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**Chairman: Mr. Jan Paul BANNIER
(Netherlands).**

AGENDA ITEM 64

Obligations of Members, under the Charter of the United Nations, with regard to the financing of the United Nations Emergency Force and the Organization's operations in the Congo: advisory opinion of the International Court of Justice (A/5161, A/C.5/952, A/C.5/L.760, A/C.5/L.761 and Add.1, A/C.5/L.763) (continued)

1. Mr. STOTVIK (Norway) said that the ominous talk of the bankruptcy of the United Nations in recent years had left many people with the impression that the Organization might eventually be unable to meet its obligations for financial reasons. Although the Norwegian people fully appreciated that some political problems were too complex to admit of immediate solution, it found it hard to believe that a relatively trifling matter like the shortage of funds could prevent the Organization from carrying out the tasks which Member States had agreed to assign to it. When a crisis occurred, its action was too urgently required for the cost to be discussed. For that reason, the financial crisis must and would be solved. It was natural that the smaller nations, which needed the United Nations most, should stress most strongly the need for a solution. General Assembly resolution 1739 (XVI) authorizing the Secretary-General to issue United Nations bonds had been sponsored largely by those countries, and their response to the Secretary-General's appeal to buy the bonds had shown that they were eager to play their part in protecting the financial integrity of the United Nations. The Norwegian Parliament had decided, without a single dissenting vote, to purchase double the amount that was expected of it, and Norway was proud to possess United Nations bond No. 1.

2. He hoped that the discussion of the advisory opinion of the International Court of Justice^{1/} would lay a sound basis for the future financing of all United Nations activities. The advisory opinion had been delivered in very clear terms; the Committee must use that opinion in such a way as to achieve a final solution of the question of unpaid obligations. The Court had ruled that the expenditures relating to the operations of the United Nations Emergency Force (UNEF) and to the United Nations Operation in the Congo (ONUC) constituted "expenses of the Organization" within the

^{1/} Certain expenses of the United Nations (Article 17, paragraph 2 of the Charter), Advisory Opinion of 20 July 1962; I.C.J. Reports 1962, p. 151, transmitted to Members of the General Assembly by a note of the Secretary-General (A/5161).

meaning of Article 17, paragraph 2, of the Charter: it therefore followed that future peace-keeping operations must also be regarded as coming within the scope of that Article, and that the General Assembly was entitled to assess Member States for such expenses. The Assembly had already adopted resolutions at previous sessions establishing rules for the assessment of UNEF and ONUC expenses and those resolutions must now be considered binding on all Member States. He hoped that States which were in arrears would wipe out their indebtedness as soon as possible. Those arrears were due in some cases to economic difficulties and in others to honest doubts regarding the legitimacy of the UNEF and ONUC assessments. Now that the position was clear, he urged States that were in arrears to make at least a token payment to show their acceptance of the principle of universality. Moreover, such States should be given time to pay off the extensive arrears that had accumulated.

3. With those considerations in mind, his delegation would vote for draft resolution A/C.5/L.760 accepting the opinion of the International Court of Justice and also for draft resolution A/C.5/L.761 and Add.1 re-establishing the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations to consider methods of financing, in the future, peace-keeping operations of the United Nations involving heavy expenditure. He was not convinced of the possibility of defining such methods in advance, but thought that an attempt should be made at least to lay down guide-lines for the future. He appealed to all Member States to support draft resolution A/C.5/L.760 accepting the Court's opinion. In so doing, they would be responding to the appeal made to them by the then Acting Secretary-General at the sixteenth session (899th meeting),^{2/} shortly after his election, when he had stressed that the tasks entrusted to the United Nations could be successfully accomplished only if pledges of goodwill were accompanied by a readiness to provide the financial support and resources essential for their fulfilment.

4. Mr. WALL (United Kingdom) recalled that, at the sixteenth session, the General Assembly had responded in three ways to the Acting Secretary-General's appeal for an improvement in the financial position of the Organization. In its resolutions 1732 (XVI) and 1733 (XVI), it had made appropriations, to be covered by the assessment of all Member States, for the costs of ONUC and UNEF up to 30 June 1962; in its resolution 1739 (XVI) it had authorized the United Nations bond issue; and in its resolution 1731 (XVI) it had decided to request the International Court of Justice for an advisory opinion. The Secretary-General had renewed his appeal at the Committee's 961st meeting and had placed three issues squarely before it. On its decision would depend, first the financial future, if not the survival of the United Nations, secondly, the prestige and authority not only of the International Court of Justice but of the General Assembly, and, thirdly, the future capacity of the Organization to keep peace in the world.

5. With regard to the first point, although the resolutions on the financing of ONUC and UNEF and the bond issue had helped the Organization to avoid insolvency during 1962, its financial position and prospects had hardly improved since the sixteenth session. The Organization's debts were continuing to mount and

large arrears were being accumulated. Excluding the assessments made at the sixteenth session, forty-nine States owed a total of \$25.25 million to the UNEF Special Account and sixty States owed \$47.5 million to the Congo *ad hoc* account. His delegation had expected that at least some of the Organization's debts would be paid off from the proceeds of the bond issue, but the funds obtained by that means had been used to meet current expenses, particularly those of ONUC. Everything possible must be done to solve the problem or to reduce it to more manageable proportions, for the alternative was the undignified collapse of the Organization.

6. It was encouraging that the advisory opinion had provided the authoritative legal guidance requested in General Assembly resolution 1731 (XVI) as to the obligations of Member States for the financing of UNEF and ONUC; the Court had clearly stated that expenses relating to those two operations constituted "expenses of the Organization" within the meaning of Article 17, paragraph 2 of the Charter. Now that that opinion had been obtained, most delegations would wish to accept it in order to uphold the authority of the Court, which was the principal judicial organ of the United Nations. Not to do so would be a blow to the authority and standing of the Court and the Assembly in a matter vital to the future of the United Nations, as the Secretary-General had pointed out at the 961st meeting. It would also show scant respect for the rule of law, a concept whose importance for the maintenance of international peace and security had been affirmed at the sixteenth session of the General Assembly (1134th plenary meeting) by the Secretary of State for Foreign Affairs of the United Kingdom and by numerous speakers in the Sixth Committee at the current session.

7. The purpose of draft resolution A/C.5/L.760, of which his delegation was a sponsor, was to declare in a straightforward manner that the General Assembly accepted the advisory opinion of the Court. Such action was expected by the citizens and legislatures of many countries, including his own, and it would not only uphold the authority of the Court but, as was pointed out by the late Sir Hersch Lauterpacht in the South West Africa Committee case^{3/} in 1956, positive acceptance by the General Assembly of an advisory opinion given by the Court made that opinion part of the "law recognized by the United Nations", and thus constituted a firm basis for future action by the General Assembly.

8. As the United States representative had recalled at the 961st meeting, although the General Assembly could accept or reject an advisory opinion of the Court, it was not competent to approve or disapprove the findings of the Court on a point of law. When the precise force of such advisory opinions had been discussed at the third and fourth sessions of the General Assembly in connexion with the Court's advisory opinions on the conditions of admission of a State to membership in the United Nations^{4/} and reparation for injuries suffered in the service of the United Nations,^{5/} the General Assembly and the Sixth Committee had mainly been concerned to word the resolutions then adopted in such a way as to avoid casting

^{3/} Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion of June 1st 1956; I.C.J. Reports 1956, p. 46.

^{4/} Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion; I.C.J. Reports 1948, p. 57.

^{5/} Reparation for injuries suffered in the service of the United Nations, Advisory Opinion; I.C.J. Reports 1949, p. 174.

^{2/} Official Records of the General Assembly, Sixteenth Session, Annexes, agenda item 54, document A/C.5/907.

doubt on the authority of the Court's opinion. Unlike a judgement of the Court, an advisory opinion had no binding force because there were no parties on whom the contractual obligations of compliance could be imposed. It was, however, an authoritative statement of the law. The authority of the Court's opinion was not affected by the fact that it was not unanimous. Article 55 of the Statute of the Court, which provided that all questions should be decided by a majority of the judges present, applied, by virtue of Article 68, to advisory opinions as well as to contentious cases. Moreover, only one of the nine previous advisory opinions had in fact been unanimous.

9. In addition, although the advisory opinions of the Court were not binding, it had been the consistent practice of the General Assembly to accept them. In the case of eight out of the nine previous advisory opinions, it had adopted resolutions by which it had sought to give them effect, and in the more recent instances, it had expressly stated its acceptance of the advisory opinion. When it had done so, it had not been passing judgement on that opinion but merely accepting it as a legal basis on which to act. It would be absurd for the Assembly merely to note the opinion of the Court when it had expressly asked for authoritative legal guidance. Moreover, for a General Assembly resolution merely to "take note" tended to imply a negative or at least indifferent reception.

10. The Court had been asked for its advisory opinion in order to dispel the genuine doubts of some Member States as to whether the costs of ONUC and UNEF could properly be considered "expenses of the Organization" within the meaning of Article 17, paragraph 2. It had been argued in the General Assembly and before the Court that that question was of a political nature and therefore inappropriate as the subject of a request for an advisory opinion; but the Court itself had stated that it found "no 'compelling reason' why it should not give the advisory opinion which the General Assembly requested by its resolution 1731 (XVI)".^{6/} Although it had been argued that the Court should refuse to give an opinion because the question put to it was intertwined with political questions, the Court, while recognizing that most interpretations of the Charter would have political significance, had decided that it could not attribute a political character to a request which invited it to undertake an essentially judicial task, namely, the interpretation of a treaty provision.

11. Because the present advisory opinion was concerned with the interpretation of a Charter provision, it was important that the General Assembly should adopt an unequivocal position by specifically accepting the opinion. Otherwise, it would fail to make clear its intention of acting in accordance with that opinion. Once a firm legal basis for future action had been established by acceptance of the opinion, it would be possible to move forward towards a solution of the Organization's financial problem. Although the financing of the Middle East and Congo operations had given rise to delicate questions which, in the opinion of many Governments, were mainly political in character, there was no reason to hesitate in accepting the Court's opinion on the legal question of Charter interpretation.

12. The Court's opinion did not concern the apportionment of the expenses of the operations in the Middle

East and the Congo. Indeed, the Court had expressly stated that it was not called upon to consider the manner in which, or the scale by which, such expenses might be apportioned. Nevertheless, the United Kingdom felt that, in view of the present position with respect to the financing of those operations, some effort should be made during the current session to bring a solution of that problem closer. Assessments for the financing of the two operations had been made only up to the end of June 1962, while, between them, they continued to cost over \$11.5 million a month. Even if the bond issue was fully subscribed, it would probably not yield sufficient funds to cover the costs until June 1963. In any event it was a once-for-all expedient. The General Assembly, in its resolution 1739 (XVI) authorizing the bond issue, had specifically stated that it "should not be deemed a precedent for the future financing of the expenses of the United Nations". In the circumstances, the United Kingdom delegation took the view that the Committee should adopt some course of action in the matter immediately after it had taken a decision on the Court's opinion.

13. The United Kingdom had consistently held that all Member States bore a collective responsibility for the financing of duly authorized peace-keeping operations in accordance with their capacity to pay, which was reflected in the scale of assessments for the regular budget. At the same time, it had recognized that, where such operations involved substantial expenditure, they placed a particularly heavy burden on countries with low per caput incomes and urgent economic problems. It had therefore agreed that the assessments of such countries for the expenses of UNEF and ONUC should be very considerably reduced. Those reductions had been offset mainly by contributions from the United States of America, which also paid the highest assessment of any Member State. However, as a matter of practical politics, it was more than doubtful whether that could any longer be regarded as a satisfactory method of financing peace-keeping operations in the future. On the other hand, the problem of the apportionment of the expenses of those operations was still too controversial for the Assembly to be expected to settle it before the close of the current session. Consequently, the United Kingdom believed that the best course to recommend to the Assembly at the present time was that set forth in the second draft resolution of which it was a sponsor (A/C.5/L.761 and Add.1).

14. That draft resolution recognized the need for further urgent and intensive study of the problem and proposed that such study should be undertaken by the Working Group of Fifteen established under resolution 1620 (XV), which would be re-established for that purpose. That proposal was based on the belief that, once the advisory opinion of the Court had been accepted, it would be easier to reach agreement in the Working Group on methods of financing peace-keeping operations in the future. The draft resolution requested the Working Group to report to the Assembly not later than 1 April 1963, thus recognizing that the Assembly might have to reconvene before the eighteenth regular session if adequate financing was to be found for all the continuing activities of the United Nations in 1963. The draft resolution deliberately refrained from binding the Working Group to detailed terms of reference in order not to prejudice the outcome of its study, for it was impossible to ignore the fact that there was still no general agreement among Member States regarding the specific principles and criteria which should govern the financing of future peace-keeping operations. His

^{6/} Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, p. 155.

delegation hoped that, given time and adequate opportunity to consider all the practical possibilities, the Working Group, and later the Committee, might find it possible to agree on methods of financing which would enable the United Nations to undertake activities for the maintenance of peace and security under the Charter without again incurring the risk of bankruptcy. He therefore appealed for wide support of draft resolution A/C.5/L.761 and Add.1.

15. Mr. MORRIS (Liberia) said that his delegation had decided, after due deliberation, to become a sponsor of the two draft resolutions before the Committee (A/C.5/L.760 and A/C.5/L.761 and Add.1), because it felt that it could not do less in the interests of the very survival of the Organization. It urged all Member States to vote for them. It was logical and proper for the Assembly to accept the International Court's opinion and thus to provide itself with the most reasonable means of making the financing of peace-keeping operations a collective responsibility of all Member States. It was also logical to assign the task of working out methods for financing such operations to the Working Group of Fifteen, the body best fitted to deal with the problem. In the Fifth Committee the tendency of Member States was to defend their special interests as sovereign States, but in the Working Group they would be more likely to put aside considerations of sovereignty and work together to preserve the peace-keeping role of the United Nations.

16. Every Member State, large or small, rich or poor, derived some measure of strength from its association with the United Nations. If the United Nations could succeed in its primary task of keeping the peace, it would fulfil the most cherished hopes of mankind. If it failed and was ultimately destroyed, the responsibility would rest with those who had failed to abide by the law and to share in the financing of its peace-keeping operations.

17. Mr. GANEM (France) said that it first was necessary to be quite clear as to the effect of the Court's advisory opinion on the financial obligations of Member States in respect of the operations in question. The Court itself had taken care to point out that proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice had not been accepted, and stressed the strictly advisory nature of its opinion. It was therefore clear that its opinion had no binding force, as the Court had explicitly stated in its advisory opinion of 30 March 1950 on the interpretation of peace treaties.^{7/} His Government was not of course seeking to cast doubt on the moral and legal value of the Court's opinions; since 1946, France had seven times been a party in cases before the Court the importance of which was sufficient to show that country's confidence in and respect for the Court. Not only had the French Government given effect to all decisions of the Court concerning it, but it had even modified its reservations concerning the compulsory jurisdiction of the Court in a new declaration on 10 July 1959.^{8/} Few States could produce such telling evidence in support of their statements of principle concerning the "rule of law"; it should also be noted that only 39 of the 110 Member States had accepted in advance the jurisdiction of the Court under Article 36, paragraph 2, of its Statute.

^{7/} Interpretation of Peace Treaties, Advisory Opinion: I.C.J. Reports 1950, p. 65.

^{8/} See International Court of Justice Yearbook 1958-1959, p. 212.

18. Since an advisory opinion by definition had no binding force, the question of whether or not it should be "accepted" was not a legal one. The crux of the matter was that the General Assembly had no authority under the Charter to oblige Member States to contribute towards the expenses in question, and the Court could not confer on the Assembly a legal power which it lacked in the first place. For if the Assembly "accepted" the Court's interpretation of the Charter, and if that interpretation thereby became legally binding on all Member States, including those which had voted against accepting the Court's opinion, the jurisdiction of the Court would be admitted as binding in a matter in which its competence had been expressly denied by the drafters of the United Nations Charter.

19. The Charter did not endow the General Assembly with the powers of a world government. Both in the International Court of Justice and in the General Assembly, the French Government had made known its interpretation of the Charter provisions on the extent of the Assembly's budgetary authority. In 1949, the Court itself had stated that the Organization was not a State, that its rights and duties were not the same as those of a State, and that still less could it become a "super-State".^{9/} But if the Assembly could decide by a two-thirds majority to impose financial obligations on all Member States, even on those which did not accept such obligations, it would indeed be a "super-State". But there were no decisions of that kind, for the drafters of the Charter had understood that States would be bound only by obligations they had formally accepted; there was only one category of decisions which were automatically binding on Member States, those adopted by the Security Council in the manner prescribed by the Charter. His Government had no intention of accepting obligations other than those to which it had agreed in accordance with the Charter.

20. Furthermore, the Assembly's recommendations did not impose a legal obligation on Member States which had not voted for those recommendations, even if the required majority had been attained. If a majority of States wished to undertake some special project, only those States which accepted the financial obligations arising from such a project were obliged to contribute to the costs. For example, Member States would surely never accept a recommendation for the creation under Chapter IX of the Charter, of a new planning or executive body in the economic or social field whose annual budget would double the expenditure of the whole Organization; it should be emphasized that under Chapter IX of the Charter, the Organization could make "recommendations" for the co-ordination of the policies and activities of the specialized agencies, and that a new specialized agency could be created only by negotiations "among the states concerned". Any infringement of those rules was a violation of the Charter which was no less a violation when it resulted from the adoption of a budget; expenses entailed by operations undertaken upon a recommendation of the General Assembly were binding only on those Member States that had approved the operations.

21. His Government had not wished formally to oppose the operations which certain Member States had seen fit to undertake in the Congo, purely as a gesture of international understanding. It had not agreed to those

^{9/} See Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 179.

operations and could not therefore be required to contribute to their financing.

AGENDA ITEM 71

Report of the United Nations Joint Staff Pension Board
(concluded)*

DRAFT REPORT OF THE FIFTH COMMITTEE TO
THE GENERAL ASSEMBLY (A/C.5/L.746)

The draft report (A/C.5/L.746) was adopted.

AGENDA ITEM 62

Budget estimates for the financial year 1963 (A/5121 and
Corr.1, A/5179, A/5205, A/5207, A/5243, A/5263, A/5267,
A/5272 and Corr.1, A/5280, A/5299, A/5309, A/5312, A/
C.5/919, A/C.5/923, A/C.5/925, A/C.5/926, A/C.5/
928, A/C.5/930, A/C.5/931 and Corr.1, A/C.5/935, A/
C.5/937, A/C.5/942, A/C.5/945, A/C.5/946, A/C.5/949,
A/C.5/950, A/C.5/951, A/C.5/L.726, A/C.5/L.730, A/
C.5/L.734, A/C.5/L.736, A/C.5/L.743, A/C.5/L.748,
A/C.5/L.756, A/C.5/L.758, A/C.5/L.759) (continued)**

Comprehensive review of the system of payment from United
Nations funds of travel and subsistence expenses in
respect of members of organs and subsidiary organs of the
United Nations (concluded)

DRAFT REPORT OF THE FIFTH COMMITTEE TO
THE GENERAL ASSEMBLY (A/C.5/L.756)

The draft report (A/C.5/L.756) was adopted.

Integrated programme and budget policy (concluded)

DRAFT REPORT OF THE FIFTH COMMITTEE TO
THE GENERAL ASSEMBLY (A/C.5/L.758)

The draft report (A/C.5/L.758) was adopted.

SECTION 7. BUILDINGS AND IMPROVEMENTS TO
PREMISES (A/5205, A/5207, A/5267, A/C.5/928, A/
C.5/942, A/C.5/L.734, A/C.5/L.759) (continued)***

*Major maintenance and capital improvement at United
Nations Headquarters (concluded)*

Draft report of the Fifth Committee to the General
Assembly (A/C.5/L.759)

22. Mr. QUAO (Ghana), Rapporteur, said that at the
end of paragraph 5 (b) the word "possibly" should be
inserted before the figure "1965".

23. Mr. HODGES (United Kingdom) said that it was
not made clear either in paragraph 6 or in the annex
to the draft report that the Committee had taken a
decision to limit additions to visual facilities to stage

*Resumed from the 941st meeting.

**Resumed from the 960th meeting.

***Resumed from the 947th meeting

I of the Secretary-General's plan. His delegation felt
that that decision should be clearly recorded in the
Committee's report.

24. Mr. QUAO (Ghana), Rapporteur, said that the
United Kingdom representative's remarks would be
taken into account.

25. Mr. HASLE (Denmark) proposed that the following
sentence should be inserted in paragraph 4 after the
words "facilities in the General Assembly Hall": "It
was decided to consult the Danish architect who was
previously responsible for the design of the Trustee-
ship Council Chamber before any conversion was
decided upon".

26. Mr. QUAO (Ghana), Rapporteur, accepted that
amendment.

*The draft report (A/C.5/L.759), as amended, was
adopted.*

AGENDA ITEM 66

Appointments to fill vacancies in the membership of sub-
sidiary bodies of the General Assembly (continued):*
(b) Committee on Contributions (continued)**

DRAFT REPORT OF THE FIFTH COMMITTEE TO
THE GENERAL ASSEMBLY (A/C.5/L.745)

The draft report (A/C.5/L.745) was adopted.

(d) Investments Committee: confirmation of the appoint-
ments made by the Secretary-General (concluded)*

REPORT OF THE FIFTH COMMITTEE TO THE
GENERAL ASSEMBLY (A/5294)

The report (A/5294) was adopted.

(e) United Nations Administrative Tribunal (concluded)*

REPORT OF THE FIFTH COMMITTEE TO THE
GENERAL ASSEMBLY (A/5295)

The report (A/5295) was adopted.

FINANCIAL IMPLICATIONS OF THE DRAFT RESO-
LUTION SUBMITTED BY THE SECOND COMMITTEE
IN DOCUMENT A/5316 ON AGENDA ITEM 36***
(concluded)****

DRAFT REPORT OF THE FIFTH COMMITTEE TO
THE GENERAL ASSEMBLY (A/C.5/L.764)

The draft report (A/C.5/L.764) was adopted.

The meeting rose at 12.10 p.m.

*Resumed from the 959th meeting.

**Resumed from the 949th meeting.

***Question of holding an international conference on trade problems.

****Resumed from the 960th meeting.