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Recommended Citation

Cotton, John Robert (1978) "Financing Peacekeeping—Trouble Again," *Cornell International Law Journal*: Vol. 11: Iss. 1, Article 5.
Available at: <http://scholarship.law.cornell.edu/cilj/vol11/iss1/5>

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FINANCING PEACEKEEPING—TROUBLE AGAIN

For many of the past twenty years financial worries have plagued the United Nations.¹ These worries have repeatedly been brought about by the refusal of member states to pay their assessed share of the cost of maintaining the U.N. peacekeeping forces deployed around the world.² The specter of financial collapse has once again materialized with the refusal by the Soviet Union, China, Libya, Iraq, and Syria to pay their portions of the expenses for the United Nations Emergency Force³ (UNEF) and the United Nations Disengagement Observer Force⁴ (UNDOF).

UNEF and UNDOF are currently serving as observers and as a "continuing presence" in the thin buffer zone separating Israel from Egypt, Jordan, and Syria.⁵ They are there at the request of, and with the full consent of, the nations involved.⁶ Nevertheless, the recalcitrant states contend that the mandate for the two forces is illegal.⁷ The problem is not merely academic; it threatens the continuing viability of the United Nations. Costs for the peacekeeping forces have in some instances totaled over \$10 million *per month*.⁸ This figure has special significance for the

1. The first major problem involving the financing of peacekeeping forces occurred with the creation of the United Nations Emergency Force at the height of the Suez Crisis in November 1956. Russell, *Development by the United Nations of Rules Relating to Peacekeeping*, 59 AM. SOC'Y INT'L L. PROC. 53, 54 (1965); see Slonim, *The Advisory Opinion of the International Court of Justice on Certain Expenses of the United Nations: A Critical Analysis*, 10 HOW. L.J. 227, 227-28 (1964). It appears that prior operations were financed with little difficulty.

2. Firmage, *A United Nations Peace Force*, 11 WAYNE L. REV. 717, 717-18 (1965).

3. See *Assembly Acts on Finances of Peace Forces*, U.N. MONTHLY CHRONICLE, NOV. 1976, at 16; N.Y. Times, Jan. 8, 1977, at 7, col. 1.

4. The United Nations Disengagement Observer Force is a subordinate command, established in 1975, under the control of the UNEF commander.

5. 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 44, U.N. Doc. S/11883 (1975), discusses UNDOF which is serving under UNEF control. See also N.Y. Times, Jan. 8, 1977, at 7, col. 1.

6. See, e.g., 30 U.N. SCOR, Supp. (July-Sept. 1975) 19, U.N. Doc. S/11759 (1975) (Israel); 30 U.N. SCOR, Supp. (July-Sept. 1975) 26, U.N. Doc. S/11771 (1975) (Egypt). See also 30 U.N. SCOR (182d mtg.) 3, U.N. Doc. S/PV.1832 (1975). Syria, however, has claimed that the force is allowing Israel to occupy Syrian lands illegally. Thus, its consent is questionable.

7. See *Assembly Acts on Finances of Peace Forces*, U.N. MONTHLY CHRONICLE, NOV. 1976, at 16; N.Y. Times, Jan. 8, 1977, at 7, col. 1. See text accompanying notes 59-65 *infra*.

8. During the 1960 Congo Crisis, peacekeeping costs reached this level. Franck & Carey, *The Role of the United Nations in the Congo—A Retrospective Perspective*, in LEGAL ASPECTS OF THE UNITED NATIONS ACTION IN THE CONGO 55 (1962). The deficit created had

American taxpayer since the United States shoulders up to 40 percent of the cost of maintaining these forces.⁹

The questions raised by this dilemma are both political and legal. They defy easy answer. This Note will analyze the recalcitrant states' positions in light of the United Nations Charter and will evaluate the possible solutions to the U.N.'s financial problems.

I

HISTORICAL BACKGROUND

On several prior occasions nations have refused to pay the share of the cost of maintaining peacekeeping forces¹⁰ apportioned to them by the General Assembly. The two refusals which are of particular relevance to the current crisis, and which had the greatest economic impact on the United Nations, involved the Soviet Union and France.¹¹

The first difficulty arose in 1956 with the creation of the United Nations Emergency Force as a result of the Suez Crisis.¹² Since the situation directly involved two of the permanent members of the Security Council, France and England, and indirectly concerned two others, the United States and the Soviet Union, effective action by the Security Council was impossible.¹³ As a result, the General Assembly chose to take action

already reached \$284.8 million by 1968. J. LARUS, *LIQUIDATING THE UN'S PEACEKEEPING ARREARS: A PROPOSAL 17* (Center for International Studies, Policy Paper No. 2, 1968). For the period from October 1973 to October 1975, \$159.8 million was authorized, \$32.7 million of which is still owing. Over \$10 million was due from members who refused to pay. 30 U.N. GAOR (Agenda Item 107), U.N. Doc. A/10350, at 3 (1975). The unpaid contributions for the 18 month period ending April 24, 1975 was \$49.3 million. *Mandate of UN Emergency Force Extended until July*, U.N. MONTHLY CHRONICLE, May 1975, at 5. Authorized costs are currently on the order of \$1.3 million per month for UNDOF and \$6.7 million per month for UNEF. 30 U.N. GAOR (Agenda Item 107), U.N. Doc. A/10350, at 3 (1975); 30 U.N. SCOR, Supp. (July-Sept. 1975) 16, 18, U.N. Doc. S/11758 (1975).

9. Congress limited the amount the United States could contribute to the U.N. annual budget to 33 1/3% in 1952, but the addition of voluntary contributions has brought the United States share to more than 40%. A. COX, *PROSPECTS FOR PEACEKEEPING* 120-21 (1967). Apportionment is now accomplished in accordance with G.A. Res. 3374, 30 U.N. GAOR, Supp. (No. 34) 125, U.N. Doc. A/10034 (1975), which updates G.A. Res. 3101, 28 U.N. GAOR, Supp. (No. 30) 122, U.N. Doc. A/9030 (1973).

10. The two most famous incidents involved the Congo Crisis and the Suez Crisis, but the operations in Cyprus and Kashmir also created financial difficulties. A. COX, *supra* note 9, at 116-17.

11. See note 13 *infra*.

12. J. LARUS, *supra* note 8, at 3-4; Russell, *United Nations Financing and "The Law of the Charter,"* 5 COLUM. J. TRANSNAT'L L. 68, 73 (1966); see L. SOHN, *CASES ON UNITED NATIONS LAW* 763 (2d ed. rev. 1967).

13. The largest expenses and greatest difficulties arose with the Russian refusal to pay for UNEF and ONUC (United Nations Operation—Congo) forces created to handle the Suez and Congo Crises and the French refusal to pay for ONUC. France distinguished the two forces on the grounds that ONUC was an armed force and thus only the Security Council could mandate its use. J. LARUS, *supra* note 8, at 10-11. France and England joined with Israel in attacking Egypt after Egypt, in retaliation for the United States refusal to assist in

through a resolution creating UNEF.¹⁴ Funding for the force was provided through a special account into which members were to pay their required assessment plus any voluntary contributions.¹⁵ However, the Soviet Union and a number of smaller countries¹⁶ refused to contribute, claiming that the General Assembly was not authorized to create the force and that the expenses for maintaining the force were not "expenses of the Organization" under Article 17(2) of the United Nations Charter.¹⁷

A similar objection was raised when the United Nations Operation-Congo (ONUC) was created in 1960 in response to the civil war in the Congo. The General Assembly attempted to fund the force through normal apportionments to all member states, but the Soviet Union and France, along with thirteen other states, refused to pay their assessed shares.¹⁸ The recalcitrant states argued that the Charter gave the Security Council the exclusive power to act in peacekeeping matters and that the General Assembly could assess only "regular" or administrative expenses of the Organization under Article 17(2).¹⁹ Eventually, the issue became so highly contested that over sixty nations were in arrears on required payments.²⁰

II

ANALYSIS OF THE CURRENT DISPUTE

A. THE GENERAL ASSEMBLY'S POWER TO DEAL WITH PEACEKEEPING MATTERS

Although the Soviet Union continues to pay its share of the costs of the

building the Aswan Dam, nationalized the Suez Canal. The Soviets supported Egypt in this move. For a general discussion of this conflict, see L. SOHN, *supra* note 12, at 527-634.

14. G.A. Res. 1000, ES-I U.N. GAOR, Supp. (No. 1) 2, U.N. Doc. A/3354 (1956).

15. 11 U.N. GAOR, II Annexes (Agenda Item 66) 13, U.N. Doc. A/3383 and Rev.1 (1957); G. ROSNER, THE UNITED NATIONS EMERGENCY FORCE 159-61 (1963). In fact the establishment of this special account, which by distinguishing these expenditures made them seem "different," may have led to much of the controversy over financing. The special account has also allowed countries to separate their contributions for peacekeeping from payments for other U.N. expenses and thus has made it possible for them to claim that they are only refusing to pay for peacekeeping as opposed to other apportioned expenses.

16. Among the nations owing assessments for 1960 were: Afghanistan, Albania, Argentina, Bolivia, Bulgaria, Byelorussia, Chile, China, Columbia, Costa Rica, Cuba, Czechoslovakia, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, Hungary, India, Iraq, Jordan, Lebanon, Liberia, Libya, Mexico, Morocco, Nepal, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Rumania, Saudi Arabia, Spain, Sudan, Ukraine, U.S.S.R., U.A.R., Uruguay, Venezuela, and Yemen. G. ROSNER, *supra* note 15, at 262 n.68.

17. *Certain Expenses of the United Nations: Advisory Opinion*, 1963 DUKE L.J. 304, 305. See notes 40-51 *infra* and accompanying text. For the text of Article 17(2), see note 40 *infra*.

18. Firmage, *supra* note 2, at 717.

19. For a full discussion of this issue, see notes 40-41 *infra* and accompanying text.

20. By February 1962, 62 nations were in arrears for ONUC expenses. Franck & Carey, *supra* note 8, at 55.

United Nations force needed to police the initial disengagements between Egypt and Israel, and Syria and Israel,²¹ it refuses to support the force created by the Second Sinai Agreement which was negotiated by Henry Kissinger.²² The Soviets argue that because this agreement was reached outside of the United Nations it is therefore not binding on U.N. members. If any agreement is to be binding, they assert, it must be reached through the Middle East Peace Conference at Geneva²³ or through direct U.N. action. The General Assembly resolutions approving the Second Sinai Agreement and establishing the funding for UNEF are said to be beyond the scope of the powers granted to the General Assembly under the U.N. Charter.²⁴

The Soviet position is based on a strict construction of Articles 24 and 43 of the Charter. Article 24 confers "on the Security Council *primary* responsibility for the maintenance of international peace and security"²⁵ The Soviets interpret "primary" in the hierarchical sense and

21. N.Y. Times, Jan. 8, 1977, at 7, col. 1. The mandate for the present UNEF force stems from Security Council Resolution 242, [1967] RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 8, 22 U.N. SCOR, U.N. Doc. S/INF./22/Rev.2, at 8 (1967), and Security Council Resolution 340, [1973] RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 11, 28 U.N. SCOR, U.N. Doc. S/INF./29, at 11 (1973).

22. The present buffer-zone forces in the Sinai Peninsula were created by the 1975 Egyptian-Israeli Disengagement Accord which was negotiated by former Secretary of State Henry Kissinger during his highly publicized Middle East "shuttle." N.Y. Times, Jan. 8, 1977, at 7, col. 1. These negotiations were not sponsored by the U.N. Mr. Kissinger acted as a mediator in the process and brought the two sides together for a bilateral agreement.

23. See, *id.*; *Mandate for Golan Heights Peace Force Renewed for Six Months until May 1977*, U.N. MONTHLY CHRONICLE, Dec. 1976, at 24. See generally *Security Council Told Main Elements of Middle East Issue Remain Difficult*, U.N. MONTHLY CHRONICLE, March 1977, at 14; *Assembly Calls for Resumption of Geneva Peace Talks Not Later than March this Year with PLO Participation*, U.N. MONTHLY CHRONICLE, Jan. 1977, at 17.

24. The arguments being advanced today to justify the refusal to pay are basically the same as were advanced 15 years ago. These contentions were rejected by the International Court of Justice Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, but the Soviets and others do not consider an advisory opinion of the Court binding. The validity of this position is highly questionable. See notes 62-65 *infra* and accompanying text. The Soviets have long held this strict view of the functions of the General Assembly vis-à-vis the Security Council. See 11 U.N. GAOR, II Annexes (Agenda Item 66) 62, 65, U.N. Doc. A/3560 and Add. 1 (1957). A fundamental flaw in the Soviet position is that UNEF has in fact been in more or less continuous existence since 1956 (though for varying reasons and under different mandates), and thus the Second Sinai Agreement should not change its validity. Further, the Soviets have been paying for UNEF forces established by the 1974 agreements, and only refuse to pay for the expansion of the force under the 1975 agreement. If they believe the entire force is illegal, then their payment for a part of it is inconsistent with this position.

The United States has stated that it believes the Soviet refusal to pay is illegal because of General Assembly resolutions approving the Second Sinai Agreement and creating the peacekeeping force. N.Y. Times, Jan. 8, 1977, at 7, col. 1.

25. U.N. CHARTER art. 24, para. 1 (emphasis added). Article 24, paragraph 1, provides in its entirety: "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, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."

conclude that the provision gives exclusive jurisdiction over security matters to the Security Council.²⁶ In support of this view they cite Article 11(2), which authorizes the General Assembly to make recommendations on questions related to the maintenance of international peace and security, as requiring the General Assembly to refer the question to the Security Council whenever action is necessary.²⁷ In addition, the Soviets read Article 43 as bestowing on the Security Council the exclusive right to negotiate agreements for the creation, maintenance, and financing of peacekeeping forces.²⁸

These same arguments were presented to the International Court of Justice during the Congo peacekeeping difficulties²⁹ and were rejected.³⁰ The Court, in its opinion on "Certain Expenses of the United Nations," held by a vote of nine to five that the assessment of peacekeeping expenses under Article 17(2) was legal and that the General Assembly could take action to seek the peaceful settlement of disputes.³¹ Specifically, it was held that "primary" in Article 24, when read in its "plain meaning," implied the existence of a secondary organ with jurisdiction to deal with peace and security—namely, the General Assembly.³² Further,

26. Slonim, *supra* note 1, at 236-37.

27. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary *shall* be referred to the Security Council by the General Assembly either before or after discussion.

U.N. CHARTER art. 11, para. 2 (emphasis added).

28. U.N. CHARTER art. 43 provides:

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, 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.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

29. See text accompanying notes 18-20 *supra*.

30. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151.

31. *Id.* This opinion was adopted by the General Assembly, G.A. Res. 1854, 17 U.N. GAOR, Supp. (No. 17) 54, U.N. Doc. A/5217 (1962). Nevertheless, the Soviets still refused to pay for the Congo operations.

32. The Court held that "primary" does not mean "exclusive," Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, 163, and went on to find the implication in Article 14 that there is a second competent organ, *id.*

the Court found that the "action" referred to in Article 11(2), which was to be handled exclusively by the Security Council, encompassed only enforcement action as envisioned under Chapter VII of the Charter.³³ Since the prior UNEF and ONUC forces, as well as the present forces, were established with the consent of the parties to the dispute,³⁴ they cannot be considered to be coercive or enforcement forces, and thus the General Assembly is empowered to deploy them. The Court also judged the Soviet reading of Article 43 too restrictive since it is not possible to expect the Security Council to arrange in advance for all expenses of a peacekeeping force.³⁵ Finally, Article 50³⁶ was read as contemplating certain cases where the application of Security Council measures would require adjustment of the economic burdens of the members, which implied action by the General Assembly under Article 17.³⁷

The Uniting for Peace Resolution³⁸ and Article 14³⁹ of the Charter also lend support to the view that the General Assembly may take steps short of enforcement action to maintain world peace and security. The Uniting for Peace Resolution calls for General Assembly action in peacekeeping when Security Council action is prevented by the veto of a permanent member. Article 14 empowers the General Assembly to recommend

33. "The word 'action' must mean such action as is solely within the province of the Security Council The 'action' which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely 'Action with respect to threats to the peace, breaches of the peace, and acts of aggression.'" *Id.* at 165.

34. For the text of agreements between the parties, see the sources cited in note 6 *supra*. It must be noted, however, that Syria has since claimed that the force is illegal.

35. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, 166-67.

36. U.N. CHARTER art. 50 provides:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

37. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, 166-67.

38. G.A. Res. 377A, 5 U.N. GAOR, Supp. (No. 20) 10-12, U.N. Doc. A/1775 (1950). This resolution was one of the first ventures by the General Assembly into the area of peace and security. It recognizes the right of the General Assembly to consider security matters when the Security Council is deadlocked. It has proved to be a cornerstone for many subsequent General Assembly actions.

39. U.N. CHARTER art. 14 provides:

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

measures for the peaceful adjustment of situations which may impair friendly relations among nations.

B. EXPENSES OF THE ORGANIZATION

A second and related argument advanced by the Soviet Union is that the expenses of UNEF are not "expenses of the Organization" as envisioned by Article 17(2) of the Charter.⁴⁰ According to the Soviets only the administrative or regular expenses mentioned in Article 17(3) may be apportioned under Article 17(2).⁴¹ The expenses for UNEF, they reason, are extraordinary rather than administrative and may not be apportioned by the General Assembly.

In light of the decision by the International Court of Justice, this argument is spurious. There, the Court held that the phrase "expenses of the Organization" in Article 17(2) did not contain any implied limitation restricting its operation to administrative or regular expenses.⁴² Rather, the phrase was construed as referring to all costs incurred in carrying out the purposes of the Organization. The Court thought that if the framers had wanted to limit Article 17(2) to administrative expenses they would have so specified as they did in Article 17(3).⁴³ Since the maintenance of international peace and security is a purpose of the United Nations under Article 1(1),⁴⁴ and since the force was created to help maintain peace and security, the Court reasoned that the costs of the force were within the scope of Article 17(2).

40. U.N. CHARTER art. 17 provides:

1. The General Assembly shall consider and approve the budget of the Organization.
2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

This argument was also advanced before the I.C.J. in 1962. *Advisory Opinion on Certain Expenses of the United Nations*, [1962] I.C.J. 151, 167-68. It is more complicated now because the Second Sinai Agreement was not formulated under U.N. auspices.

41. U.N. CHARTER art. 17, para. 2.

42. *Advisory Opinion on Certain Expenses of the United Nations*, [1962] I.C.J. 151, 161. In reaching its conclusions the Court relied heavily on past U.N. practice. Pharand, *Analysis of the Opinion of the International Court of Justice on Certain Expenses of the United Nations*, 1 CAN. Y.B. INT'L L. 272, 281 (1963).

43. *Advisory Opinion on Certain Expenses of the United Nations*, [1962] I.C.J. 151, 159.

44. U.N. CHARTER art. 1 provides in pertinent part:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression 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

In the alternative the Soviets argue that costs for UNEF are not "expenses of the Organization" because they support a force created outside of the world organization.⁴⁵ They contend that since the present UNEF received its mandate from the Second Sinai Agreement, and not through the U.N. or the Middle East Peace Conference at Geneva, members should not now, after the fact, be required to support a force in whose creation they played no part.⁴⁶

This alternative argument, which comes closest to justifying the Soviet refusal to pay, has not been previously advanced or litigated. Nevertheless, in light of the International Court of Justice opinion, its validity is doubtful. There, the Court held that under Article 17(2) the General Assembly can apportion expenses of the Organization which are in furtherance of United Nations purposes.⁴⁷ It must be established then that the cost of the force is an expense of the Organization. The reaction of the General Assembly to the Second Sinai Agreement is a strong indication that the United Nations feels it is such an expense. While the Agreement was reached through the mediatory efforts of Mr. Kissinger and not the United Nations, the U.N. approved the Agreement in resolutions⁴⁸ and further resolved to create and fund UNEF under its auspices.⁴⁹ These resolutions were passed by a vote of the members under Article 18 of the Charter.⁵⁰ Prior to the passage of the resolutions the

45. The Soviets argue that to be an expense of the Organization, the expense must be approved before it is incurred. *See generally* N.Y. Times, Jan. 8, 1977, at 7, col. 1.

46. *See id.* The Middle East Peace Conference at Geneva met only once. The Soviets have been excluded from the subsequent negotiations outside of Geneva and are demanding that the Conference be reconvened under joint United States/Soviet chairmanship. The General Assembly has called for a reconvening of the Conference as well. G.A. Resolutions 61 & 62, 31 U.N. GAOR, Supp. (No. 39) 22-23, U.N. Doc. A/31/39 (1976).

47. An argument could be made that the force is actually a source of conflict since it is a constant reminder of the animosity between the two sides. A second argument which a few of the more radical Arab states might support is that the presence of the force is only prolonging the controversy and that only an armed conflict will bring about a final solution. Such arguments, however, would probably find few adherents.

48. *See* 30 U.N. GAOR, U.N. Doc. A/PV.2368, at 22-26 (1975) (comments of Israeli representative); S.C. Resolutions 371, 378 & 381, [1975] RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 6, 7, 30 U.N. SCOR, U.N. Doc. S/INF./31, at 6, 7 (1975) (renewing mandates of UNEF and UNDOF). For the text of the Agreement between Egypt and Israel, see 30 U.N. SCOR, Supp. (July-Sept. 1975) 54, U.N. Doc. S/11818/Add.1 (1975).

49. G.A. Res. 3374, 30 U.N. GAOR, Supp. (No. 34) 124, U.N. Doc. A/10034 (1975); G.A. Res. 3211B, 29 U.N. GAOR, Supp. (No. 31) 120, U.N. Doc. A/9631 (1974); G.A. Res. 3101, 28 U.N. GAOR, Supp. (No. 30) 122, U.N. Doc. A/9030 (1973).

50. U.N. CHARTER art. 18 provides:

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting
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.

Soviet Union and the other dissatisfied states had ample opportunity to state their position, voice their objections, and try to convince the members of the correctness of their position. Once the vote is taken, however, they are bound by the decision of the majority.⁵¹ The majority vote for the acceptance of the Second Sinai Agreement and the force it created brought the Agreement within the ambit of a decision by the Organization and thus expenses arising out of this decision are covered by Article 17(2).

C. PURPOSES AND FUNCTIONS OF UNEF

It may be argued that UNEF is not a mere peacekeeping or observer force but is more in the nature of an enforcement action under Chapter VII of the Charter, which is in the exclusive province of the Security Council.⁵² This argument would be based not only on the fact that the force is armed, but also on the force's extensive use of surveillance and reconnaissance.⁵³

Such an argument is easily countered, both by precedent and by the Charter. The International Court of Justice characterized the United Nations operation in the Congo as a peacekeeping operation.⁵⁴ That action involved far more troops, considerably more fighting, and much greater military involvement than the current UNEF operation. Traditionally, peacekeeping forces have been characterized by the agreement of the two parties to their presence. Such agreement is present here.⁵⁵ Enforcement actions, on the other hand, require no agreements and no invitations.⁵⁶ Finally, under Article 22 of the Charter "[t]he General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."⁵⁷ Since one of its functions under Article 11(2) is to make recommendations on the maintenance of peace,⁵⁸ it may establish a subsidiary force to observe or to implement and facilitate its recommendation.

51. Cf. Russell, *supra* note 12, at 83 n.29 (comparing the effect of U.N. General Assembly majority voting with that of the League of Nations unanimity requirement).

52. Articles 41 and 42 provide a partial listing of the measures that may be taken by the Security Council upon a finding of a "threat to the peace, breach of the peace, or act of aggression" under Article 39. U.N. CHARTER arts. 39, 41 & 42.

53. The force has set up early warning systems in the Sinai utilizing radar, electronic surveillance and hearing devices, and reconnaissance flights and has made the information available to both sides. See 30 U.N. SCOR, Supp. (Oct.-Dec. 1975) 44, 45, U.N. Doc. S/11883 (1975); 30 U.N. SCOR, Supp. (July-Sept. 1975) 16, 17, U.N. Doc. S/11758 (1975).

54. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151. For a good discussion of the distinction between the settlement activities of a peacekeeping force and U.N. enforcement actions, see Russell, *supra* note 1, at 54-56.

55. Syria, however, has seemingly withdrawn its approval. For the text of agreements between the parties to the dispute, see the sources cited in note 6 *supra*.

56. This proposition is clearly mandated by Chapter VII of the U.N. Charter.

57. U.N. CHARTER art. 22.

58. For the text of U.N. Charter article 11, paragraph 2, see note 27 *supra*.

D. OTHER ARGUMENTS

China, Iraq, Libya, and Syria claim that the "Zionist aggressors" should pay the entire cost of maintaining the peacekeeping forces.⁵⁹ In short, they believe that Israel has caused the problem and thus should pay for it. There is no authority which supports this argument and it seems to be based solely on ideological and political grounds. There are clearly severe difficulties with such a position. First, there is the obvious problem of ascertaining which party was the true aggressor. Further, nothing in the Charter requires payment by the aggressor even if it can be named; apportionment is left to the discretion of the General Assembly under Article 17(2).

Syria also argues that it is unfair to expect it to help maintain a force which it believes is allowing Israel to illegally retain Syrian territory captured during the war.⁶⁰ However, it must be remembered that in June 1974 when the agreement creating the peacekeeping forces was created both Syria and Israel agreed to the positioning of U.N. troops along their borders.⁶¹ Although Syria may call the validity of the force into question, the International Court of Justice opinion would indicate that it is still bound to pay its apportioned costs until the force is removed by General Assembly action.

The final argument presented by the Soviets and the other recalcitrant nations is that the General Assembly may only make recommendations on peace and security under Article 11, and that any resolutions passed by the General Assembly are only recommendatory under Article 10.⁶² They argue that these resolutions cannot create binding legal obligations for the member states of the Organization. In the past it has generally been assumed that General Assembly resolutions carry only political and moral force and are not binding.⁶³ The International Court of Justice in its

59. *Assembly Acts on Finances of Peace Forces*, U.N. MONTHLY CHRONICLE, Nov. 1976, at 16. The Soviets have long believed that the parties responsible for the crisis should bear the entire cost. See 11 U.N. GAOR, II Annexes (Agenda Item 66) 62, 65, U.N. Doc. A/3560 and Add. 1 (1957); Comment, *International Law—The United Nations Emergency Force—Legal Status*, 57 MICH. L. REV. 56, 78-79 (1958).

60. See *Assembly Acts on Finances of Peace Forces*, U.N. MONTHLY CHRONICLE, Nov. 1976, at 16.

61. See the documents cited in notes 6 & 49 *supra*.

62. U.N. CHARTER art. 10 provides:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

63. Slonim, *supra* note 1, at 247. See also Note, *Security Council Resolutions: When Do They Give Rise to Enforceable Legal Rights? The United Nations Charter, the Byrd Amendment and a Self-Executing Treaty Analysis*, 9 CORNELL INT'L L.J. 298, 298 n.1 (1976).

interpretation of Article 17(2) seems to have considered resolutions as having more power than that. It is now at least arguable that while General Assembly resolutions initiating actions may only be recommendatory, the financial resolution passed pursuant to Article 17(2), which finances the action, is obligatory.⁶⁴ This seemingly anomalous result arises from the independent authority of the General Assembly to apportion expenses. Thus, although a member may not agree with certain actions by the Assembly, it must still finance them. This would, in fact if not in theory, seem to make resolutions binding. Further, while it is true that the Court opinion was only advisory, the General Assembly adopted the opinion by resolution.⁶⁵

III

OTHER CONSIDERATIONS

The present controversy surrounding the financing of peacekeeping stems from differing views of the Soviet Union and the United States on the proper function of the United Nations in the world. The Soviet view of the U.N. is much more limited than that of the United States. The Soviets tend to be restrictive when analyzing U.N. powers, using a very strict construction of the Charter.⁶⁶ This attitude is illustrated by their attempts to limit expenses under Article 17(2) to administrative operations and to restrict the General Assembly's power in peacekeeping functions. They seem to view the U.N. not as a world government but as a permanent forum where sovereign states may meet and discuss their differences. The Soviets are suspicious of, if not hostile to, any attempt to increase the power of the United Nations with respect to the individual states.

The United States, on the other hand, views the Charter expansively.⁶⁷ It tends to be more willing to give the U.N. some real power even at the expense of its own sovereignty in the belief that the U.N. should be something of an international government.⁶⁸

64. Slonim, *supra* note 1, at 247. The author realizes that this argument is almost circular. Practice and the I.C.J. opinion, however, seem to support it.

65. G.A. Res. 1854, 17 U.N. GAOR, Supp. (No. 17) 54, U.N. Doc. A/5217 (1962).

66. Examples of Soviet actions where they have sought to restrict U.N. action are: The Greek Question, The Hyderabad Question, The Korean Question, and The Hungarian Question. *See generally* L. SOHN, *supra* note 12, at 321-52, 393-416, 474-90, 634-80. This position seems to be gradually shifting in recent years as the U.N. membership becomes increasingly sympathetic to Soviet policies. Thus, the restrictive policies of the Soviets may have been more of a defensive technique than a true ideological belief.

67. Examples of this attitude are American support for the Uniting for Peace Resolution and heavy United States funding of all peacekeeping forces.

68. This is not to say that the United States is willing to follow the will of the majority in all situations. Examples of American refusals to abide by majority views are The China

Although there is great divergency between the two views there are certain basic policies upon which both countries would seemingly agree. Among these is that the United Nations should perform some role in conflict resolution. There is, of course, controversy on how this can best be accomplished. Since the Soviets have supported some of the peacekeeping forces,⁶⁹ however, they would presumably admit that in some instances such forces are the only practical way to bring about peace.

While it is fine to discuss the legal aspects of peacekeeping and the philosophy underlying United Nations actions, it must be remembered that politics play an important role in peacekeeping decisions. At least one superpower has had a political interest in each of the peacekeeping decisions made to date.⁷⁰ Power politics is still a very important factor in international relations. Thus, it must be realized that despite all of the supposed legal justifications for refusing to pay expenses, the bottom line may simply be that it is not in the political interest of a state to pay. Since U.N. power to force compliance is usually limited to moral force, perhaps the only realistic solution is to give the U.N. a measure of independence which would allow it to act without the support of a particular superpower in a given circumstance.

IV

RECOMMENDATIONS

One possible solution to the problem is action against the member in arrears under Article 19 of the Charter.⁷¹ This Article calls for the loss of voting rights in the General Assembly when the amount in arrears equals the contributions due from the member for the preceding two years. This is undoubtedly the strongest sanction available and its invocation would certainly discourage some countries from falling behind in payments, but

Question, The Israel Question, and The South African Question. As the Western majority in the U.N. has eroded in recent years, so has the liberal attitude of the United States. Thus, the American attitude could also be self-serving.

69. The Soviets have supported operations in Greece, Palestine, Indonesia, Kashmir, and Yemen, among others. A. Cox, *supra* note 9, at 155-60.

70. Although at times the analysis does not hold (for example, the conflict in Kashmir), it appears that in most instances an "East-West" confrontation has been involved (for instance, the conflicts involving Indonesia, Cyprus, the Congo, and Palestine).

71. U.N. CHARTER art. 19 provides:

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.

its use against a powerful nation such as the Soviet Union is impractical.⁷² The loss of a vote in the General Assembly would have little effect on a permanent member of the Security Council since the member would still retain its veto power in that organ. Further, while it would lose its own vote, the effect of a world power would still be felt in the General Assembly through its influence over aligned countries. Most importantly, removal of the vote from a permanent member of the Security Council could lead to its withdrawal from the U.N. resulting in a total collapse of the world organization. Finally, the removal of the vote does not place money in the U.N. coffers and solve the financial problem. Thus, while Article 19 is the most severe sanction and should be considered as a possible remedy especially against smaller nations, its enforcement against one of the superpowers is unrealistic.

A second and more promising recommendation is to require all members to contribute to a separate peacekeeping fund each year whether or not peacekeeping operations are then in progress.⁷³ This plan has many advantages. Foremost among these is that it helps remove the problem of financing peacekeeping from the political arena. In the past whenever a country has refused to pay peacekeeping costs, the contributions have been for a force to which it was politically opposed. This recommendation would preclude such difficulties by collecting funds for the force before the particular dispute arose. It also would create a reserve which would be immediately available for the financing of operations, thus avoiding the time lag involved in accumulating the funds as the need arises.⁷⁴ Finally, the system would allow for a large monetary reserve upon which interest could be accumulating, thus further strengthening the U.N. financial position. While it is true that some states may be reluctant to follow this recommendation because it would "give the U.N. too much power," and while it is also true that there is some risk of the General Assembly becoming irresponsible in setting up peacekeeping forces, these drawbacks are outweighed by the advantages such a recommendation offers.

A third alternative is to develop a system of weighted voting on budget-

72. The United States argued strongly at one time for the application of the Article 19 sanction against the Soviets. Russell, *supra* note 12, at 68-69. The United States still believes in the Article in principle, but now realizes that practical considerations mitigate against enforcement. 19 U.N. GAOR, Special Committee Peacekeeping Operations 7-10, U.N. Doc. A/AC.121/PV.15 (1965).

73. Cf. Fine, *Peace-Keeping Costs and Article 19 of the UN Charter: an Invitation to Responsibility*, 15 INT'L & COMP. L.Q. 529, 536-39 (1966) (proposing plan for mandatory retroactive assessment in conjunction with presubscription assessment of peacekeeping costs).

74. For example, U.N. contributions become due on January 1 of each year. The United States, however, funds on a fiscal year. Money usually does not become available for its contribution until June or later. The United States is thus habitually six months in arrears.

ary matters.⁷⁵ A very large portion of the controversy centers around how expenses are apportioned among the member states. Large countries often find themselves carrying the largest share of the expenses but still having only an equal voice with smaller, poorer countries. Apportionment has traditionally been based on ability to pay and is tied closely to a country's gross national product.⁷⁶ Hence, large countries are forced to support what they often consider to be rash decisions of nations who furnish little or none of the support. A weighted voting system should not have the effect of putting the veto power into the General Assembly. Voting weight need not be exactly proportional to economic power. Finally, it must be emphasized that such a weighted system should only be used when voting on financial matters. If weighted properly, it would not give ultimate control of the General Assembly to the larger states or upset the balance of power. Such a solution is of course not without difficulties. Poorer countries will undoubtedly be extremely reluctant to give up even a small part of their power in the General Assembly. Further, this alternative would require an amendment to the Charter which is certainly no easy task.

Two final suggestions may be useful in solving the immediate problem. The first, and perhaps easiest to implement immediately, is to insure that the Soviets participate in any further negotiations concerning the Middle East. This will satisfy them at least temporarily and will start sorely needed funds flowing into the U.N. coffers. Second, world opinion must be focused against the recalcitrant states. The news media should be employed to inform the public that political nuances are being used to avoid financial responsibilities and that this avoidance is a direct threat to everyone's peace and security.

CONCLUSION

The continuing financial viability of the United Nations has been repeatedly threatened by member states' refusal to accept their responsibilities to finance peacekeeping forces. While it appears that the actions of these states are without legal basis, the problem still continues. The adoption of weighted voting and the creation of a permanent separate peacekeeping fund requiring annual contributions would go a long way toward solving these problems. The stakes are high—world peace hangs in the balance.

John Robert Cotton

75. Jackson, *The Legal Framework of United Nations Financing: Peacekeeping and Penury*, 51 CALIF. L. REV. 79, 127 (1963).

76. See Bleicher, *Financing Peacekeeping from IMF and IBRD Income*, 42 WASH. L. REV. 1017, 1062-64 (1967).