for Peace Resolution, whereby the General Assembly may take steps to preserve the peace when the Security Council fails to act. U.N. GEN. ASS. RES. NO. 377A (V) (1950).

¹² U.N. GEN. ASS. RES. NO. 1854 (XVII) (1962).