

# NOTES

## A Legal Analysis of Article 19 of the United Nations Charter

Joel I. Bell \*

*Gentlemen all, — alas, what shall I say?  
My credit now stands on such slippery ground*

Shakespeare; *Julius Caesar* III, 1.

The future of collective security activities of the United Nations depends largely upon the interpretation to be placed upon Article 19 of its Charter. The solution to this question will affect not only the location of decision-making within the UN, but also the effectiveness of the UN in its response to the needs of world peace in face of desperate situations despite opposition by one or more of the great nations. It is, therefore, not entirely inappropriate that a political solution be found to the current confrontation. Nonetheless, a disregard for the legal issues, or a solution which flies in the face of the meaning of the Charter, will deal a serious blow to the prestige and development of international law. It is the object of this note to apply the traditional tools of legal analysis to the relevant sections of the Charter, making possible an assessment of the conformity or lack of it achieved by the solution eventually arrived at.

“A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.”<sup>1</sup>

The contentions of the Soviet Union as to the meaning of the article may be summarized as follows:

I. The application of the first sentence of Article 19 whereby a Member in arrears loses its vote in the General Assembly is not

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\* Of the Senior Board of Editors, McGill Law Journal; third year law student.

<sup>1</sup> Article 19, UN Charter.

mandatory and automatic but requires a decision by the General Assembly;

II. Such a decision is to be taken by a two-thirds majority of the Members present and voting under the terms of Article 18, paragraph 2, which provides for such a majority for "the suspension of the rights and privileges of membership." A modification of this contention is that even if the provision is *mandatory* and *automatic*, the Assembly must first find as a fact that the Member is in arrears in terms of Article 19 (by a two-thirds vote, being an "important question").

III. Arrears on the payment of assessments for ONUC<sup>2</sup> and UNEF<sup>3</sup> if not peace-keeping expenses in general, are not to be included in the computation of arrears for the purposes of Article 19.

All of these grounds of dispute direct the inquiry to the Charter itself for a solution.

#### I. Article 19 - Mandatory or Permissive ?

It is beyond dispute that the second sentence of Article 19 is permissive — the General Assembly "*may... permit*" a Member in arrears to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". This language is in clear contrast to that of the first sentence of Article 19 whereby a Member in arrears "*shall have no vote in the General Assembly*"<sup>4</sup> Additional evidence of the intent of Article 19 can be derived from the use of similar terms elsewhere in the Charter to provide a mandatory effect (e.g. Article 20 provides that the General Assembly "*shall*" meet in a regular annual session) and the same contrasting language to provide a permissive effect (e.g. Article 22 says that the General Assembly "*may*" establish such subsidiary organs as it deems

<sup>2</sup> ONUC is a French acronym for the United Nations Operation in the Congo. This undertaking began when in 1960 the newly independent government of the Congo (Leopoldville) appealed to the UN following local hostilities and Belgian intervention to "protect the national territory against acts of aggression committed by Belgian metropolitan troops". The Security Council agreed to provide "such military assistance as may be necessary". (see SCOR 15th Yr., Suppl. for July, August, and September 1960 — S/4382 and S/4387).

<sup>3</sup> UNEF refers to the United Nations Emergency Force established as the first major peace-keeping operation by the UN to "secure and supervise the cessation of hostilities". (see General Assembly Resolution 998 (ES-1), 4 Nov. 1956).

<sup>4</sup> The French text tells us that a member in arrears "ne peut participer au vote à l'Assemblée Générale..." while the Spanish provides that such a member "no tendrá voto". The Chinese and Russian texts are reported to give similar wording in their literal interpretations.

necessary). Similarly, Article 5 provides that a Member "may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council" (and that they "may be restored by the Security Council") in the event that preventive or enforcement action is taken by the Security Council against a Member.

Furthermore, all Members normally have the right to vote.<sup>5</sup> There would be no need for the General Assembly to be accorded the optional authority that it "may . . . permit" a Member in arrears to vote unless such voting rights had already been suspended. The General Assembly need not "permit" anything to which a Member is entitled by the Charter itself.

A greater certainty might be achieved by reference to the records of the founding conference at San Francisco.

"The Assembly will be a body on which every member of the United Nations is represented and in which every member has one vote. A member which has fallen two years in arrears on its financial obligations to the Organization, however, will not be allowed to vote except by special decision of the Assembly. On important questions a two-thirds majority will be required, but otherwise, decision will be made by a majority vote."

"The Assembly will have the right, upon a recommendation of the Security Council, to admit new members, to suspend the rights and privileges of members against which preventive or enforcement action is taken by the Security Council, and to expel members . . ."<sup>6</sup>

This indicates the mandatory effect intended by the founders of the provision of what was to become Article 19, and the exception to which a "special decision of the Assembly" may give effect. In explaining the substance of what became Article 5, the Rapporteur notes that "The Assembly will have the right"<sup>7</sup> i.e. a discretionary authority, to deny a member the rights and privileges of membership, a provision of more severe proportions than that of Article 19 which refers only to the vote in the General Assembly.

The source of Article 19 lies primarily in amendments proposed at the San Francisco Conference by the delegations of India, the Netherlands, and Australia.<sup>8</sup> Committee 11/1 reported: "that states failing to fulfill their financial obligations should be deprived of

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<sup>5</sup> Article 18, paragraph 1 — "Each member of the General Assembly shall have one vote."

<sup>6</sup> UNCIO — vol. 8, pp. 265-266. Revised Report of the Rapporteur (Judge Alfaro of Panama) Commission 11, adopted by the Plenary Session of the San Francisco Conference.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, pp. 508-509.

all voting rights in the Assembly as long as they are in arrears. In its discussion of this matter, the experience of the League of Nations was cited as indicating the need for such a penalty... It also recommends that the General Assembly should be empowered to waive this penalty if the default of the member is due to causes beyond its control."<sup>9</sup> The consequent provision was:

"Each member of the Organization shall have one vote in the General Assembly. A member which is in arrears in the payment of its financial contributions to the Organization shall have no vote so long as its arrears amount to its contributions for two full years. The General Assembly may waive the penalty if it is satisfied that the reasons for delay in payment are beyond the control of the state in question."<sup>10</sup>

The Plenary Session ultimately adopted unanimously the interpretation noted by the Rapporteur above.<sup>11</sup>

Past experience with Article 19 is very slight since most members have paid their assessments, or being in arrears, have paid enough to avoid the Article's application.<sup>12</sup> Haiti remained in arrears at the opening of the Fourth Special Session of the General Assembly on May 14, 1963. Before the issue came to a head, adequate payment was made to exclude the application of Article 19. Such payment was made *before* its delegation appeared at any meeting of the Assembly's Plenary Session or any meeting of the single Main Committee then sitting, the Fifth Committee.

Mr. Zafrulla Kahn, the then President of the General Assembly, made it clear in public interviews that he believed the provisions of Article 19 to be of automatic application, subject to a discretionary power of the General Assembly to suspend its operation if it felt the default to be no fault of the particular country. On only one other occasion did the issue come to the fore — that was in August 1958 when the Committee on Contributions reported to the Thirteenth Session that Bolivia had not paid part of its contributions for 1955, as well as its total contribution for 1956, 1957 and

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<sup>9</sup> *Ibid.*, p. 453.

<sup>10</sup> *Ibid.*, p. 457. The Secretariat of the Conference advised a replacement of the phrase "waive the penalty" by the words: "restore the privilege of voting". The Coordination Committee which was confined to questions of language, clarification and organization, excluding substantive changes, drafted the text substantially as it appears today.

<sup>11</sup> Adopted by the Conference's 9th Plenary Session (UNCIO, vol. 1, p. 623).

<sup>12</sup> There were ten Members in arrears prior to the Fourth Special Session of the General Assembly in 1963, nine made sufficient payment before the session opened. Among these were Hungary and Cuba whose liability included in the computation of the arrears assessments for ONUC and UNEF.

1958. Payments were made, however, before the opening of the session.<sup>13</sup>

In addition to the implications to be drawn from the past experiences under Article 19 as to its mandatory application and the respect paid to it by delinquent members (remaining absent from proceedings until making payment although the Article only stipulates a loss of the vote and does not deny participation in the proceedings), it should be observed that experience of the Specialized Agencies with similar articles has been perfectly analogous to that suggested by this commentary.<sup>14</sup> In cases where the wording follows that of Article 19, the experience has been unanimously in support of its mandatory application, with several instances of the permission to vote being restored on record.

While this aspect of the question has not yet been debated too extensively, it could prove to be of prime consideration should attempts at a solution fail to materialize once the Assembly is confronted with a vote on some matter.

## II. Computation of Arrears:

The second point of contention lies in the issue of who decides that the terms of Article 19 have been met. Must the General Assembly make a finding of fact to that effect?<sup>15</sup> Is a specific majority required for that purpose? Perhaps more basically, one must consider whether the fact of arrears is a political or arithmetical issue. The accounting procedure of the United Nations can hardly be viewed as a political question, particularly once a system has been adopted for the keeping of such records. If one were to suggest that the comparing of amounts due with the amounts due from a particular Member for the preceding two full years is something which must be verified by the General Assembly, the role of the Secretary-General as "the chief administrative officer of the Organization" would be cast into great doubt. It is true that the General Assembly adopts the rules by which the Secretary

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<sup>13</sup> A/3890, p. 5.

<sup>14</sup> The Constitutions of ILO [13 (4)], FAO 111 par. (4), UNESCO IV par. C8, and IMCO Art. 62 as well as IAEA (XIX) par. 4, contain provisions analogous to Article 19. Where the intention was to have a decision to suspend the vote by the Assembly of the agency involved, the respective Constitutions expressly so provide. e.g. WHO Art. 7; WMO Art. 31, ICAO Art. 62.

<sup>15</sup> Having suggested that the General Assembly need not vote on the actual loss of the vote, but that such loss flows automatically from the fact of arrears, it remains to discuss the authority upon whom the finding of fact rests.

General is obliged to keep the accounts, but the Secretary General then applies them in an objective and impartial manner.

The General Assembly has provided such direction to the matter of finances. Rule of Procedure 153 provides that: "The General Assembly shall establish regulations for the financial administration of the United Nations". Under Rule 161, the role of advising the General Assembly on the scale of assessments "and on the action to be taken with regard to the application of Article 19 of the Charter" is assigned to the Committee on Contributions. In addition, the General Assembly has unanimously adopted the Financial Regulations to "govern the financial administration of the United Nations..."<sup>16</sup> A Controller is made responsible on behalf of the Secretary-General for the administration of the rules issued under these financial regulations.

"The Secretary-General shall maintain such accounting records as are necessary and shall submit annual accounts..." according to Regulation 11.1. Under this regulation statements are prepared as official documents on a monthly basis showing advances to the working Capital Fund and "contributions due" to the United Nations Regular Budget, the United Nations Emergency Force Special Account, and the Congo *ad hoc* Account. The authority and accuracy of such reports appear never to have been challenged. The Secretary-General reports to the General Assembly<sup>17</sup> on the situation of financial contributions and refers to the terms of Article 19:

"As at 14 September 1959, the contributions payable by Member States for the years prior to 1957 have been paid in full, and for 1957 the amounts outstanding represent in all cases less than the total contributions due for that year. At the present time, therefore, no Member State is in arrears in the payment of its financial obligations to the Organization to the extent that Article 19 of the Charter would apply."<sup>18</sup>

The only occasion on which the Committee on Contributions made an observation as to the existence of arrears under the terms of Article 19 has been noted above.<sup>19</sup> It was based upon the accounts kept under the above noted rules. Undoubtedly, the advisory capacity of the Committee on Contributions under Rule of Procedure 161 would call upon that Committee to advise whether the default

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<sup>16</sup> Regulation 1.1.

<sup>17</sup> Regulation 5.7 "The Secretary-General shall submit to the regular session of the General Assembly a report on the collection of contributions and advances to the Working Capital Fund."

<sup>18</sup> A/C. 5/778, p. 1.

<sup>19</sup> This occurred in August of 1958 and referred to the arrears owing from Bolivia. The Committee has normally reported that Article 19 applied against no Member as of the time of its report.

is due to conditions beyond the control of the delinquent Member. Should this Committee not be in session at the time of the opening of the General Assembly, it appears that the Secretary-General would be called upon in his report to note the arrears according to the accounts kept.<sup>20</sup> This past practice, supported by similar practice of the Specialized Agencies casts grave doubt upon the suggestion that the General Assembly ought to decide upon the fact of arrears. The adoption of Rules of Procedure and Financial Regulations indicate a framework within which accounts are to be kept and the basis upon which one can mechanically establish the fact of arrears exceeding "the amount of the contributions due from it for the preceding two full years". There is no suggestion by the defaulting states at the present time that there is any mistake in the records such that the General Assembly might be called into the picture. The records are accepted as being accurate, consequently, this fact need not be called before the Assembly. The question of whether there exists a legal obligation to pay certain specific assessments (the amount of which is not disputed) is to be discussed under section III of this commentary.

It is thus suggested that the Assembly has no role to play in the dispute on this point. The attempt to bring the question of fact before the Assembly independently of any dispute as to the accuracy of the fact involved appears to be geared to render political questions of a purely administrative nature. It would be very strange to find the General Assembly failing to find a fact (on the basis of political considerations) which is not in itself questioned by the delinquent Members. It would amount to saying that while the amount of arrears reported is accurate, the conditions do not meet those laid down by Article 19. Article 19 itself provides the basis on which the Assembly may, *despite the fact of arrears*, decide against the application of the first sentence of that Article — namely, that "it is satisfied that the failure to pay is due to conditions beyond the control of the Member".

If the interpretation suggested in the first two sections is correct, the question of the majority required either to effect the loss of the vote or to establish the fact of arrears does not arise. A comment should be made, however, on the reference to the special majority required under Article 18 (2) in view of the fact that Article 19 does provide for a decision of the General Assembly to permit a delinquent Member to vote despite its arrears.

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<sup>20</sup> The Pleadings to the International Court of Justice describe the procedure followed in *Certain Expenses of the United Nations*, I. C. J. Reports 1962, p. 53-55.

"2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, *the suspension of the rights and privileges of membership*, the expulsion of Members, question relating to the operation of the trusteeship system, and budgeting questions.

3. *Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.*"<sup>21</sup>

It is submitted that the reference in Article 18 to "the suspension of the rights and privileges of membership" has no connection with Article 19, but applies to Article 5 whereby a Member "may be suspended from the exercise of the rights and privileges of membership". Article 19 does not speak of a step as drastic as that of Article 5. It merely denies the right to vote, and that denial applies only in the General Assembly.<sup>22</sup> Such a view is supported by the phrase in Article 18 (2) which follows directly that noted above — namely, "the expulsion of Members" — which provision is related to Article 6 of the Charter.

The attempt to expand the list under Article 18 (2) requires an express vote to that effect "by a majority of the members present and voting". As Professor Kelsen observes, the provision of Article 18 (2) on "the suspension of rights and privileges of membership" does not apply to Article 19." . . . the formula probably refers only to the suspension of rights and privileges of membership provided for in Article 5."<sup>23</sup>

### III. Legal Validity of Peace Force Assessments:

Do the peacekeeping assessments constitute legal obligations to make "financial contributions" within the meaning of Article 19? If the assessments involved are within the authority of the General Assembly, which body levied them, they are valid once apportioned and approved by the General Assembly in accordance with Article 17. The more vital question in the current dispute, however, is whether the General Assembly in imposing such assessments may give them the status of financial contributions within the meaning of Article 19.

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<sup>21</sup> Article 18 (Emphasis supplied).

<sup>22</sup> It is suggested that the loss of vote would apply to the proceedings of the Assembly sitting in Plenary Session or in the Main Committees.

<sup>23</sup> *The Law of the United Nations*, 1951, p. 719.



In a recent advisory opinion, the International Court of Justice concluded (with a majority of nine to five) that the expenditures authorized by the General Assembly for peacekeeping operations in the Congo and the Middle East "constitute 'expenses of the Organization' within the meaning of Article 17, paragraph 2, of the Charter of the United Nations".<sup>24</sup> The General Assembly, by resolution 1854 (XVII) on December 19, 1962 "accepts the opinion of the Court on the question submitted to it" thereby confirming that the expenses for ONUC and UNEF are "expenses of the Organization" and, hence, included with the "financial contributions to the Organization" under Article 19.<sup>25</sup>

The counter argument is that expenses resulting from these operations for the maintenance of international peace and security, are not "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, inasmuch as such activities are left exclusively to the authority of the Security Council through agreements negotiated in accordance with Article 43 of the Charter. This would mean that *only* the Security Council is authorized to decide on any aspect of an action relative to the maintenance of international peace and security. It is further argued that the General Assembly is limited to discussing, considering, studying and recommending action, but cannot impose an obligation to pay the expenses which result from their implementation.<sup>26</sup>

The crux of the issue is whether the authority given to the Security Council is "exclusive" or "primary". Article 24 of the Charter provides:

"In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council *primary* responsibility for the maintenance of international peace and security . . ."<sup>27</sup>

Chapter VII of the Charter gives exclusive authority to the Security Council to *require enforcement by coercive action against*

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<sup>24</sup> I.C.J. Reports, 1962, p. 156 at 179-180.

<sup>25</sup> This resolution was passed by a vote of 76-17-8 despite an amendment submitted by Jordan to replace "accepts" by "takes note of" with the declared intention of avoiding the inclusion of UNOC and UNEF assessments in the computation of the requisite arrears under Article 19. The amendment was defeated 68-28-14. (See General Assembly Seventeenth Session, *Official Records*, 964th meeting of the Fifth Committee; par. 4 and the resolution adopted by the General Assembly — Resolution 1859 (XVII) on December 19, 1962.

<sup>26</sup> See I.C.J. Pleadings, *Certain expenses of the United Nations*. See particularly the submissions by Mexico (p. 90), the Republic of South Africa (p. 260), the U.S.S.R. (p. 273). For rebuttal, see Australia (p. 233-238), U.S.A. (p. 207-209) and Sir Kenneth Bailey's oral presentation (Australia) (p. 372-377).

<sup>27</sup> Emphasis supplied.

*an aggressor*. Does this exclude the concern and capacity of the General Assembly for matters of international peace and security? That the powers of the General Assembly exceed that of mere recommendation is evidenced by Article 18 which provides for the majorities by which "Decisions of the General Assembly . . . shall be made". These include the suspension of the rights and privileges of membership, expulsion of Members, "and budgetary questions". That Article 17 (2) permits the General Assembly to apportion expenditures is not disputed. But does this imply a capacity to apportion expenditures incurred by the General Assembly for peace-keeping operations?

As to whether the General Assembly has acted beyond its authority under the internal constitutional arrangements, the answer cannot come by reference to an authority which can interpret the Charter in an authoritative or binding manner. This lays the foundation for a dispute destined to be plagued by political considerations, legal and logical uncertainties, and firm stands on issues making face-saving devices difficult to find. It is fine to consider the undertaking in question desirable from the vantage point of our individual prejudices or outlooks; it is probably true that the measures were in keeping with the "purposes of the United Nations" as outlined in Article 1<sup>28</sup> and one might argue that they were necessary to prevent the outbreak of violence at the time and place of their implementation; but policy justification (although it might ultimately be the basis upon which Members take firm stands on the issue) permits of alternative policy bases from which to proceed to a conclusion. Consequently, a desire to see a force in existence is the premise upon which much subsequent analysis is done after resorting to the General Assembly in the face of an insurmountable veto power in the Security Council.<sup>29</sup> On this basis words such as "the General Assembly may recommend measures for the peaceful adjust-

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<sup>28</sup> The first such purpose being cited as: "To maintain international peace and security . . ."

<sup>29</sup> The United States has rarely found that any UN project has run counter to its own national interest and has, thus, usually appeared as the champion of the neutral UN. However, the U.S. did find a conflict in June 1961 when the Governing Council of the Special Fund was considering projects of many countries, including one for Cuba which sought over \$1,000,000. The pressure of Congress resulted in a negative vote and rationalization of its position as the sole opponent of the Cuban project. The reason provided was that of unstable economic conditions, although the delegation saw no objection to a project for the Republic of Korea immediately following a military coup d'état. This is not meant to criticize, but to point up the ultimate preference for national interest of even the strongest of the Member nations and one which has often revealed an admirable objective quality with regard to the role of the UN. Russia is greatly concerned over

ment of any situation . . ." <sup>30</sup> are deemed to import the capacity to *take measures* although it might be suggested that Article 11 limits its authority over this aspect to that of making "recommendations with regard to such principles to the Members or to the Security Council or to both"; <sup>31</sup> that the exclusive area of authority of the Security Council is limited to the implementation of action directed *against* States <sup>32</sup>, while the enforcement of peace and security lies also with the General Assembly.

Thus, one possible answer to the problem posed is the decision that the General Assembly did, indeed, have the capacity to act as it did with regard to the operations in the Middle East and in the Congo. That is, not only does the operation of peacekeeping fall within the substantive power of the United Nations, <sup>33</sup> but also it meets with the procedural qualifications of the Charter.

The measures taken are seen as attempts to counteract threats to international peace, not as constituting sanctions contemplated in Chapter VII of the Charter. The power to initiate such operations is usually based upon the authority given to the Organization under Article 1 (1) <sup>34</sup> with the subtraction of only specific powers for the Security Council.

There is the further authority of the "Uniting for Peace" Resolution <sup>35</sup> on which to base this interpretation of the Assembly's residual role in the maintenance of peace and security where the Council fails to fulfil its primary responsibility. However, this resolution is not as strong a support as one might think at first glance since it only contemplates an authority for the Assembly to

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the trend of shifting power from the Security Council to the General Assembly, while the new nations likely find attractive the availability of military help should the need arise in their territories.

<sup>30</sup> Article 14.

<sup>31</sup> Except where precluded from doing so by Article 12.

<sup>32</sup> This is concluded from Chapter VII. This view postulates that the general capacity of the Organization to take "collective measures" (Article 1 (1)) is broader than the authority of the Security Council to take "enforcement measures" against states.

<sup>33</sup> It might be noted that several writers have suggested that the activities to date were really action by Members under the request of the Organization rather than "collective measures" of the Organization itself, which collective measures require implementation via the agreements envisaged by Art. 43 though never concluded. For discussion of this see J. W. Halderman *Legal Basis for United Nations Armed Forces*, Vol. 56, A.J.I.L., p. 971.

<sup>34</sup> Article 1(1) accords this authority to the Organization and *NOT* to the Security Council.

<sup>35</sup> Resolution 377 (V) Nov. 3, 1950, General Assembly, 5th Session, Official Records Supp. No. 20 at 10-12. UN Doc A/1775 (1950).

*recommend* steps to the Members.<sup>36</sup> Herein lies the major objection to this proposed answer to the current assessment disagreement — that is, the objectives of Article 1 (1) must be achieved by means of the machinery provided by the remainder of the Charter, and that the only ability to implement a peace force lies with its express provision in Chapter VII of the Charter. This view calls into support Articles 10, 11 (2) and 14 which reveal the role to be played by the Assembly in general, as one of recommendation to which Members *may* respond.<sup>37</sup> Thus, the finding that the scope of “collective measures” which the UN as a whole is competent to undertake is broader than the authority given to the Security Council, merely renders action taken by Members a “collective measure”, but does not necessarily qualify it as an operation which the General Assembly can undertake with a view to paying the expenses thereby incurred by the participating Members. This would enable the UN to act, while not necessarily denying the monopoly of the Security Council in the area where the expenses are to be borne by the Members. The view that “under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties”<sup>38</sup> does not necessarily mean that it can ignore the procedures and appropriate organs provided for such activities by the Charter itself. Consequently, the recommendations made by the Assembly would not become legally binding orders that Members participate in such collective measures, being only bound to comply with such orders as emanate from the Security Council.<sup>39</sup>

The General Assembly could undoubtedly adopt regulations for the establishment of forces to be put at the disposal of the Organization. Members could be urged to make such forces available without any claim of a violation of the Charter being validly made. Such a recommendation leaves the Members with individual discretion to refuse to comply.

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<sup>36</sup> The only response offered to this observation by the advocates of the capacity of the Assembly in this area is that this is a voluntary limitation by the Assembly of the plenitude of its powers to achieve the objectives laid out in Article 1 (1).

<sup>37</sup> The Assembly may thus recommend action to the Members which is essentially different from that which is within the authority of the Security Council. Consequently, response by individual Members to the request would constitute “collective measures” in its wider sense and not amount to an illegal act of war.

<sup>38</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (1949) I.C.J. Rep., 174 at 182.

<sup>39</sup> It has been suggested that the scope of the power possessed by the military forces set up by Assembly recommendation are limited to non-interventionist roles.

An alternative avenue of justifying General Assembly action in this field, in addition to the above capacity to recommend, lies in Article 22 which provides that: "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."<sup>40</sup> It has been argued that such subsidiary organs should be established only to assist the Assembly in its deliberative and investigatory functions. However, the acceptance of a practice of permitting the appointment of additional personnel to commissions for such purposes as, mediation and enforcement of truce agreements or guards to defend UN missions, seems to permit wide scope to the type of personnel which may be thereby appointed<sup>41</sup>, including military personnel. Under such a heading there appears to be no limit on the amount of expense which a two-thirds majority of the Assembly could impose upon all Members by virtue of Article 17. The assessments for the UNEF and ONUC have not been structured to include the totality of the costs involved for these operations. Part has been left to the method of voluntary contributions, a device used for a significant portion of the UN's activities.<sup>42</sup> In the long run, however, such activities as the Peace Force Operations cannot be left to the vagaries of voluntary support.

Thus, the Assembly can implement action under Article 22. It can also, at least, recommend action to Members under its general powers. Under the latter source of authority, can the Assembly then bind its Members to participate in the expenses thus incurred in view of its role in implementing the peace force involved?

Article 17 makes it quite clear that the General Assembly is the ultimate budgetary authority, and Article 18 sets a majority of two-thirds for such questions. The original resolution on UNEF passed the Assembly unanimously, while the first resolution on its financing passed by a vote of 62 in favour, 8 against, with 7 abstentions. This resolution provided

"...that the expenses of the United Nations Emergency Force other than for such pay, equipment, supplies and services as may be furnished without charge by Governments of Member States, shall be borne by the United Nations and shall be apportioned among the Member States, to the extent

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<sup>40</sup> Many very useful committees and commissions have been established under this Article. e.g. the Commission on Korea (1948).

<sup>41</sup> It has even been suggested that a UN Force may be established as part of the Secretariat under Article 97, providing the appropriate budgetary approval is made by the Assembly. This does not fit the current situation since the contingents involved are of specific national affiliation.

<sup>42</sup> The more important voluntary programmes are: UNICEF, UNHCR, UNRWA, EPTA and Special Fund.

of 10 million dollars, in accordance with the scale of assessments adopted by the General Assembly for contributions to the annual budget of the Organization for the financial year 1957...<sup>43</sup>

The fact that both the UNEF and ONUC budgets were assessed via separate accounts to avoid delay in securing funds for an operation which demanded immediate implementation should not form the basis for any legal distinction between these and regular budget assessments. In the case of the Congo operations the Assembly resolution deliberately assessed \$48,500,000 on the basis of the 1960 scale to be "binding legal obligations" on the members according to Article 17,<sup>44</sup> as a first allocation of funds to this project. Here the Security Council had approved unanimously beforehand. Notwithstanding the fact that the Security Council had approved the force, the Soviet Union insists that the Assembly cannot even decide upon the assessment of expenses for action which it claims fall under Article 48, thereby subjecting the assessments as well to the unanimity of the major powers in the Council.

It is submitted that even if the Security Council must approve certain actions which the Assembly can only recommend, the unanimity principle cannot be reasonably extended to matters of finance where the General Assembly is supreme.<sup>45</sup> That is, the Council need not be the exclusive body to assess the expenses even if it *must* approve the undertaking. It is particularly this supremacy and the flexibility of assessment granted to the Assembly (along with the provisions of Article 19) which were placed in the UN Charter after the lesson was learned under the League Covenant. While the Assembly could have agreed to finance these particular expenses independently of Article 17, the Members, by a sufficient majority, chose to implement the assessments through the ordinary procedure.

Failure to invoke the sanction of Art. 19 in the face of assessments made by the General Assembly and declared to be "binding legal obligations" in at least one case in question (ONUC Resolution of 20 December, 1960) would make a mockery of the Charter provisions.

On the other hand, the political expedience of enforcing Article 19 at this time is cast into great doubt lest it give truth to the prophets

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<sup>43</sup> General Assembly Resolution 1089 (XI) 21 Dec. 1956.

<sup>44</sup> General Assembly Resolution 1590 (XJ) 20 Dec. 1960. N.B. The authorization for the establishment of this undertaking came from the Security Council to the Secretary General. (UN Security Council, *Official Records*, (SCOR); 15th year, Supplement for July-Sept. 1960. (Doc S/4387) p. 16.

<sup>45</sup> Certainly if the Assembly is not acting beyond its power, it can then assess the expenses according to the requirement of Articles 17 and 18.

of doom who foretell of a financial collapse of the latest attempt at an international organization or an equally effective death by means of a withdrawal of several powerful states.<sup>46</sup>

In the final analysis the discussion of finances of the United Nations is but a reflection of the problems of creating a world community in the face of divergent ideologies and policies. A more fundamental accord will have to precede the establishment of any *permanent* solution to the dilemma of financing international peace and security.

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<sup>46</sup> Limited withdrawals proved ineffective in the past and Russia returned. The recent withdrawal of Indonesia, however, leaves many less confident of the attitude that no Member would feel it advantageous to walk out.