

PEACE-KEEPING  
BY  
UNITED NATIONS

Z. A. BHUTTO



*Reproduced by:*

**Sani H. Panhwar**

Member Sindh Council, PPP

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**1967**

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*Were half the power that fills the world with terror*

*Were half the wealth bestowed on camps and court*

*Given to redeem the human mind from error,*

*There were no need of arsenals or forts.*

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## Part One

## Introduction

The problem of peace-keeping by the United Nations is of close interest to Pakistan because of our involvement in the Kashmir dispute. Recent events have demonstrated the truth that peacekeeping operations impinge on the life and destiny of peoples much more than any other activity of the World Organization. Upon an understanding of this problem, therefore, will depend our approach to the United Nations itself.

Peace-keeping is a rather journalistic term which has come into vogue only since the middle fifties. It is not an accurate description of the activity by which the United Nations has established its presence in certain situations of actual or potential conflict. However, common usage has now given it an established status. In this presentation, we shall survey the origin and growth of the concept of peace-keeping operations and, then, examine the problem which is confronting the United Nations at present. The problem has first to be understood as it appears within the milieu of the United Nations before we look at it from the perspective of mankind at large.

Any discussion of peace-keeping by the United Nations must take, as its point of departure, the very first operative clause of the United Nations Charter. Article 1 (I) of the Charter affirms that the first of the four purposes of the United Nations is "to maintain international peace and security, and to that end: to take effective collective measures for the prevention 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."

It is this basic stipulation of the Charter which has impressed itself on the consciousness of the world. If one were to let it be the sole frame of reference, a twofold inference would naturally follow: (a) that it makes peace-keeping an essential and inescapable task of the Organization; and (b) that it provides a sufficient basis for any legal appraisal of the activities of the Organization in the sphere of international security. The second part of the inference would mean that, for an operation in this sphere of the United Nations to be legal, it is enough that it should be in conformity with the purpose of maintaining international peace and security.

This would be a simple rule of justification. In reality, however, it is greatly circumscribed by other provisions of the Charter which embody the law of the United Nations. The Charter is a multilateral treaty that prescribes the

constitution of the Organization and establishes a division of functions among its various organs. The provisions of the Charter specifically relevant to the maintenance of international peace and security are set forth in (a) Articles 10, 11 and 14, which deal with the functions and powers of the General Assembly, (b) Articles 24, 25 and 26, which deal with the functions and powers of the Security Council, (c) Chapter VI (Articles 33 to 38) which deals with the pacific settlement of disputes, (d) Chapter VII (Articles 39 to 51).which deals with action with respect to threats to the peace, breaches of the peace and acts of aggression, (e) Article 99, which enables the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, and (f) Article 106 which sets forth transitional security arrangements pending the coming into force of the machinery envisaged in Chapter VII for the exercise of the responsibilities of the Security Council.

It has been a cardinal feature of the experience of the United Nations that, between themselves, these various provisions of the Charter, set forth in different chapters, give no such precise definition of the circumstances under which a peace-keeping activity has to be undertaken, or of the authority by which it can be undertaken, as would prevent any doubt or dispute. Much controversy has arisen over these questions and, at the moment, it touches the very roots of the Organization's existence. Indeed, there is no settled definition of the term "peace-keeping operation", which has come into vogue only since 1950. Since legal norms in international relations are not always applied in practice, the term belongs to an area of approximations rather than definitions, an area where an empirical kind of thinking is far more useful than logical deductions from given premises.

## Nature of Peace-Keeping Operations

In a sense, any activity of the United Nations, even that of discussion or study, which serves to moderate a dispute or temper the asperities of a situation is a peace-keeping activity. But, in this study, when we talk of peace-keeping operations, we talk broadly of those operations of an executive nature which interpose a United Nations presence in order, first, to control a situation and prevent it from further deterioration or leading to a breach of the peace and, second, to facilitate a peaceful settlement of the dispute involved.

These operations fall into five categories, which, however, cannot be precisely differentiated:

- (1) The stationing of observer groups for the observation and surveillance of cease-fires and truce lines: this includes the operations in the Balkans in 1946-47, in Indonesia in 1947-49, in Palestine from 1947 onwards, in Kashmir from 1948 onwards, in Lebanon in 1958, in West Irian in 1962-63, and in Yemen in 1963-64;
- (2) The interposition of military forces to separate two or more national forces and to patrol an international frontier: this includes the United Nations Emergency Force (UNEF) in the Gaza strip;
- (3) The deployment of military forces with a mandate to assist a government in the task of maintaining internal law and order and to prevent outside intervention: this includes the United Nations Operation in the Congo (UNOC);
- (4) The establishment of a military presence to prevent the expansion of a communal conflict: this includes the United Nations Force in Cyprus (UNFCYP);
- (5) The employment of the military contingents of one or more nation states in a territory for the combatant purpose of repelling aggression: such was the United Nations operation in Korea.

For several reasons, some of which will be discussed later, we may leave Korea aside for the moment. Suffice it to say here that the action in the Korean war was not an enforcement action in terms of Chapter VII of the Charter. It has little importance in the context of the evolution of peace-keeping by the United

Nations, except that it led to the institution of new measures embodied in the Uniting for Peace Resolution. The significance of this Resolution will also be discussed later.

The other four categories mentioned show that, as undertaken to date, the peace-keeping operations of the United Nations have an astonishing diversity. They cover a wide range, stretching from mere supervision by a few observers as in the Balkans to the deployment of sizable military forces for policing a disputed territory or safeguarding law and order, as in the Congo. It is reasonable to suppose that, though in accord with the Charter, the nature and the variety of these operations do not seem to have been anticipated at the time the Charter was framed. This is established by a reference to the history of these operations and their gradual evolution.

## The Charter: Original Assumption

The Charter based its concept of the enforcement of peace or collective security, set out in Chapter VII read with Articles 24 and 25, on the power and status of five countries, which became the Permanent Members of the Security Council. Their unity was supposed to serve as a base for any action to prevent threats to, or breaches of the peace, or to repel and punish aggression. These powers had been allies in World War II and the assumption was that they had an identity of interest, even of aims and objects, to maintain international peace. The Security Council was made the bearer of “primary responsibility for the maintenance of international peace and security” [Article 24(i)] and this responsibility could not be discharged without the unanimity of the five Permanent Members. Further, it was laid down in Article 43 that all Member States “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”. Article 45 imposed the obligation on Member States to hold “immediately available national air-force contingents for combined international enforcement action”. Article 46 provided that “plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee”. This Committee, whose role in the mobilization of forces and their strategic direction was crucial to the whole scheme, was to consist of the Chiefs of Staff of the five Permanent Members or their representatives (Article 47).

This makes it clear that the Charter envisaged the Security Council as a Directorate of Great Powers. In 1945, when the Charter was framed, it seemed realistic to suppose that no threat to, or breach of, the peace, in which the Great Powers would lack unanimity of decision on the action to be taken, or if any action should be taken at all, would be of such magnitude as to disrupt the system of collective security.

Apart from the directorate aspect, the framers of the Charter could not but be influenced by history and the entire tradition of national policies of the past. To reflect these realities, their concept of the United Nations, outside the Security Council, was of “a conference machinery” (to quote the words of the late Dag Hammarskjöld) “for resolving conflict of interests”,<sup>1</sup> and effecting reconciliation through discussion, negotiation, mediation and such other means. Surely, they did not visualize that the United Nations would become, or seek to become, to

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<sup>1</sup> GAOR; 16 Session: Supp.1 A (A/4800/Add. 1), p.1

quote the late Mr. Hammarskjold again, “a dynamic instrument of Governments through which they should try to develop forms of executive action, undertaken on behalf of all members, and aiming at forestalling conflicts, and resolving them, once they have arisen, by appropriate means”. That is why the Charter erected a rather lopsided structure for the Organization. While its conference or parliamentary aspects were delineated in some detail, it was equipped with machinery which could but meagerly fulfill the needs for executive action that subsequent developments demonstrated. Apart from the provisions of Chapter VII, cited above, the relevant provisions for executive action were:

(a) Articles 22 and 29 in which provision is made respectively for the General Assembly and the Security Council “to establish such subsidiary organs as it deems necessary for the performance of its functions”;

(b) Article 40 which enables the Security Council to decide on “provisional measures” with respect to threats of the peace;

(c) Article 48 which says: “(i) 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. (ii) 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.”

(d) Article 98 which obliges the Secretary-General to “perform such other functions as are entrusted to him” by the various organs of the United Nations.

It is clear from these provisions that, though legally they encompass any operation undertaken by the United Nations, they do not seem to have been designed for executive action of the variety and scope which events have forced on the Organization. Article 48, read with Article 49, of the Charter particularly makes it clear that what was visualized was direct action by the Member States. It would, no doubt, be action in accordance with the decisions of the Security Council, but it would be taken by Member States directly and by mutual assistance. We see here no anticipation of Member States acting through the executive machinery of the United Nations. It seems that except as provided for in Articles 43, 45 and 41; in Chapter VII, there was no idea whatsoever of the United Nations not only channelizing and coordinating the actions of the members but also mobilizing their forces under its own organization and command.

This poverty of executive furniture in the United Nations was not due to any accidental omission on the part of the framers of the Charter. It had its reason and the reason was that the Charter was not an attempt at, or even a prefiguration of, world government. This is brought out clearly on the judicial side of the Organization. The International Court of Justice, the principal judicial organ of the United Nations, has to accept, particularly in rendering advice, the right of those theoretically subjected to its decisions, to opt out of them. In the crisis which has beset the Organization at present in the matter of the finances of peacekeeping, the Court gave an authoritative legal guidance on the issue submitted to it for its opinion. This opinion has not served to mitigate the crisis. It is being held, and rightly so, that not only this advice, but even its acceptance by the Assembly through a resolution is not binding on the dissentients. Here is a forceful example of the organic limitations of the United Nations in the matter of ensuring international justice, and keeping the peace.

## Early History

It was natural that these limitations were not keenly felt in the early days of the United Nations. It is not now often recalled that the Military Staff Committee attempted to take up its business with speed in February 1946 or that, at one time, the United States proposed an international force, to be kept at the disposal of the Security Council and under the strategic directions of the Military Staff Committee, which would consist of 20 ground divisions, 3,500 bombers and fighters, 3 battleships, 6 aircraft carriers and nearly 200 other naval craft including cruisers, destroyers and submarines—a force much larger than the respective national armed forces of all but a few Member States today. The discussions of the Military Staff Committee lasted from early 1946 to August 1948. They registered failure when it became apparent that there were vital points of divergence between the U.S.S.R., on the one side, and the Western powers, on the other. Disagreements arose over three main heads. First, with respect to the size of the force contemplated, the Western powers envisaged a much larger international force than the Soviet Union was prepared to concede. Second, the Soviet Union was not prepared for these national contingents to be stationed outside their home territory, while the Western plan was for them to be located in different parts of the world, ready for immediate action. Third, the Western powers visualized an integrated force, with its components drawn from different countries—personnel from one country, arms from another and supplies from a third, as found expedient—which was not acceptable to the Soviet Union.

It is tempting to speculate what would have been the history of the world if the cold war had not intervened to frustrate the Military Staff Committee and paralyze all efforts towards the establishment of an international police force. The organization of such a force, consisting of national contingents at the disposal of the Security Council and under the strategic direction of its Military Staff Committee, was provided for in Chapter VII of the Charter. Indeed, it was the most important of three elements of the collective security system envisaged in the Charter. These three elements were:

- (a) the inherent right of individual or collective self-defence in the event of an armed attack against a member of the United Nations until the Security Council has taken the necessary measures (Article 51);
- (b) joint action by the five Permanent Members of the Security Council, on behalf of the Organization, if the situation demanded intervention and the

necessary special agreements referred to in Article 43 had not come into force (Article 106);

(c) the organization of an international force (Articles 42 to 47).

Evidently, the first two were of a transitional nature only. It was the third which was its cornerstone. When this cornerstone could not be laid on the ground, the construction of the entire system could not advance beyond the blueprint stage. It was the lack of unanimity of the Permanent Members of the Security Council, indeed their mutual conflicts and suspicions, which, in practice, atrophied a vital part of the Charter. This part was based on the expectation of their consensus. When the consensus did not emerge, what was revealed was a fundamental institutional gap which the United Nations has had to fill with *ad hoc* measures ever since.

This failure has meant that the Security Council has never been able to establish the central part of its peace-enforcement machinery and that no United Nations peace-keeping operation has had the character of the coercive action contemplated in the Charter.

## The First Improvisation

It is a historical paradox of the United Nations that the cold war, which made much of Chapter VII of the Charter virtually a dead letter, was what stimulated the Council to undertake the only operation that approximated to the model envisioned in Chapter VII. This was the operation in Korea. The resemblance, however, was not only illusory but also due to fortuitous circumstances. When hostilities broke out in June 1950 in Korea, the Soviet Union had walked out of the Security Council in protest against the exclusion of the People's Republic of China from the Organization. Free from the threat of its negative vote, the Council met speedily, demanded the immediate withdrawal of North Korean forces and recommended all Member States to provide all possible assistance to the United Nations and to the South Korean Government to repel the attack.

But this was not an enforcement action in Charter terms, because in the absence of the agreements foreseen under Article 43, the call of the Security Council amounted to a recommendation and not a binding decision. The role of the Organization in the operation was restricted to providing its aegis. The execution was delegated to a group of Member States and the command of the forces was given to one Member State, the United States. The national contingents were provided on a voluntary basis and so was the financing of the costs involved. The Korean operation, in fact, was overwhelmingly an effort of the United States in terms alike of command structure, troop commitments and financial expense. The "Unified Command" under General MacArthur exercised complete control over the strategic direction. It was subject only to the political direction of the President of the United States, though, he was careful to confine the operation to the terms of the United Nations' mandate.

In August 1950, however, the Soviet Union ended its boycott of the Security Council. Consequently, it proved impossible to reach agreement among the Permanent Members on the conduct of the Korean operation. It was in order to prevent a veto in the Council from paralyzing the United Nations efforts that the United States introduced the 'Uniting for Peace' Resolutions in the General Assembly which would allow the Assembly to act when the Council was deadlocked. An added stimulus behind this Resolution was the realization that, in political direction, if not in strategy or economy, any operation approaching the size and scope of Korea would have to be a collective effort if it was to attain any success.

This Resolution—General Assembly Resolution 377 (V) of 3 November 1950—marked a turning point in the affairs of the United Nations. To say the least, it gave a new interpretation to the distribution of responsibility between the Security Council and the General Assembly under the Charter. Some of the important clauses of the Resolution may be quoted here:

*“The General Assembly..... .*

*“Reaffirming* that the initiative in negotiating the agreements for armed forces provided for in Article 43 of the Charter belongs to the Security Council, and desiring to ensure that, pending the conclusion of such agreements, the United Nations has at its disposal means for maintaining international peace and security,

*“Conscious* that failure of the Security Council to discharge its responsibilities on behalf of all the Member States, particularly those responsibilities referred to in the preceding paragraph, does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security,

*“Recognizing* in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,

*“Recognizing* that discharge by the General Assembly of its responsibilities in these respects calls for possibilities of observation which would ascertain the facts and expose aggressors; for the existence of armed forces which would be used collectively; and for the possibility of timely recommendation by the General Assembly to Members of the United Nations for collective action which, to be effective, should be prompt,

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“1. Resolves that 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 in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately 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. If not in session at the time, the General

Assembly may meet in emergency special session within twenty-four hours of the request therefore. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations."

The Resolution further established two Committees, each composed of fourteen members. One was the Peace Observation Commission to observe and report on the situation in any area where there existed international tension likely to endanger peace and, for this purpose, "to go into" the territory of a State upon the latter's invitation or with its consent. The other was the Collective Measures Committee which was to study problems of collective security and suggest methods to strengthen international peace. Finally, the Resolution recommended to Member States that:

".... each Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units, upon recommendation by the Security Council or General Assembly, without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter;"

and to

"..... inform the Collective Measures Committee provided for in paragraph 11 as soon as possible of the measures taken in implementation ....."

In actual event, this Resolution, though adopted by an overwhelming majority (39 votes to 5 with 11 abstentions) did not infuse any life into the collective security system. The subsequent course of the war in Korea changed the complexion of the world situation. For this reason, and for others of a less transitory nature, there was only meager response to the appeal for earmarking national contingents for the service of the United Nations. Though the Collective Measures Committee produced three reports, it made no impact because two realities came again to the surface. First, none of the Great Powers was prepared to make available to the United Nations forces which would cease to be under national command and to lessen their reliance on their own collective pacts. Second, the smaller powers were not prepared to earmark troops that might be used in support of one bloc against the other and thus to be drawn into a Great Powers conflict.

But, though the Uniting for Peace Resolution as such made no difference, in physical terms, in the peace-keeping capability of the United Nations, later history proved its far-reaching consequences. For a time, it had the effect of rescuing the generality of the membership of the Organization from an exclusive dependence on the Security Council, that is, on its five Permanent Members, for keeping the peace. Though it was firmly opposed by the Soviet Union and its associated Members as a violation of the Charter, .it is significant that, at the time of the Suez crisis in 1965, the Soviet Union voted for the Resolution, introduced by Yugoslavia, in the Security Council (5/3719) which took the fact into account that the lack of unanimity of the Permanent Members (because of the vetoes of Britain and France) had prevented the Council from exercising its primary responsibility and “decided to call an emergency special session of the General Assembly, as provided in General Assembly Resolution 377(V) of 3 November 1950 in order to make appropriate recommendations.” Again, at the time of the crisis in the Lebanon and Jordan, in 1958 the Soviet Union supported the request for an emergency special session of the General Assembly in accordance with the Uniting for Peace Resolution. Therefore; while we might grant the merit of the contention that this Resolution interpreted the Charter in a manner not provided for in the Charter itself, the truth still remains that this *de facto* extension of the Charter and the enlargement of the authority of the General Assembly has been acquiesced in, to become an integral part of the charter.

“The question of constitutionality of an action taken by the General Assembly or the Security Council,” Judge Sir Percy Spender said in his Separate Opinion on Certain Expenses of the United Nations<sup>2</sup> “will rarely call for consideration except within the United Nations itself, where a majority rule prevails”. It is true, as the Judge was careful to add, that a *de facto* extension of the Charter would be disregarded by the International Court if it were challenged on legal grounds. But the fact is that the opponents of the Uniting for Peace Resolution did not take any recourse to the Court for this purpose. The United Nations Assembly, in fact, initiated several operations before the financial crisis in 1964 compelled a review of the whole problem and a re-appraisal of the legal issues involved in it.

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<sup>2</sup> Advisory Opinion on Certain Expenses of the United Nations, page 5

## Evolution: The Legal Background

The jurisdictional issues posed by, or traceable to, the Uniting for Peace Resolution are still subjects of active controversy, and these will be mentioned later. While we might here refrain from pronouncing on them, one way or the other it is necessary to appreciate the thinking behind the legal justification of an increase in the authority of the General Assembly. This chain of reasoning starts from the fact that the Charter did not establish any rigid division of function between the role of the Security Council and that of the Assembly in the matter of maintaining peace. Enforcement or coercive action *stricto sensu* is, of course, within the exclusive jurisdiction of the Security Council. But between such action, and the recommendations which the Assembly is empowered to make under Article 11, paragraph 2, there is a wide field in which the jurisdictions of the Council and the Assembly inevitably overlap. All peace-keeping operations in which the Organization has engaged itself, subsequent to the Uniting for Peace Resolution, fall within this field.

Closely related is the fact that, contrary to a popular supposition, the functions and powers of the General Assembly are not confined, under the Charter, to discussion, consideration, study and the making of recommendations. It is the contention of the Soviet Union that "action" with respect to peace is within the exclusive competence of the Security Council. Support is drawn for this contention from the title of Chapter VII and from the provision of Article 11, paragraph 2, which requires that "any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion". As against this, there are the following considerations cited by the International Court in its Advisory Opinion on 'Certain Expenses of the United Nations'

(a) Article 14 authorizes the Assembly to "recommend measures for the peaceful adjustment of any situation": the word 'measures' implies some kind of action.

(b) Article 18 deals with "decisions of the General Assembly on important questions": obviously these cannot be 'decisions' unless they have a dispositive force and effect. Indeed, under Articles 5 and 6 which are concerned with the suspension of rights and privileges of membership and expulsion from membership, it is the Security Council which has the power only to 'recommend' and it is the General Assembly which is competent to 'decide'.

(c) Article 17, paragraph 1, gives the General Assembly power not only to 'consider' the budget of the Organization but also to 'approve' it.

(d) Lastly, as the Court has pointed out, the Powers of the General Assembly under Article 11 are comparable to the Powers of the Security Council under Article 38. In both cases, the recommendations made may require for their implementation the establishment of suitable commissions, involving an organizational activity, *i.e.*, 'action'. It cannot, therefore, be said, that competence for such action is 'withheld from the Assembly by the Charter.

This conclusion is reinforced by the consideration that the powers of the General Assembly stated in Article; 14 are subject only to Article 12, which means that, under this Article, the limitation (operating in Article 11) that "any question on which action is necessary, shall be referred to the Security Council by the, General, Assembly" does not exist This, Article 14 is enough to justify the exercise by the Assembly of its authority in the matter of 'peace-keeping.

These considerations are specifically legal. Over and above theme is the, fact that the Charter is unique as a multilateral treaty. It not only defines the rights and obligations of states but it is also the constitution of an international organization which cannot remain static. It needs to respond to the ever new challenges of international life. Like all other constitutions, the Charter too must grow and evolve, even, without being explicitly amended, if it is to remain a viable instrument of effective international cooperation toward its purposes. Any interpretation which makes the Charter a fixed instrument and robs it of an essential dynamism, therefore, lacks general appeal. This is not merely a political argument; it is also legally sustainable. As Judge Sir Percy Spender has said in his Separate Opinion, of 20 July 1962:

"..... since from its inception it was contemplated that other States would be admitted to membership so that the Organization would, in the end, comprise 'all other peace-loving States which accept the obligations contained in the Charter' (Article 4), the intention of the framers of the Charter appears less important than intention in many other treaties where the parties are fixed and constant and where the nature and subject-matter of the treaty is different. It is hardly the intention of those States which originally framed the Charter which is important except as that intention reveals itself in the text....."<sup>3</sup>

It has been remarked by many representatives during discussions at the United Nations that the signatories of the Charter in 1945 could not have anticipated that the United Nations would preside over the liquidation of colonialism. The

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<sup>3</sup> I. C. J. Reports 1962, page 38

Declaration of the Granting of Independence to Colonial Countries and Peoples –General Assembly Resolution 1514 (XV)– could not have emanated from the Assembly if the Charter were not viewed as a living instrument and if the original authority of the Great Powers had not been surpassed by the strength and membership of the General Assembly which is now almost representative of all the peoples of the world.

## Evolution: Political Realities

The Charter, as originally understood, envisaged peace-keeping by the Great Powers, acting unitedly. Korea is said to have been a demonstration of peacekeeping by one Great Power, in opposition to another, but with the support or endorsement or acquiescence of other Great Powers and the bulk of the other Member States. Both these notions were soon made virtually obsolete by the course of history. From either of these notions to the notion of peace-keeping by the United Nations, with or without the help of the Great Powers, there stretches a distance which neither the Uniting for Peace Resolution nor all its legal background or underpinning would suffice to cover. It was covered, from the year 1956 onwards, by three political realities which we can only briefly describe here.

(a) The growth of nuclear power and its delivery systems and their being, for practical purposes, almost equally at the disposal of the United States and the Soviet Union. While it completely transformed the power equations which had persisted throughout history, it established a new kind of Great Powers unity. This was not the unity of outlook and intention contemplated by the Charter; it was a community of fear, the fear of escalation, of uncontrollable conflicts. The result was not a joint resolve by the United States and the Soviet Union to act together, by combining their forces in order to keep the peace. The result was their common willingness to let others act. These 'others' could act only through the United Nations.

(b) The complication of the political alignments of the nations of the world. For sometime in the cold-war phase of history, the world scene was a pattern of black and white drawn by the two power blocs with the grey of small powers coming only fitfully into view. The course of human events however made it far more variegated soon afterwards. The result was, that situations arose which could not be appraised in the simple terms of how they would suit one power bloc against the other. It became possible that there might be a situation which might suit neither. This was dramatized by the Suez crisis in 1956 when the United States found itself at odds with two of its allies, the United Kingdom and France, and at least in partial agreement with the Soviet Union.

(c) As a direct result of these two processes, the realization grew, among the bulk--of the membership of the United Nations that between the punitive action, contemplated in Chapter VII of the Charter; and the hortatory resolutions of the General Assembly; there was a third possibility. This was the possibility of Collective - action which would be preventive or protective in nature. In plainer

words, if you, cannot punish, if it is not enough to plead you can at least protect or help to prevent. On this basis, a new pragmatic principle was evolved, the principle of peace-keeping operations with the consent and the request of a member government. These operations would be voluntary in character because a member government requested them and other member governments freely granted their being undertaken. Their effect would be to interpose a United Nations presence in a situation which otherwise would be “desperate and dangerous”, to quote the words of Secretary-General U. Thant, with the object of “preparing the ground for a permanent, freely agreed solution”.<sup>4</sup>

The first occasion which clearly brought out the working of these three processes was the Suez Crisis in 1956. When the United Kingdom, France and Israel attacked the territory of Egypt, they faced a sharp and severe international disapproval, backed by the action and the attitude of the United States and the Soviet Union, and which halted the aggression. However, the United Kingdom and France vetoed a resolution in the Security Council which condemned their action and called upon them to withdraw their forces. The Security Council, in accordance with the Uniting for Peace Resolution, called an emergency special session of the General Assembly for “appropriate recommendations”. These appropriate recommendations began with Resolution 997 (ES-1) of 2 November 1956, calling for an immediate cease-fire and Resolution 998 (ES-1) which requested the Secretary-General to submit:

“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 in accordance with all terms of the General Assembly Resolution 997(ES-1) of 2 November 1956.”

The Secretary-General submitted a Report (Document A/3289) which emphasized that the General Assembly was unable to establish the force, with the consent of those parties which contributed units to it and that this force could not be stationed or operate on the territory of a given country without the consent of the Government concerned. It drew a clear distinction between such a force and one the Security Council could have established “within the wider margins” of Chapter VII of the Charter; while the former would supervise the cessation of hostilities, with a withdrawal of forces, already agreed upon, the latter could enforce it. Paragraph 12 of this Report read in part:

“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

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<sup>4</sup> SG/SM/76: 26 May 1964

Egyptian Government, in order to help maintain quiet during and after the 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."

The Assembly, by its Resolution 1001 (ES-1) "concurred in the definition of the functioning of the Force as stated in paragraph 12 of the Secretary General's Report" and by Resolution 1000 (ES-1) provided as follows:

"1. Establishes a United Nations Command for an emergency international Force to secure and supervise the cessation of hostilities in accordance with all the terms of General Assembly Resolution 997 (ES-1) of 2 November 1956;"

It must be mentioned parenthetically that the Soviet Union voted for Resolution 997 (ES-1) calling for an immediate cease-fire and for Resolution 998 (ES-1) authorizing the Secretary-General to arrange for the implementation of the cease-fire and abstained on the other Resolutions; it did not oppose any of them. The operation was thus authorized by the Assembly without a single negative vote and it was clearly established that though a military action, it was not repressive and was designed merely to secure and supervise a cease-fire which had been agreed upon previously.

The next outstanding example of peace-keeping operations by the United Nations was furnished in 1960 when the Republic of the Congo appealed to the Security Council for help in a situation which was characterized by the mutiny of Congolese Security Forces, the attempted secession of Katanga and the breakdown of effective control by the Central Government. The Government of President Kasavubu and Prime Minister Lumumba alleged that this situation was the result of aggression by Belgium. The operation in the Congo was authorized by the Security Council by Resolution S/4387 of 14 July 1960, which was voted for by the Soviet Union:

"2. Decides 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 tasks;”

The Secretary-General submitted a report on 18 July 1960 (S/4389) in which he informed the Council which States he had asked to contribute forces or material, which units had already arrived and other details. On July 22, the Council by Resolution S/4409 “appreciated the work of the Secretary-General and the support so readily and so speedily given to him by all Member States invited by him to give assistance” and “commended the Secretary-General” for his “prompt action”. By a further Resolution on 9 August 1960 (S/4426) the Council “confirmed the authority given to the Secretary-General” by the two prior Resolutions, requested him “to continue to carry out the responsibility placed on him thereby” and called upon all Member States “to afford mutual assistance”. These Resolutions were “fully supported” by the General Assembly by its Resolution 1474 (FS-IV) of 20 September 1960, without a dissenting vote. Some time later, the Security Council reaffirmed its three previous Resolutions in Resolution S/4741 of 20 February 1961 which broadened the mandate of the operation and reminded “all States of their obligations under these Resolutions”. Finally, the Security Council adopted Resolution S/5002 on 24 November 1961 which reaffirmed the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out in previous Resolutions.

This operation in the Congo, though authorized by the Security Council, did not come within the ambit of Chapter VII because it did not involve the use of armed force against a State which the Security Council, under Article 39, had determined as having caused a breach of the peace or as having committed aggression. Like the operation in the Middle East (UNEF) the operation in the Congo (UNOC) did not involve any element of belligerence against a State but only elements of security and supervision by mutual consent. However, it raised a problem which had not been encountered in UNEF or in the crisis in Jordan and Lebanon in 1958.

This problem was posed by the different nature of what might be called the political terrain in the Congo as compared to that in the Middle East. The distinction between armed action which is coercive (which can be taken only by the Security Council under Chapter VII) and that which is non-coercive has been called “too subtle” by Judge Bustamante in his Dissenting Opinion in the International Court. However, it was clearly maintained in the Middle East but it became somewhat dubious in physical fact, if not in theory, in the Congo. Such a problem is inevitable when, in the nature of circumstances, there enters an element into a military action undertaken by the United Nations in a foreign territory which is in excess of the element of supervision or surveillance.

The Secretary-General had identified the distinction between supervisory and enforcement actions as follows in his Report about the operation in the Lebanon embodied in Document A/3943 of 9 October 1958:

“The basic dement involved is clearly the prohibition against any initiative in the use of armed force.”

In other words, an expeditionary force dispatched by the United Nations can use force defensively but take no initiative. Some other distinguishing features of UNEF were also brought out by the Secretary-General in this Report. UNEF was “interposed between regular, national, military forces which were subject to a cease-fire agreed to by the opposing parties”, and it “functioned under a clear-cut mandate which entirely detached it from involvement in any internal or local problems and enabled it to maintain its neutrality in relation to international political issues”. On this basis, the Secretary-General argued against the interposition of a United Nations force between conflicting parties in the Lebanon or Jordan.

Earlier in the Security Council he had stated that he had no mandate to enlarge “the observation operation” which he had already undertaken in the Lebanon into “some kind of police operation” without exceeding his instructions and violating the Charter. He said:

“In a police operation, the participants would in this case need the right, if necessary, to take the initiative in the use of force. Such use of force would, however, have belonged to the sphere of Chapter VII of the Charter and could have been granted only by the Security Council itself.”

One cannot avoid noting that these features did not obtain in the United Nations Operation in the Congo where, in spite of announced declaration of interference in internal affairs, the very presence of a United Nations force decisively influenced the political outcomes in a country and where the element of consent became dubious because of governmental instability. To say this is not to criticise UNOC but to draw attention to the unavoidable enlargement of the functions of peace-keeping by United Nations forces as a result of unforeseen developments or new situations. There was an exceptional neatnes about UNIFY which by the very nature of things could not be maintained in the Congo, or other similar emergencies attracting United Nations’ attention for action.

## Part Two

## Principles and Practice

Even at the risk of repetition, it is necessary to recapitulate here the practice and principles of peacekeeping operations undertaken by the United Nations. The political circumstances in which these operations were initiated were, of course, different in each case. In the case of UNEF, and the Congo, and most recently in the case of UNIPOM, and to some degree in Cyprus, the operations had to be set up with great speed. However, in spite of the ad hoc and emergency nature of many of the arrangements, there are certain features common to the different truce observation missions, UNEF and, to a large degree, UNOC.

With regard to the purposes, functions, command and composition of a United Nations force, the late Mr. Hammarskjöld laid down a doctrine in connexion with UNEF and the Lebanon operation which had a considerable influence upon the conduct of subsequent operations, at least before the onset of the crisis in 1964. The report of the former Secretary-General on the United Nations force in the Congo amplified but did not in any way change the pattern.

The basic principles governing a United Nations force established outside the terms of Chapter VII of the Charter were formulated by Mr. Hammarskjöld as follows:

- (a) It can only be stationed on the territory of a State with the consent of the Government concerned.
- (b) It should not be used to enforce or bring about a specific political situation.
- (c) It should not become involved in an international conflict.
- (d) Its authority should not be exercised within a given territory either in competition with the host Government or in cooperation with it on the basis of any joint operation.
- (e) It should not include contingents from the armed forces of the Permanent Members of the Security Council or of any nation which, because of its geographical position or other reason, might have a special interest in the operation.
- (f) The views of the host country about the composition of the force should be taken into account and even though the United Nations must

retain the right of final decision, a serious objection by the host country against a specific contributing country will determine such decision.

(g) The command of the force should be established by the Security Council or the General Assembly or by the Secretary General on the basis of authority delegated to him.

(h) Force must only be used in self-defence; in other words, the troops of the United Nations must not take the initiative in the use of force but must remain free to respond with force to an armed attack, including an attempt to force their withdrawal from positions occupied by them under the orders of their command.

These are broadly the basic principles which will, in all likelihood, continue to govern peace-keeping operations undertaken outside Chapter VII of the Charter. But while the first principle, namely, the consent of the Government concerned, has been the essential feature of all the United Nations operations mounted so far, circumstances in individual cases have led to certain departures, or, at any rate, some flexibility in the interpretation, or application, of these principles. Instances can easily be recalled. In the Congo, the late Mr. Lumumba, Prime Minister of the very Government which had invited the United Nations force to the Congo, was prevented by the United Nations troops from using the Congo Radio to make a broadcast. The action taken in Katanga in 1961, ostensibly to oust the mercenaries, in effect to put an end to the secession of a province, was legally justifiable only through a very broad interpretation of the right of self-defence. However, these instances do not invalidate the basic principles formulated by Mr. Hammarskjöld. They only show that no hard and fast rule can be laid down in advance for international action in various unpredictable situations that may arise.

As a corollary of the Hammarskjöld doctrine, it can be considered extremely unlikely, that a United Nations Force will ever be used in situations which partake of the character of one of the following:

(a) When one of the parties to a situation or dispute necessitating United Nations intervention is opposed to the dispatch or deployment of a United Nations force.

(b) When one of the parties is a non-member State and does not invite a United Nations presence. In fact, from a practical point of view, it cannot be visualised that the Security Council will agree to authorize a United Nations force to be deployed in South Vietnam, even if the Government of that country were so to request.

(c) When the situation is one of civil war. The Katanga case was *sui generis*, and not likely to recur; as such it is not really an exception to this rule.

(d) When the territory involved is colonial, where a United Nations force runs the risk of being used by a colonial power in its own interest. The strength of the anti-colonial powers in the General Assembly furnishes a measure of protection against overt misuse of a peace-keeping operation by the colonial powers.

Changes in the composition of the Secretariat will make it difficult to carry out covert perversion of the purposes of a United Nations operation.

## The Constitutional Crisis

This whole theory of peace-keeping operations authorized by the General Assembly would probably have remained unassailed if it were not for the fact that these operations involved heavy expenditures and the question, therefore, arose as to how the necessary funds could be obtained. Two conflicting positions became visible immediately. On the one side, it was categorically stated that Member States must contribute to these expenses on the same basis as they contribute to the budget of the Organization. The Assembly could, therefore, assess these expenses on the general membership under Article 17 of the Charter, as the expenses of the Organization. According to this school of thought, nothing short of the determination and acceptance of the legal obligation of contributing to their expenses on the part of the membership would suffice to ensure the continuance of the peacekeeping functions of the United Nations on a secure basis. This was the position of the United States, the United Kingdom and, for a certain time, it was also the position of the majority of the United Nations. But it was directly challenged by the second school of thought, of which the Soviet Union and France are the chief exponents. There are some differing nuances within this school but its main position is that the General Assembly is not competent to initiate peace-keeping operations involving armed action because such operations are within the sole jurisdiction of the Security Council and, therefore, their expense could not be assessed on the Membership of the United Nations. We thus, see that, in the guise of a financial issue, the very basis of the "Uniting for Peace Resolution" was brought into dispute.

The circumstances in which the financial issue became so crucial may briefly be recalled. Resolution 1089(XI) of 21 December 1956 and Resolution 1151(XII) of 22 November 1957, decided that the expenses of UNEF, other than those covered by voluntary contributions, shall be borne by the United Nations. These Resolutions were a sequel to the Secretary-General's report, made orally on 26 November 1956, that the Special Account to be established for UNEF must be construed as coming within the meaning of Article 17 of the Charter. In resolutions adopted in the following years, it was consistently the practice of the General Assembly to treat the expenses of UNEF as the expenses of the Organization. With regard to ONUC, the Assembly by Resolution 1583 (XV) of 20 December 1960, similarly recognized that the expenses involved constituted the expenses of the Organization within the meaning of Article 17, paragraph 2 of the Charter. It is this determination of the expenses of peace-keeping as expenses which can be "apportioned" to the Members that has been strongly challenged both by the Soviet Union and France. The result has been a huge deficit in the finances of the

Organization which has seriously affected its solvency and could make it impossible for it to intervene in future international crises.

From a purely administrative point of view, it can be said that the root of this financial crisis lies in the fact that peace-keeping operations were improvised. As such the General Assembly did not give careful consideration beforehand to the question when and how the costs of the operations that it or the Security Council initiated were to be met. When the Assembly was faced with a large cash deficit on account of the UNEF and Congo Operations which it was not in a position to make good, it decided on issue of bonds to enable the Secretary-General to continue the peace-keeping operations. This eased the crisis for a while but it actually complicated the problem because a sequel to the issuance of bonds was of the inclusion within the regular budget of the Organization a special item for payment on the bonds. The result was a situation in which Member States that had objections to the peace-keeping operations were forced to object to an item in the regular budget as well. Thus not only the expenses of the peace-keeping operations but even the regular budget of the Organization became controversial. As a means of solving the problem, the General Assembly referred to the International Court of Justice for its advisory opinion the issue whether or not Member States had the obligation to contribute to the expenses of peace-keeping operations, which they clearly have under Article 17(2) with respect to the expenses of the Organization. In its opinion rendered on 20 July 1962, the Court (by nine votes to five) held that the expenditures authorized by the General Assembly constitute "expenses of the Organization" within the meaning of Article 17(2) of the Charter.

This opinion can be appreciated only if we first recapitulate, in a summary form, the issues that arose over the financing of peace-keeping operations. These are:

(a) Where rests the responsibility for the maintenance of international peace and security under the Charter? It is beyond dispute that the Security Council bears 'primary responsibility' in this behalf (Article 24) but is this responsibility exclusive? The dissentients, France and the Soviet Union, assert that the General Assembly is clearly not authorized to undertake peace-keeping operations, if no other provision is made for their expenses than assessment on the general membership of the Organization.

(b) Article 11, paragraph 2, of the Charter, requires 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". What is meant by "action"? Does it mean anything over and above a recommendation? If so, the

General Assembly has acted ultra vires in authorizing peace-keeping operations.

(c) Does the General Assembly have the right to apportion the cost of peace-keeping operations?

(d) Are the expenses of UNEF and ONUC the expenses of the Organization within the meaning of Article 17, paragraph 2?

There are many sub-issues involved in this controversy but the main heads of debate are these four. The Court gave its opinion as follows: \_

(a) In the first place the Court decided that the 'primary responsibility' conferred upon the Security Council by Article 24 of the Charter in regard to the maintenance of international peace and security is not exclusive. The Court's opinion said on the subject:

"The responsibility conferred is 'primary' not 'exclusive'."

and further on:

"..... The Charter makes it abundantly clear that the General Assembly is also to be concerned with international peace and security."

(b) On the second issue, the Court said:

"The Court considers that the kind of action referred to in Art. 11 para. 2, is coercive or enforcement action.

"This paragraph in its first sentence empowers the General Assembly by means of recommendations to States or to the Security Council, or to both, to organize peace-keeping operations at the request, or with the consent, of the States concerned.

"Accordingly, the last sentence of Art. 11 para. 2, has no application where the necessary action is not enforcement action."

(c) As regards the cost of peace-keeping operations in general and the Assembly's right to apportion them, the Court's opinion stated:

"By Art. 17, para. 1, the General Assembly is given the power not only to 'consider' the budget of the Organization but also to 'approve it'.

The decision to 'approve' the budget has a close connexion with paragraph 2 of Article 17 since there under the General Assembly is also given the power to apportion the expenses among the Members and the exercise of the power of apportionment creates the obligation, specifically stated in Art. 17, para. 2 of each Member to bear that part of the expenses which is apportioned to it by the General Assembly. When those expenses include expenditures for the maintenance of peace and security which are not otherwise provided for, it is the General Assembly which has the authority to apportion the latter amounts among the Members. The provisions of the Charter which distribute functions and powers to the Security Council and to the General Assembly give no support to the view that such distinction excludes from the powers of the General Assembly the power to provide for the financing of measures designed to maintain peace and security."

Further on the Court said:

"The Court accordingly finds that the argument which seeks, by reference to Art. 17, para. 2 to limit the budgetary authority of the General Assembly in respect of the maintenance of international peace and security is unfounded."

(d) With respect to the specific costs of UNEF and UNOC, the Court's opinion stated respectively:

"1...that, from year to year, the expenses of UNEF have been treated by the General Assembly as expenses of the Organization within the meaning of Art. 17, para. 2 of the Charter.

"2...The conclusion to be drawn from these paragraphs is that the General Assembly has twice decided that even though certain expenses are 'extraordinary' and 'essentially different' from those under the 'regular budget', they are nonetheless 'expenses of the Organization' to be apportioned in accordance with the power granted to the General Assembly by Art. 17, para. 2."

It might seem superficially that the opinion of the Court, particularly when it was accepted by the General Assembly by the overwhelming vote of 76-17-8 on 19 December 1962 should have ended the controversy. In actual fact, it did not accomplish that purpose for the simple reason that an advisory opinion of the Court is not binding on sovereign States.

Far from abating, the controversy was, in fact, accentuated after 1962 when the so-called 'arrears' of the dissentient powers began to accumulate. In 1964, the position was that, in consequence of their withholding contributions in respect of UNEF and UNOC, the amount of the 'arrears' of the Soviet Union and from 1 January 1965 of France, and some other States, equalled or exceeded the amount of the contributions due from them for the preceding two years. As a result, the United States strongly took up the position that Article 19 of the Charter became applicable to these States and they should, therefore, have no vote in the General Assembly. The United States further argued that Article 19 was a mandatory provision of the Charter, automatic in its application and leaving no room for discretion. In reply, the Soviet Union and France argued with equal vehemence that they would not be coerced into accepting the legality of the apportionment to them of the expenses of UNEF and ONUC simply by the threat of the application of Article 19. The Soviet Union, in particular, made it definitely known that, if any attempt was made to invoke Article 19, she would have no hesitation in walking out of the General Assembly.

The diametrical opposition of these two viewpoints brought the organization to a complete impasse at the nineteenth Session of the General Assembly. It was called a confrontation which the overwhelming majority of the membership wished to avoid. Consequently, the Assembly resorted to the extraordinary, makeshift device of conducting its business without taking any vote on any question. This was, indeed, a state of paralysis for the United Nations which gravely undermined its reputation. That a showdown which might well have brought about the collapse of the United Nations was averted is due largely to the effort and influence of the Asian-African Member States. Though their immediate aim was to induce an atmosphere of moderation and restraint, the effect of their mediation proved to be more substantive. It encouraged a more pragmatic approach and a recognition that the United Nations can survive only by the synthesis and harmonization of different viewpoints, especially where the basic principles of its operations are involved.

We might briefly recite the main developments during and after the nineteenth Session of the Assembly. These are:

On 30 December, 1964, the Asian-African powers submitted a plan for the resolution of the crisis to the United States and U.S.S.R. This plan did not purport to be a definitive settlement of the problem of the proper authorization of peace-keeping operations. Confining its aim to the normalization of the Assembly's procedure and the solution of the Organization's current financial difficulties, it sought to issue an appeal for voluntary contributions from Member States. In this way, the principle of voluntary contributions gained a recognition which had

been withheld from it during the tortuous debate that preceded the nineteenth Session of the Assembly. However, whether the two Great Powers accepted or rejected the plan is a matter of controversy. The fact remains that it was not accepted without reservations and it did not, therefore, immediately resolve the crisis.

On 18 February, the General Assembly, adopted Resolution 2006(XIX) which recognized the necessity of a comprehensive review of the whole question of peace-keeping operations in all their aspects. This resolution authorized the President of the General Assembly to establish a Special Committee on Peacekeeping Operations and instructed the Committee to undertake a comprehensive review, including ways of overcoming the present financial difficulties. The President appointed 33 members 'including Pakistan' on this Committee, which held a series of meetings from 26 March to 31 August, 1965. Both the United States and the U.S.S.R. submitted their respective proposals which, while containing some constructive elements, were ultimately based on premises whose mutual opposition had brought about the deadlock. In his turn, an African-Asian representative, the Representative of Ethiopia submitted a draft resolution more or less based on the Asian-African plan of 30 December 1964. According to this resolution, the Special Committee would note the general agreement of all Member States about the necessity for the normalization of the Assembly's proceedings and would appeal to Member States to restore the solvency of the organization by voluntary contributions "on the understanding that this arrangement shall not be construed as any change in the basic position of any individual member".<sup>5</sup> It would also be expected of the highly developed countries to make such substantial contributions as would really solve the current financial difficulties. Finally, the Representative of Mexico,<sup>6</sup> submitted a draft resolution according to which the General Assembly would agree to resolve the financial situation by means of voluntary contributions and would decide that the cost of the United Nations operations in the Congo and the Middle East shall be defrayed by means of voluntary contributions and that the contributions made in the past towards these expenses would be considered to have been voluntary.

Neither this resolution nor the respective plans of the United States and the U.S.S.R. were decisively dealt with by the Special Committee. The Committee's discussions, however, were both intense and exhaustive. The depth of the differences was revealed by the fact that, even after eighteen meetings, there was no agreement on a precise set of propositions. The Secretary-General and the President of the General Assembly submitted a report<sup>7</sup> summarizing the

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<sup>5</sup> A/AC.121/L1

<sup>6</sup> A/AC.121/L.1

<sup>7</sup> A/AC.121/4

different viewpoints that were cogently expressed in the Committee. Its paragraph 52 contained some tentative “guidelines” on which, it was agreed, the views of Member States had to be elicited.

On 31 August, at the conclusion of its deliberations, the Chairman of the Special Committee made the following statement which represented the consensus of the Committee:

“In the light of the statements made in the Committee, without prejudice to the positions taken therein, and on the basis of paragraph 11 of the Committee’s report of 15 June, I take it that the consensus is:

(a) That the General Assembly will carry on its work normally in accordance with its rules of procedure;

(b) That the question of the applicability of Article 19 of the Charter will not be raised with regard to the United Nations Emergency Force and the United Nations Operation in the Congo;

(c) That the financial difficulties of the Organization should be solved through voluntary contributions by Member States, with the highly developed countries making substantial contributions.”

On 1 September, 1965, the General Assembly took note of the Special Committee’s report and decided to continue the comprehensive review of the whole question at the twentieth session. Earlier, the United States made it known that, though it still adhered to its position with regard to the applicability of Article 19, it would not oppose the opinion of the majority of Member States that this article must not be invoked. In this way, the crisis was eased but it still remained far from resolved.

## The Issues Involved

This constitutional crisis could not have been caused by technical, legal or administrative issues. From a purely technical point of view, it would be puzzling that the financial competence of the Assembly should have been brought into question in the matter of UNEF and UNOC when it was accepted in the case of several observation missions initiated earlier. The United Nations Military Observers Group in India and Pakistan (UNMOGIP) is an example. Though this group was established under the Resolutions of the Security Council, the Council took no decision on how its expenses should be allocated. Such decisions have been made by the General Assembly when it has approved the budget of the Organization, which has included the cost of the maintenance of this Group. Again, the financial competence of the Assembly with regard to all the expenses of the Organization, even those incurred as a consequence of a decision of the Security Council, which have to be apportioned to Members, is evident from the fact that the investigative and observational operations undertaken by the Organization are financed as part of the regular budget of the United Nations. This was laid down in 1961 in the Report of the Working Group of Fifteen. Furthermore, the expenses incurred by the Secretary-General in his discharge of the obligation to perform such functions as are entrusted to him by the Security Council, under Article 98, are always treated as the expenses of the Organization, regardless of whether they are of a normal kind or not. This serves to show that Article 17 of the Charter has been commonly understood as the only article which refers to budgetary authority or confers the power to apportion expenses. Why, then, has it given rise to dispute?

It is sometimes thought that what brought about the crisis was the size of financial expenses involved in UNEF and ONUC. It is true that the amount of expenditure on ONUC was several times the size of the normal budget of the Organization. But it is obvious that the deficit of 134 million dollars faced by the United Nations in 1964 was not beyond the resources of its Members to meet. The City of New York spent 123 million dollars on garbage collection in 1963. As Lord Caradon, the representative of the United Kingdom said at the 1316th meeting of the Assembly, "The amount which threatens to sink the United Nations is less than the cost of a single submarine".

Obviously, the financial crisis was, and is, purely political in its origin. If the peace-keeping operations had not been attended by political implications of a global scale, no legal controversy would have resulted and the Organization would not have been brought to a standstill in 1964.

These implications can be divided into two categories. In the first category, we deal with their impact on power positions, especially of the Permanent Members of the Security Council. In the second, we deal with their relations to the rights and claims of Member States who are not militarily great powers and to the requirements of peace with justice. Implications in the first category require an assessment; those in the second call for an evaluation.

The basic fact which was commonly overlooked during the earlier phase of the crisis was that peacekeeping operations are not conducted in isolation from the power realities which constitute the pattern of international existence today. When they extend beyond something like the observations of a frontier, supervision of a truce or armistice, inquiry, fact-finding, mediation or conciliation, they are capable of influencing the political outcome of both a domestic and an international situation. If they thus guide a situation in a direction beyond the calculation of a Great Power, they inevitably become open to the gravest suspicion on its part. Since the Charter gave a privileged position to the Great Powers in the Security Council, it would be fatuous to expect that all of them should agree to this position being diminished by the enlargement of the General Assembly's jurisdiction. Such enlargement, it must be recognised, is an inevitable result of giving financial implications to the resolutions of the Assembly.

This aspect has been closely dealt with in the Separate Opinion of Judge Sir Gerald Fitzmaurice of the International Court. Judge Fitzmaurice did not accept the argument that the mere fact that certain expenditures had been actually apportioned by the Assembly was conclusive as to their validity. He said:

“The issues involved clearly transcend the merely financial problem, and even on the financial side they go deeper; for if the Assembly had the power automatically to validate any expenditure, as some Governments appear to have claimed in their written or oral statements, this would mean the Assembly could, in practice, do almost anything, even something wholly outside its functions, or maybe those of the Organization as a whole. Member States would be bound to contribute, and accordingly a degree of power, if not unlimited, certainly much greater than was ever contemplated in the framing of the Charter, would be placed in the hands of the Assembly.”<sup>8</sup>

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<sup>8</sup> Advisory opinion on ‘Certain Expenses of the United Nations’, p. 56

The opinion of Judge Fitzmaurice was that the practice of the Assembly merely establishes a prima facie presumption as to the validity of these expenditures, but this is a presumption which can be rebutted.

This aspect of the question helps one to understand why the legal opinion of the International Court did not settle the political controversy. A judgment about validity is not a judgment about the political wisdom or necessity of an act. Though the Court ruled that the expenses incurred on UNEF and ONUC were in fact the expenses of the Organization within the meaning of Article 17, it did not determine the method to be followed in financing them. The Court itself held that the question submitted to it for advisory opinion was a question which “has to do with a moment logically anterior to apportionment, just as a question of apportionment would be anterior to a question of member’s obligation to pay”.<sup>9</sup> It added that the Court was not called upon to consider the manner in which, or the scale by which, these expenses may be apportioned. Its opinion, therefore, related to a very restricted question which was but a fraction of the whole issue. It has been a main argument advanced by France that the opinion of the Court did not definitively solve the real problem which is “to determine whether the principles of these expenditures in the Congo and the Middle East had been the subject of a decision by a body competent under the Charter to take a decision with a resulting obligation for the Member States”. That is why when the Assembly requested the opinion of the Court, France had proposed an amendment requesting an opinion as to whether these expenditures had been “decided on in conformity with the Charter”. This amendment was not adopted, and the result was that the Court’s opinion left room for doubt as to whether it was conclusive of this aspect of the question. To say that the Court upheld the supremacy of the General Assembly’s budgetary power is not an answer to the argument that this budgetary power cannot be converted into (to use the expression employed by the representative of France) “an all embracing legislative power”.

Whatever opinion might be held about the purely legal issue, it is thus clear that the position of the Soviet Union and France cannot, in fairness, be described as one of defiance of the Organization as a whole or even of the International Court. The refusal to contribute is the only remedy open to a minority which seeks to dissociate itself from the decisions that, in its opinion, are illegal or politically inopportune. Under the Charter, the resolutions of the General Assembly are purely recommendatory. There is something odd about the position that they assumed an obligatory character in respect of their financial implications. This would mean that a member could oppose a resolution of the General Assembly,

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<sup>9</sup> Ibid p.11

could express disapproval of its being carried out by anyone and yet would be under the legal obligation to pay towards the expenses of implementing it. Though, according to Judge Fitzmaurice, the intention of the San Francisco Conference was to impose a definite financial obligation on Member States irrespective of their political positions, yet the fact remains that this financial obligation is not, and could not be, a sufficient base for the United Nations to compel conformity and cooperation where sovereign States, and especially the Great Powers, are opposed to its operations.

During the earlier phase of the crisis, these deeper issues were eclipsed by certain legal contentions which were rather inflated. Much stress was laid on the principle of collective responsibility which somehow was regarded to mean a proportional equality of financial burden. This inhibited the growth of a more realistic and pragmatic approach. It was only when the principle of voluntary contributions was adopted, as it was adopted in the Asian-African proposals of 30 December 1964, that the crisis was somewhat alleviated. The new trend was reflected in the remark of the Representative of the United States in the Special Committee on Peace-keeping Operations that his Government would be willing to consider any modifications in the application of this principle which are thought necessary. The following guidelines embodied in the report of the President of the General Assembly and the Secretary General\* are also indicative of the recognition that the rigid application of the principle of collective responsibility could not enhance the effectiveness of the Organization:

“In each case involving a peace-keeping operation by the United Nations, various methods of financing may be considered, such as special arrangements among the parties’ directly involved, voluntary contributions, apportionment to the entire membership of the Organization and any combination of these various methods.

“If the costs of a particular peace-keeping operation, involving heavy expenditure, are to be apportioned among all the Members of the Organization, this should be done according to a special scale, due account being taken of: (1) the special responsibility of the permanent members of the Security Council; (2) the degree to which particular States are involved in the events or actions leading to a peace-keeping operation; and (3) the economic capacity of Member States, particularly of the developing countries.”

It is, of course, true that the principle of collective responsibility is a presumptive principle and there are great dangers in discarding it. If, for example, a formula were to be evolved which would exempt a member from contributing to the cost of an operation, which it opposed, the result could not be ruled out that a

Member would oppose an operation only to secure the exemption. This would be an anarchical situation. All the same, the principle of collective responsibility, by itself, does not furnish an answer to the question as to what is the 'collective' involved. It has been the argument advanced by France that the collective cannot be the entire Membership of the United Nations when an operation is initiated by the General Assembly outside its competence. The French position is that if the majority of States wish to establish a special machinery or project a special organ for a specific purpose, it is their obligation to contribute to the resulting cost. "It is for those States," the French Representative once said, "to find within themselves the means of solving the financial problem which they have thereby brought about".

It can thus be seen that no reasoning about the Assembly's authority to apportion expenses and no invocation of such principles as that of collective responsibility could solve the problem of who is competent to initiate peace-keeping operations. It was the experience of the Working Group of Twenty-One, instituted by the Assembly at its eighteenth Session, as well as of the Special Committee on Peacekeeping Operations, that the problem of how peacekeeping operations can be financed is not separable from who is competent to initiate them.

It is not possible here to recite the arguments about this issue in their complexity. On the one side, it is argued that peace-keeping operations are distinguished by their essentially voluntary nature and that the element of consent brings them within the context of the pacific settlement of disputes. On the other side, it is argued with equal force that any use of armed forces on behalf of the United Nations without exception constitutes an enforcement measure and is unequivocally governed by the relevant provisions of Chapter VII. The representatives of the Soviet Union have emphasised that whether or not the State concerned has consented to admit a United Nations armed force to its territory, the nature of the operations themselves remain the same; that is to say they involve the use of armed forces on behalf of the United Nations.

If the first line of reasoning is accepted then there is no doubt about the competence of the Assembly. If the opposing line is adopted, then not only is the Assembly's competence excluded but also the adoption of a formula for the financing of peace-keeping operations is illegal because it disregards the Security Council's competence and all the assumptions of Chapter VII. In that case, it is for the Security Council to determine the financing of an operation in accordance with Article 43 of the Charter.

Put in this way, the opposition of these two stand-points created an almost insoluble problem for the United Nations. It was, however, acutely remarked by the Representative of Mexico in the Working Group of 'Twenty-One that the two

positions adopted respectively by the Western Powers (with the exception of France) and by the U.S.S.R., though diametrically opposed, were similar in being extremely conservative. He added that the two positions were based either on the letter of the Charter or on the premise that the obligations assumed in 1945 are sacrosanct. This was also the feeling of the 75 Member States of Africa, Asia and Latin America. These countries were reluctant to pronounce themselves on the question in such a way as would present the Soviet Union and France with the alternatives of surrender or exclusion from the United Nations. But the position of the majority of members was not merely motivated by the consideration of expediency; it also reflected their conviction that the situation confronted by the United Nations was of a higher order than one in which old doctrinal standpoints can be viable.

It was this new line of thinking which generated the idea that there need not be a dispute about the conflicting jurisdiction of the Security Council and the General Assembly. The Representative of Mexico in the Special Committee on Peace-keeping Operations aptly pointed out that the powers of the Security Council and the General Assembly are mutually complementary and not competitive. This was accepted as one of the guide-lines in the report of the Secretary-General and the President of the General Assembly.<sup>10</sup> Indeed, the Charter itself embodied the conception of the General Assembly and the Security Council as two mutually reinforcing organs in Article 10, Article 11 (paragraphs 2 and 3) Article 12 (paragraph 2) and, most significantly, Article 15. In this perspective, any emphasis on what are called the residual powers of the Assembly – which were, let us recall, asserted in the Uniting for Peace Resolution – becomes unnecessary.

On this basis, the issue before the United Nations is not so much of the respective jurisdictions of its two political organs as of the discharge of a function by the United Nations as a whole. Where such functions can be discharged only by the Security Council – that is when an act of aggression or breach of the peace is to be suppressed – the lack of a decision by the Security Council becomes conclusive. When, however, within the ambit of Article 33 (paragraph 1) Article 35 (paragraph 1) and Article 36 (paragraphs 1 and 2) read with Article 14, the United Nations is capable of bringing about by peaceful means the adjustment or settlement of international disputes, the lack of decision by the Security Council cannot become conclusive for the United Nations as a whole.

Though this point of view is not yet firmly accepted by all, there are signs that the two opposing standpoints are not now as far apart as they were a year ago. The Soviet Union and France have conceded that the powers of the General

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<sup>10</sup> A/AC.121/4

Assembly are not confined to mere study, discussion, recommendations and acquiescence in the decisions of the Security Council. They have in fact recognised that if the Security Council is unable for any reason to adopt decisions in the exercise of its responsibility for maintaining peace, there is nothing to prevent the General Assembly from considering the matter immediately and making appropriate recommendations in conformity with its responsibilities. But what happens if there is a second deadlock in the Security Council? This is the question to which no generally acceptable answer has yet been found.

There are some formulas at present under discussion in the United Nations, whereby a procedure could be evolved which would ensure that the Security Council and the General Assembly should act in full knowledge of the attitude of each other. After the first deadlock in the Security Council, the General Assembly would give the most serious weight to the views expressed, and positions taken, by the Permanent Members of the Security Council. Likewise, the Council, when the question is referred back to it, could not lightly disregard the recommendation of the General Assembly. Though the precise formula cannot yet be spelled out, it can be assumed that a solution of the crisis can be found only along this line.

This will require, not so much legal inventiveness, but an accommodation of three viewpoints: first, the viewpoint of the United States and the United Kingdom; second, that of the U.S.S.R. and France, and, third, that of the Asian-African-Latin American countries. All three will, in the process, have to adjust their world-views to one another's.

## Evaluation

Peace-keeping operations of the United Nations can be evaluated from two standpoints: one, the standpoint of the Organization as such and, two, the standpoint of peace. The two are not necessarily identical. By the working of something like a variation of Parkinson's Law, an organizational effort attracts attention to itself and, if the course of its progress is chequered, the efficiency of its engineering becomes almost an independent end. The original aim gets complicated, if not eclipsed, in the process. All administrative machines, like flesh, are heir to these ills and the United Nations, insofar as it is an administrative machine, is no exception.

From the viewpoint of the Organization, it can be said that the experiences of the United Nations in the matter of peace-keeping have been inevitably of a disparate nature. It is not possible to squeeze them into a single consistent and clear-cut pattern which would lead towards the establishment of permanent force acting in discharge of both the preventive as well as the punitive functions of the United Nations. ONUC, as we have seen, posed more problems than it solved insofar as the role of the United Nations in the matter of peace-keeping is concerned. The basic presupposition of the notion of threats to international peace and security was that the world's populated territories are recognizably under the sovereignty of one or another nation state and that it is only between these nation states that breaches of the peace can occur which the United Nations should prevent or eliminate. Congo, however, presented a type of danger to international security which nothing in the Charter and nothing in the previous experiences of the United Nations in the Middle East had equipped the Organization to deal with. The situation as referred to the Security Council by the Congolese Government became the subject of action by the Council which circumvented recourse to Article 39, 41 or 42 of the Charter, and, therefore, did not necessitate the determination of the fact of aggression and consequently, a decision upon enforcement measures. Indeed, this action merely authorized the Secretary-General to provide the Government of the Congo with military assistance. It was not at all established beyond any doubt as to what Article the initial Security Council Resolution regarding Congo based itself upon. It was, to repeat, not based on Articles 39, or a for-lion i on Article 41 or 42. Article 49 which was cited in Resolution A/1474, Rev. 1 (ES-IV) of the General Assembly, merely obliges Member States to "join" in affording "mutual assistance" in carrying out the measures decided upon by the Security Council. Sometimes, it was suggested that Article 40 had been implicitly invoked in this case, but such invocation was never explicit or specific and, in any case, Article 40 mentions only "provisional measures" which are "without prejudice to the rights, claims

or position of the parties concerned". The action in the Congo, on any evaluation, was certainly far more than "provisional". The assumption in UNEF was that it would not either compete or co-operate with the forces of the host Government in a joint operation; that, on the contrary, it must be separate and distinct from the activity of the national authority. This assumption was meant to be carried over to UNOC where, however, it led to a great many difficulties because UNOC was designed to restore order within a state. The result was that the non-interventional character which was maintained in UNEF could not be preserved in ONUC nor could the absolute prohibition of initiative in the use of force be sustained on account of the rapid internal developments and growing external intervention. The net result of the operation was of a mixed nature. Insofar as it stabilized the situation in the Congo and prevented further international complications, it was an operation of some value. Insofar, however, as the situation in the Congo was *sui generis*, it established no clear precedent which could be said to have resulted in an accession of strength to the Organization.

Looking at the peace-keeping operations of the United Nations from the point of view of justice and deace, we might notice a few facts which are beyond controversy:

(a) It was not UNEF that brought about the cease-fire in Egypt and the Gaza Strip. It was the strong international disapproval backed by the action and the attitude of the United States and the Soviet Union, which France and Britain and Israel were unable or unwilling to resist. UNEF was merely the necessary expedient for supervising the cease-fire.

(b) Of all peace-keeping operations undertaken by the United Nations, only those in the Lebanon in 1958, attained success so complete as to enable the Security Council to delete the items from its Agenda. This success, however, was not attained by the operations as such but by a political agreement among the disputants which led all the ten Arab states jointly to sponsor Resolution 1237 (ES-III) which was adopted unanimously by the Assembly on 21 August 1958. The situation was stabilized not by the operation but by the agreement which made the operation unnecessary after November 1958.

(c) The Congo was a case of internal disorder portending an international conflict. That this disorder was quelled cannot be attributed to ONUC alone: the loosening of thoughts and tranquillization of passions which the passage of time brings with it in situations of internal conflict was a contributing factor.

These facts can be multiplied by other examples. All these bring home a two-fold lesson: first, that peace-keeping operations by the United Nations are *per se* ancillary in nature, and, two, they are thought to have succeeded if they help to

prevent a bad situation from getting worse. The cold reality is that no peace-keeping operation undertaken by the United Nations, whether large or small, whether military or civilian, whether expensive or cheap, has served to consolidate peace in the region involved. These operations have to be regarded as merely aids to vigorous efforts at the definitive political settlement of international disputes. The purpose of the United Nations is "to bring about, 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". The purpose of peace-keeping operations is to restore and maintain the *status quo*. The perpetuation of the *status quo* is not the fulfillment of justice or the guarantee of durable peace.

This glaring inadequacy in the concept of peace-keeping operations has begun to be increasingly perceived. Perhaps the event that stimulated this consciousness more than any other, was the outbreak of hostilities between India and Pakistan in September 1965. Here was a dispute of which the Security Council had remained cognizant for 17 years and which had attracted a peace-keeping operation by the United Nations, though of a limited kind. Yet this operation did not serve to prevent fighting nor, by itself, did it in any way facilitate the settlement of the dispute. When the war broke out, the voice was heard all around the world that the United Nations does not serve its purpose if it temporizes with problems and makes no effort towards enforcing their solution. The loudly expressed gratification of the great powers at bringing about a cease-fire between India and Pakistan muffled this voice somewhat but did not suppress it altogether. This is evidenced by the statements made in the opening debate of the General Assembly by numerous Member States from all continents. There is one note common to them: it is that the cease-fire is a good thing but it is not enough.

Though this kind of consciousness may not palpably change the actions and attitudes of the United Nations, at least in the immediate future, its value should not be underestimated. However, there is a deeper problem involved here which is being all too easily overlooked.

It is primarily a problem of international morality. The danger of peace-keeping operations as conceived so far, lies chiefly in their imposing a false ethics on international relations. It is not merely that the approach which places an emphasis on interim, ceasefire measures detracts from the urgency of the final settlement of international disputes. It is also that it encourages an illusory view of peace. Thus a morality is established which aims at tranquility even at the expense of justice. This is a system of values which could not have been acknowledged by the framers of the Charter.

The root of this difficulty lies in the fact that the Great Powers have shown no interest in the securing of peaceful change through the United Nations. It is being said, in answer to this charge, that the United Nations has played a large role in the liquidation of colonialism. But this is not a sufficient defence. The fact must be candidly faced that the historical situation which brought about the termination of colonialism was due to a variety of factors—economic, social, cultural and psychological--which were not consequent to the birth or existence of the United Nations. Moreover, the United Nations espoused the cause of the liquidation of colonialism only after it had already made progress in Asia and parts of Africa. Its definition of colonialism is still the conventional one and does not include situations which would be awkward for one of the two Great Powers to handle. To denounce colonialism of the time-worn type is like denouncing sin; it requires no courage and less imagination.

This aspect of the philosophy and growth of the United Nations bears a striking resemblance to the philosophy of the status quo which brought about the decline of the League of Nations. But while the membership of the League of Nations was restricted, the United Nations aspires to universality and, as such, exerts a pervasive influence on the political culture of the age. If the basic approach of the League of Nations was wrong, there existed a large segment of the world community ever ready to point out its errors and aberrations. But the United Nations claims the allegiance of 117 Governments with the result that except for the People's Republic of China and Indonesia of the "old order", no Government takes upon itself to point out, not merely the failures of the World Organization, but the defect in approach which lies at their root.

It is unfortunate that the ideological emphasis in the pronouncements of the People's Republic of China distracts world attention from their content. It is easy to put the Communist tag on the phrase "wars of liberation" and denounce it as denoting subversion and malevolence. But such facile reactions are of no help whatsoever towards the fulfillment of the aims of the United Nations Charter. They do not help the growth of a world-view which would be harmonious with the Charter. The fact is that there are areas in the world today, whose peoples are groaning under tyranny. The fact is that there are contemporary situations which cannot be brought into conformity with justice by the procedures of the United Nations. If the provisions of the Charter contained in Articles 33 and 34 had not been allowed to atrophy, if Chapter VII had not become virtually a dead letter, if there were no divergence of interests between the Great Powers, on one side, and between them and the smaller powers, on the other, then it would be fair to say that there is no such thing as a "just war". But these provisions of the Charter, and indeed its whole spirit, do not constitute the political map of the world today. The result is that, under the dominance of a viewpoint which preserves existing

situations and perpetuates their iniquities, the United Nations today lives in what may be called a moral no-man's-land. It is not the land of peace with justice.

## Conclusion

The mass of facts which comes into view in a survey of the peace-keeping role of the United Nations can support diverse conclusions, both pragmatic and philosophical. We shall, however, confine ourselves here to a few broad ones.

First, the concept of peace-keeping operations has, in essence, been the response of the United Nations to the challenges of an international society very different from the one present in the minds of the founders of the United Nations at San Francisco.

Second, this response has been largely stereotyped. It has been conditioned much more by power realities than by demands of peace with justice.

Third, the problem about the authorization of these operations, which is plaguing the United Nations at present, cannot be solved unless either structural changes are made in the United Nations, or the principle of voluntary contributions is accepted for the financing of the operations. At any rate, a political understanding will have to grow among the Great Powers before a firm prospect will emerge for the initiation of peace-keeping operations by the General Assembly in future.

Fourth, in the event of such an understanding, a likely course for restoring the solvency of the United Nations will be to give voluntary contributions an institutional form. The idea of a Peace Fund has been mooted in the United Nations. It can be promoted only in an atmosphere of relative harmony between the main power interests.

Fifth, even with the accommodation of different power interests, the United Nations will not come much nearer to being a real instrument for international collaboration rather than a weapon in the diplomatic arsenal of two or three Great Powers.

The last is a melancholy conclusion. But nothing in the political realities prevailing in the world today could justify a more serene view of this important reality.