TOWSON STATE JOURNAL OF INTERNATIONAL AFFAIRS

REPRINT

TOWSON STATE COLLEGE
BALTIMORE, MARYLAND

Volume X Number 2

Spring 1976

Towson State Journal of International Affairs

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Statements of fact and opinion appearing in the *Journal* are made on the responsibility of the authors alone and do not imply the endorsement of the editors or the publishers.

Subscriptions and inquiries about advertising may be sent to the Circulation Editor at Box 1951, Towson State College, Baltimore, Maryland 21204. The cost of subscriptions is $2.00 per year. The *Journal* is published semi-annually under the auspices of the Department of Political Science and the Committee on International Studies, Towson State College.

Produced by the Office of News and Publication Services

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Location	*Per Issue*	*Per Volume (2 Issues)*
Front Cover, inside	**$50** (full page only)	**$80** (full page only)
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TOWSON STATE JOURNAL OF INTERNATIONAL AFFAIRS

Baltimore, Maryland 21204

Towson State Journal of International Affairs

VOLUME X SPRING 1976 NUMBER 2

CONTENTS

THE 1971 INDO-PAKISTANI WAR IN RETROSPECT: THE INTERPLAY OF NATIONAL INTERESTS, CAPABILITIES, AND INTERNATIONAL LAW
Christopher C. Joyner 43

THE FINANCING OF UNITED NATIONS PEACE-KEEPING OPERATIONS
Linda Piccinini 79

REVIEW OF BOOKS

Global Reach: The Power of The Multinational Corporations
Ghulam M. Haniff 119

Charles A. Beard and American Foreign Policy
Mitchell W. Kerr 122

Latin America and the United States: The Changing Political Realities
David W. Dent 125

Rich Against Poor: The Reality of Aid
Dennis E. Zembower 128

Selected Bibliography 130

The

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A.B.C. Political Science Index

TOWSON STATE JOURNAL OF INTERNATIONAL AFFAIRS

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CARL MARCY . . . . Vol. X, No. 2

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STATEMENT OF PURPOSE

The study of international affairs as an academic discipline no longer belongs exclusively to the specialists in that field; rather, its scope has been extended to include the work of other related disciplines in recognition of the fact that international problems are not exclusively political in nature. It is the purpose of this journal to speak on matters involving international problems with many academic voices. More important, it is the purpose of this journal to permit undergraduate students to try their wings in describing, analyzing, and possibly suggesting solutions to the problems that have vexed nations in their contacts with each other.

The underlying premise of this journal is that undergraduate students *can* contribute effectively to a reasoned, moderate, academic analysis of international problems and that such contributions will have a more profound effect on the study of international affairs as well as on the student contributors to this journal than the passionate, partisan, and emotionally charged outbursts which have lately permeated American campuses.

Consequently, the *Journal* invites contributors to take an active interest in this publication. It encourages students as well as members of the Towson State faculty and the students and faculty from other campuses to contribute articles, reviews, and other pertinent materials.

THE 1971 INDO-PAKISTANI WAR IN RETROSPECT: THE INTERPLAY OF NATIONAL INTERESTS, CAPABILITIES, AND INTERNATIONAL LAW

By Christopher C. Joyner*

The eruption of civil conflict in East Bengal during March, 1971, reached its seemingly inevitable climax on December 3, 1971, when, for the third time in a quarter century, war broke out between India and Pakistan. Fourteen days later the bitterest fighting on the subcontinent since 1947 had formally ended. Although much scholarly attention has been focused upon Indo-Pakistani relations during those tragic ten months, the bulk of these writings is relegated to the tremendous socio-economic dislocations which occurred in East Pakistan (now Bangladesh) and the anti-humanitarian, genocidal atrocities perpetrated by West Pakistani military forces upon Bengali civilians.[1] Notwithstanding the merit and importance of these studies, there still exists a dearth of relevant information concerning the evolution, culmination, and denouement of the two-week-long December crisis from a foreign policy-international law perspective. As a consequence several major questions are raised for students of international law and politics: What factors can be empirically verified as contributors toward fomenting the situational crisis environment? What relevant impact did the primary actors' conceptions of national interest, national capabilities, geopolitical strategies, national objectives, and decision-making alternatives have upon their international legal considerations during the crisis? Were there appreciative policy inputs by exogeneous (i.e., external) actors which could have influenced the participant actors' legal alternatives? Finally, was international law employed as an instrument to constrain policy or was it used as a tool to protect and enhance the respective Indian and Pakistani policy positions?

This paper will explore these questions with three fundamental purposes in mind: first, to determine whether valid links existed between the foundational components of foreign policy formulation (i.e., national goals, objectives, strategies and capabilities) and the Indo-Pakistani legal positions during the 1971 hostilities; second, to ascertain whether the relative salience

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[1] See, for example, Thomas M. Frank and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law*, Vol. 67 No. 2 (April 1973), pp. 275-305; F. Ahmad, *East Bengal: Roots of Genocide* (Delhi: Vikas Pub., 1971); and Edward M. Kennedy, "International Humanitarian Assistance: Proposals for Action," *The Virginia Journal of International Law*, Vol. 12 No. 3 (April 1972), pp. 299-308.

of these foreign policy components fluctuated as the crisis progressed through its various phases (viz., protestation, disputation, confrontation, conflict, and peaceful settlement); and third, to construct a paradigm demonstrating the impact flow these components had upon the primary actors' perceptions of the crisis environment when outlined against their respective legal positions. Nevertheless, to gain greater perspicacity into the exact nature of the 1971 Indo-Pakistani war, first it will be necessary to briefly review the historical genesis of discord between these two South Asian neighbors.

The Historical Genesis of the Crisis Environment

Any systematic analysis of the 1971 subcontinental war must begin by viewing the roots of Indo-Pakistani discord from a historical perspective. The animus between India and Pakistan can be traced from the early 1500's when Moslem warriors completed their subjugation, begun centuries earlier, of the subcontinent, then mostly inhabited by Hindus.[2] In 1765, Britain assumed the conqueror's role and eventually extended its rule throughout India. It was not until after World War II that economic difficulties and a rising tide of indigenous nationalism compelled the British to withdraw.[3] Nonetheless, even though Hindus and Moslems inherited the land, they were unable to reconcile the politico-religious differences which had alienated the two most powerful political parties, the Indian National Congress and the Muslim League. As perceived by one scholar, four crucial factors had been responsible for this estrangement: 1) The bitter history of relations between the Indian National Congress and the Muslim League; 2) The opposition to partition by the Indian National Congress until 1947; 3) The Muslim League's claim for parity between itself and the Indian National Congress, as well as for socio-political parity between Moslems and Hindus; and 4) The ideological conflicts between these two political factions.[4] Consequently, even though the dream of an independent Pakistan eventually came to fruition on August 15, 1947,[5] the pre-partition Congress-League rivalry became transformed into an intense Indo-Pakistani antagonism.

Hostilities first broke out between the two fledgling states in late 1947 over the disputed area of Kashmir in northwest India.[6] The dispute flared up when the Hindu Prince of Kashmir, a feudal Princely State under British paramountcy, joined the new state of India after his predominantly Muslim subjects rose in rebellion. Responding to his appeal, the Indian army occupied two-thirds of the contested region. Hundreds of thousands of people were killed during the widespread rioting and slaughter that followed; Hindus

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[2] For a general history of the Indian subcontinent, see Milton W. Meyer, *India-Pakistan and the Border Lands* (Totowa, N.J.: Littlefield, Adams & Co., 1968).

[3] *Ibid.*, pp. 160-164.

[4] D. C. Jha, "Roots of Indo-Pakistani Discord," *The Indian Journal of Political Science*, Vol. 32 No. 1 (January-March 1971), p. 14.

[5] The instigation of Muslim separation is usually credited to Muhammad Ali Jinnah (1876-1948), the "true architect of Pakistan." See N. N. Gidwani, "Genesis and Growth of Pakistan," *South Asian Studies*, Vol. 7 No. 1 (January 1972), pp. 1-13.

[6] An excellent study of the Kashmir dispute is Lynn H. Miller's "The Kashmir Dispute," in Lawrence Scheinman and David Wilkinson (eds.), *International Law and Political Crisis: An Analytic Casebook* (Boston: Little, Brown, and Co., 1968), pp. 41-89.

sought safety under Indian rule and Moslems fled India to seek sanctuary under the Pakistani flag. Sporadic fighting continued until a cease fire was effectuated by the United Nations on January 1, 1949.[7] Nonetheless, it was an uneasy truce and tensions remained high on the subcontinent.

In April 1965, limited clashes were reported along the Assam-East Pakistan border, as well as in the Rann (swamp) of Kutch area skirting the West Pakistan-Cujarat border near the Arabian Sea.[8] Armed conflict between Pakistan and India erupted in late August, 1965, once again over Kashmir; Indian soldiers advanced toward Lahore in West Pakistan while Pakistani troops were deployed to Jammu. On September 20, the United Nations Security Council demanded compliance to a cease-fire order.[9] Two days later both sides agreed to the U.N. fiat although they refused to comply with the concomitant provision to withdraw their forces back to the 1949 cease-fire line.[10] The situation remained stalemated until January 10, 1966, when negotiations at Tashkent, USSR, brought forth a mutual pledge to withdraw military forces from Kashmir.[11] Despite this apparent reconciliation, during the interim years to 1969, both India and Pakistan lodged frequent accusations and diplomatic protests over border violations and breaches of "the Spirit of Tashkent." [12] It is against this embittered twenty-five year history of suspicion, hatred, and conflict between these two communities—Indian Hindu and Pakistani Moslem—that the subsequent events in 1970 and 1971 must be viewed.

The Indo-Pakistani War of 1971 was the precipitant outgrowth of internal political turmoil in the geo-politically divided state of Pakistan. In the late 1960's popular discontent within Pakistan became manifest. Opposition groups alleged that the constitution promulgated in 1962 was discriminatory and was designed chiefly to maintain President Mohammad Ayab Khan's ruling party in power; public agitations called for reforms and demanded restitution of civil liberties which had been curtailed since the 1965 war with India. Separatist movements sprung up in East Pakistan and urged regional autonomy. Worker strikes and student demonstrations ensued, especially in the East, and in March, 1969, Ayub Khan resigned. He was succeeded by General Mohammad Yahya Khan, who forthwith declared martial law in the face of continued rioting and protests throughout the country. In August,

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[7] *Ibid.*, p. 62. See also Interim Report of the United Nations Commission for India and Pakistan, SCOR: 3rd Year, Supplement for November, 1948 (S/1100, November 9, 1948).

[8] See B. M. Kaul, *Confrontation with Pakistan* (New York: Barnes and Noble, Inc., 1972), especially Chapter 3, "Prelude in Kutch and Kashmir," pp. 19-29.

[9] For the text of the resolution, see SCOR: 20th Year, Supplement for July, August and September (S/6699, September 20, 1965).

[10] As Miller notes: ". . . New Delhi's acceptance was subject to a guarantee against further Pakistani infiltration and 'aggression,' and stated that no amount of pressure would prevent the Indian government from maintaining its sovereignty over Jammu and Kashmir. Pakistan's acceptance was predicated on the condition that the cease-fire arrangement would provide for a resolution of the 'real' cause of the conflict." [i.e., the cease-fire should be followed by mutual force withdrawal from Kashmir, the induction of a U.N.-sponsored Africa-Asian peacekeeping force to keep order, and a plebicite within three months]. Miller, "The Kashmir Dispute," *op. cit.*, pp. 77-78.

[11] *U.N. Monthly Chronicle*, III, No. 3 (March 1966), pp. 10-11.

[12] See David E. Lockwood, "Sheikh Abdullah and the Politics of Kashmir," *Asian Survey*, Vol. 9 No. 5 (May 1969), pp. 382-396.

Yahya called for Pakistan's first universal direct election, scheduled for late 1970, to select a National Assembly for drafting a more equitable constitution. Acknowledging East Pakistan's claim of domination by the West and also attempting to redress the East's grievances, Yahya stipulated that the election should be based on one-man, one-vote which would guarantee East Pakistan a majority constituency.[13]

Relations between East and West Pakistan became more severely strained during 1970, and reached grave proportions in November when a cyclone-driven tidal wave devestated the offshore islands and coastal districts in the East. With a death toll estimated to be as high as half a million, Eastern officials accurately charged that the West was slow to respond with needed supplies and medical provisions.[14]

Nevertheless, the national election was finally held in December, 1970. The Awami League, hostile to Yahya Khan and advocating autonomy for the East, won 167 of the 313 seats in the National Assembly—an absolute majority.[15] Negotiations were initiated between the Awami League, led by Sheik Mujibur Rahman, and the dominant Western political faction, the Pakistani Peoples Party. The negotiations floundered, and on March 1, 1971, Yahya personally postponed convening the National Assembly.[16] The immediate consequences of this act were ominously foreseeable: The Awami League called for public noncooperation and a general strike; subsequently East Pakistan erupted in revolt, and declared its independence as a separate Bengal nation named Bangladesh.[17]

Less than four weeks later, on March 25, the Pakistani Army—composed mostly of Western Pakistanis—moved to crush the East's rebellion,

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13 At that time, the population of East and West Pakistan was 75 million and 55 million, respectively.

14 Dom Moraes, *The Tempest Within: An Account of East Pakistan* (Delhi: Vikas Pub., 1971), pp. 54-98.

15 The election results are discussed in *Far Eastern Economic Review*, January 9, 1971, pp. 19-21 and *South Asian Review*, (London), Vol. 4 (April 1971), pp. 224-225. Sheik Rahman's Awami League ran on a program consisting of six fundamental points:

1. The Pakistani Constitution should be Federal as enunciated in the Lahore Resolution (March 23, 1940), with a "parliamentary form of government based on the supremacy of a directly elected legislature on the basis of universal adult franchise" and population.

2. "The federal government shall be responsible only for defense and foreign affairs."

3. There shall be two separate, mutually or freely convertible currencies in East and West Pakistan; if a single currency is preferred, a federal reserve system should be constitutionally established to "prevent the transfer of resources" and capital from East to West Pakistan.

4. All fiscal policy, including revenue collection and the power of taxation, for East Pakistan shall be vested in that federated unit alone.

5. Separate accounts for foreign exchange earnings shall be maintained for East and West Pakistan; constitutional provisions should be enacted to allow East Pakistan to negotiate its own foreign trade and aid with foreign states.

6. "The government of the federating units shall be empowered to maintain a militia or para-military force in order to contribute effectively towards national security." Sheikh Mujibur Rahman, *Bangladesh, My Bangladesh* (New Delhi: Orient Longman, Ltd., 1972), pp. 127-128.

16 *Far Eastern Economic Review*, March 6, 1971, p. 12.

17 Official declaration did not come until April 17, 1971, when Bangladesh was proclaimed a Republic with Nazrul Islam as the Acting President, and Tajuddin Ahmed as the Prime Minister. The proclamation referred to in early March was done by the residents of East Pakistan.

Civil war resulted, bringing horrors of indiscriminate death and destruction.[18] The Awami League was outlawed by the Islamabad government, and Sheik Mujibur Rahman was arrested, branded a traitor, and taken to West Pakistan to await trial. Internal order was restored for the most part by full military occupation, but occasional bloody skirmishes continued into the summer and fall of 1971. During this period, however, nearly ten million refugees from East Pakistan—the majority of them Hindus—streamed into neighboring India.[19] Although India had publicly sympathized with the East Pakistani rebels, this influx of refugees imposed an insufferable burden on its already over-extended economy. Concurrently, relations between India and Pakistan rapidly deteriorated.

During October and November, Pakistan repeatedly accused India of infiltrating troops into the East and supplying the Bengalis with arms.[20] Awami League officials, having established an exiled government in Calcutta, had promoted formation of a rebel army, the Mukti Bahini, to wage guerrilla warfare against Yahya Khan's forces in East Pakistan. Not unexpectantly the West Pakistani government formally protested that India was training and equipping these rebel forces in addition to fomenting insurgency in its strife-torn state.[21] Gunfire was increasingly exchanged across the Indo-Pakistani borders; armed clashes and mutual troop incursions were reported almost daily; and domestic pressures within both countries pressed for all out war. On November 25, Pakistan announced the call-up of its military reserves, noting that fighting between Indian and Pakistani troops was intensifying around Jessore, Dinajpur, Sylhet, and Commila.[22] In a political rally speech in Calcutta on November 29, Indian Defense Minister Min Ram stated that Indian troops had permission to move as deeply into Pakistan as the range of the guns firing at them.[23] Three days later, Indian tanks and infantry were reported to be battling Pakistani forces near the northeastern border town of Hilli.[24] On December 3, 1971, skirmishing escalated into open warfare. West Pakistan launched a fateful two-hundred plane blizkrieg attack against Indian airfields at Avantipur, Uttarlai, Jodhpur, Amritsar, Srinagar, Pathankot, and

[18] See, for example, *How Pakistan Violated Human Rights in Bangladesh: Some Testimonies* (New Delhi: The Indian Council of World Affairs, 1972). During the nine-month internal war which followed, 10,000,000 East Pakistani refugees fled into India, another 20,000,000 were displaced within Bangladesh, and as many as 3,000,000 civilians died from malnutrition or military action. *Hearings on Relief Problems in East Pakistan and India Before the Subcommittee to Investigate Problems Connected with Refugees and Escapees of the Senate Committee on the Judiciary*, 92d Cong., 1st Sess., pt 3, 427, 449 (1971).

[19] *Ibid.* See also "Bangladesh—Can It Survive?," *U.S. News & World Report* (December 27, 1971), pp. 20-24 and M. S. Rajan, "Bangladesh and After," *Pacific Affairs*, Vol. 45 No. 2 (Summer 1972), 191-205.

[20] See *Ceylon Daily News* (Colombo), Oct. 18, 1971; *The Times* (London), Nov. 29, 1971; The New York *Times*, Nov. 25-Dec. 1, 1971. See generally, Robert LaPorte, Jr., "Pakistan in 1971: The Disintegration of a Nation," *Asian Survey*, Vol. 12 No. 2 (February 1972), pp. 97-108 and David H. Bayley, "India: War and Political Assertion," *Ibid.*, pp. 92-96.

[21] See sources cited *supra*, note 20.

[22] New York *Times*, Nov. 25, 1971, p. 1:8.

[23] *Ibid.*, Nov. 29, 1971, p. 1:8.

[24] *Ibid.*, Dec. 1, 1971, p. 3:1.

Amabla.[25] President Giri of India declared a state of National Emergency, and the Indian Parliament responded with the Defense of India Act to provide sweeping emergency powers for the government.[26] A blockade of Pakistan was ordered,[27] Indian forces were put on full alert, and counter attack thrusts were instigated into East Pakistan near Jessore.[28]

Operational Strategies in the Crisis Environment

Militarily, events moved rapidly and decisively during the two-front war which followed. In order to offset Indian attacks in the East, West Pakistani troops made probing advances into Kashmir, but met some resistance near Sind. Pakistani forces were repulsed at Chhamb and Jammu, along the disputed Kashmir cease-fire line, on December 6. That same day, India formally recognized Bangladesh,[29] causing Pakistan immediately to break off diplomatic relations with the Gandhi government.[29a]

Success of the three-pronged pincers strategy used by India in East Pakistan—designed to converge on the provincial capital Dacca—was felt as early as December 10. The towns of Jessore, Ashuganj, Chandpur, and Daudkandi had been captured, and Indian troops had crossed the Meghna River, preparing for the final assault on Dacca.[30] In the West, air raids had virtually isolated the Pakistani capital of Islamabad from the outside world.[31]

On December 14, India reported its forces were only six miles from Dacca and were fighting on the city's outskirts. The East Pakistani civilian governor, A. M. Malik, and his cabinet resigned, thereby disassociating themselves from actions taken by the Yahya Khan government.[32] The following day, the Pakistani commanding General in East Pakistan, A. A. K. Naizi, surrendered Dacca to Indian troops, and a cease fire agreement was concluded on the Eastern front. Admitting defeat at Dacca, Yahya Khan on December 16, vowed the war's continuance until final victory over India was

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25 *Ibid.*, Dec. 4, 1971, p. 1:3. In her broadcast to the nation on December 3, Prime Minister Indira Gandhi declared:

> I speak to you at a moment of grave peril to our country and to our people. Some hours ago, soon after 5:30 P.M. on December 3, Pakistan launched a full-scale war against us. . . . Today the war in Bangla Desh had become a war on India. . . We have no option but to put our country on a war footing.

Indira Gandhi, *India and Bangla Desh: Selected Speeches and Statements* (New Delhi: Orient Longman, Ltd., 1972), pp. 128-129.

26 New York *Times*, Dec. 5, 1971, p. 1:8.

27 *Ibid.*, p. 24:1.

28 *Ibid.*, p. 1:8.

29 Indira Gandi, Statement in Parliament, December 6, 1971.

29a New York *Times*, Dec. 7, 1971, p. 1:7. One Pakistani commentator subsequently asserted:

> Actually India recognised "Bangla Desh" to provide a legal and political basis for the presence of the Indian Army in support of the Mukti Bahini and the "Bangla Desh Government." After the recognition the "Bangla Desh" authorities could assume charge of the areas captured by the Indians, and invite the Indians to come and take over [the] whole of East Pakistan. This would circumvent the charge that India aimed at annexing East Pakistan. It would also legalise India presence in the East.

Mehrunnisa Hatim Iqbal, "India and the 1971 War With Pakistan," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), p. 29. Cf. Sardar Swaran Singh's statement to the U.N. Security Council. *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 29.

30 New York *Times*, Dec. 11, 1971, p. 1:8.

31 *Ibid.*, Dec. 9, 1971, p. 15:1.

32 *Ibid.*, Dec. 15, 1971, p. 1:1.

achieved;[33] however, this pledge was short-lived. On the seventeenth Yahya Khan announced his acceptance of a general cease-fire agreement with India whereupon fighting was halted in the West.[34]

The striking consequences of the fourteen-day war were unmistakably clear: A decisive alteration in the political and strategic balance of power had swiftly occurred. Old Pakistan ceased to exist for it had been effectively dismembered, and the Peoples' Republic of Bangladesh had been born—although at a tremendous cost; its economy was devastated, its leadership decimated, and its people exhausted. Yahya Khan was replaced by Zulfikar Ali Bhutto on December 20, and shortly thereafter Sheikh Mujib was released. On January 12, Mujib became Prime Minister of his new state, and a week later at least seven nations had recognized Bangladesh as a viable member of the international community with more expected to shortly follow suit.[35]

Yet, no less important than the aftermath consequences of the 1971 Indo-Pakistani War are the latent conditions and disparate perceptions which motivated its occurrence. It is with the analysis of these causal relationships that the remainder of this study is concerned.

Delineating Participant Actors

The above account is intended only to provide the reader with the operational tactics demonstrated during the military phase of the 1971 Indo-Pakistani conflict. For the explicit purposes of this analysis, however, primary, secondary, and extrinsic actors clearly should be identified to facilitate ascertaining their respective policy inputs as well as to assess the principal actors' legal positions vis-à-vis their foreign policy actions.

The following criteria must be satisfied for an actor to be considered as having "primary" policy input: a) the actor had to be distinctly identifiable and distinguishable from other participant actors; b) the actor had to have possessed definite freedom in formulating its foreign policy decisions during the crisis; c) the actor must have directly participated in the crisis environment through military involvement; and d) the actor must have exerted some significant influence on policy decisions affecting the crisis environment. A "secondary" actor is one which only satisfied criteria a, b, and d. An "extrinsic" actor, while possibly involved in the conflict failed to satisfy the requisite criteria to any appreciable degree. When viewed in the international context, the following emerge as actor-candidates in the December, 1971 subcontinent crisis environment: Pakistan, Bangladesh, India, the United States, the Soviet Union, the Peoples' Republic of China, and the United Nations, more particularly, the Security Council.

Pakistan fully meets the criteria for being a primary actor during the hostilities. It was a recognized sovereign state, possessed governmental facilities for foreign policy decision-making, and assumed a significant participa-

[33] Yahya Khan, Speech to the Nation, December 16, 1971, in *Ibid.*, Dec. 17, 1971, p. 1:3.
[34] *Ibid.*, Dec. 18, 1971, p. 1:8. Text of Yahya Khan's ceasefire statement reprinted in *Ibid.*, p. 12:1.
[35] *Ibid.*, Jan. 14, 1972, p. 2:3.

tory role militarily, as well as diplomatically. Although there may be conjecture whether West and East Pakistan should be considered separate actor entities, it is unmistakably clear that the Western government—under the direction of Yahya Khan—exercised policy decisions for the state as a whole until its capitulation.

In this connection, the eastern wing of Pakistan—the newly proclaimed state of Bangladesh—was centrally involved in the conflict. Even so, more weighty realizations supercede its being considered a distinct primary actor. For ten months prior to the declared Indo-Pakistani war, East Pakistan was characterized by internal rebellion and insurgency. At the crisis' inception, the national status of Bangladesh was uncertain, and it had not been recognized as a separate state by the international community. Moreover, there was no legitimate Bangladesh government in power capable of formulating, much less implementing, foreign policy decisions.[36] Although it could be argued that the Mukti Bahini (the East Bengali guerrilla insurgents) constituted a sanctioned appendage of the Bangladesh government-in-exile, there is no evidence to substantiate the necessary contention that viable communication and policy contingencies were efficaciously exchanged. Given these important indicators, Bangladesh per se must be classified as the exceptional extrinsic actor, or perhaps more appropriately as an in-process secessionist territory from West Pakistan. Because successful secession did not occur until after the crisis hostilities had ended, the eastern wing of Pakistan will be treated in this study with the Western part as a single primary actor.

India also must be designated as a primary actor during the December, 1971, war. Throughout the entire conflict, India obviously fulfilled the above enumerated criteria and executed coherent foreign policy decisions to achieve military, diplomatic, and strategic goals.

The United States, while not involved in actual combat operations, assumed an overt pro-West Pakistani foreign policy posture during the crisis. Yet, more important than the official posture articulated were the diplomatic actions taken to influence the course of the war. As later revealed, the United States persisted in supplying Yahya Khan's West Pakistani forces with armaments and materials until their eventual surrender.[37] In glaring contrast, the State Department on December 1, suspended any licensing of arms shipments to India, thereby revoking $2 million worth of previously approved ammunition and ammunition-making equipment.[38] Two days later, export licenses

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[36] Lauterpacht has stated that "The only legitimate occasions for implying recognition are: (a) the conclusion of a bilateral treaty, such as a treaty of commerce and navigation regulating comprehensively the relations between the two states; (b) the formal initiation of diplomatic relations; (c) probably, the issue of a consular exequatur; (d) in the case of recognition of belligerency, a proclamation of neutrality or some such unequivocal act." Hersch Lauterpacht, *Oppenheim's International Law*, (Vol. 1. Longman's, Green, and Co., 1955), pp. 147-148. See also Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947). Noticeably, Bangladesh in 1971 had failed to fulfill Lauterpacht's criteria, but compare A. K. Pavithran, *Bangla Desh: Principles and Perspectives* (Madras: The Eastern Centre of International Studies, 1971), especially pp. 95-106.

[37] Also important was the fact that the United States dispatched the aircraft carrier *Enterprise* and seven other vessels to the Bay of Bengal on December 7, 1971. New York *Times*, Dec. 13, 1971, p. 1:1.

[38] The New York *Times*, Dec. 2, 1971, p. 1:2.

were cancelled for $11.3 million worth of military and communications equipment destined for shipment to India.[39] On December 6, the State Department announced a $87.6 million cut in developmental loans for India, forthrightly declaring that the United States would not make short-term contributions to the Indian economy which could be utilized to sustain military efforts against Pakistan.[40] Thus, the United States did undertake diplomatic initiatives which affected the military status of primary actors—positively for Pakistan, negatively for India—albeit there was little impact upon the ultimate outcome of the crisis. Realizing this, the United States played the role of a secondary actor, being external to the crisis only insofar as direct military participation was involved (criteria c).

Regarding the Soviet Union and the Peoples' Republic of China, each supported its own client state politically and propagandistically, i.e., India and Pakistan, respectively. Like the United States, neither of these two Asian powers intervened militarily, although both exercised considerable influence to stymie Security Council action aimed at effecting an early case-fire agreement. Throughout the Security Council debate China adamantly pressed for a resolution condemning India, but that effort was fruitless.[41] As for the Soviet Union, within nine days its delegate vetoed three Security Council cease-fire resolutions on grounds that they failed to provide a political settlement which was amenable to the East Pakistani insurgents.[42] It is important to understand that had the Security Council been able to institute an early cease-fire agreement, the crisis environment most likely would have been altered. Surely the temporal dimension would have been affected, consequently changing later events. However, by failing to secure agreement on a cease-fire, withdrawal-of-forces resolution, the Indo-Pakistani crisis was extended to its fateful conclusion. Conclusively then, though perhaps with not the express intent, the Soviet Union and the Peoples' Republic of China participated as secondary actors, significantly affecting the course of the conflict as they politically supported their respective client states.

The Security Council, as previously mentioned, became the victim of great power rivalries during the 1971 subcontinental war. In point of fact, this UN organ was so paralyzed that the only forthcoming United Nations resolution had to be secured by invoking the Uniting for Peace Resolution,[43] thereby transferring debate on the crisis from the Security Council to the General Assembly. The resultant General Assembly resolution,[44] passed on December

[39] *Ibid.*, Dec. 4, 1971, p. 10:1.

[40] *Ibid.*, Dec. 7, 1971, p. 1:5.

[41] A Pakistani perspective of China's role during the crisis is Mehrunnisa Ali, "China's Diplomacy during the Indo-Pakistan War, 1971," *Pakiston Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 53-62.

[42] For a West Pakistani reaction, see Kemal A. Faruki, "The Indo-Pakistan War, 1971, and the United Nations," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 10-20. Also noteworthy is Virendra Narain, "Bangladesh and the Changing International Context," *South Asian Studies*, Vol. 7 No. 2 (July 1972), pp. 216-225.

[43] General Assembly of the United Nations, Nov. 3, 1950. G.A. Res. 377A, 5 U.N. GAOR, Supp. 20 (A/1775), p. 10. Debate was transferred to the General Assembly by S.C. Res. 303 (1971), refer S/Agenda 1606 to General Assembly as provided for in G.A. Res. 377A (V) of 3 Nov. 1950.

[44] General Assembly of the United Nations, G.A. Res. 2793 (XXV) of 7 Dec. 1971.

7, called for India and Pakistan to cease hostilities and withdraw their troops; nevertheless, the resolution went unheeded, and the fighting continued. Because of its inefficiency—admittedly attributable to counterproductive policy positions held by member states—the Security Council itself can only be designated an extrinsic actor during the two-week war. Regretfully, what little impact the Security Council had on the crisis environment was relegated to rhetorical accusations and vituperative exchange. In short, its role became frustrated and ineffectual.

From this analytical preview, India and Pakistan (West and East inclusive) have been found to be the sole participant *primary* actors in the 1971 subcontinent hostilities. The overriding question now begged is did these two actors operationalize their strategies vis-à-vis international legal considerations, and if so, did their respective conceptualizations of "national interest" and "national capabilities" interact with (or impinge upon) these considerations? To best answer these queries, we must first determine what exactly were the national interests and capabilities of the primary actors prior to and during the December war.

National Interests

Although notoriously vague and difficult to define, "national interest" may be considered as "the general, long-term, and continuing purpose which the state, the nation, and the government all see themselves as serving."[45] Every state's national interest is rooted in the social consciousness and cultural identity of its people; the process of its synthesis is dependent upon history and the institutional structure of that society. Conceptually speaking, the "national interest" serves two fundamental purposes: first, it circumscribes the state's general orientations to the external environment, and second, it provides a controlling criterion of choice during immediate situations. In the case of Indo-Pakistani relations, disparate religious experiences were largely responsible for inculcating those social values (and consequently the relative perceptions of its national interests by each state) antithetical to their cooperation.

India, though predominantly Hindu, is committed to constructing a secular, multi-religious society.[46] The secular state, as graphically conceived, may be diagrammed as a triangle; the base represents the separation of state and religion, one side represents the relationship between religion and the individual, and the other side the relationship between the state and the individual.[47] According to one Indian scholar, secularism is "not atheistic in nature and does not imply any negation or rejection of religion. It is a secularism based on democratic traditions and liberal thought and is not only tolerant toward religion but grants to all full freedom of religious faith and practice."[48]

[45] Charles O. Lerche, Jr. and Abdul A. Said, *Concepts of International Politics* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1970), p. 25.
[46] See generally, Donald E Smith, *India as a Secular State* (Princeton: Princeton University Press, 1963).
[47] *Ibid.*, p. 4.
[48] Ziya-Ul Hasan Faruqi, "Indian Muslims and the Ideology of the Secular State," in Donald E. Smith (ed.) *South Asian Politics and Religion* (Princeton: Princeton University Press, 1966), p. 149.

Conversely, the secular-state religious concept is anathema to Pakistan, which is fervently committed solely to the ideals of Islam.[49] Before partition the Muslim League's cardinal ideological tenet was to protect Islamic culture on the subcontinent. For Pakistan, preservation of Islam has been the chief national concern. Stated President Ayb Khan in 1960, "[The Islamic ideology] is the foremost justification for our existence and we cannot be true to Pakistan without being true to this ideology." [50] He later added that it was on the basis of Islam "that Pakistan came into being, it is on that basis alone that it can survive and progress and become stronger." [51] Moreover, Pakistan's political order makes no attempt to separate the state and religion. The First Policy Principle of the Pakistani Constitution instructs the state "to support the Islamic faith, to make compulsory the teaching of the Qur'an and Islamic studies to the Muslims of Pakistan, to promote Muslim standards, and to insure the proper organization of Muslim taxes, religious endowments, and mosques." [52]

It is important to note that for Pakistan, Islam performed a most vital function in the post-partition search for national identity. Separated by one thousand miles of Indian territory. Pakistan felt a persistent need to cultivate a distinct sense of nationhood—one territorial unit (though not geographically) born from the same historical, cultural, and social ideals. Glorification of Islam was to serve this purpose, but by doing so, constant villification of India became a necessary adjunct.[53]

In sum, the antagonistic religious attitudes fostered by India and Pakistan were instrumental in shaping their respective value-systems, thereby contributing to rigid perceptions of each other's foreign policy behavior. (During the 1971 crisis, the impact of religious values became dramatically apparent as Pakistani cries of *"jihad"*—holy war for the spread of Islam—echoed across the battle lines). The legacy of these antithetical value-systems was hatred and mistrust; the precipitant result was war and bloodshed. Accordingly, the chief political implications arising from Indo-Pak religious disparities are depicted in Table 1.

Foreasmuch as this religious antagonism affected India's and Pakistan's perceptions of their national interest vis-à-vis each other, what relevant repercussions were evidenced in 1971? That is, how were national interests perceived by the two disputants during the course of crisis events? In an article appearing in *International Studies Quarterly*, Thomas W. Robinson

[49] For an excellent discussion of this, see Freeland Abbott, "Pakistan and the Secular State," in Smith, *Ibid.*, pp. 352-370.

[50] Field Marshal Mohammed Ayub Khan, *Speeches and Statements* (Katochi, n.d.), Vol. 3, p. 52.

[51] Jha, "Roots of Indo-Pakistani Discord," *op. cit.*, p. 21.

[52] Abbott, "Pakistan and the Secular State," *op. cit., p.* 353.

[53] Keith Callard emphasized the "villification role" for India when he posited:

In large measure Pakistani feeling toward India has been a continuation of the political struggle before partition. . . . The idea that a country has a foreign enemy is easy for the mass of the people to understand, and it also provides a powerful stimulus to unity. For Pakistan, India has filled this role.

Keith Callard, *Pakistan: A Political Study* (London: Allen and Unwin, 1957), p. 17.

Table 1

THE POLITICAL IMPLICATIONS OF HINDUISM AND ISLAM

	HINDUISM	ISLAM
1. *Theory of history.* Great concern with the course of history tends to increase a religion's involvement in politics.	History is metaphysically at a lower level of reality, and is ultimately not significant.	History is decisive. A certain pattern of life must be established on earth.
2. *Attitude toward other religions.* Attitudes of tolerance reinforce the tendency to use the political process for communal advantage.	Extremely tolerant philosophically, but pattern of group exclusiveness socially.	Theologically intolerant, and often so in practice.
3. *Capacity for ecclesiastical organization.* The more highly organized a religion, the greater its involvement in politics.	Practically no ecclesiastical organization.	*Ulama* (doctors of the law) not effectively organized, but can be mobilized.
4. *Political and religious functions.* Tradition of fusion of these two functions tends to increase a religion's involvement in politics.	Two functions performed by separate castes.	Tradition of Muhammad and caliphs—fusion of temporal and spiritual authority.
5. *Tendency to regulate society.* The stronger this tendency, the greater the area of conflict between religious authority and the state.	Caste system, Hindu law.	Islamic law—detailed regulation of society.

Source: Donald Smith, *South Asian Politics and Religion,* p. 19.

has cogently synthesized a conceptual framework for analyzing various aspects of a state's "national interest." [54] When this schema is applied to the 1971 Indo-Pakistani conflict, the hierarchial order of India's and Pakistan's national interests can be determined, thereby giving the relative value each interest-issue had to its participant actor. Furthermore, such an analysis should provide a reasonable indication regarding the primacy assigned to each prevailing national interest. Briefly below is Robinson's conceptual framework which will be incorporated to analyze Indo-Pakistani national interests during the 1971 war.

All the interests expressed by any nation at any time are designated as the total interests of that nation. There are six main "national interests," grouped according to their relative degrees of primacy, permanence, and generality:

1. *Primary* interests are those essential to protecting a nation's physical, cultural, and political identity. These are hardcore interests, vital to a nation's survival, and "can never be compromised or traded."

[54] Thomas W. Robinson, "A National Interest Analysis of Sino-Soviet Relations," *International Studies Quarterly,* Vol. II (June 1967), pp. 135-175. The categorical interest breakdown which Robinson enumerates, and from which the present conceptual framework is taken, is a synthesis of Hans Morgenthau's works on the national interest. In this connection, "national interests" are distinct from "national objectives;" whereas national interest has implications of perpetuity or ultimacy, a national objective is immediate or short range in its time component. Essentially national objectives contribute to the national interest.

2. *Secondary* interests are those directly contributing to primary interests.
3. *Permanent* interests are those "relatively constant" over long periods of time.
4. *Variable* interests are those regarded as national interests at a given point in time, and are a function of "all the cross currents of personalities, public opinion, sectional interests, partisan politics, and political and moral folkways."
5. *General* interests are those applied by a nation in international dealings and affairs, including trade, preserving a balance of power, international law, and diplomatic intercourse.
6. *Specific* interests are logical outgrowths of general interests, but are usually more closely defined in time and/or space.

It is important to note that from this classification, two basic divisions of national interests emerge, viz., primary and secondary. Concurrently, permanent, variable, general, and specific interest characteristics may be subsumed under primary or secondary headings, depending, of course, upon descriptive accuracy.

Coincident with "national interests" *per se,* there are three general international interests which affect a nation's foreign policy behavior:

1. *Identical* interests are those held in common between nations.
2. *Complementary* interests, while not identical, are those interests "capable of forming the basis of agreement on specific issues."
3. *Conflicting* interests are those interests excluded from 1 and 2.

Application of this schema to Indo-Pakistan foreign policy behavior in December, 1971, reveals several intriguing interest distinctions by each primary actor.

Pakistani National Interests

Throughout the entire course of hostilities—from the March internal rebellion to India's December intervention—Pakistan's primary/permanent-specific national interest was preservation of its territorial integrity (i.e., unity). Its very survival as a sovereign political entity was gravely threatened, first by civil war in the East, and subsequently by India's invasion. Had the Bangladesh secessionist movement been permitted to run its own course without West Pakistan's coercive intervention, in all likelihood it would have succeeded. Certainly, success for Bangladesh meant failure for Yahya Khan's government, not only politically, but also economically: a large portion of Pakistan's foreign trade revenues were accrued from selling jute grown in the East.[33] The internal situation in the East was further complicated by Indian-trained guerrilla insurgents operating to gain the region's independence, in addition to the frequent Indo-Pakistani border clashes escalating in October and November. Considering the momentum of events, it now seems evident

[33] Pakistan, in 1971, had the world's greatest jute production—some 6,000,000 bales—which constituted its largest export. See Washington *Post,* Aug. 27, 1971, p. A4:1.

that West Pakistan chose to act decisively by resorting to war with India. Hence, the airstrike on December 3, was an attempt (though a tragicomic one) to mimic the Israeli strategy demonstrated in the 1967 Six Day War; that is, it was designed expressly to extinguish the possibility of an armed intervention (or invasion) before it actually occurred.

Implicit in West Pakistan's military action to ensure the East's political unity are two correlative primary/permanent-specific national interests: a desperate need to preserve cultural ties with East Pakistan, and the concomitant necessity for ensuring national security. As previously argued, the only unifying forces Pakistan enjoyed as an entity were the Islamic culture and hatred of India. To sacrifice unity would compromise both. Bangladesh secession or defeat by India would shatter the cultural identity of Pakistan, and simultaneously vitiate its military posture—strategically as well as numerically. Consequently, self-preservation of cultural identity and national security became primary interest considerations for Pakistan before and during the war with India.

No further primary national interests were evinced by Pakistan. Therefore, by definition, all other national interests it perceived were secondary. Not least of Pakistan's secondary interests was destroying the East's rebel insurgents, the Mukti Bahini. These guerrilla forces were the principal subversive group working to overthrow Yahya Khan's control over East Bengal; their annihilation would greatly facilitate the West's objecitve of retaining East Pakistan's ante-bellum territorial integrity. Noticeably, however, the importance of suppressing Mukti Bahini activities declined as the likelihood of Indian intervention increased. That is to say, Pakistan's military attention during October-November (i.e., the confrontation stage) increasingly shifted to border clashes with Indian troops. This suggests Pakistan's preoccupation with the Mukti Bahini was a secondary/variable-specific national interest.

Analysis of Pakistani military tactics during the conflict indicate troop movements initially were made into Kashmir from the West, giving rise to speculation whether this disputed region was highly significant as an interest variable. It does appear significant, though not of primary status. Nearly all the fighting in the 1971 Indo-Pakistani war was concentrated in the East; further, despite the 1965 conflict, Pakistan had generally accepted the stalemated situation created in 1948. Admittedly, diplomatic protests over border incidents often had been made. During the December war, however, there is no evidence to suggest Pakistan's acquisition of Kashmir was a paramount strategic objective. Thus, because of these realizations, Pakistani concern over Kashmir in 1971 may be classified a secondary/permanent-specific national interest.

Settlement of the East Pakistani refugee problem must also be mentioned. From March to December, 1971, an estimated ten million refugees fled from East Pakistan into India. Yet, even though the loss of ten million inhabitants might seem highly detrimental to a state's survival, it was not perceived so by West Pakistan. The refugees were mostly Hindu Bengalis[56]—potential

[56] It had been estimated that as many as 90% of the refugees were Hindu. The Washington *Post*, June 11, 1971.

citizens of secessionist Bangladesh—and possibly in collusion with the Mukti Bahini rebels. The refugees' flight into India did not compromise Pakistan's vital interests, albeit certainly strained India's economic structure. In this regard, resettlement could not occur until the insurgency was quieted with some viable solution, but this never materialized: anti-government guerrilla operations continued unitl India's entry into the conflict was a declared fact. Additionally, because of the indiscriminate genocidal atrocities perpetrated by Pakistani troops in the East, repatriation of the refugees seemed remote at best without UN observers present. From this evidence, then, the refugee problem for Pakistan may be seen as a secondary/variable-specific interest.

Another less tangible interest, but important nonetheless, was Pakistan's desire to maintain its parity as a national power with India in Southern Asia. Admittedly, such a balance of power seems superficial given the realization that Pakistan was heavily dependent upon United States and Chinese foreign aid up to the December, 1971, hostilities.[57] Yet a major transformation in the balance had taken place only three months before. In early August, an Indo-Soviet Treaty of Friendship was announced,[58] pointing up to Pakistan a most disturbing reality: an equitable power equilibrium with India, while not wholly impossible, would be dependent upon the outcome of the December war. Understanding this, Pakistan's regaining political par with India in 1971 assumed the quality of a secondary/permanent-general interest. (Regarding balance-of-power equilibrium as an interest factor, a caveat is in order here. If through diplomacy, i.e., alliances, treaties, or aid agreements, Pakistan had attempted to offset India's power advantage, this could be designated a secondary/variable-general interest; conversely, had India's political power rapidly expanded to such an extent that it openly threatened Pakistan's survival, this would likely be perceived as a primary/permanent-specific interest by Pakistani officials. Nevertheless, neither of these situations were justifiably applicable to the December 1971 conflict.)

A final secondary national interest for Pakistan was its participation in the Security Council's debates. Had the Security Council been able to impose a cease-fire early in the conflict—thereby precluding total victory for India—East Pakistan might well have been relegated to its former status with the West. Surely, Bangladesh as a separate entity could have then been snuffed

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[57] Since 1954, United States military assistance to Pakistan has been estimated in excess of $2000 million. *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 34. For Pakistani impressions of United States and Chinese roles during the 1971 conflict, see Khurshid Hyder, "United States and the Indo-Pakistan War of 1971," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), pp. 63-74, and Ali, "China's Diplomacy during the Indo-Pakistan War, 1971," op. cit., pp. 53-62.

[58] Commenting on the military implications of the Indo-Soviet Treaty of Friendship, one Pakistani scholar noted:

> In early November, 1971, it was reported in the foreign press [*The Times*, London, Nov. 6, 1971], that twelve Soviet transport aircraft carried military equipment, mainly advanced versions of SAMs to New Delhi and Bombay. . . . Meanwhile, a Russian consignment of 250 tanks, 40 120mm rockets and a large number of radio sets and other equipment were dispatched as negotiations were initiated for the supply of supersonic medium bombers, medium reconnaissance aircraft and MIG-23 fighters [Dawn, Karachi, Nov. 4, 1971]. This resulted in a positive shift in the military balance in the subcontinent in favour of India. . . .

Zubeida Mustafa, "The USSR and the Indo-Pakistan War, 1971," *Pakistan Horizon*, Vol. 25 No. 1 (First Quarter, 1972), p. 46.

out. Therefore, an early cease fire probably would have worked to West Pakistan's advantage—and at India's expense—in the short run. (This realization was one apparent motivation encouraging the Soviet Union to use its veto on three separate occassions during the debates, delaying any Security Council action until India had achieved victory.) To Pakistan, early resolution of the conflict through United Nations machinery took on characteristics of a secondary/variable-specific national interest.

Indian National Interest

Unlike Pakistan, India's national interests during the protestation-confrontation periods (March 25-December 2) seem more difficult to pointedly distinguish. Ostensibly, the ongoing internal upheaval in the Eastern wing precluded Pakistan's being a great threat to India's territorial security. Indeed, the civil war raging in East Pakistan could be visualized as a positive factor rather than a negative one: India's arch rival—politically, militarily, and religiously—was being torn apart by its own doing.

Nevertheless, Pakistan's "preemptive" airstrike on December 3 radically altered the situation. With this overt, unabashed act of aggression Pakistan became a serious threat to India's national security, an essential primary interest. Hence, India's retaliatory defensive action during the conflict can be classified as a primary/permanent-specific interest.

The influx of refugees, which undeniably imposed a severe onus on India's economy, did not constitute an undue threat to the nation's survival.[59] Despite India's vociferous complaints, resettling the Bengalis should be described as a secondary/variable-specific interest. Had India perceived the detrimental economic problems caused by having ten million new mouths to feed to be compromising its vital interests, in all probability war with Pakistan would have occurred earlier and would have been India-initiated. Yet, this did not happen.[60]

Similar to Pakistan, the disputed Kashmir region was not a primary concern for India. Certainly, considering the swift Indian victory in the East, the Gandhi government could have easily diverted troops to the northwestern front. However, it choose not to do so. In consonance with this, India opted to attack Western cities from the air in preference to a land invasion through the Kashmir region.[61] Thus, it is plausible that India viewed Kashmir as merely a secondary/permanent-specific interest.

Perhaps the most important secondary interest held by India was fostering and encouraging the creation of a new, less bellicose state on its eastern

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[59] While the Bengali refugees cost India $3 million each day, Indira Gandhi stated as late as November 15, 1971:

> Taking care of the refugees means cutting a lot of our programmes, it means a certain austerity in living, cutting government spending and reorienting various schemes and programmes. It is indeed a very, very heavy burden. I don't think it will cripple our economy, we won't go under with it. But the major danger is not this burden, which is heavy enough. It is the social and political tensions which are growing out of this problem. And we feel that there is a real threat to our security.

Gandhi, *India and Bangla Desh*, *op. cit.*, p. 101.

[60] Cf. Iqbal, "India and the 1971 War with Pakistan," *op. cit.*, pp. 21-31.

[61] The New York *Times*, Dec. 9, 1971, p. 15:1.

border. By supporting the Bangladesh movement—through military aid as well as political rhetoric—India could accomplish two important objectives. First, pre-war Pakistan as an entity would be permanently destroyed, hence removing it as a future two-front military threat; and second, with Bangladesh's independence would also come India's position as the unchallenged political force on the subcontinent. The implications of this power shift were clearly revealed as an Indian newspaper editorialized:

> A friendly nation has come in existence on India's highly sensitive eastern border, thus opening immense possibilities for its economic growth. The nation's security in the northeast Himalayas has been strengthened because the Chinese in control of the Chumbi valley can no longer threaten to cut off northeastern region. The stigma of the defeat in 1962 has at last been wiped out. No power will in the foreseeable future treat this country as if it is of no consequence.[62]

While important for India that Bangladesh be established, this was not a primary interest. India did not resort to declared belligerency to free East Pakistan from the West's oppression, rather, it reacted to an attack upon national security interests. Therefore, Bengali independence must be categorized as a secondary/permanent-specific interest.

In conjunction with this, another national interest for India should be noted. Since 1947, the Indo-Pakistani border-lands have been earmarked by frequent clashes between the two states and even two mini-wars. One may argue that the intensifying skirmishes occurring in late October and November made India realize that it would be in the national interest to stabilize these areas. This could be achieved easily in the east by supporting the creation of a friendly Bangladesh. Nevertheless, stabilizing the border-lands was not a hard core interest; instead, it too should be considered a secondary/permanent-specific interest.

A final Indian national interest must be mentioned: namely, India's desire to halt the mass slaughter of Bengalis in East Pakistan. While it is difficult to precisely determine just how significant preventing further genocide was to India's decision-makers, this issue was central to their legal position supporting the legitimacy of intervention into the East. Even so, it is arguable whether genocidal cessession was of primary interest; had it been so, in all likelihood war with Pakistan would have started as early as spring of 1971, especially considering the paucity of international counter measures at that time. Nevertheless, public enunciations indicate genuine concern for humanitarian rights by the Gandhi government throughout the entire crisis. Thus, as a national interest, India's desire to halt the aborgation of human rights in East Pakistan can be classified as a secondary/variable-specific interest.

Structurally summarized, the breakdown of Pakistani and Indian national interests is depicted in Table 2.

[62] *The Times of India*, Dec. 14, 1971, p. 8:7.

Yet the tabled information fails to adequately indicate the relative order of importance for these interests. Obviously, the most crucial interests for Pakistan were those primary ones, namely preserving political unity, cultural identity, and national security. Based on its actions during the conflict, the following rank-order of secondary interests is suggested: 1) the destruction of the Mukti Bahini; 2) to secure power parity with India; 3) to maintain status quo in Kashmir; and 4) to resettle the Bengali refugees.

Table 2

INDIAN AND PAKISTAN NATIONAL INTERESTS (March - December, 1971)

NATIONAL INTERESTS	PAKISTAN	INDIA
Primary/Permanent-Specific	Preserve territorial unity. Preserve cultural identity. Defend national security.	Defend national security [a]
Secondary/Permanent-General	Maintain power equilibrium with India.	Create friendly Bangladesh. Gain power superiority in subcontinent.
Permanent-Specific	Maintain status quo in Kashmir.	Maintain status quo in Kashmir. Stabilize northeastern borderlands.
Variable-General	Stabilize power balance through diplomacy. (hypothetical)	Support dismemberment of Pakistan.
Variable-Specific	Gradual resettlement of Bengali refugees. Utilize U.N. machinery to halt conflict. Destroy Mukti Bahini rebels.	Immediately repatriate Bengali refugees. Support Mukti Bahini rebels. Stop genocidal atrocities.

[a] applicable only December 3-17, 1971.

It is important to note that India lacked any legitimate primary interest until the Pakistani attack on December 3. In this respect, the temporal dimension has crucial implications, principally because those primary interests enumerated for Pakistan were not only valid during the war itself, but during the earlier period of internal conflict as well. Regardless, from newspapers and policy statements issued in late November and throughout December,[63] India's hierarchy interests vis-à-vis Pakistan take this form: 1) to defend national security (primary); 2) to support creation of Bangladesh (and correlatively

[63] See "What We Are Fighting For," in Gandhi, *India and Bengla Desh*, *op. cit.*, pp. 136-145, and Iqbal Marain, "Bengladesh Issue and the Indian Political System," *South Asian Studies*, Vol. 7 No. 2 (July 1972), pp. 204-215.

Pakistan's dismemberment) by aiding Mukti Bahini rebels; 3) to repatriate Bengali refugees; 4) to gain subcontinental power superiority; 5) to halt genocide; 6) to stabilize northeastern borderlands; and 7) to maintain the status quo in Kashmir.

Incidentally, when contextually placed in Robinson's international grouping, Pakistani and Indian national interests can be easily recognized as "conflicting." With the single exception of maintaining the status quo in Kashmir, all other interests found were at variance and irreconcilable with one another; i.e., they were neither "identical" nor "complementary." It is not surprising, therefore, that war seemed an inevitable possibility. Realizing this, the fundamental question now asked is what capability resources were available for making either Indian or Pakistani national interests more realistically attainable during the conflict? The next section attempts to answer this very important query.

Indian and Pakistan Capabilities

Although there are many conceptual descriptions of a state's "capability," perhaps the most useful definition is "the capacity to affect changes in the international environment in its [i.e., the state's] own interest." [64] In other words, "capability" is a summary manner of referring to the "means" aspect of the ends-means continuum in a state's foreign policy.

Yet, the concept of "capabilities" is not circumscribed by quantifiable limits; to be sure, certain behavioral, less tangible relationships internal to any state must be taken into account. From this realization, capability alternatives can be best viewed from a demand-response alternative. That is, given the "capabilities" of a state, will it support (i.e., enforce) its demands (policies), or conversely, will it resist (i.e., defend) adverse demands (pressures or attacks) imposed by other states? The answer to this key question vis-à-vis the primary actors in the 1971 Indo-Pakistani war is couched in a functional analysis of their relative capabilities.

In their introspective work, *Foundations of International Politics,* Harold and Margaret Sprout suggest five primary functional determinants which must be considered to adequately ascertain a state's capabilities, viz.: 1) information-providing functions; 2) decision-making functions; 3) means-providing functions; 4) means-utilizing functions; and 5) resistance-to-demands functions.[65] By relating these functional attributes to India and Pakistan circa December, 1971, we should be able to assess their respective capability postures and concomitantly gain greater insight into those factors which promoted or debilitated the chances for achieving their aforementioned national interests.

Information-Providing Functions

Essentially, information-providing functions allow for analyzing international problems and situations. The better the government's "intelligence

[64] Lerche and Said, *Concepts of International Politics, op. cit.,* p. 60.

[65] Harold and Margaret Sprout, *Foundations of International Politics* (New York: D. Van Nostrand Co., 1962). The functionally-oriented capability analysis employed in this section is central to the Sprout's conceptualization. See especially *Ibid.,* pp. 163-174.

stockpile," the better its capacity should be to evaluate and cope with the immediate situation at hand.

It is understandably difficult to adequately assess the "intelligence-gathering" function of a state, for indeed the very success of such a function hinges upon secrecy. Yet, from viewing the Indo-Pakistani war in retrospect, its outcome supports the contention that India possessed the more efficacious intelligence-providing mechanism.

One highly important factor working for India was the Mukti Bahini rebels. These independence fighters were indiginous East Bengalis, knew the terrain, and often served as "scouts" for the Indian Army. From the decisive swiftness of the military campaign in the East, it appears they did their job well.

Just as significant in the short run were India's military tactics. The overall Eastern strategy was to secure the provincial capital of Dacca by attacking the border towns at three different points and then driving inland. Indian intelligence made estimations of Pakistani forces and positions that overwhelmingly proved correct: thirteen days after the Indian intervention was launched, Dacca capitulated.

Conversely, Pakistan's intelligence operation, if it can realistically be called one, performed miserably. The initial Pakistani intelligence estimations used for the "preemptive" airstrike not only blundered, but in the long run can be held partially responsible for Pakistan's defeat. Had the strike been a true reproduction of the Israeli strategy in 1967, the war would have been over before it began. However, perhaps the greatest impact the December 3 attack had upon India was to catapult its military machine into action.

The awesome success of India's intervention mirrors the tragic failure of West Pakistan's intelligence system. To be sure, Pakistan's defensive actions were marred by poor communications, lack of information, and an inconsistent sense of timing. Without these vital elements, intelligence became worthless, and in the end, so did the Pakistani military effort.

Decision-making Functions

The success or failure of policy formulation is dependent upon the decision-maker's analytical perceptions of the environment. Accordingly, several considerations must be made to accurately ascertain the performance capabilities of various decision-making structures, e.g., policy flexibility; training and experience of decision-makers; the extent of bias distortion in the decision-making mechanism; and the possession of "error correcting" machinery.

The importance of this function in the Indo-Pakistani conflict was clearly seen in the chain-of-command structures each primary actor utilized. In India, the Supreme Command of the Armed Forces was vested in the President of the Indian Republic. Policy was decided at different levels by several committees, including the Defense Committee of the Cabinet (presided over by the Prime Minister) and the Defense Minister's Committee. Administrative and operational control rested in the respective Service Headquarters, under the aegis of the Ministry of the Defense.[66]

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[66] John Paxton (ed.). *The Stateman's Yearbook 1970-71* (London: Macmillan & Co., 1970), p. 339.

The Ministry of Defense was the central agency for formulating defense policy and for coordinating the activities of the three branch services. (Among the organizations directly administered by this Ministry were the National Defense College, the National Cadet Corps, the Production Organization, and the Directorate-General of Armed Forces Medical Services). Finally, each military service was organized into command units to more effectively protect different geographical sections of the country.[67]

Pakistan's military decision-making apparatus, on the other hand, critically suffered from a lack of precise structure. There was a rudimentary chief-of-staffs system, and a General Headquarters located at Rawalpindi.[68] Paramount military decisions during the 1971 conflict were made principally by President Yahya Khan, a former Pakistani general. By relegating difficult decisions to a single individual, little consultative coordination resulted; as a consequence, the military information needed for making prudent decisions in the field was greatly stiffled. In essence, where India's chain-of-command was flexible and well trained, Pakistan's was rigid and ill-prepared; where India's military tactics were governed by expediency, Pakistan clung to the bias of inevitable victory through Islam. Finally, where India's military planners were cognizant of available options in their tactics, Pakistan had no options at all. The decision-making function, too, was an Indian capability advantage.

Means-providing Functions

As one of the most crucial factors in assessing state capabilities, means-providing functions encompass a broad spectrum of elements—both tangible and intangible. These are the instruments which comprise national capabilities, and take two forms: First, there are the instrumentalities of military forces and weaponry; second, but by no means less important, there are the instrumentalities of statecraft and diplomacy, including public relations ability, propaganda and subversion skills, foreign aid, and technical assistance capacity. Importantly, to assess statecraft capabilities additional factors should be treated in any analysis. The availability of securing raw materials and foodstuffs should be accounted for, as well as the strength of human resources. Although more difficult to quantify, "human resources" generally can be ascertained by determining the relative levels of such factors as national labor skills, economic development, industrial capital, economic adaptability, and the potential for industrial growth and technological improvement.

In 1971, the general character of Indian vis-à-vis Pakistani armed forces was significant, and is outlined in Table 3.

With the sole exception of para-military forces, India had overwhelming superiority in military men and material during the war. Also, not to be discounted for India are the Mukti Bahini rebels, whose exact number was unknown.

The disparity was further accentuated when the specific military status of the two sides is realized just prior to the outbreak of hostilities. Pakistan had four divisions (about 75,000 men) of infantry in East Pakistan, sup-

[67] *Ibid.*
[68] *Ibid.*, p. 393.

Table 3

INDIAN AND PAKISTAN MILITARY FORCES

	INDIA	PAKISTAN
Total armed forces	980,000 men	392,000 men
Defense budget	$1,656 million	$714 million
Army	860,000 men	365,000 men
Tanks	1550	800
Artillery pieces	3000	1100
Navy	40,000 men	10,000 men
Aircraft carriers	1	—
Submarines	4	4
Cruisers	2	—
Destroyers and escorts	12	5
Other vessels	39	16
Air Force	80,000 men	17,000 men
Combat aircraft	62	285
Para-military forces	100,000 men	280,000 men

Source: International Institute for Strategic Studies, *The Military Balance 1971-1972* pp. 46, 50.

ported only by antiquated tanks and a few F-86 Sabre jet aircraft. In contrast, India had deployed seven infantry divisions (122,500 men) to the Eastern borderlands, with reenforcements ready if needed. Moreover, each Indian division had assigned support of 45 tanks as well as heavy air cover, if requested.[69]

Qualitatively, the disparity of military hardware was even more apparent. Nearly two-thirds of the Pakistani tanks were vintage Shermans or of the "light class." [70] India, on the other hand, possessed 200 *Centurian* MK 5/7 tanks and 300 of the Soviet *Vijayanta* (medium) variety.[71]

Regarding the air forces, Pakistan had 12 fighter-bomber/interceptor squadrons composed of F-86 and MIG-19 aircraft;[72] India had available 30 fighter-bomber/interceptor squadrons, 7 of which were comprised by the more advanced MIG-21's, and 8 by *Gnats*.[73]

Thus, qualitatively and quantitatively, with men and material, on the land, the sea, and in the air, India had superior hardware capability over Pakistan. This certainly had telling results.

The second aspect of means-providing functions (i.e., statecraft-diplomatic capabilities) is more difficult to objectively assess, but some pertinent facts should be posited. First, during the Indo-Pakistani conflict, the Soviet Union became the ardent mouthpiece of Indian interests in the Security Council debates. Whereas, the People's Republic of China failed in its attempt to secure a resolution condemning "Indian aggression," the three Soviet

[69] *The Military Balance* 1971-1972 (London: International Institute for Strategic Studies 1971), p. 50.
[70] *Ibid.*
[71] *Ibid.*, p. 46.
[72] *Ibid.*, p. 50.
[73] *Ibid.*, p. 46.

vetoes gave India's military forces time enough to operationalize and carry out their campaign in the East.[73a] Second, the general success which the Mukti Bahini rebels enjoyed also testified to India's ability to implement guerrilla-type forces for subversive activities; concurrently, Pakistan's inability to wipe out these insurgents displayed its reciprocal inferiorities.

Regarding availability of raw materials and food stuffs, both India and Pakistan were under enduring hardships and deficits. Even so, geography worked in India's favor.[73b] Pakistan, being a state separated by one thousand miles of Indian territory, encountered incredible logistics problems trying to supply its troops in the East. Also, not to be overlooked is the obvious cost which the internal war had upon East Pakistan's agricultural productivity and resource availability. In short, uneffective coordination and a lack of foodstuffs put the Pakistani troops in the East at the mercy of the Indian military machine as it rolled towards Dacca.

West Pakistan itself did not fare much better. The Indian-imposed blockade of the West's port facilities was demonstrably effective. This, coupled with the periodic air raids upon major Western Pakistani cities, precipitated food riots and civilian chaos.[74] Needless to say, the blockade and the air strikes greatly contributed to curtailing West Pakistan's re-supply efforts to its Eastern troops.

Respective to "human resources," the following data [75] further illustrates India's advantage over Pakistan:

	INDIA	PAKISTAN
Total Population	547,949,809	139,892,000
Percent literate	33	15.9
Educational Institutions		
University level	6,038	489
Student enrollment	1,968,000	136,126
Secondary level	102,755	6,956
Student enrollment	28,667,965	2,430,580
Primary level	388,618	51,594
Student enrollment	36,240,169	6,999,706

Not unexpectedly, India far surpassed Pakistan in every educational category. Also, magazine and newspaper circulation are often used as an indicators for measuring information available to the populus: India's number of circulated periodicals and newspapers was 10,281 (1968); Pakistan had only 1,667 (1969).[76] Greater disparity in human resources was illustrated

[73a] It must not go unnoted that the Soviet Union's military assistance, as well as its diplomatic support, could be counted as positive capability factors for India. See *supra*, note 58. Cf., Zubeida Mustafa, "USSR and Indian Action in East Pakistan," *Pakistan Horizon*. Vol. 24 No. 4 (Fourth Quarter, 1971), pp. 60-74.

[73b] See *infra*, note 79.

[74] See New York *Times*, Dec. 9, 1971, p. 15:1.

[75] This statistical data is extrapolated from Paxton (ed.), *The Statesman's Yearbook 1970-1971*, *op. cit.*, pp. 334, 336, 392. Population figures are from *Information Please Almanac: Atlas and Yearbook 1974* (New York: Dan Goldenpaul Associates, 1973), pp. 177, 226, and 263. India's 1971 census population includes Jammu and Kashmir; Pakistan's population is the sum of Bangladesh and Pakistan estimations in 1971.

[76] Paxton, (ed.), *The Statesman's Yearbook, 1972-1973*, op. cit., pp. 336, 460.

industrially: whereas India's total installed capacity for generating power was more than 37,293 million kw. (1966-67), Pakistan's total had been estimated at little more than 840,000 kw.[77]

Economically speaking, the statistics below[78] are noteworthy:

	INDIA	PAKISTAN
Gross National Product	$49 billion	$16 billion
Per Capita Income	$73	$131
Imports	$2,091,000	$1,089,000
Exports	$2,026,000	$716,000

With the single exception of Pakistan's better per capita income, India on the whole possessed a stronger economy. India's GNP was more than three times that of Pakistan; both imports and exports far exceeded those of Pakistan, and importantly, India's import-export ratio more closely approximated a favorable balance of trade, whereas Pakistan suffered from importing almost twice as much as it exported. In summation, India possessed more and better men and material, statecraft-diplomatic persuasion, and "human resources" than Pakistan during the 1971 hostilities.

Means-utilizing Functions

Instruments alone are largely nugatory without the will or ability to implement them. As the Sprouts point out, "A government may possess a well-organized and efficiently administered foreign office and diplomatic service, and yet, for internal political or other reasons, it may be unable to carry out effective diplomacy." Accordingly, there are certain factors which impinge on or aid in the ability to efficaciously utilize one's resource capabilities. Among these are the geographical situation of a state; the nature of its political system; its adaptability to changes in the international system, and the degree of consonance found between civic values and attitudes vis-à-vis foreign policy decisions.

In the case of the 1971 Indo-Pakistani war, the means-utilizing functions held by both primary actors had far-reaching effects—positively for India, negatively for Pakistan.

The geographical situation was an overwhelming advantage for India—tacticly, militarily, politically, and economically. West Pakistan's physical separation from the East by one thousand miles of Indian territory created insurmountable logistic problems for Pakistani troops before and during the December war. Moreover, it exacerbated communication difficulties between the Islamabad government and the Eastern military commanders, hence making effective tactical planning and coordination practically an impossibility.[79]

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[77] *Ibid.*, 1970-1971, pp. 345, 394.

[78] GNP figures are from *The Military Balance 1971-1972*, *op. cit.*, pp. 46, 50. Export-Import figures are in 1970, extrapolated from *The World Almanac and Book of Facts* (New York: Newspaper Enterprise Association, Inc., 1971), pp. 535, 554.

[79] The geographical area of India was 1,261,597 square miles; West Pakistan's territory encompassed 310,403 square miles and East Pakistan contained 55,126 square miles. The paucity of good roads in the East, coupled with low-lying, riverine terrain (largely formed by the many branches of the Ganges and Brahmaputra rivers) contributed to West Pakistan's transportation-communication difficulties.

Historically, this separation had tended to accentuate the political domination by the West Pakistanis, especially the Punjabis, over East Pakistan. As a direct result, East Pakistanis have complained of their treatment in Pakistan as "second class citizens." To support this contention, one commentator observed on the eve of the December war:

> Their [i.e., the East Pakistanis] representation in central government services of Pakistan after twenty-one years of independence was "barely 15 percent." . . . East Pakistanis never comprised more than 10 percent of the officer corps and only one East Pakistani was appointed minister over the past 15 years, holding the finance portfolio for four days. In the Pakistani Army, East Pakistani representation was even less than 10 percent, and of 50 senior army officers who were promoted to the rank of major general and above since 1947, only one was from East Pakistan.[80]

This Western discrimination over the East was carried over into the economic and industrial sectors as well. Branded by Sheik Rahman as "an intolerable structure of injustice," during the 1950's and 1960's East Pakistan earned 65-70 percent of Pakistan's total foreign exchange, but only received "just a 30 percent return for it." [81] In 1947, West Pakistan regional income was lower than the East's; in 1970, it was twenty-five percent higher.[82] Finally, it should be noted that while West Pakistan's national income rose 34.8 percent between 1965 and 1970, the East's only rose 22.1 percent.[83]

Regarding industrial disparity, Ved Nanda has noted:

> In industrial development, the disparity is even more pronounced. West Pakistan, at the time of independence in 1947, had very little manufacturing industry. By the end of a decade, almost 70 percent of Pakistan's manufacturing industry was located in the West. The annual increase of agricultural production in the West has been 5.5 percent compared with a three percent increase in the East. Almost 80 percent of Pakistan's budget and 70 percent of its development funds are spent in West Pakistan.[84]

Mention is made of these blatant economic-industrial inequities for two major reasons. First, to demonstrate the indiginous antagonism between the peoples of East and West Pakistan; and second, by doing so, to illustrate that the country of Pakistan was not only separated geographically, but economically and socially as well. All this points up the obvious. The inherent inequalities between the two Pakistans undermined the entire socio-political structure and inhibited any possible adaptability to meet challenges which might arise. This lack of West-East Pakistani cooperation further frustrated coherent foreign policy formulation during the 1971 Indo-Pakistani conflict.

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[80] Ved P. Nanda, "Self-Determination in International Law: The Tragic Tale of Two Cities—Islamabad (West Pakistan) and Dacca (East Pakistan," *The American Journal of International Law*, Vol. 66 No. 2 (April 1972), p. 328. Footnotes omitted.

[81] G. Gourgey, "Bangla Desh's Leader: Sheikh Mujib," *Venture* (London), Vol. 23 No. 7 (July-August 1971), p. 13.

[82] Nanda, "Self-Determination in International Law," *op. cit.*, p. 330.

[83] *Ibid.* See also John E. Owen, "The Emergence of Bangladesh," *Current History*, Vol. 63 No. 375 (November 1972), pp. 206-209 ff.

[84] See also Sheikh Mujibur Rahman, "East Pakistan: The Roots of Estrangement," *South Asian Review*, Vol. 3 (1970), pp. 235-236.

In fact, it would be fair to posit that the Eastern provinces had little to say in the matter; the Western government under Yahya Kahn unilaterally enacted policies for the state as a whole.

Whatever means-utilizing functions West and East Pakistan had possessed as a sovereign entity began disintegrating after March 25, 1971. By the outbreak of hostilities with India, Pakistan's means-utilizing functions were solely in West Pakistan's hands. Certainly, half a state is better than no state at all; but there was never a Pakistani nation.

This latter assertion is made even more evident by Pakistan's political system. As previously noted, Pakistan's political order was extricably linked to the Islamic faith. Yet, persistent dissidence and discontent throughout the 1960's led to martial law and curtailment of civil liberties, which in turn, only served to foment further dissatisfaction with the Western regime. It was a vicious circle, and finally gave way to rebellion and the East's desire for independence. In short, the inability of Pakistan to act as a cohesive, unified socio-political entity made impossible any truly effective use of the limited resources capabilities it once possessed.

India, on the other hand, was a constitutional democratic republic. Although not altogether free from internal problems (most specifically, overpopulation and meeting sustenance requirements of its citizens), India was able to effectively operate politically. In terms of means-utilizing functions, this was crucial; tactical instructions flowed through the governmental chain of command to the military forces in the field. The consequences are only too well known: a fourteen day decisive victory over Pakistan. It is significant to note here that a reciprocal military relationship functioned during the course of the Indo-Pakistani conflict; i.e., the disorganization and frustration of the Pakistani troops served to enhance the means-utilizing capabilities of the Indian forces. This is only logical, but noteworthy nonetheless.

Thus, we can conclude that Pakistan's ability to function as a coordinated military unit during the crisis was undermined by its own internal faults and restrictions. Conversely, India took advantage of these limitations, capitalized upon them, and utilized its means-providing functions at Pakistan's expense.[85]

Resistance-to-Demand Functions

Resistance-to-demand functions entail the ability of a state to withstand external pressures of all kinds. The degree of vulnerability to military attacks is significant, but so are vulnerabilities to economic boycotts, internal political subversion, and the socio-psychological strength of the citizenry to endure severe stress.

Resistance-to-demand functions are directly related to the four previous categories of capabilities; i.e., the strength of information-providing, decision-making, means-providing, and means-utilizing functions will determine an actor's overall ability to withstand external pressures. Pakistan in December,

[85] See Sisir Gupta, "Pakistan's Domestic Crisis and Foreign Policy," *South Asian Studies*, Vol. 7 No. 1 (January 1972), pp. 114-126.

1971, was a sterling example of this truism. Civil conflict in the East had weakened the internal structure of Pakistan for nine months prior to India's intervention. The people were tired and exhausted, and the government was dictatorial and desperate. In short, Pakistan's severe internal turmoil rendered it vulnerable to military attack.

Similarly, Pakistan was vulnerable economically and politically. India's superior air and sea power isolated the West economically, and its army, augmented by Mukti Bahini rebels, performed the political task in the East. Islam and anti-India sentiment were not sufficient enough for a Pakistani victory; concurrently, Pakistan's incapabilities contributed to India's capabilities, making a potential Vietnam into a two-week field exercise for India's troops.

From this analysis of Indo-Pakistani capabilities, it becomes quite easy to see why India emerged the victor militarily and was able to realize those goals and objectives comprising its national interests. A final poser, however, remains to be explored: Did international legal considerations interact with either (or both) of the primary actors' foreign policy behavior during the crisis, and if so, in what manner? It is to this question that our analysis now turns.

Pakistani and Indian Appeals to International Law

During the course of the December, 1971 crisis, both Pakistan and India proffered international legal principles to defend their military actions and to substantiate their respective national interests. Chief among the legal issues were: 1) prohibiting the use of force; 2) the right of self-defense; 3) the right of self-determination; 4) the question of non-intervention; and 5) the abrogation of human rights through genocide. Nevertheless, because many of the Indo-Pakistani claims and counterclaims in the Security Council debates were earmarked by polemics and political rhetoric, the niceties of these legal issues deserve a less subjective appraisal—especially regarding their interplay with the primary actors' national interests, goals, and objectives and the strategies taken to achieve them. For this reason, the tenacity of both disputants' legal assertions will be considered below.

Prohibition of the Use of Force

The Pakistani delegate to the United Nations, Agha Shahi, emphatically argued that India had violated Article 2(4) of the UN Charter [86] by committing aggression against Pakistan's territorial integrity and political independence. In the emergency session on December 4, he resolutely declared:

> If the Security Council fails to suppress India's aggression, the Charter of the United Nations would be shattered. Pakistan's eastern province had been under a massive attack, since 21 November, by India's regular troops.[87]

[86] Article 2(4) states: All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

[87] *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 5.

To support this latter allegation, Mr. Shahi went on to posit that:

> As many as 12 Indian divisions were reported on 21 November to have been deployed around East Pakistan. In addition there were 38 battalions of the Indian Border Security Force. Since then the Indian armed forces had perpetrated aggression against Pakistan, including the crossing of international borders, and hostile action on Pakistani soil. Governments which had independent means of information about developments in the Indian-Pakistan subcontinent had been aware of the unprovoked large-scale armed attacks by Indian forces against Pakistan since 21 November. It was a fact beyond denial or dispute.[88]

Furthermore, to buttress Pakistan's legal contention that India had violated international law by committing aggression, the Declaration on Friendly Relations explicitly prescribed:

> Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.[89]

Finally, Pakistan cited paragraphs 4, 5, and 6 of the Declaration on the Strengthening of International Security which, in fact, had been mentioned in General Assembly Resolution 2793 (XXVI) relating to an early India-Pakistan cease fire. In paragraph 4, the General Assembly:

> *Solemnly reaffirms* that States must fully respect the sovereignty of other States and the right of peoples to determine their own destinies, free of external intervention, coercion or constraint, especially involving the threat or use of force, overt or covert, and refrain from any attempt aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.[90]

Accordingly, paragraph 5 maintains that "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force." Moreover, "every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts to another State." [91] Consistent with this, paragraph 6 urges all "Member States to make use and seek improved implementation of the means and methods provided for in the Charter for the exclusively peaceful settlement of any dispute or any situation." [92] Thus, Pakistan's mention of these paragraphs

[88] *Ibid.*, p. 6.

[89] Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation Among States, General Assembly Resolution 2625 (XXV), Oct. 24, 1970, paragraphs 1 and 2.

[90] Declaration on the Strengthening of International Security, General Assembly Resolution 2734 (XXV), 16 Dec. 1970, paragraph 4.

[91] *Ibid.*, paragraph 5.

[92] *Ibid.*, paragraph 6.

from the Declaration on the Strengthening of International Security was aimed at a different notion of Indian aggression, i.e., "indirect aggression," perpetrated by training, aiding, and abetting the Mutki Bahini insurgents.

Despite these substantial charges by Pakistan, India's countercharges held considerable validity. It was not India, but Pakistan, who had escalated aggressive acts since August, 1971. Throughout October and November, Pakistani troop incursions and trans-border artillery bombardments into India had fiercely increased, until war seemed imminent. Yet, the war was not India-initiated; the December 3 airstrike by Pakistan was in itself, a violation of Article 2(4) of the Charter as well as the Declaration on Friendly Relations. Just as important, India contended, was the point that Pakistan's claim of territorial integrity was inapplicable as a justification for its actions: The dismemberment of Pakistan was not externally created; it was the patent manifestation of an internal secessionist movement brought about by socio-economic inequities within the two Pakistans. Stated Sardar Swaran Singh, an Indian representative to the United Nations:

> It was not India which sought to dismember Pakistan. It was the oppressive regime of West Pakistan which had dismembered Pakistan by its own actions. What held a nation together was a spirit of understanding and accommodation, a political process and not tanks or machine guns.[93]

From the available evidence, there seems to be little doubt concerning this last assertion.

Self-Defense

As expected, Pakistan used Article 51 of the U.N. Charter to legitimize its military response against "India's aggression." After noting the November build-up of Indian troops along the Indo-East Pakistan border, Mr. Shahi stated:

> On the afternoon of 3 December, India opened up new fronts, against the western part of Pakistan, and in the Poonch area in the disputed State of Jammu and Kashmir. In the face of such a preplanned and large-scale offensive along a 500-mile front, the armed forces of Pakistan could not but fight back.[94]

Notwithstanding this, Article 51 clearly provides for "the inherent right of self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council had taken the measures necessary to maintain international peace and security."[95] Even so, those "measures taken by Members in exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."[96]

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93 *U.N. Monthly Chronicle*, Vol. 9 No. 1 (January 1972), p. 34.
94 *Ibid.*, p. 6.
95 The United Nations Charter, Chapter VII, Article 51.
96 *Ibid.*

Likewise, India used Article 51 to legally justify its retaliatory measures. Yet, a crucial question remains regarding who initiated the aggression against whom? Were Indian troops moving into East Pakistan before the Pakistani airstrike—thereby making the airstrike a response rather than an initiation—or were the Indian troops deployed as a counter-offensive reaction to Pakistan's raid? The strongest indications suggest the latter contention as the most plausible. Pakistan's strategy called for a "preemptive" strike, designed to extinguish an impending war by crippling the Indian airforce. Given this conclusion, India's defensive action would be more appropriately subsumed under Article 51.

Interestingly enough, India also charged Pakistan with "indirect aggression," viz., by forcing "a vast and incessant flow of millions of human beings" [97] to flee into Indian territory. While not entirely pertinent to Article 51's invocation, the mass exodus of Bengali refugees was certainly an important consideration to India's decision-makers and could have easily appeared as a form of "economic aggression."

Self-Determination

The legal principle of self-determination refers to "the freedom of a people to choose their own government and institutions and to control their own resources." [98] Within recent years, this principle has gained greater currency in official documents and proclamations, and, in fact, was instrumental in two international covenants, The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights Adopted by the General Assembly in 1966:

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.[99]

During the 1971 Indo-Pakistan war, self-determination became a polemical legal issue, primarily because East Pakistan was not strictly a colonial situation in the traditional sense. That is to say, pre-World War II Western colonialism had been a determinant factor in establishing the legitimate right of self-determination for emerging states during the 1950's and 1960's; as a result and in order to sooth the apparent contradictions between "the right of all peoples" and the principle of "territorial integrity," colonialist presence evolved into a requisite criterion for self-determination.

Thus, Pakistan vehemently contended that self-determination was not an applicable issue during the March-December protestation-confrontation periods. The peoples of East Pakistan, it was argued, still remained loyal to the Islambad government and the state as a whole entity. In essence, the civil strife and insurrection occurring in the East was not Pakistan's making.

[97] Nagendra Singh, quoted in V. S. Mani, "The 1971 War on the Indian Sub-Continent and International Law," *Indian Journal of International Law*, Vol. 12 No. 1 (January 1972), p. 91.

[98] John Norton Moore, "The Control of Foreign Intervention in Internal Conflict," *Virginia Journal of International Law*, Vol. 9 No. 2 (May 1969), p. 247.

[99] This is Article 1 in both Covenants, adopted by General Assembly Resolution 2200 A (XXI), Dec. 16, 1966. Cited in Nanda, "Self-Determination in International Law," op. cit., p. 326.

rather, it was fomented and exacerbated by Indian provocation, both through external interference and internal assistance to the rebels. From this, it seemed clear to the West Pakistanis that their territorial integrity was the signal issue, and that had been aggressively breached by India's military incursions in November and the subsequent invasion on December 3.

Nonetheless, India claimed to the contrary that self-determination was, in fact, the central issue. Certainly this principle had been legitimized by many U.N. Charter provisions, most especially Article 1(2), Article 55 and 56, and Chapter XI and XII.[100]

More importantly, "colonial domination" was glaringly present in the form of West Pakistan's egregious politico-economic discrimination and domination over the eastern wing.[101] Further, the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security explicitly stipulated that "assistance [be given] . . . in accordance with the Charter . . . to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external aggression." [102] If these provisions were legally meaningful, then India's intervention with assistance to East Pakistan's national liberation movement (i.e., the Mukti Bahini) was not only justified, but also morally obligatory. In the words of the Indian External Affairs Minister addressing the United Nations:

> If the majority population of any country was oppressed by a military minority, as was the case in Bengla Desh . . ., it was the inalienable right of the majority population to overthrow the tyranny of the minority rulers and decide its destiny according to the wishes of its own people. The birthright of the majority of the population of a country to revolt against the tyranny and oppression of a militant minority could not be denied under the principles of the Charter or according to international law.[103]

Hence, by steadfastly maintaining that self-determination was indeed viable in East Pakistan, India perforce was able to justify its "premature" recognition of Bangladesh on December 6.

Non-Intervention

The international principle of non-intervention was also cited by Pakistan in defence of its legal position against India. To be sure, non-intervention is widely recognized in international law. Article 2(7) of the U.N. Charter provides, *inter alia:*

> Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. . . .[104]

[100] Mani, "The 1971 War on the Indian Sub-Continent and International Law," *op. cit.*, p. 92.

[101] See *supra*, pp. 38-40 and Nanda, "Self-Determination in International Law," *op. cit.*, pp. 328-331.

[102] General Assembly Resolution 2734 (XXV), *supra* n. 90, paragraph 18.

[103] Swaran Singh to the Security Council (December 13, 1971), U.N. Doc. S/PV. 1613, pp. 103-105.

[104] The United Nations Charter, Chapter I, Article 2(7).

Similarly, the Declaration on Friendly Relations articulates the essence of this principle:

> No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State.[105]

Understanding this, Pakistan alleged India had intervened illegally by: 1) giving aid to the Mukti Bahini and 2) direct military invasion into the East.

That India intervened militarily is undeniable. And yet, several legal points put forth by Indian officials during the hostilities suggest that its intervention could be legitimized, especially considering the state of Pakistan's internal affairs in East Bengal.

First, and probably foremost, is the issue of genocide. There is no question that atrocities were willfully committed by West Pakistani military forces against the East Bengalis from March 25 to the December 17 capitulation. One correspondent for the *London Times,* Anthony Mascarenhas, reported:

> What I saw and heard with unbelieving eyes and ears during my 10 days in East Bengal in late April made it terribly clear that the killings are not the isolated acts of military commanders in the field. . . .
>
> "We are determined to cleanse East Pakistan of the threat of succession, even if it means killing off two million people and ruling the province as a colony for 30 years," I was repeatedly told by senior military and civil officers in Dacca and Comilla.
>
> The West Pakistan army in East Bengal is doing exactly that with a terrifying thoroughness. . . .
>
> I saw Hindus, hunted from village to village, and door to door, shot off-hand after a cursory "short-arm inspection" showed they were uncircumcised. . . .[106]

In his statement to the U.N. Subcommittee on the Prevention of Discrimination of Minorities, John Salzberg listed these violations of human rights:

> . . . killing and torture; mistreatment of women and children; mistreatment of civilians in armed conflict; religious discrimination; arbitrary arrest and detention; arbitrary deprivation of property; suppression of the freedom of speech, the press, and assembly; suppression of political rights; and suppression of the right of migration.[107]

If these testimonial accounts, among many others, are true and accurate, then there is serious doubt that Pakistan had legitimate control over its Eastern population throughout the internal crisis. Perhaps more importantly, it seems ominously possible that had not India intervened when it did, even greater slaughter and more flagrant abrogations of human rights would have occurred in West Pakistan's ruthless attempt to restore "its territorial integrity." As a result, then, West Pakistan's reprehensible reatment of East Bengali civilians

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105 General Assembly Resolution 2625 (XXV), third principle, paragraph 1, initial sentence.

106 Anthony Mascarenhas, Press Release of the International Commission of Jurists, August 16, 1971, pp. 3-4. Also quoted in *Indian and Foreign Review,* July 1, 1971, p. 23 and Nanda, "Self-Determination in International Law," *op. cit.,* p. 332. Also see Anthony Mascarenhas, *The Rape of Bangladesh* (Delhi: Vikas Publications, 1971).

107 Quoted in Nanda, *Ibid.*

removed the crisis situation from the strict parameters of its own "internal affairs." Therefore, under the Declaration of Human Rights, the Genocide Convention (and the Nuremburg precedents), and the general principles of human justice, a sound case can be made for India's intervention. However, at best, it is difficult to hierarchially place humanitarian considerations in the priorities of India's decision-makers! Even so, one realization remains unmistakeably clear: When mass practices of genocide are perpetrated upon a people, the function of Article 2(7) loses its purpose. This is not to say that India's unilateral action should be a precedent for future interventions taken to suppress genocide; rather, it is meant that the Law of Nations must be more fully attuned to the realities of a crisis situation—as in the case of East Pakistan—and adjust the relevant legal principles accordingly.[108]

Conclusion: Assessing the Linkages

At the outset of this study, several questions were proffered for analytical considerations. From the evidence uncovered in the preceeding analysis, a number of conclusions can be posited about the interplay of Indo-Pakistani national interests, capabilities, strategies, and objectives vis-à-vis the participant actors' legal alternatives: 1) For Pakistan, primary national interests (viz., that state's physical, cultural, and political survival) manifestly superceeded any regard for international law. In fact, the perceived threat of national dismemberment was so great in early December that the Pakistani decision-makers concluded war was inevitable with India, and if any hope for victory (and national unity) existed, it lay with a "preemptive" airstrike. In short, despite a qualitative and quantitative inferiority in capabilities, Pakistan's stakes were too high to be bounded by legal considerations. Thus there was a direct linkage with international law, albeit an inverse one: the greater the threat to primary national interests, the less restraint exercised for peaceful, legal settlement. This leads to the inescapable conclusion that international law was used by Pakistan as an instrument to rationalize its actions during the conflict, rather than a constraint upon its foreign policy behavior. 2) For India, international law was also applied *ex post facto* to the crisis environment, but there appears substantially more validity to India's legal position than that of Pakistan. The gross disparities between West and East Pakistan strongly suggest a form of "colonialism" was present, hence self-determination was applicable. Secondly, Pakistan's air strike on December 3 violated Article 2(4) of the U.N. Charter. Thirdly, under Article 51, India was legally justified to retaliate, although admittedly restraint in using military force would have been preferable under international law. Finally, West Pakistan's extermina-

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[108] The argument for humanitarian intervention has been clearly set forth by Professor Borchard when he posited:

> When these human rights are habitually violated, one or more states may intervene in the name of the society of Nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignity [sic] for that of the state thus controlled. Whatever the origin, therefore, of the rights of the individual, it seems assured that these essential rights rest upon the ultimate sanction of international law, and will be protected, in the last resort, by the most appropriate organ of the international community.

Edwin M. Borchard, *Diplomatic Protection of Citizens Abroad* (1922), p. 14, cited in International Commission of Jurists, "East Pakistan Staff Study," *The Review*, No. 8. June, 1972, p. 59. See also Lauterpacht, *Oppenheim's International Law* (Vol. I), *op. cit.*, p. 312.

tion campaign against the East Bengalis necessitated some definitive response. Most assuredly, positive action by the United Nations should have been forthcoming, but regretfully was not. This realization, while not wholly legitimizing India's intervention, does suggest that many potential victims were spared after West Pakistan's downfall.

Here again, international law can be construed as a link to national objectives and strategies. India's intervention was concentrated on Pakistan's eastern provinces, not upon the West. Moreover, it is plausible that after the East had been militarily secured, invasion of the West could have quickly followed. Yet, India was restrained from doing so. Perhaps international legal considerations were responsible for this, or perhaps it was because India realized such action could jeopardize its international prestige. The answer remains unclear. 3) In a sense, both Pakistan and India can be seen to have employed international law in concurrence with their respective national interests: India's support of the Mukti Bahini to create a new Bangladesh state (viz., self-determination); the quest for continental power superiority (viz., self-determination and prohibiting the use of force); the counter-action against Pakistan (viz., self-defense); and halting genocide (viz., intervention)—all were interacting and re-enforcing factors. Pakistan likewise demonstrated links between its interests and legal position: to sustain survival of the state (viz., territorial integrity); retaliating against the border clashes with India (viz., self-defense); and destruction of the Mukti Bahini rebels (viz., territorial integrity and non-intervention). 4) The evolution of the 1971 Indo-Pakistani War did conform to a unique crisis pattern. That is, from the inception of internal hostilities in March 1971, through the turbulent summer and fall months, and into December, 1971, five distinct stages of the conflict can be discerned. When placed on a continuum, the temporal dimensions of Indo-Pakistani relations during the 1971 conflict appear as follows:

Historical Antagonisms: Religious Political Cultural	East-West Pakistan's Negotiatons	Protestation	Disputation	Confrontation	Conflict	Peaceful Settlement
	December 1970	March 1971	August 1971	November 1971	December 3, 1971	December 17, 1971

Each phase of the crisis was earmarked by its own particular events: between March 25 and early August, India vigorously protested the enormous influx of refugees from East Pakistan; during August, September, and October, Pakistan openly disputed the legality of India's aiding the Mukti Bahini insurgents; throughout November and early December numerous clashes occurred between Indian and Pakistani troops in the borderlands, aggravating an already deteriorating situation; open conflict erupted on December 3 and persisted until Yahya Khan's capitulation on December 17; the final stage, that of peaceful settlement, is still in process today: it will not be completed until the Bengali refugees have been fully resettled and a definitive decision is made regarding the legal status of those West Pakistani military officers accused of genocide. And 5) In the final analysis, the Indo-Pakistani War of 1971 does demonstrate more than a superficial relationship between the behavior of the primary participant actors (consonant with their national

interests and strategic goals) and international law. That international legal implications were purposefully considered is in itself significant. Moreover, the national interest-capabilities-intrenational law paradigm does reveal a new perspective of the Law of Nations: law emerges not so much as a constraint on foreign policy behavior as a device to facilitate communication of policy intentions. For indeed, the formulation of foreign policy seeks to reconcile conflicting goals, to adjust national aspirations to capability means, and to accommodate disparate advocates of these competing goals and aspirations with one another. Similarly, international law seeks to provide normative guidelines to assist states in reconciliating their differences and in ameliorating their disputes. If there is a lesson to be gleaned from the Indo-Pakistani hostilities, it is that law and policy interact in a meaningful way, rather than compete for functional supremacy.

We live in a complex, policy-oriented age—no scholar can deny this. Yet, perhaps from the tragic events on the Indian subcontinent during 1971, the sociological function of law can be more fully appreciated, and in turn, the execution of national policies—both internal and external—can be more justly attuned to the realities of our interdependent world. If this can be achieved in the years to come, the agonies of independence suffered by the Bangladesh people will have contributed to a more humane, more understanding world order.

THE FINANCING OF UNITED NATIONS PEACE-KEEPING OPERATIONS

By Linda Piccinini*

> The Secretariat finds itself in a difficult position. On one hand, it has to pursue "vigorously" the policy decided upon by the General Assembly and the Security Council. On the other hand, it is continuously fighting against the financial difficulties with which these decisions under present circumstances face the Organization. Of course, the Organization cannot have it both ways.[1] Will this Organization face the economic consequences of its own actions and how will it be done? Further, if it is not willing to face the financial consequences of its own decisions, is it then prepared to change its substantive policies? There is no third alternative.[2]
>
> Dag Hammersjkold

The question of who shall bear the financial responsibility for United Nations peace-keeping operations has been one of the most politically and legally difficult questions ever faced by the Organization in defining its functional role in world affairs. While the question of financing peace-keeping operations may appear to be in and of itself minor or merely a technical aspect of the overall function and operation of the Organization, in reality it represents one of the most complex matters ever dealt with by the U.N., with significant ramifications for the overall effectiveness of the Organization in responding to world conflicts. Indeed, the political and legal importance of the question is well evidenced by the fact that when the matter was presented to the International Court of Justice in 1962 for an advisory opinion, a record twenty-four States submitted written presentations (See Appendix No. I:1); and nine States appeared to orally argue the question, including the premier appearance of the Soviet Union before the Court (See Appendix No. I:2).

As John Stressinger noted:

> No more important question has come before the present International Court. Although it is difficult at the moment to estimate how far this Advisory Opinion may determine the authority or the effectiveness of the Organization in years to come, it can be claimed that it represents a landmark in the history and jurisprudence of the Court. . . .[3]

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1 U.N. Document A/c.5/843 (November 21, 1960), p. 8.

2 *Ibid.*, p. 1.

3 John G. Stóessinger and associates, *Financing the United Nations System* (Washington. D.C.: The Brookings Institute, 1964), p. 12.

It is the purpose of this paper to examine the legal aspects of the financing of peace-keping operations as they existed in the fiscal crisis of the 1960's. In doing this, a consideration of the historical and political development of those operations which precipitated the crisis—the United Nations' Emergency Force (UNEF) and the United Nations Force (ONUC) in the Congo—shall be undertaken to provide a perspective for the legal arguments involved. An analysis of the 1962 Advisory Opinion of the International Court of Justice shall be undertaken as will a consideration of the impact of the opinion on the immediate and long-run functioning of the United Nations.

The Importance of the Issue

The political and legal importance of the financial issue lies in the nature of the question itself. On its face, the question is as important as the financial solvency of the Organization for this is quite literally what was at issue in 1962—the debts of peace-keeping operations in the Middle East and the Congo which alone were greater than the entire anticipated budget of the U.N. Thus, for the sake of the solvency and continued operation of the other facets of the Organization, the question had to be decided.

In terms of the practical implications, unless the mounting debts were paid, a radical curtailment or termination of the particular operations or a reliance on a single state or group of states for financial support would be necessitated. Either alternative, however, is unacceptable and would greatly impair, if not totally destroy, the credibility and functioning of the Organization. The former is impractical given the crisis situation which necessitated the operation; a point which is ironically borne out by the hindsight of history in that war which erupted just months after U.N.E.F. was removed in 1966. The latter alternative entails an inevitable reliance by and affiliation of the U.N. with a particular ideological position, negating its usefulness as a global forum and making it a mere extension of a particular monied foreign policy. Thus, the significance of where the financial liability for these expenses lies is readily apparent. If peace-keeping expenses are "expenses of the Organization" within the context of Article 17 (2) (See Appendix No. I:3), then the liability is obligatory and must be paid by all member States in accordance with Article 17 (especially paragraph 2) and Article 19 (See Appendix No. 4). If such costs are not "expenses of the Organization," then the mounting debts of the operations would mandate some drastic action by the Organization to prevent its own fiscal imbalance.

It is interesting to note the often drawn comparison between the financial crisis of the U.N. and the failure of the League of Nations to secure effective financial support which contributed to the eventual collapse of the League. Implicit in this, of course, is the prediction of the eventual collapse of the U.N. because of a similar failure on its part to gain practical financial support for its operations (though unlike the U.N., there were no provisions in the Covenants of the League obligating contributions). However, an investigation of the respective U.N. and League situations reveals the existence of a basic and crucial difference which negates the contention of impending doom.

> The fiscal plight of the League was a symptom of a struggle over its very existence. Many States questioned the "raison d'etre" of the League; others had tolerated it; certainly, no state had wanted it to move beyond the concept of a "static" conference machinery. In that sense, the League's chronic weakness was the result of a struggle between nihilists and conservatives: those who would relegate it to the peripheries of their national policies. The former attitude had led to active hostility, the latter to political neglect and indifference.
>
> The financial plight of the U.N. is not the expression of a struggle over the Organization's existence. All states have accepted its presence (as evidenced by thirty years of operation and the solvency of the regular U.N. budget).
>
> The struggle is being waged between those who wish to maintain the U.N. as a "static conference machinery" and those who wish to give it increasing strength and executive authority. Viewed in this light, the financial crisis of the U.N. does not indicate that the Organization has fallen into political collapse but rather, that the membership has not yet been willing to ratify its rise to a higher plane of evolutionary development. . . . At its heart is not so much the problem of economic incapacity to pay the costs, but of the unwillingness to pay for politically controversial operations. . . .[4]

Therefore, the U.N.'s financial crisis is inherently different from that of the League. And it is precisely this inherent difference which further complicates the already complex financial question. For inherent in the question of who shall pay the cost of peace-keeping operations is the underlying question of what and who shall determine the proper role and scope of the U.N. in settling world conflicts.

While it might be argued that this issue underlies many U.N. disputes, it is particularly so here in that the peace-keeping function contains potentially the most direct challenge to individual state sovereignty in favor of the development of an international superstructure. The ability to collectively dispatch and maintain U.N. forces to areas of world conflict, while representing one of the prime goals of the Organization, is the major infringement on the individual actions of the States (as France and the Soviet Union noted), particularly the superpowers because of their global involvement and commitment. Thus, Leo Gross noted,

> The U.N. needs not to be reminded that its members are sovereign states and will not be commanded if they cannot be persuaded.[5]

The abrogation of State Sovereignty in the mandate of responsibility for the maintenance of international peace and security to the U.N. is in and of itself a politically and legally complex issue, complicated in this instance by the financial question. Associated with this are the political questions relating to the proper structural delineation of power among the Security Council, the General Assembly and the Secretary General in authorizing and controlling

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[4] *Ibid.*, pp. 293-294. See also, Norman J. Padelford, "Dept and Dilemma: the U.N. Crain," *India Quarterly*, XIX (Oct.-Dec. 1963), p. 311-314.

[5] Leo Gross, "Expenses of the United Nations for Peace-Keeping Operations—The Advisory Opinion of the International Court of Justice," *International Organizations*, XVII (Winter 1963), p. 35.

peace-keeping operations (complicated further by the Uniting for Peace resolutions), the validity of the activities which accrue the expenses as mandated by the proper U.N. organ, and the ability to interpret the U.N. Charter and to bind other members to that interpretation. The nature of the issue itself and its inherent ramifications make the financial question one of the most important issues the Organization ever concerned itself with, for in actuality, the U.N. was concerning itself with its own future development and effectiveness. Before engaging in a consideration of the legal issues involved in the financial question, a general examination of the regular budgetary procedures and of the growth of U.N.E.F. and O.N.U.C. to critical financial proportions shall be undertaken to provide the basis from which many of the legal arguments used before the International Court of Justice were drawn.

The Regular Budget

One issue which was to form a basis for a majority of contentions before the International Court of Justice (abbreviated I.C.J.) was the proper definition of the regular budget of the U.N. and the relation of the peace-keeping expenses to those included as the expenses of the Organization within the regular budget. The regular budget of the U.N. is divided into eight broad categories: 1) sessions of the General Assembly and councils, 2) personnel (comprising approximately 60% of all budgetary expenditures), 3) building and equipment maintenance (15%), 4) special expenses, 5) technical programs, 6) special missions and related activities, 7) the Office of the U.N. High Commission on Refugees, and 8) the I.C.J. These expenses are considered predominantly household expenses of the Organization; that is, those costs needed to provide for the continued existence of the Organization. In addition, there is also the Working Capital Fund, established in 1946, on the recommendation of the Preparatory Commission as a fund "from which the Secretary General was authorized to advance 'such funds as may be necessary to finance budgetary appropriations pending receipt of contributions.'" This account was formed, at an initial level of $25 million and expanded to $40 million in 1963, to alleviate financial pressure on the Organization resulting from the lag between the billing of current accounts as certification of assessments and their collection (during which time the Organization was incurring "living expenses") and to provide funds for emergency operations (including peace-keeping operations) necessitated after the appropriations had been finalized.

Since 1947, the following resolution has been substantially adopted without dissent:

> *Resolved*, that if, as a result of a decision of the Security Council, commitments relating to the maintenance of peace and security should arise in an estimated total exceeding $10 million before the General Assembly is due to meet again, a special session shall be convened to consider the matter. Secretary General has authority to draw in the Working Capital Fund for expenses but is required to submit supplementary budget estimates to cover amounts so advanced.[6]

[6] Norman J. Padelford, "Financing Peace-Keeping—Politics and Crisis," *International Organizations*, XIX (Fall 1965), p. 415.

In 1952 some adverse votes were recorded but they can be attributed to the Korean conflict. In addition, the Secretary General has available to him the use of all monies in special funds and accounts held by him for unforeseen emergency situations. There is also an annual resultory appropriation for unforeseen and extraordinary expenditures authorizing the Secretary General to utilize up to $2 million without any prior approval (by the Advisory Committee for Administrative and Budgetary Questions) for any expense as long "as they relate to the maintenance of peace and security." Although it should be noted that the determination of what is an expense for the maintenance of peace and security is left to the Secretary General, it should also be noted that if additional funds are necessary, they can be secured by the Secretary General after consultation with the Advisory Committee. The funds for these expenses come primarily from member State assessments. (See Appendix No. 5), in accordance with Articles 17, 18, and 19 of the Charter.

Traditionally, the regular budget has always contained provisions for financing peace-keeping operations. The U.N. Truce Supervision Organization in Palestine (begun in 1949), the U.N. Conciliation Commission for Palestine (1949), the U.N. Military Observer Group in India and Pakistan (1950), the U.N. Representative for India (1950), the U.N. Commission for the Unification and Rehabilitation of Korea (1950), the U.N. Observer Group in Lebanon (1958), and the U.N. presence in Laos (1959) have all been normally financed through categories of the regular budget—specifically through the special expense and special mission and related activities categories (The 1950 Korean police action is not included here because the financing for the operation was fully voluntary and was at no time included as part of the regular budget of the U.N.).

Initially, these measures were individually funded from the Working Capital Fund and were integrated into the regular budget when the next budget was drawn. Thus, it has been the general practice of the Organization to include the cost of peace-keeping operations in the regular budget and to apportion them to the general membership in accordance, with Articles 17, 18 and 19. It should be noted here that the degree of expense of these operations was relatively small. For example, the cost of all the previously mentioned operations from 1948 through 1953 was $58 million, with the largest single expenditure occurring in 1958 at $6.79 million. In relation to the aggregate budget, the largest percentage of the regular budget devoted to peace-keeping expenditures occurred in 1949 as 12.6% of the total regular budget. It is interesting also to note that no strenuous objection was made to the inclusion of these expenses within the regular budget. Although this may be due in large measure to the relatively small scale and cost of the operations as well as the general political consensus for each mission. The Soviet Union alone in the late 50's had voiced an objection to this exclusionary practice, however, these objections were heard only in the Fifth Committe and never reached the plenary sessions or influenced the payment of the Soviet assessment and the States were remarkably conscientious in paying their assessments. Indeed, until the situation with U.N.E.F. and O.N.U.C. arose in the 1960's, the regular budget was remarkably solvent. However, considering the existence of

Article 19, perhaps this is not so remarkable or unexpected. Payments averaged, before the 16th Plenary Session, 98% of the assessed amounts, and at no time did the total amount of arrears ever exceed 15% of the entire budget.

Note should be made that the largest single debtor, accounting for ¾ of the total arrears debt, was China, as represented by Taiwan. This situation existed because China was assessed the 5th largest contribution because of her claim on the millions of people and resources of the mainland. Thus, Taiwan was paying for all of China from the resources of Taiwan. However, China's debt never totalled the sum for two years which would have subjected them to Article 19 sanctions.[7] The only significant problem regarding the regular budget has been the claim by some states—most notably the U.S.S.R. and at times the U.K.—that the budgets are growing too rapidly (from $50 million in the first years to $478 million in 1975). This question is not new to the international Organization. As Inis Claude noted,

> Before coming to grips with the political aspects of these problems, we would do well to note that the history of general international organization has been marked by the tendency of States to invest only the most meager of his resources and those grudgingly in such financial institutions. If poverty is a perennial virtue of international agencies, it is one born of necessity imposed tight-fisted States. In short, there is ample precedent for the World Organization's condition of financial stringency. *Viewed in historical perspective, the budget of the U.N. and the specific agencies have been more, not less, generously supported than might have been expected.* (Emphasis added)[8]

Thus, the regular budget, including these relatively small scale and politically inoffensive peace-keeping operations, is, of itself, stable and solvent.

> So far as the regular budget of the Organization is concerned, there is no major financial crisis, and none is in prospect. States evidently recognize the need for and the utility of a broad international forum and they are, by and large, willing and able to pay for it. It is a reasonably safe prediction that the routine administrative costs of the U.N. will gradually increase, and that member States will, while grumbling about this trend and attempting to check it, continue to make the necessary payments. . . .
>
> Significant political issues arise only when the question is posed as to what, if anything, the U.N. is to do beyond the agreed minimum of providing a setting for multi-lateral or parliamentary diplomacy. . . . It is in connection with operational functions that major financial and political problems arise and become entangled. In the first place, the execution of programs in this (the political and security) field tend to be, by the normal standards of international organizations, extraordinarily explosive. In the second place, such programs tend to be politically contentious, partly but not entirely, because of their unusual financial implications.[9]

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[7] *Op. Cit.*, Stoessinger, p. 85.
[8] Inis L. Claude, Jr., "The Political Framework of the U.N. Financial Problems," *International Organizations*, XVII, (Autumn 1963), p. 832.
[9] *Op. Cit.*, Stoessinger, pp. 6-7.

And this is exactly the category in which U.N.E.F. and O.N.U.C. can be placed. The arguments advanced by the respective countries should be noted in this analysis since many of these same arguments were presented before the I.C.J. In addition, it is interesting to note that all of the Justices voted according to the stands taken by their respective countries.

U.N.E.F.

The financial crisis over peace-keeping operations began first with the United Nations Emergency Force (U.N.E.F.) which was established by General Resolution 1000 (E.S.-I). U.N.E.F. represented the first action ever taken by the General Assembly based on the inability of the Security Council to act because of a veto blockage under the provisions of the Uniting for Peace Resolutions. The resolutory action was occasioned after British-French-Israeli-Egyptian action had forced the closing of the Suez Canal and was in response to a proposal by Canadian Lester Pearson, that peace be restored by the presence of a U.N. force.

U.N.E.F. was established on a vote of 64—0 with 12 abstentions on November 5, 1957. Egypt voted in favor and publicly said it would welcome the force into its territory to restore peace and security (and this became the basis for later legal contentions). Secretary General Hammerskjold then established a ten nation, 6,000 man unit, including an initial force from the Palestine Observer Group, specifically excluding troops from any of the major powers. However, it was apparent that the cost of such a unit, including the necessary support facilities would quickly deplete the Working Capital Fund and other special regular budget provisions (remembering that the budget for that year was set in September and extended for the entire fiscal year, and that this expense arose in November), and therefore required debt financing. Thus, on November 21, the Secretary General requested that a special account of $10 million be established to finance the Middle Eastern operation, and that the $10 million be raised on the basis of the 1957 regular budget apportionment schedule.

> I have . . . considered it imperative to seek the concurrence of the General Assembly in the following matters: first, the establishment of a United Nations Emergency Force Special Account; secondly, the establishment of this Account in an initial amount of $10 million; thirdly, the authorization of advances from the Working Capital Fund for the purpose of interim financing of the force; fourthly, authorization to establish necessary rules and procedures and to make necessary administrative arrangements for the purpose of ensuring effective financial administration and control of the Account so established.[10]

The device of a special account, it appears, was employed because of the time discrepancy involved in attempting to amend the regular budget to include the expense and urgent need to station U.N. forces immediately.

[10] G. A. O. R., 11th Session, 596th meeting, Paragraphs 223-5.

> I wish to make it . . . clear that while funds received and payments made with respect to the Force are to be considered outside the regular budget of the Organization, the operation is essentially a United Nations responsibility and the Special Account to be established must, therefore, be construed as coming within the meaning of Article 17 of the Charter. [11]

On November 26, the Secretary General's request was granted by the General Assembly on a 52-9-13 vote. On December 3, the Secretary General informed the General Assembly that all future expenses (and it was now apparent that operation would be lengthy and costly) of the U.N.E.F. would be apportioned by the 1957 scale, touching off one of the most heated debates in the history of the Organization. In what would prove to be the political and legal division throughout consideration of this matter, the U.S. and the Western States supported the Secretary General while the U.S.S.R., the Arab States, and Eastern Europe claimed that the cost of U.N.E.F. should be borne entirely by the British, French and Israeli aggressors.

The Latin States adopted a somewhat middle view favoring U.N.E.F. "as an institution which is necessary for peace and as a basis for the evolution of a permanent instrument of military action by the U.N.," recognizing "the political expediency and the principle of equity which made it necessary for all Member States to contribute to the maintenance of the force" but noting that they could "not regard, as either just or equitable, an assessment system according to which the financial contribution to be made by member states are in proportion to the regular admiinstrative budget of the U.N." The final result was the adoption of the Secretary General's proposal 62-8-7, establishing a degre of collective financial responsibility [Appendix IV].

However, political and economic reality (primarily the inability of the Latin American States to meet their obligations based either on general fiscal instability or a difficulty in currency conversion to U.S.—then the official U.N. currency) intervened and the U.S. agreed to bear one-half of all U.N.E.F. expenses over the initial $10 million. This had the effect of significantly lowering each State's assessed share by one-half. It is apparent that this was done to gain support of the Latin American States for the proposal.

As the annual costs of the operation mounted, the collective non-U.S. half of the expenses went largely unpaid (1957—$15 million, 1958—$25 million, 1959—$15 million, 1960—$20 million, 1961—$19 million, 1962—$19 million, 1963—$19 million, 1964—$17.5 million, and 1965—$17.5 million) [Appendix II].

Annually, one-third of the assessed cost went unpaid, and had to be met out of the limited Working Capital Fund. The new African States pleaded financial hardship. The Latin American States varied in their responses but one of the more commonly used arguments was that the U.N.E.F. was established by a resolution and therefore, no state was legally obligated to pay for it. The Soviet and Arab position remained unchanged—they felt that payment sould be made by the "aggressor states" only. Alone, the U.N. might have been able

[11] *Ibid.*

to tolerate the U.N.E.F. expenditures without deep concern for its fiscal solvency, although it should be noted that in floor debates over the budget, several Latin States raised the legal question of the validity of the apportionment of an expense incurred by General Assembly resolution which in and of itself is only recommendatory in nature. But in addition to U.N.E.F., the U.N. became involved in the Congo, and the cost of this operation threatened to bring the Organization to its financial knees [Appendix III].

O.N.U.C.

The U.N. operation in the Congo was the result of a July 12, 1960 request of the President and Prime Minister of the Congo for military assistance in the wake of political instability left by the colonial Belgium withdrawl and the threatened intervention by the major powers. The Secretary General, in accordance with Article 99, brought the matter to the attention of the Security Council, which, on July 14, authorized the Secretary General,

> to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government, with the technical assistance of the U.N., the National Security Forces may be able, in the opinion of the Government, to meet fully their tasks.[12]

The Secretary General again excluded all troops from major powers and assumed direct control of the operation. By July, there were 10,000 men in the Congo, 15,000 by August, 16,500 by September; and by the end of three months, and average of 20,000 troops from 29 states were involved costing $66.6 million in 1960 alone (July through December). Actually, only $48.5 million was the declared debt as the U.S. and the U.S.S.R. waived reimbursement of $10 and $15 million respectively for transportation charges.

O.N.U.C. was the largest undertaking ever attempted by the U.N., singularly and collectively. The plans for financing such a massive and politically controversial operation were the source of prolonged debate and deep discussion with the Assembly. Much of the controversy centered on the very nature of the Congo operation and on the personal leadership exercised by the Secretary General over the troops. Indeed, Russia charged the Security General with usurping the power of the Security Council in the operation.

Norman Padelford and others have suggested that had a different approach to the recruitment of troops, their deployment in the Congo, and the role of the Secretary General been used, France and quite possibly the U.S.S.R. might have well paid their assessment and at least tacitly supported the operation.[12] After long consideration, an African proposal, supported by the U.S., establishing an ad hoc account which specifically stipulated that O.N.U.C. costs were expenses of the Organization within the meaning of Article 17 and therefore assessable as binding legal obligations of the members subject to Article 19 was adopted 45-15-25 after a Polish amendment to

[12] *Op. Cit.*, Padelford, p. 454.

delete the legal obligation required by Articles 17 and 19 provisions was defeated 40-27-17 (budgetary matters require a ⅔ majority for approval rather than a simple majority).

Some of the other proposals considered included a Latin proposal that the members of the Security Council bear the major financial burden because of their ratification of the operation; a Communist bloc proposed that the U.N. should not bear the cost but that the Belgian colonizers, as "chief culprits", should be held responsible; and a proposal favored by the Secretariat that the expenses be included in the regular budget and apportioned by the 1960 assessment scale, under the auspices of Articles 17 and 19. In 1961, O.N.U.C. cost the U.N. $135 million—the largest single expense ever incurred by the Organization. While the U.S. advocated the doctrine of collective financial responsibilty, the U.S.S.R. (which had refused to pay its 1960 assessment) contested the payment on the grounds that O.N.U.C. was a Security Council action in the sense of Article 48 and that under Article 11, the Security Council, and not the General Assembly, should decide the question. The Secretary General's reply was that to wait for Security Council financing would lead to a total paralysis of the entire operation and thus negate the intent of the operation and of the U.N.

The Latin States and India raised a fundamental legal question when O.N.U.C. was termed a special expense involving armed forces under Article 42 and then deduced the nonapplicability of Article 19 from the San Francisco proceedings. The Secretary General denied the enforcement nature of the O.N.U.C. and termed it an internal security function within the borders of a member state. The General Assembly agreed to apportion the cost in accordance with the 1960 scale (54-15-33) although Article 17 was not referred to. Stoessinger noted that:

> Reductions were again granted to obtain the necessary ⅔ majority in the plenary Assembly. [13]

Apparently, the political manipulations concerning the cost of O.N.U.C. were intense in this U.S.—U.S.S.R. confrontation to the point of near bribery of smaller states. Additionally the obligatory nature of the expense was not referred to. Instead, the resolution described the costs as "extraordinary expenditures." The U.S.S.R. used this point before the I.C.J. in claiming that O.N.U.C. was not apportionable within the regular budget.

The 1962 resolution, when O.N.U.C. was incurring expenses of $10 million a month and only 24 states had paid their assessment, was even weaker than the preceeding resolutions, noting that O.N.U.C. expenses were essentially different from Article 17(2)'s expenses of the Organization in the regular budget to accomodate many of the smaller States who feared the consequences of Article 19. But by 1962, the U.N. was in serious financial difficulty primarily due to the ever-increasing cost of O.N.U.C. The default rate was over 70% with two permanent Security Council members—France and U.S.S.R.—withholding payment and a third—China—in default.

[13] *Op. Cit.*, Stoessinger, p. 118.

Finally, after Acting Secretary General U Thant informed the Organization of the "impending bankruptcy," the possibility of forcing payments through Article 19 arose. In a heated floor debate, a question of the applicability of Article 19 devices because of characteristics of the O.N.U.C. and U.N.E.F. expenditures arose. Again, after prolonged consideration, it was decided by a 31-10-20 Fifth Committee vote and a 52-11-32 General Assembly vote to send the issue to the I.C.J. for an advisory opinion. The Soviet bloc States, however, stated in advance that they would not consider themselves bound by the opinion because the matter was political and therefore, outside the jurisdiction of the I.C.J. Thus, the stage was set for legal consideration of the question.

The I.C.J. Opinion

Pursuant to Article 65 (2) of the Statute of the I.C.J., on December 27, 1961, the following question was deposited at the Registry of the I.C.J.:

> Do the expenditures authorized in the General Assembly resolutions . . . relating to the U.N. operations in the Congo undertaken in pursuance of the Security Council resolutions . . . and General Assembly resolutions . . . and to the expenditures authorized in General Assembly resolutions . . . relating to the operations of the U.N.E.F. undertaken in pursuance of the General Assembly resolution . . . constitute "expenses of the Organization" within the meaning of Article 17(2) of the Charter of the U.N.? [14]

The question, as submitted to the Court, proved in itself to be a source of considerable controversy and dispute—evidencing some of the intense feelings surrounding the financial questions—the impliedly related question.

As stated, this question asks the I.C.J. to consider only the validity of the expenses of U.N.E.F. and O.N.U.C. as "expenses of the Organization" within the context of Article 17(2). It makes no mention of the validity of the underlying enabling resolutions pursuant to which the expenses were incurred. This very narrow phraseology, if literally construed in accordance with Article 65(2)'s "exact words" clause, would limit the scope of the question to exclude the validity of O.N.U.C. and U.N.E.F. per se, the Unity for Peace resolution impliedly, and the entire question of the scope of the respective organs in peace-keeping operations. This is considerably more narrow than the question proposed by France in the committee drafting sessions which would have asked the Court:

> If the expenditures authorized in General Assembly resolutions were decided in conformity with the provisions of the Charter and, if so, do they constitute expenses of the Organization within the meaning of Article 17(2) of the Charter of the U.N.? [15]

The effect of this rewording would have been to change the basis of the request to consider the validity of the resolutions authorizing U.N.E.F. and O.N.U.C. rather than just the nature of the resultant expenses of these operations.

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[14] Certain Expenses of the U.N.—Article 17(2) of the Charter, July 20, 1962, No. 262, p. 152-3.

[15] U.N. Document A/1.378, December 16, 1961, p. 34.

Although, in a broad sense, the questions are not unrelated, the General Assembly question was more limited in its scope and confined solely to the question of incurred expenses rather than the validity of the resolutions under which the expenses were incurred. The arguments against the French proposal in the U.N. dealt directly with this point. The Canadian representative argued that if such a constitutional decision was sought, it would set a dangerous precedent, sending the Assembly to the I.C.J. to decide the validity of every action questioned by a member state, placing an undue burden on the I.C.J. and negating the effectiveness of the Organization.[16]

On a practical basis, there would probably be no surer way to condemn the U.N. to a role of impotency in the midst of world crisis than to permit or sanction wholesale challenges to the Charter. It must be remembered that the I.C.J. is not the final authority on interpretation of the Charter. The attempts to so designate the I.C.J. were defeated at San Francisco. Thus, any attempt to prescribe to the I.C.J. by practice or resolution, sole power of interpretation, as the French wording might well have initiated would be an *ultra vires* extension of the Charter and therefore illegal. In addition, disagreement with the opinions of the I.C.J. or refusal of the General Assembly to adopt and affirm a controversial issue would most certainly injure the prestige of the I.C.J. (because of the political considerations) and seriously impair the viability of the I.C.J. as legal arbitrator. Indeed, the I.C.J. would undoubtedly have found itself steeped in intense political controversy rather than legal reasoning. In addition to the persuasive Canadian arguments, the Danish representative challenged the very concept of the French proposal on the grounds that:

> It would be meaningless to maintain than an action taken with the active support of an overwhelming majority of the member States in a situation of intense gravity should be considered meaningless.[17]

On the strength of arguments of this nature, the Assembly defeated the French proposal 12-20-61. However, the inherent question of the validity seemed to pervade the proceeding before the I.C.J. as every state favoring a negative decision referred to the matter in varying degrees [Appendix VI].

The I.C.J. took note of the question and declared that the specific wording of the question as put to the I.C.J. did not prevent the I.C.J. from deciding whether the disputed expenses were decided on in conformity with the Charter or from integrating Article 17(2) and the "expenses of the Organization"—the essence of the French proposal—in light of the provisions of the Charter as a whole. If the I.C.J. determined that these elements were relevant to their consideration of the matter, they declared that the defeated French proposal was valid and the specific question before them invalid. Thus, the I.C.J. moved to establish its own limits on the extent of the question it would consider in the interest of obtaining all material having a bearing on the matter. Many of the Justices, however, found this concession insignificant.

[16] *Op Cit.,* Stoessinger, p. 53.
[17] G.A.O.R., 11th Session, 276th meeting, paragraph 18.

Justices Basdevant and Bustamente y Rivero based their dissents in large measure on the specific wording of the question. President Winaiski was critical of the wording of the issue as were Justices Fitzmaurice, Quintava and Spiropoulos. Part of their displeasure with the question may lie in the tremendous potential of legal questions which was put before the I.C.J.

In a court which often finds itself without cases to hear, the possibility of dealing with such complex legal issues as the overall right of apportionment (as President Winaiski favored), the obligatory nature of the debts incurred by the non-obligatory resolutions, the Unity for Peace resolution, etc. paled a more narrow consideration of expenses after the fact. The question as it was finally interpreted by the I.C.J. was narrow in scope and dealt with whether specified expenditures were expenses of the Organization without considring the question of the financial obligations of the Members.

The narrowness can be seen in the fact that originally the title of the case was *The Financial Obligations of the Members of the United Nations* and which changed to the more restricted *Certain Expenses of the U.N.*[18] The I.C.J. had defined the question to consider:

> a moment logically anterior to apportionment just as a question of apportionment would be anterior to a question of a Member's obligation to pay.[19]

The question of apportionment and of a Member's obligation to pay were considered logically anterior to the question of the fundamental "expense of the Organization." Logically, if an expense is an "expense of the Organization," then apportionment and the obligation to pay naturally follows (even though their own overall legality is questionable).

The decision by the I.C.J. to accept a narrow definition of the question reflects what many authorities consider to be a prime example of the beneficial use of judicial caution. Had the I.C.J. considered any of the broader questions, it might well have found itself undermining the viability of the U.N. instead of promoting what Justice Spender called the "institutional effectiveness" of the Organization and the Charter. Indeed, had the I.C.J. used a broad interpretation, it might well have found itself in the entanglement the Canadian delegate had warned against. Any consideration of the operations would, by its nature, have necessitated a strict interpretation of the validity of each case, therefore never fully resolving the issue but merely the solvency of the Organization's immediate instance of it.

The I.C.J. seemed to realize, too, the essentially political nature of the question it was being asked to decide. The fact that the General Assembly decision to send the matter to the I.C.J. was so divided and that the Soviet bloc had already stated its intention not to be bound by the decision seemed to weigh heavily with the I.C.J. who had to be concerned not only with the purely legal aspects of the question, but also with the political acceptability of its decision and the future prestige of such opinion of the I.C.J. Indeed, the I.C.J. seemed to well realize what R.Y. Jennings noted:

[18] *Op Cit.*, Leo Gross, p. 12.

[19] "Certain Expenses of the U.N." (Article 17, Paragraph 2 of the U.N. Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, p. 151.

> Nor is a Court an altogether suitable body to pass upon some of these essentially political questions raised by the attack upon the basic resolution.[20]

The I.C.J. had to balance its concern for the viability of the Charter and the U.N. with the political reality of intruding too far into individual State sovereignty and negating the gradual development of both up to this point.

The decision of the Court to confine itself to the narrow issue at hand—to settle the pressing issue at hand rather than delve into the legal ramifications—was a wise one. As the U.N. balanced on the brink of financial ruin, it would have been almost meaningless to issue a more encompassing opinion which, because of its legal aspects, might be unacceptable to the majority of the states, thus damaging the prestige of the I.C.J., but also placing the U.N. no better off than when it first came to the I.C.J.

The I.C.J. began its opinion by considering the argument that there existed a limitation on the term "budget," in the form of an "administrative" and "operational" differentiation—as used in Article 17. If it had found that such a qualification did in fact exist, then it would have impliedly limited the budgetary authority of the General Assembly to that area only as the Soviet Union contended it should be.

The Justices began their consideration of the question by first defining the abstract concept of the "expenses of the Organization" referred to in Article 17, (2), and in the question presented to the Court by the General Assembly. Although the majority opinion noted that the definition was outside of the realm established by the narrow interpretation of the question by the Court, the Justices felt that without an explicit definition and criteria for the term, no definitive decision could be reached concerning the validity of the certain specified expenses of O.N.U.C. and U.N.E.F. as such "expenses of the Organization."

The question was also important because, in establishing the basic criteria of what constitutes an "expense of the Organization," the Court was effectively deciding the issue before it. If the Court chose to accept a broad, liberal definition which would include the cost of peace-keeping operations such as O.N.U.C. and U.N.E.F., the question would be effectively resolved in favor of the expenses as "expenses of the Organization"; and therefore as apportionable costs which the Member states must bear or face the consequences of Article 19.

If the Court decided on a narrow, strict interpretation, then limitations as to the purpose of the expense, the administration of the funds and the specific operation and the specific use of the funds might apply and become the crucial factor in determining the question before the Court. If the expenses of O.N.U.C. and U.N.E.F. exceeded these limiting criteria, then the expenses would not be "expenses of the Organization," and would not be the legal obligation of the Member states.

This later possible interpretation is the position advanced by those states seeking a negative reply to the question from the Court. The arguement,

[20] *Op Cit.*, Leo Gross, p. 35.

advanced primarily by the Soviet Union and its bloc countries, was that there existed a limitation to the terms "expense" and "budget" as used in Article 17, paragraphs 1 and 2, respectively, which specifically excluded the cost of peace-keeping operations from the regular budget and the category of "expenses of the Organization," and therefore also from the influence of Articles 17 and 19 (apportionment and payment). Inherently, what was being contested here was the basic unlimited authority of the General Assembly over all matters of the budget. For from its exclusive control over the budget, and all financial matters concerning the Organization, the General Assembly could very well broaden the scope of its authority to one day encompass all those powers not explicitly denied it in the Charter. (A comparable situation can be seen in the development and expansion of the "power to regulate interstate commerce" clause in the U.S. Constitution. The development of the interpretation of the clause has expanded the scope of government intervention to include those items having even the most indirect link with interstate commerce.)

Thus by defining some limit on the budgetary authority of the General Assembly in restricting their power to only certain financial aspects—specifically, to the administrative budget of the UN and not to the operational budget which would include peace-keeping operations—the Soviet Union was attempting to retain to itself and to the Security Council (in which it had the right of veto to effectively block any motion) a vestage of control over the budget. Inherent, of course in the control of the budget is also the control over the scope of operations and the direction and degree of involvement of the Organization in world affairs.

In searching for an independent criteria to define the "expenses of the Organization," the Court relied heavily on the "plain meaning of the text" approach as opposed to the telescopic or intent-of-the-framers approach for interpretating the term. It should be noted that in the oral arguments, the States favoring an affirmative reply from the Court, namely: the United States, the United Kingdom, Australia, Canada, Denmark, Ireland, Italy, Japan, the Netherlands, and Norway all favored the use of this approach. Conversely, for the most part, those states which argued for the negative position: Portugal, Spain, Upper Volta and the Soviet bloc countries seemed to demonstrate a decided preference for the intent-of-the-framers approach. The reasoning behind these preferences can be readily deduced. On the plain face of the text, no restricting adjectives or phrases appear to limit the scope of Article 17. Thus, as the Court itself noted, ". . . since no qualification is expressed in the text of the Charter, it could be read in, only if such qualification must necessarily be implied from the provisions of the Charter considered as a whole, or from some particular provision thereof which makes it unavoidable to do so in order to give effect to the Charter." [21] Thus a difficult burden of proof, as it were, in showing that such restrictions do exist is placed squarely on those advocating the negative position. Thus it was only natural

[21] *Op. Cit.*, Opinion, p. 159.

that the states advocating the negative position should seek to use another method to determine the meaning of the phrase.

While the matter of selecting an appropriate criteria for investigating the question itself might have become a source of controversy and conflict, the matter was allayed somewhat by the fact that states advocating both the affirmative and the negative positions relied on this textual plain meaning approach in varying degrees as they attempted to show the relation of Article 17 to the rest of the body of the Charter. Indeed, while Professor Tunkin of the Soviet Union used the framer's-intent as the basis for his argument on the administrative/operational limitation on Article 17, he used the textual approach to illustrate the inconsistencies (as he saw them) of Article 17's application to the peace-keeping operations in relation to the rest of the Charter. Indeed, Czechoslovakia utilized both the framer's-intent and the textual approaches in its arguments on the limitations to the terms of "expenses" and "budget."

While the selection of an interpretative basis can be viewed as a victory for the affirmative position, the reliance by the Court on mutually reinforcing supportative data obtained from an investigation into the *Travaux Preparatoires of the San Francisco Conference* and the *Dumbarton Oaks Meeting Reports,* from the actual practice of the United Nations, and from the overall intent of the Charter as a whole and as individual articles and provisions would seem to diminish the impact of the particular methodology selection. The use of a variety of approaches to develop supporting evidence for a conclusion would seem to void any possible objections to the practice of the Court in reaching its decision.

Additionally, the choice of the reliance on the textual approach seems well-founded, not only because of the general usage of this approach by a large number of the States involved, but also because of the basic nature of the question involved. On an interpretation of the U.N. Charter, it seems only logical and reasonable that the Court should consider the textual meaning of the words in their particular context. This is precisely what the textual approach does. It provides a clear, distinct, face value determination of what the Charter mandates. Investigation into the San Francisco Conference records shows that this aproach is perhaps not altogether sufficient for this particular case, in that the direct intent and reasoning of the framers of the Charter is not always evident and is often subject to individual interpretation. For example, at one point in its oral arguements, the Soviet Union supported its claim of an administrative limitation on Article 17's "budget" and "expense" terms by citing the fact that at the San Francisco Conference, the original order of the article's paragraphs concerning apportionment of expenses and the general budgetary expenses of the Organization had been inverted, placing the budgetary paragraph before the apportionment clause. The positional change of these clauses, the Soviet Union argued, represented a realization by the framers that only administrative costs should be apportioned and that consequently, expenses related to the operational activities of the Organization should be financed differently.[22] The Soviet contention was

[22] Oral proceedings, Prof. Tunkin, USSR, p. 321.

disputed by the United States who argued that the reversal was merely for the sake of organization within the structure of the article.[23]

An investigation into the *Travaux Preparatoires* to trace the development of the Article 17 reveals only that the change did occur. No reasons for the reversal were given by the committee.[24] Thus, primary reliance on the framer's-intent for the definition of the "expense of the Organization" might well have proven somewhat ambiguous, as might a reliance on the intent of the general document. While the textual approach is also open to interpretative discrepancies, the extent to which a contradiction can exist is limited by the explicit words themselves. Of course, the fact that the Court sought and found supportative evidence for their textual based conclusions by the other investigative methods negates many of the inherent ambiguities and makes the reliance on the textual approach and the decision itself all the stronger.

The decision to utilize the face value approach appears well founded and prudent on the part of the Court.

Employing this approach, the Court established that:

> It would be possible to begin with a general proposition to the effect that the "expenses" of any Organization are the amounts paid out to defray the costs of carrying out its purposes, in this case, the political, economic, social, humanitarian and other purposes of the United Nations . . . Or, it might simply be said that the "expenses" of an Organization are those which are provided for in its budget.[25]

From this initial point, the Court considered the previously alluded to contention that there existed a qualification of "administrative" to the words "expense" and "budget" as they appear in Article 17, paragraphs 1 and 2, respectively. The position that such a qualification did in fact exist was based in part on a treatise, *A Commentary on the Charter of the United Nations* (2nd Ed., London, 1949) of L. M. Goodrich and Edvard Hambro which stated that the expenses referred to in Article 17 (2) do not include the costs of enforcement actions and operations.[26] Both the Portugese and Czech positions relied on this treatise and developed from it a rationale for the differentiation of the expenses of the Organization.

> The Czechoslovak Government sought to establish the existence of a broad distinction between the financing of "normal" expenditures and the financing of "non-normal" expenditures. "Non-normal" expenditures, in that Government's view would always include expenditures connected with the establishment and support of armed forces employed in actions for the maintenance or the restoration of peace. The Czechoslovak Government saw in the seperate reports and debates at San Francisco on the drafting of Articles 17 and 49 justification for the distinction between "normal" and "non-normal" expenditures, and, in respect of U.N.E.F. and O.N.U.C. expenditures,

[23] *Ibid.*, Abram Chayes, p. 174.

[24] *Travaux Preparatories*, Summary Report of the Seventh Meeting of Committee II/2, May 1945, p. 1342.

[25] *Op. Cit.*, Opinion, p. 158.

[26] Rosalyn Higgins, *United Nations Peace Keeping 1946-1967* Vol 1, *The Middle East*, (London: Oxford University Press, 1969).

claimed that the primary responsibility for contribution must rest with the "guilty" States [i.e., Belgium, France, Israel, and the United Kingdom].[27]

Those States which adopted the position that no such qualification existed relied on the textual account of the article for support. As the Australian arguement noted:

> Nowhere in the Charter is a distinction made between ordinary or special or extraordinary expenses or budgetary provisions. The cardinal rule of interpretation, that of effectiveness, must lead the Court to uphold the validity of the assessing resolutions adopted by the Assembly in the exercise of its Charter powers.[28]

And similarly, British Sir Reginald Manningham-Buller told the Court in his country's oral argument that:

> Article 17(2) means all expenses of the Organization, whether or not they were included in the regular budget. . . . There is no language in the Charter to qualify the "expenses of the Organization. . .[29]

The Court began its analysis of the matter by noting that in Article 17, (3), the term "administrative budgets" is specifically used in reference to the financing of specialized agencies. From the inclusion of these words (which did not change significantly in their development throughout the San Francisco Conference)[30], the Court deduced that the framers of the Charter recognized the difference between administrative and operational budgets. It was therefore logical for the Court, utilizing the plain meaning criteria, to note that being cognizant of the different types of budgets and expenses, if the framers had intended to establish such a distinction in regard to the "budget" and "expenses" of Article 17, paragraphs 1 and 2, they would most certainly have included the qualifying words in the text as they did in Article 17, (3).[31] Indeed, carrying his line of reasoning one step further, one could well deduce from the fact that nowhere in the Charter is a qualifying term such as administrative or operational used, that the framers had no intention of including any such restrictive clause of the budget and the expenses of the Organization, and thereby also on the budgetary authority of the General Assembly.

Leo Gross, in an article published after the Court handed down its opinion, advanced the argument that the framers of the Charter intended for the United Nations to operate

> in the footsteps of the League of Nations and (being) familiar with the establishment of specialized agencies, intended to say "regular" or "administrative" budget. They were familiar with the distinction and did not provide

27 Supra, #20, p. 1185.

28 *Ibid.*, p. 1185 citing the written submission of Australia to the International Court of Justice.

29 Oral proceedings, Sir Buller of Britain, p. 241.

30 Supra., #24, Summary Report of the fourth Meeting of Committee IV/1, April, 1945, p. 921.

31 *Op Cit.*, Opinion, p. 159.

> for an operational budget. There were two natural reasons for it: in the first place operational functions were entrusted by governments to the specialized agencies rather than to the United Nations; and in the second place, the vital operational function of the Organization, that is enforcement of action, was especially provided for in Article 43 of the Charter.[32]

However, while this argument sounds plausible, it does not explain the specific reference to administrative budgets in 17 (3) and the absence of the reference in the preceeding two paragraphs. If Gross's argument has merit, then why didn't the framers specifically clarify each expense if they perceived a basic difference between the regular budget expense and the specialized agency expense. Indeed, why is there no mention of an operational expense and budget for the specialized agencies, which would seem the more logical alternative if the framers perceived the regular budget as administrative and the budget and expenses referred to in paragraph 3 as administrative? Given this, the word "administrative" should not appear, but the word operational should. The fact that it does not reveals a weakness in the basic structure of the argument. In addition, research into the development of Article 17 at the San Francisco Conference reveals that paragraph 3 originally preceeded paragraph 2. One of the reasons, it appears, that the order was reversed was to make the intent of the article more definitive. From this one could well imply that the budget and expenses of paragraphs 1 and 2 are related to each other while being separate and distinct from the administrative expenses referred to in 17 (3). Indeed, one is hard pressed to explain the difference in these terms except by the reasoning employed by the Court.[33]

In addition, Gross and the contention itself, fail to note the case of the *Contributions of the State of El Salvador to the Expenses of the League of Nations*[34] in which a subcommittee of jurists declared that the expenses of the International Labor Organization were indeed expenses of the Organization as were *all* expenses legally incurred by the organs of the League without qualification to the nature of the expense.

Gross's argument and the entire contention is sustained neither by the reasoning of the Court, the apparent actions and intent of the framers, nor the history of the League.

Although the I.C.J. reached its decision that no qualification existed through sound legal interpretative reasoning (with which argumentation is difficult), the Court chose to examine the practice of the U.N. to provide general support for their arguments, but also to specifically counter the claim advanced by the Soviet Union that the U.N. practice in the financing of peace-keeping operations was to function outside of the regular budget. Citing the Korean action as the only applicable precedent because of the combat nature of the operation and the scale of the force which both showed similarities to the O.N.U.C. and U.N.E.F. operations, the Soviet Union noted that the

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[32] Supra, #5, p. 14.

[33] *Travaux Preparatories.* Summary Report of the 37th Meeting of the Coordination Committee, p. 1361.

[34] *League of Nations Documents,* 1st Committee, League of Nations, 3rd Assembly, Plenary, Vol. II, p. 191-4. A,128,922.V. (1922).

expenses of Korea had been paid through voluntary contributions and that at no time was the expense included in the regular budget for payment by the Membership.

Finding support for their general denial of any qualification of the term "expense," the Court noted:

> Actually, the practice of the Organization is entirely consistent with the plain meaning of the text. The budget of the Organization has from the outset included items which would not fall within any of the definitions of "administrative budget" which have been advanced in this connection. Thus, for example, prior to the establishment of, and now in addition to, the "Expanded Programme of Technical Assistance" and the "Special Fund" both of which are nourished by voluntary contributions, the annual budget of the Organization contains provisions for funds for technical assistance. . . . Although during the Fifth Committee discussions (in 1962) there was a suggestion that all technical assistance costs should be excluded from the regular budget, the items under these heads were all adopted . . . without a dissenting vote. The "operational" nature of such acts so budgeted is indicated by the explanations in the budget estimates for example, the requests for the continuation of the operational programs in the field of economic development. . .[35]

The General Assembly, like the framers of the Charter, are also cognizant of the difference between administrative and operational budgets, as evidenced by the fact that when the Constitution of the International Refugee Organization was drawn, the General Assembly accepted differentiated budgets and programs. Thus clearly knowing the differences between the two types of budgets and expenses, and adding qualifying stipulations only when administrative budgets and expenses alone are contemplated, it can be assumed from the practice of the UN that the Organization as a whole realizes the difference and accepts the unqualified terms of Article 17 as applying to the total regular budget and just to administrative expenditures. In addition, it should be noted that no qualifying distinctions exist in the Financial Regulations of the United Nations which were initially adopted in 1950 by a unanimous vote, including those States now contesting the matter. In considering this piece of evidence, it is important to note the 1950 date, because it indicates that several years of peace-keeping operations and expenditures had already occurred. Thus the General Assembly was well aware of the financing of peace-keeping operations, even if they were on a smaller scale than O.N.U.C. and U.N.E.F., so if they had wished to distinguish the funding for a peace-keeping operation by a special extra-budgetal account, they could well have done so. The inference from their failure to do so is that they were satisfied with the inclusion of these peace-keeping expenses in the regular budget of the Organization as "expenses of the Organization."

The Court also took note of the 1961 Report of the Working Group of Fifteen on the Examination of the Administrative and Budgetary Procedures of the United Nations which showed as one of its few unanimously accepted

[35] *Op. Cit.*, Opinion, p. 160.

(by the General Assembly) articles — Article 22: "Article 22. Investigation and Observation operations undertaken by the Organization to prevent possible aggressions should be financed as part of the regular budget of the U.N."[36]

Thus, the practice of the U.N. was not to delineate between administrative and operational expenses in the regular budget, therefore including peacekeeping expenses, as operational expenses, within the regular budget. Consequently, the Court stated that:

> Whether or not expenses incurred in discharge of this obligation become "expenses of the Organization" cannot depend on whether they be administrative or some other kind of expense.
>
> The Court does not perceive any basis for challenging the legality of the settled practice of including such expenses as these in the budgetary accounts which the General Assembly apportions among the Members in accordance with the authority which is given to it. . . .[37]

Given the set of facts as such, the practice of the U.N. is clearly not to distinguish between the regular and administrative and operational expenses and budgets. This clearly supports the conclusion of the Court in denying that such a qualification does indeed exist.

One point should be made at this juncture regarding the reliance of the Court on the practice and the conduct of the Organization in establishing a legal basis for their decision. Considerable concern has been generated by the I.C.J.'s use of practice in this case, as evidenced by the references to the matter in the separate views of President of the Court Winiarski and Justices Percy Spender and Gerald Fitzmaurice. Indeed, Justice Sir Spender devotes considerable time and effort in his concurring opinion to this subject (see appendix VI).

While there may be sufficient cause for concern over the unbridled reliance on the practice of the U.N. or any other international organization to form the primary basis for a judicial opinion, the evidence of the case and the opinion support the contention, that such unlimited use did not exist here. In the *Certain Expenses* case, the practice of the U.N. was considered in a strictly supportive role. At no time was it the sole determinant of a point made by the Court. In such a supportive role the consideration of the practice of the Organization, particularly on a matter which is closely related to the functional aspects of the Organization is wise. Indeed, it would seem frivilous to analyze the exact words of the text and the intent of the framers if one did not also consider the practical effectiveness given to the words and the intent by the interpretation of the Member States as evidenced by the practice of the Organization. The Court cannot issue a decision or an advisory opinion with a total disregard for the functional reality of the U.N. and its members.

The contention, however, that Court consideration is mandated because the U.N. represents a world legislative body and that its actions and practices are sources of international law, I find utterly preposterous and unfounded

[36] *Ibid.*, p. 161-2.
[37] *Ibid.*, p. 162.

given the intensely political nature of the body (as evidenced by the trade-off of affirmative budget votes for reductions in the apportioned total of a State's contribution to the U.N. mentioned earlier), the lack of an agreed consensus of the U.N. as in fact a source of international law, the lack of the key element of opinion *juris sive necessitas* in the actions and practices of the Members, etc. Indeed, it is similarly difficult to accept the premise that the practice of the U.N. should be considered evidence of customary international law, for many of the same reasons.

However, when the practice of the U.N. is placed in its proper perspective and not elevated to unfounded and unreasonable legal heights, the practice of the Organization can be a valuable supportive tool, as it was in the *Certain Expenses* case, supporting the intent of the framers and the meaning of the text. For if one is to challenge the textual meaning of a Charter clause, he must also reconcile the fact that the clause has been adhered to by the Members for years under the assumption that they were legally justified. Thus, one must consider the practice of the UN, for while in and of itself it may not form a legal basis, its impact on the nature of the question and the decision warrants its consideration. Therefore, practice, when properly relied upon represents a factor which it serves the Court well to consider, as it did in the *Certain Expenses* case. Indeed, given the composite of the multi-faceted approach — the caliber of the supportive practice, the intent of the framers and the textual meaning — it appears difficult to argue with this aspect of the Court's decision.

Several Justices however — Justices Bustamante y Rivero, Koretsky, Moreno Quinana, Basdavante, and President Winiarski — dissented from the view held by the majority — Justices Badawi, Wellington Koo, Spiropoulos, Spender, FitzMaurice, Tanaka, Jessup, Morelli, and Vice-President of the Court Alfaro — in regard to this matter. Justice Koretsky, who interestingly enough adopted the position of his own government, the U.S.S.R., dissented totally from the majority opinion. Concerning this particular matter, Justice Koretsky declared flatly that, "It is known that the financing of peace-keeping operations is not made within the regular budget. One should apply to Article 43 and not to Article 17 . . ."[38]

Justice Morelli also took exception to the decision of the Court and reasoned that two separate types of expenses inherently exist in Article 17. He differentiated between one type of expenditure referred to in paragraph 1 in which the General Assembly only *may* authorize the expenses, whereas the other type, alluded to in paragraph 2, *has* to be authorized by the General Assembly to be a valid expense. Justice Morelli thus places the type of restriction on the budgetary authority of the General Assembly which the Soviet Union impliedly hoped to achieve.

The views of these Justices, however, were in the minority as the majority held that no qualification existed on the terms "expenses" and "budget" in Article 17. The single most persuasive piece of legal reasoning in this decision

[38] *Op. Cit.*, Opinion, p. 267—the dissenting opinion of Justice Koretsky.

appeared to be the existence in 17(3) of the budgetary restriction for the specialized agencies. From the existence of this stipulation, it was simply a logical step to question why, if the intent existed, such a similar restriction was not in evidence in words a mere paragraph away. The only logical conclusion which could be drawn was that drawn by the majority — that there never existed any intent to qualify the terms and to so restrict them.

Having satisfied itself that within the context of Article 17 there existed no qualification of the budget or the expenses of the Organization, the Court then turned to an investigation of the general Charter to ascertain if such a qualification existed elsewhere to limit the terms. In this analysis, the Court found itself outside of the narrow construction they had placed on the question and in the realm of related issues. While the Court found itself considering many of the questions it had hoped to avoid by the narrow construction, the earlier limitation permitted the Court to consider these issues only in so far as they related to the immediate question of the qualification of the expenses, and not in and of themselves. Indeed, if the Court had not proceeded in this way, the Opinion would probably be several hundred pages longer and more complex, and the question of the validity of the O.N.U.C. and U.N.E.F. expenses as apportionable expenses of the Organization might well have gotten lost in the shuffle of issues — to the dismay and the insolvency of the United Nations.

Primarily in response to the presentation and arguments of the Soviet group of States, the Court considered the possibility of a combined restrictive effect embodied in Articles 11, 39, 41, 42, 43, and 48 of the Charter which set forth the powers of the Security Council in situations which threaten the peace, breach the peace or are open acts of aggression. The contention of the USSR regarding the expenses in the context of their actions was the same as it had been in the General Assembly through the numerous resolutions and debates, and was also remarkably similar to those arguments which the Soviet government used in the discussions of the Uniting for Peace resolution. (In essence, this is what the Soviet Union perceived this case to be— a confrontation over the Uniting for Peace Resolution under the guise of the financial issue.)

The Soviet argument was based in a very strict construction and interpretation of the Charter, particularly those articles relating to the power of the Security Council. According to the argument, as presented before the Court, the Charter had vested in the General Assembly only the power to discuss, consider, study, and recommend on matters relating to the maintenance of international peace and security. Specifically, it was contended that the General Assembly was empowered only to make recommendations, and even then only when the Security Council is not considering a matter concerning international peace and security. The Assembly, Professor Tunkin argued, lacked the proper authority to take action or to cause the functional realization of any of its recommendations pertaining to this specific area of competence. Any action, it was argued, which entailed the use of armed force or force of any kind was the responsibility of the Security Council and of the Security Council alone. The General Assembly, it was further argued, could not assume the role of mandating payment for peace and security operations since these operations

were outside of the realm (functionally) of the Assembly. The necessary financial arrangements for such operations involving the use of force and duly authorized by the Security Council, were to be decided by the special agreements procedure of Article 43 and not by the general provisions of Article 17. The existence of Article 43, it was argued, clearly indicated that the expenses of peacekeeping were not to be considered expenses of the Organization under the terms of Article 17, but rather were special, extraordinary expenses handled by the Security Council in their functions related to international peace and security. In relation to the validity of the particular expenses, the Soviet bloc countries claimed that U.N.E.F. was created in open violation of the Charter and in a flagrant attempt to bypass the Security Council and its security function by way of the Uniting for Peace Resolution. Similarly, it was alleged that O.N.U.C. also violated the security provisions of the Charter because although it had been duly authorized by the Security Council, the Secretary-General, Dag Hammarskjold, had overridden the Security-Council's function by his direct control of the operations of the units in the Congo. The Soviet Union noted that both operations should have been established and administered in accordance within Articles 42-6 by the Security Council alone, and that the failure to have been established in this manner meant that these operations and their assessing resolutions were ultra vires to the Charter. And, reiterating the elements of their General Assembly speeches, because this element of strict legality was lacking, the Soviet representative claimed, States were refusing to pay their "illegal apportionments," causing the financial insolvency of the Organization.

Professor Tunkin commented on the financial implications of the legal issue as he perceived it.

> We should not sacrifice the principles of the United Nations' Charter, on which depends the very existence and the future of the Organization, even though by that sacrifice we might reach a more simple solution of this or that current problem.
>
> In this connection, . . . I would like to invite your attention to a very dangerous tendency which can be seen throughout the written replies of some governments and also the statements of the representatives which have been made in this Hall.
>
> This tendency consists of opposing the so-called effectiveness of the United Nations to the provisions of its Charter. Roughly speaking, according to this conception, it is necessary to strive for the so-called effectiveness of the United Nations, disregarding the provisions of the Charter and in accordance with the principle "The end justifies the means."
>
> The above-mentioned tendency emanates from a conception that is usually called "realistic." This so-called realistic conception reflects the main features of the "position of strength" policy and it is an attempt to provide a theoretical justification of that policy. . .
>
> I would like to state that the above-mentioned realistic conception is full of a nihilistic attitude to the international law and in its extreme manifestation regards international law as a legal "straight-jacket" for diplomacy and calls to remove this legal straight-jacket. . . .

> The opposing of the effectiveness of the United Nations Organization to the observance of the principles of the United Nations Charter is legally groundless and dangerous.[39]

The States advocating the affirmative position seemed content not to consider these related issues to the depth they were pursued by the Soviet Union. As Sir Reginald Manningham-Buller noted:

> The validity of the relevant Security Council and General Assembly resolutions authorizing the UNEF and the Congo operations is not in terms submitted to the Court. However, if and so far as the answers to the question referred to it by the General Assembly may depend on the validity of those resolutions, the British Government would support their validity on the assumptions and to the extent that (i) they were within the purposes of the United Nations as expressed in the Charter and (ii) they required the consent of the governments concerned.[40]

The U.S. position was similar although somewhat stronger.

> How can the main purpose of the Organization, the maintenance of international peace and security, be regarded as an "extraordinary" activity? The Security Council has no budgetary or fiscal competence nor can it be said to have exclusive competence in peace actions. The expenses were authorized in a correct procedural manner, with the assent of a two-thirds majority of member States, and could not be ultra-vires.[41]

In considering this argument, the Court challenged the basic concept upon which the argument of the Soviet Union rested — their interpretation of the words "primary responsibility" in Article 24 to give the Security Council exclusive authority in all matters related to international peace and security. Noting the wording of Article 24:

> Art. 24.: In order to insure prompt and efficient action by the United Nations, its Members confer on the Security Council the primary responsibility for the maintenance of international peace and security. . .[42]

The Court declared that:

> The responsibility conferred is "primary" and not exclusive . . . "in order to ensure the prompt and effective action [of the United Nations] . . ." To this end, it is the Security Council which is given a power to impose an explicit obligation of compliance if for example it issues an order or command to an aggressor under Chapter VII. It is only the Security Council which can require enforcement by coercive action against an aggressor.[43]

In support of this contention, the Court further stated:

> The Charter makes it abundantly clear, however, that the General Assembly is also tó be concerned with the international peace and security. Article 14

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39 Oral proceedings, Prof. Tunkin, p. 350.
40 *Ibid.*, Abram Chayes, p. 186.
41 *Ibid.*, Sir Buller, p. 224.
42 U.N. Charter Article 24 para. 1.
43 *Op. Cit.*, Opinion, p. 163.

> authorizes the General Assembly to "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." The word "measures" implies some kind of action, and the only limitation which Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so. Thus while it is the Security Council which, exclusively, may order coercive action, the function and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies, the making or recommendations; they are not merely ortatory.[44]

Continuing with the right of the General Assembly to take "action," the Court noted the enforcement powers already solely within the jurisdiction of the General Assembly by Article 18 in relation to Articles 5 and 6. The Court cited the specifics of the expulsion of Members and the supervision of the rights and privileges of Membership as well as the all encompassing term "budgetary questions" and noted that in these matters the General Assembly has the sole power of enforcement subject to the recommendations which the Security Council might provide. But the Court went a bit further and seemed to note that this strict delineation of power to the point of inter-organ rivalry is foolish when it noted: ". . . but there is a close collaboration between the two organs [in these matters]." [45] It chose instead to cite the higher motives for which the United Nations was formed and to which the organs are supposedly working together toward. Viewed in this respect, the opinion of the Court goes beyond a mere interpretation of the words of the Charter to what is perhaps a more important interpretation of the goals and ideals of the Charter and the feasibility of achieving them.

This particular portion of the opinion has been the subject of intense discussion, pro and con, since it was handed down by the Court. The reason for the interest is obvious, the ramifications of this portion are tremendous for the future of the United Nations. First by its interpretation of "primary responsibility," the Court gave legal sanction to the incursion of the General Assembly into the areas of the maintenance of international peace and security. It gave validity to the "actions" the General Assembly might take — ranging from the stationing of an observer force, which the General Assembly had done as early as 1949, to operations the size of the Congo operation. The validity of the General Assembly to take such "action" necessarily meant that there was an inherent duty among the Members to bear the financial burdens of such a valid act of the General Assembly. Inherent in this opinion also, is somewhat of an implied sanction for the Uniting for Peace Resolution in that the General Assembly is permitted to take "action" for the maintenance of international

44 *Ibid.*, p. 163.
45 *Ibid.*, p. 163.

peace and security. However, the fact that the Court notes that enforcement power lies solely within the realm of the Security Council and not the General Assembly would seem to imply a strong challenge to the legality of the resolution. But Uniting for Peace was not the subject of the opinion, and peripheral comments may shed more darkness than light on the question.

Second, the Court established in the General Assembly supremacy over the control of the U.N. budget—administrative, operational and regular budget expenses and the costs of United Nations peace-keeping forces combined. The important power of the purse was vested in the hands of the General Assembly for all U.N. expenses, revenues, apportionments, etc. In these two conclusions alone, the Court has strengthened and advanced the importance and the prestige of the General Assembly to the benefit not necessarily of the General Assembly at the derision of the Security Council, but to the benefit of the goals and the purposes of the United Nations for the benefit of all members of the world community. The cumulative effect of these two interpretations was to enhance what Justice Spender termed "the institutional effectiveness of the United Nations as an international organization and the viability of the Charter as a flexible legal document in a politically changing environment.

Carrying the analysis of Article 17 and the Charter as a whole further, the Court considered the restrictive nature of Article 11(2), that ". . . Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion." To this, the Court said:

> The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not to merely general questions relating to peace and security, but also to specific cases brought before the General Assembly . . . under Article 35. . . . The word "action" must mean such action as is solely within the province of the Security Council.
>
> The practice of the Organization throughout its history bears out the foregoing elucidation of the term "action" in . . . Article 11(2). Whether the General Assembly proceeds under Article 11 or under Article 14, the implementation of its recommendations for setting up commissions or other bodies involves organizational activity — action — in connection with the maintenance of international peace and security. Such implementation is a normal feature of the functioning of the United Nations.[46]

This is a vital element, for if one can accept this interpretation of the term "action" and the extent of involvement that it entails, one can accept the entire nature of the Opinion, for herein lies the crucial question of the extent of the involvement of the General Assembly in world conflicts. While the Court did not seek to accurately define exactly what operations and actions were within the authority of the General Assembly, it did limit them by setting the upward limit of their involvement — the enforcement and coercive

[46] *Ibid.*, pp. 164-165.

action with is reserved solely to the discretion of the Security Council. However, the Court left open who shall determine if a particular action is enforcement or coercive or within the bounds of the function of the General Assembly, leaving this issue, quite wisely I think, to the political negotiations and circumstances of each immediate crisis rather than mandating a rule which itself might prove dilatory and superfluous to the maintenance of international peace and security — the purpose of the entire operation.

Justices Quintana, Koretsky and Rivero, however all disagreed with the distinction drawn by the majority. For them, the distinction between the types of operations was much too subtle and vague to be effective. As Justice Koretsky noted: how is the operation in the Congo different from that in Korea? Justice Quintana also pursued a similar line of reasoning in his dissenting opinion and questioned in detail who should arbitrate jurisdictional disputes over enforcement operations. Each Justice then proceeded to restate their separate beliefs that authority for such enforcement operations lies not in the General Assembly, but in the Security Council alone. They interpreted the Charter as mandating to the General Assembly only the power to discuss and to recommend, and not to act under any circumstances.

After reading the differing opinions, one tends to get an immediate impression that the majority is perhaps too idealistic in striving for the goals of the Organization and the prevention of all future wars and the other purposes of the UN. However, it is necessary, I believe, to realize the context within which the Court was operating, for then, the Court appears to be tempering its legal reasoning with political reality. Faced with the imminent bankruptcy of the United Nations and the internal power struggle between the respective power blocs which became delineated between the Security Council and the General Assembly, the Court found itself in the position of having to issue an opinion which was first legally proper, and second and equally important, one which would be acceptable to the United Nations (recalling that the Soviet bloc had already announced its intention not to be bound by the decision of the Court), as well as attempting to maintain the prestige and legal integrity of the Court. In this sense, the Court is acutely aware of the political realities of the world and in reaching its decision is trying to balance them while retaining the legal integrity and effectiveness of the Court.

In considering the decision in this light, the majority opinion, even though they rely on general terms and do not clearly and specifically define some of their terms, is actually a carefully designed and intricately balanced frame which serves to further the Organization as a whole by accepting the political reality of the power struggle and the need for effective UN action in global disputes while specifically setting the limits of this advance, permitting that to be decided in the political realm of the UN in which the opinion will be given force if it is to be useful and, quite literally, if the ICJ is to remain as an impartial juridicial source for the governments of the world. And throughout all of this balancing, the Court provides a legally accurate and acceptable opinion of the question at hand.

Turning to Article 43 as one of the last points of contention, the Court

dealt with the claim that the Security Council, being responsible for international peace and security and the special agreements related thereto, was responsible also for the financial obligations, or at least for arranging the financing, incurred by all peace-keeping operations. This derogated directly from Article 17 under which the General Assembly functioned and sought to prescribe a degree of financial control and therefore actual control over peace-keeping forces to the Security Council where the veto still prevailed. The Court seemed to deal with this contention somewhat out-of-hand by noting that O.N.U.C. and U.N.E.F. were not enforcement actions per se and were therefore not subject to any of the Chapter VII restrictions and limitations, including Article 43. But conceeding that even if Article 43 did apply to the expenses in question, the Court stated that it could not accept a limiting view of the article, or for that matter of any article of the Charter. For as the Court noted, it was entirely possible for the Security Council to have the General Assembly carry out this function at its behest through the General Assembly's apportionment power, and in accordance with Article 29 of the Charter. Indeed, as the Court noted, if one of the parties to a dispute wishes the financial cost borne by all of the members of the UN for whatever reason, it would be virtually impossible for the Security Council to achieve because of their lack of authority in this general budgetary aspect. This function is reserved in the Charter, as we have just proven, solely to the General Assembly. Thus, even if Article 43 were applicable, such a limited interpretation as that proposed by the Soviet Union was unacceptable to the Court in light of the realities and legalities of the distribution of powers within the United Nations under the Charter.

After having finally dismisssed all of the objecting arguments and finally having established a criteria for the expenses of the Organization, the Court then turned to consider the U.N.E.F. and O.N.U.C. costs as expenses of the Organization within the meaning of Article 17(2). The Court established their purpose for the examination by stating that:

> In determining whether the actual expenditures authorized constitute "expenses of the Organization within the meaning of Article 17, paragraph 2 of the Charter," the Court agrees that such expenditures must be tested by their relationship to the purposes of the United Nations in the sense that if an expenditure were made for a purpose which is not one of the purposes of the United Nations, it could not be considered an "expense of the Organization." . . .
>
> The primary place ascribed to international peace and security is natural, since the fulfillment of the other purposes will be dependent upon the attainment of that basic condition. The purposes are broad indeed, but neither they nor the power conferred to effectuate them are unlimited. Save as they have entrusted the Organization with the attainment of these common ends, the Member States retain their freedom of action. But when the Organization takes action which warrants the assertion that it was appropriate for the fulfillment of one of the stated purposes of the Organization, the presumption is that such action is not *ultra vires* the Organization.[47]

[47] *Ibid.*, pp. 167-168.

There is special significance in this statement by the Court in that it modifies one of the premises established by the Court in the *Lotus* case.[47a] In that case, the Court pronounced that rules of law which are binding on States must emanate from their own free will and in accordance with their own sovereign intentions. Therefore restrictions upon independent States cannot be assumed. However, here, the Court is stating that the explicit provisions of the Charter may bind States to common purposes. These two principles are not altogether removed from one another in that the States which have signed the U.N. Charter have signed the document of their own free will and have in effect agreed to be bound by the Charter as an international treaty. Still, the concept that a State may be bound to support one of a number of broad purposes of the Organization represents a step forward from the original *Lotus* decision. While many might argue that it represents a step in the direction of a world government by abridging the sovereignty of the Member States, on a more conventional scale, it represents the acceptance of the United Nations as an international organization by the members, and as a personality in world affairs which may bind all Member States regardless of their particular political persuasion or involvement in the world situation.

There is another interesting aspect which this interpretation by the Court provides. This particular opinion negates the possibility of demands for restitution, etc. should the Uniting for Peace Resolution specifically, but also applying to the basis for any other peace-keeping operation, be declared in and of itself ultra vires or for some reason non-functional in the light of the Charter. If Uniting for Peace was declared to be *ultra vires* at some future point, then it is quite conceivable that those States which contributed money and resources to operations such as U.N.E.F. might well expect some sort of reimbursement. The decision here, negates that possibility in that the action was undertaken to achieve one of the prime purposes of the Organization, the maintenance of international peace and security, and being done for this purpose, it cannot be *ultra vires,* and therefore the expenditures were valid and non-refundable.

As if to answer an anticipated question, the Court further briefly elucidated on this point, but did not venture to go too far with the matter in that it was not directly related to the certain expenses quesion at hand. The Court noted that an action might, be "within the purposes of the UN, carried out 'in a manner not in conformity with the division of functions among the several organs which the Charter prescribes" and still be *inter vires* as far as the United Nations was concerned.

> If the action was taken by the wrong organ, it was irregular as a matter of that internal structure, but this would not necessarily mean that the expenses incurred were not an expense of the Organization. Both national and international law contemplate cases in which the body corporate or politic may be bound, as to third parties, by an ultra vires act of an agent.[48]

While the Court was careful to note that on this question of *ultra vires*

[47a] The S.S. "Lotus" (France v. Turkey) *Permanent Court of International Justice*, P.C.I.J., Ser. A, No. 10, 2 Hudson, World Court Reports 20 (1935).
[48] *Ibid.*, p. 168.

it was venturing to explain its reasoning rather than to issue a definitive statement of international law, the point of the reasoning is not lost. The Court is clearly giving primary import to the purposes of the Organization in determining the validity of financial questions rather than to more narrow concerns such as the exact delineation of power, etc.

The Court lastly proceeded to relate O.N.U.C. and U.N.E.F. to the "purpose of the Organization" criteria it had established to test if indeed these two operational expenses can be considered as expenses of the Organization. First considering U.N.E.F., the Court noted that it was a creation of the General Assembly (however, their previous statement relating to the proper organ function seems to end any challenge to this point) and was created without dissent, and at the invitation of several of the participants. The purpose of U.N.E.F. was to promote and to maintain peace and security in the area. The duties envisioned for the Force at its creation were noncoercive. From this data, as well as the statements and the written submissions of the Secretary-General as to the purpose of the operation, the Court had no difficulty in deducing that U.N.E.F. was not an enforcement operation and was therefore not subject to Chapter VII of the Charter.

The Court also apparently did not have difficulty with the fact that U.N.E.F. was financed from a special ad hoc account, ruling that this did not imply an obligation separate from the regular budget and from the assessment principle. The Court thus stated definitively that U.N.E.F. expenses were and had been from their initial occurrence, expenses of the Organization within the meaning of Article 17, paragraph 2.

The peculiarities of the O.N.U.C. financing also did not seem to bother the Court. They noted the initial Security Council authorization for the force, again a matter which had no dissent. They rejected a claim by the Soviet Union again that although there was proper authorization, the execution and administration of the operation had violated the Security Council mandate and that the Secretary-General had exceeded his authority in his conduct of the operation. The Court cited Article 29 and 98 of the Charter in support of authority of the Secretary-General to act in favor of the Security Council, once the Council has designated to him that responsibility. Any disagreement with the conduct of the operation was inherently a political matter which it served the Court well to remain out of. Indeed, if dissatisfaction with the performance of the Secretary-General was widespread, the original mandate could be withdrawn, revesting authority in the Security Council itself. The absence of a consensus to do this however indicated a political dissatisfaction which the Court avoided.

The Court had a somewhat more difficult time in declaring that O.N.U.C. was not an enforcement action, as several of the dissenting Justices noted in their respective opinions. The Court declared that O.N.U.C. did not represent an armed force but rather relied on the definition of the Secretary-General which termed the action "an action of the Member States coming to the aid of a State experiencing internal turmoil. It was not an action between two States, but rather an action internal to one State." Agreeing that O.N.U.C. was not a military action against another State, the Court held that O.N.U.C. was not within the realm of the powers and functions of the Security Council.

On the question of the financing of O.N.U.C. which it will be recalled contained the progressively weaker worded resolutions disclaiming the obligatory nature of the expenses, the Court refused to consider the number of resolutions before them and instead argued that the specific wording of the financing resolutions was not appropriate for the I.C.J. to consider. Rather, the Court relied on the different scales of assessment which were established and the different basis for apportionment which were developed for each resolution. From this, the Court was able to conclude that the expenses of O.N.U.C. were definitely within the realm of Article 17.

Thus the Court returned an opinion which served to further the development of the Organization, resolve the present legal question before the Court, and establish a foundation for future decisions to expand upon. The opinion of the Court was in many ways imperfect,—for example, often creating more questions than it answered, as in matter concerning the purposes of the Organization and expenditures the Court did not consider who shall determine the extent of conformity to the purpose of the Organization, what shall occur if an act is found to be *ultra vires* in part, etc. While several of the individual Justices did consider these and a number of different related questions, such as the authority to mandate payment for the provisions of a non-binding recommendation or resolution, the definition of majority and consensus in determining financial liability, the responsibility of States who vote against funded operations in making payments to finance that operation, etc., and these provide for interesting analysis and debate, the larger impact was made by the majority opinion, and for that reason, this consideration will confine itself to that opinion only. Yet for its weakest moments, the opinion is a strong legal argument with well-conceived reasoning and legal interpretation. In countering the argument for a restrictive interpretation of the terms in Article 17, the opinion is also strong, demonstrating good legal reasoning. In the matters of the relation of the Security Council and the General Assembly, the Court provides a clear, logical reasoning for its determination.

In general, this advisory opinion of the Court was well-reasoned and sound. In those areas where the Opinion was vague or uncertain, a degree of benefit seems to have been derived in that the opinion retained its political viability without losing any of its legal character.

But the Opinion itself did not end the matter of peace-keeping funding. When the Opinion was presented to the General Assembly, the Soviet Union moved that the body merely take note of the opinion (a definite slap to the prestige of the Court). The vast majority of the General Assembly, however, disagreed with the Soviet position and the opinion was accepted by a large majority. But an advisory opinion of the International Court of Justice carries no enforcement provision, other than perhaps the reliance on the prestige and judicial authority of the Court to persuade adherence. When the opinion was returned, the U.N. was still in financial difficulty. The $200 million bond issue which the U.N. had floated was not sufficient to cover the mounting cost of doing business. In addition, subscriptions to the bond issue had not been borne as evenly as had been hoped, and there still existed a substantial amount of unsold notes.

The opinion of the Court did seem to have some bearing on many of

the unpaid members. Liabilities which had been mounting for years began to be repaid to the Organization by many of the smaller States. However, the Soviet Union adamantly refused to pay any portion of the cost of the peace-keeping operations. Thus in 1963, when the Soviet Union fell more than two years behind in the payment of its assessment, a move was begun to institute action under Article 19 of the Charter. (It should be remembered that the incident which initially triggered the bringing of the case to the I.C.J. was the question over whether Article 19 could be used.) Article 19 had never been invoked in the history of the U.N.—there was one incident in 1961 when Haiti fell more than two years behind; however her envoy to the U.N. did not appear to claim his seat and to vote until some of the debt had been paid. The political maneuvers which were involved in this U.S.-U.S.S.R. show-down have been well documented. For a moment, however, I would like to consider the matter which was the center of so much controversy during this time—the procedure for the removal occassioned by Article 19.

The Soviet Union claimed that a 2/3 vote was necessary to remove her vote in the General Assembly. The U.S. for the most part argued that a mere declaration from the President of the Assembly was sufficient to strip Russia of her voting privilege. This issue was never fully resolved, even after the controversy was ended. But a reference to the San Francisco Conference reveals that initially in Article 18—the article which mandates a 2/3 voting procedure—a provision had been included requiring such a vote for the expulsion of a member and for the removal of voting privileges. In the development of the Article, it was agreed that a simple majority would be sufficient to remove a voting privilege. The change, which had interesting ramifications because of translational difficulties, was accomplished and the provision for the 2/3 vote was deleted. Thus a simple majority vote of the General Assembly would have been sufficient to have removed Russia's vote according to the clearly expressed intention of the framers of the Charter.

What does the future hold for the financing? The question is difficult to answer. All peace-keeping operations after O.N.U.C. and U.N.E.F. have been financed through voluntary contributions or through special contributions by the States directly involved in the conflict. Thus the question which threatened to quite literally destroy the U.N. in the 1960's has never really been answered, perhaps because the basic underlying questions have never been answered. It has merely been allayed. Given another U.N. action such as Korea which would require general support, one can only assume that the crisis which developed in the 60's would reappear in the 70's, with perhaps a very different outcome. Indeed, a Uniting for Peace type of action may not even be necessary given the disenchantment of the U.S. with the United Nations. Since the U.S. consistently makes the largest general voluntary and voluntary peace-keeping contributions to the Organization, a severe crisis could develop merely because the U.S. decided not to contribute.

In closing this paper, I am reminded of what was said in the beginning—that the financial crisis was actually a crisis over the role of the U.N. in world affairs. In retrospect, this appears even more true. The financial crisis will end when the member states—all member states—decide that the U.N. is an indispensible part of international relations and agree to financially support

it as such. Until that time, the Organization will have to "pinch pennies" because financial help will not be forthcoming until that time.

APPENDIX I

Number 1

The Countries were: Australia, Bulgaria, Byelorussia Soviet Socialist Republic, Canada, Czechoslavakia, Denmark, France, Ireland, Italy, Japan, Netherlands, Portugal, Rumania, South Africa, Spain, Ukranian Soviet Socialist Republic, Union of Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, and Upper Volta.

Mexico, the Philippines, and Poland referred the I.C.J. to their General Assembly arguments.

Number 2

These were: Canada, represented by M. Marcel Cadieux; the Netherlands, represented by Professor W. Riphagen; Italy, represented by M. Ricardo Monaco; The U.K. of G.B. represented by the Right Honorable Sir Reginald Manningham—Buller, Q.C.; Norway, represented by Mr. Jens Eversen; Australia, represented by Sir Kenneth O'Caoimki, S.C.; U.S.S.R., represented by Professor G. I. Tuskin; and the United States, represented by Abram Chayas.

Number 3

Article 17

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.

Number 4

Article 19

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 contribution due from it for the preceeding two full years. The General Assembly may, nevertheless permit a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Number 5

Income from other sources include funds made available through various Member related general income sources, i.e., rental income and invested

revenues, the sale of U.N. postage stamps, U.N. publications, services to headquarters visits as in New York and Geneva, etc.

As the revenue from these sources increase, in relation to the aggregate U.N. budget, the amount, though not the percentage of each Member's assessed contribution to the General Budget is decreased. However, assessments still provide the vast majority of funds—over 70% of budget of the Organization.

APPENDIX II

U.N.E.F. Forces

Country	*Men & Officers*
Brazil	630
Denmark	562
Canada	945
India	1,249
Norway	613
Sweden	424
Yogoslavia	710
	5,133

Largest cash contributors:

US—$23 million
UK 2.5 million
Fra. .4 million.

—John Stoessinger. *Financing the United Nations System* (Washington, D.C.: The Brookings Institution, 1964), p. 111-2.

O.N.U.C. Forces

Country	*staff person.*	*combat troops*	*air person.*	*admin. person.*	*Total*
Argentina	2		48		50
Austria	1			46	47
Brazil			2		2
Canada	16		19	273	308
Congo (L)		616			616
Denmark	7		5	87	99
Ethiopia	11	2,982	46		3,039
Ghana		704			704
India	77	4,618	112	928	5,735
Ireland	43	690		5	738
Italy	2		8	58	68
Liberia	4				240
Malaya	8	236			1,620
Netherlands	1	1,612			6
Nigeria	20		5		1,734
Norway	10	1,714			149
Pakistan	40		78	61	698
Sierra Leone	122		658		122
Sweden	117	651	200	84	952
Tunisia	2	1,044			1,046
	371	14,989	1,181	1,542	17,973

Cash contributors: US—$10.3 million, USSR, 1.5 million, Canada—.65 million, UK—.52 million. [Ibid., p. 120.]

APPENDIX III

The Polish position:

It is self-evident that the cost of freeing the Canal, which has been immobilized by the British-French attack, as well as the other expenses linked with the return of the Near Eastern situation to normal, cannot be borne by all the Members of the United Nations, but must be borne by the Governments which committed the aggression. (Per Poland, GAOR, 11th sess., 592nd plen. metg., para. 81.)

The Byelorussian SSR position:

The delegation of the Byelorussian SSR yesterday voted against the draft resolution proposed by the Secretary-General for the allocation of a pleminary sum of $10 million for the maintenance of the United Nations Emergency Force. We consider that the United Kingdom, France and Israel, which perpetrated the aggression against Egypt, should bear the burden of any expenses arising from the maintenance of the Force. (Ibid., 597th mtg., para 32.)

The Soviet position:

These States are aware that the establishment of a United Nations Emergency Force resulted from the armed attack of the United Kingdom, France and Israel on Egypt and consider that it would therefore be reasonable and fair if the cost of maintaining the Force were borne by the States responsible for the aggression. Such a method of financing the cost would correspond to one of the basic and most important principles on contemporary international law, under which a State that has committed aggression must bear both material and political responsibility for it.

It is therefore entirely legitimate that a number of the Member States have announced that in principle they refuse to make any contribution towards financing the United Nations Emergency Force and at the same time that some other States, as the Secretary-General points out in his report, have declared that they cannot make any voluntary contributions towards the expenses of the Force. . . . The Soviet delegation considers that to relieve the United Kingdom, France and Israel of material responsibility for the expenditure arising out of their aggression against Egypt, including the cost of maintaining the United Nations Emergency Force, and to place this responsibility on the shoulders of other States which resisted that aggression and themselves suffered losses from the prolonged obstruction of the Suez Canal, would be incompatible with elementary concepts of fairness and with the principles on which the United Nations is based. (GAOR, 12th sess., 720 mtg., para. 137-9.)

APPENDIX IV

68. Our position may be summed up by the following three points: we are in favour of the maintenance of the Emergency Force as an institution which is necessary for peace in the Middle East and as a basis for the evolution

of a permanent instrument of military action by the United Nations; we recognize the political expediency and the principle of equity which make it necessary for all Member States to contribute to the maintenance of the Force; we cannot, however, regard as either just or equitable an assessment system according to which the financial contributions to be made by Member States are in proportion to their contributions to the regular administrative budget of the United Nations.

69. Our arguments in support of the latter objection may be briefly stated as follows.

70. In the first place, we consider that, in the case of the Middle East, the Emergency Force became necessary owing to the individual action of certain Powers which, in our opinion, thus became primarily responsible for the crisis which compelled the United Nations to set up the Emergency Force. We consider also that this responsibility cannot and should not be limited to political matters, but must inevitably include financial liability.

71. Secondly, we believe that peace is a universal responsibility and that stability in the Middle East must therefore be a matter of international concern. Apart from these general interests, however, we also believe that there are material interests, which affect certain Powers and certain European and Asian geographical areas much more directly than others. I must point out that these material interests cannot fail to exercise an influence on the question of stability in the Middle East.

72. Thirdly, we consider that not only the nations outside these regions, but more particularly the peoples of the area, have a more direct responsibility, owing to the tensions and instability prevailing among them, and that a more determined effort on the part of these peoples would decrease the risks which have made it necessary to establish and maintain the Emergency Force. This responsibility of causality and this direct interest in survival should entail not only political, but also financial responsibility.

73. Fourthly, Article 24 of the Charter establishes the primary responsibility of the members of the Security Council for the maintenance of peace and, in our opinion, this responsibility rests with the five great Powers who are permanent members and have the privilege of the veto, so often attacked by the Latin American countries. We firmly believe that the greater the privilege, the greater the responsibility, and that this responsibility is not limited to political matters. Our congratulations are due to the United States for the efforts it has made through voluntary contributions, over and above its regular contribution. We regret that another great Power has refused to make any contribution whatsoever, and hope that this will be remedied in the future. Finally, we are surprised that two other great countries have not made a greater effort.

74. Fifthly, we know that the defence budgets of the great Powers are reckoned in millions; that is not the case of the countries in my region. For these great Powers, the contribution to the Emergency Force is but a drop in the financial torrent of their military appropriations; but for the small countries of the United Nations, the increase of their contribution by 50 per cent—for that is what the effort demanded of us amounts to—entails extraordinary

sacrifices. We realize that this effort must be international and we therefore do not refuse to contribute, but we should like to do so on a more equitable basis.

75. Sixthly, the financial sacrifice of the more highly developed countries would mean one more tax for their citizens and one luxury the less in their daily life; for the less-developed countries, however, where the level of living is very low and where constant effort is exerted to raise this level inch by inch, against tremendous odds, the financial sacrifice asked of us does indeed mean one more tax, but not one luxury the less. It means that we would have to dispense with something vitally necessary, some remedy for the ills that oppress our peoples. It would not be amiss to point out to public opinion outside this assembly hall that a Latin American citizen pays more to the United Nations than a citizen of the United States of America; and it is in this proportion that we are asked to contribute to the Emergency Force. We quite realize that the voluntary contributions of the United States of America exceeded its regular contribution in 1957. Would that that example were followed by other great Powers!

76. Seventhly and finally, it should be borne in mind that the Emergency Force paradoxically seems to relate to a permanent emergency and that, like so many other bodies established on a short-term basis by the United Nations, it shows every sign of continuing for years.

77. It is painful to present all these arguments, but my Government has obligations to its own people. In speaking of financial matters, in which selfish interests always tend to appear, it is usually forgotten that questions relating to contributions must always be based on an inexorable principle of justice and equity. There is no modern country which does not realize that in contributions justice lies in proportionality, but there seems to be a tendency at times to forget the criteria of judgement and the standards to which the proportions must be adjusted.

78. For these reasons, my delegation will be unable to support the draft resolution (*A/L.235 and Add. 1*) to which I have referred and, in explaining our position, I should like to submit my Government's formal reservation with regard to any obligations to which this draft resolution may give rise if it is adopted by the Assembly. I would also extend this reservation to the doubtful interpretation whereby a draft resolution such as that proposed may be held to place obligations upon Member States under Article 19 of the United Nations Charter.

79. I cannot and should not leave this rostrum without expressing on behalf of my Government our gratitude for the timely and generous effort of the Governments of Brazil, Canada, Colombia, Denmark, Finland, India, Indonesia, Norway, Sweden and Yugoslavia, countries which, at great sacrifice, have sent contingents to the United Nations Emergency Force. Our gratitude is also due to the United States for its exceptional financial support. (Ecuador, 11th sess., 721st meeting, para. 68-74.)

32. My delegation considers that there are circumstances in which the United Nations collectively and its Members individually must assume financial responsibilities in connection with a specific situation. But in this par-

ticular instance, where the situation was brought about through the deliberate action of certain Member States, the Government of El Salvador can hardly be expected to agree to contribute in any way towards the costs of clearing the Suez Canal of the obstructions which prevent it from operating normally.

33. It would like to refer in a general way to the theory of human responsibility. Within a given State, when an offence of any kind is committed, there is as we all know a twofold responsibility: criminal responsibility and civil responsibility. If we apply this to the case under discussion, we cannot but conclude that those responsible for the present situation in the Middle East should bear the responsibility for restoring the situation as it existed before the events which have taken place in Egypt since the end of last month. In any case, if there is to be any sharing of the costs involved in clearing the Suez Canal, then the users of the Canal, those who benefit from its use, should be the ones to bear the financial responsibility.

34. I am certain, and I should like to state emphatically and very clearly, that neither the Executive nor the Legislative Assembly of my country could agree to endorse any legislation under which El Salvador would contribute to the costs involved in the clearing operations. I should like our position on the question to be perfectly clear, because the solemn responsibilty of the delegation of El Salvador towards the General Assembly is involved. This morning we learned that some countries are proposing to undertake the clearing of the Suez Canal on their own account. If that is so, what I said is superfluous. However, in any event, I must state that my delegation is very much concerned with this aspect of the question and wishes to place on record that it could not endorse any resolution to such an effect. [*Per El Salvador, GAOR, 11th sess., 596th mtg.*]

APPENDIX V

Several writers, most notably, Leo Gross, have criticized the U.N. for the time lag between the incurrance of the expenses and the request for the opinion. Gross noted that:

> ideally it should have been, to the Court for an opinion before the first financial resolutions on UNEF and ONUC were adopted or immediately after they were adopted, or as soon as it was established that Members were in arrears, there would not have been an impressive series of resolutions before the Court, but one or none. The question then would clearly have been whether the expenses which it was proposed to incur (sic), or which in fact had been incurred on a provisional basis, could be regarded legally as coming within the budgetary powers of the Assembly under paragraphs 1 or 2, or both, of Article 17. The Court then would not have been able to rely on a string of resolutions and to attach probative value to them. (Lea Gross. "Expenses of the United Nations For Peace-Keeping Operations: The Advisory Opinion of the International Court of Justice," *International Organizations* XVII, March 1963, p. 18.

While this point is well taken, the Court, as Gross notes later in his article, used sound judicial reasoning in defining the basis of the question

and in utilizing ipse dixit of the General Assembly as supportative rather than as primary basis for its decision.

While it may be argued that the Court was placed in a political situation such that a decision in the affirmative was inevitable, this reasoning overlooks the independent nature of the Court and the sound legal reasoning presented in support of the decision. The decision of the Court was supported not only by an analysis of the meaning of the words as they appeared in the text, but also by an examination of the San Francisco proceedings and the intent of the entire Charter. For, as the Court so aptly noted in the *Eastern Caribbean* case: "The Court, being a Court of Justice, cannot, even in an advisory opinion, depart from the essential rules guiding their activity as a Court." (States of Eastern Caribbean, 23 July 1923, PCIJ, Series B, no. 5, p. 29)

Thus the Court used the principles of law in the *Certain Expenses* case and disregarded the political overtones, although perhaps not completely, and handed down a judicially sound opinion.

APPENDIX VI

France and South Africa both carried their contention over the question before the Court to the point that they orally argued that the Court should refuse to respond to the Request of the General Assembly. They based their arguments on the grounds that 1) the ambiguous and equivocal nature of the question which made it impossible in their view to render a legal opinion; 2) that any opinion would result in a de facto revision of the constitutional rules of the Charter and 3) that if any opinion was rendered, it should examine the reaison d'etre of the initial resolutions in relation to their conformity with the letter and spirit of the Charter before considering the expenses incurred as a result of the resolutions.

In answering this claim, the Court noted that it could only refuse to respond to such a request of the General Assembly on the basis of "compelling reasons" which the majority of the Justices felt were absent here. The Court made it clear that they considered the case a matter of treaty interpretation and noted that:

> It is true that most interpretation of the Charter of the United Nations will have political significance, great or small. In the nature of things, it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely, the interpretation of a treaty provision. . . (Opinion, p. 155.)

Global Reach: The Power of the Multinational Corporations. By Richard J. Barnet and Ronald E. Muller. (New York: Simon and Schuster, 1974. pp. 508. $11.95).

In this volume, the authors—one a political scientist and the other an economist—present an incisive analysis of the multinational corporation. This new form of human organization is rapidly making claims on the future world order as a powerful competitor of the nation-state by the virtue of its planetary enterprise. Various social scientists have only recently become cognizant of this new element in transnational intercourse operating largely beyond the realm of national control while exercising powerful influence on the world economy and, by extension, on political relations among nation-states. It is the possession of superior managerial skills, argue the authors, that the managers of the multinational corporations can conceive of the world as an integrated market place and begin to institute structures for the production of goods and services through modern systemized technology. They remain increasingly oblivious of the national frontiers, all in search of the vast personal profits for the shareholders.

Written in an easy narrative style, the book is perspicuous and illuminating. The authors combine an artful description of the mysteries of the multinational corporations with a pungent analysis of the impact of these business enterprises on countries in which they operate in general, and on international trade and social change in particular. They reveal that many of the economic ills of the present—inflation, unemployment, ecological decay, and even deficits in the balance of payments—are largely the products of the unscrupulous activities of these monstrous organizations. The authors cogently show that the multinational corporations have their economic tentacles around the globe so pervasively that they, in effect, control what people want, will have, and what prices will be paid. The global corporations are not purely economic organizations, but have, for all practical purposes, become private governments. They manipulate political processes and often dominate the conflict of national political life outright. But even more alarming is the cultivation of their own corporate loyalty and the dissemination of corporate ideology which indirectly denigrates national governments as mechanisms for assuring personal welfare, and enhances the image of the multinational corporations as means for obtaining personal satisfaction.

The authors contend, furthermore, that the multinational corporations have been able to secure huge profits, and evade high taxes by moving large amounts of capital across national boundaries made possible through various accounting procedures. Many global firms operate out of tax havens, and are, therefore, beholden to no nation or society; and because of their control of productive technology and finance capital, they shift production from one market to another, leaving behind unemploymed workers, depleted resources and ecological destruction. Through restrictive interconnections which essentially amount to powerful producers' cartels the global corporations dominate the world productive system to such an extent that the operation of a competitive market system is virtually destroyed—much to the detriment of the

consumer. This globalization of the means of production and distribution, controlled by a few giant enterprises, has brought about the structural transformation of the world economy, and, the authors appropriately note, is undermining the sovereign power of the nation-state to maintain economic and political stability within its territory. Even the United States, the world's leading industrial country is not immune to the conditions of instability resembling that of Latin America, characterized by inflationary recession, erratic mails, campus disorders, power failures, food shortages and bankrupt railroads.

With the publication of this book, Barnet and Muller have kicked up a hornets nest which some will find fascinating as a study into the interstices of power, while others will be disturbed at the pessimism inherent in this work. In all honesty, however, recent revelations in connection with the Watergate episode have provided painful glimpses into the labyrinthine world of the multinational corporations. Actually this work demonstrates a remarkable ability to discern the essence of a problem amid a plethora of obfuscating minutiae, to articulate it expressively and precisely, and to generalize from disparate occurences to a wider universe; and all this accompanied by a penchant for, and great skill at, thoroughness and poignant analysis. Through a level headed and balanced discussion the authors sought to bring clarity and order to one of the most controversial issues of our time. They have avoided the temptation to make evaluative judgments at critical junctures; instead, they have let the corporate officials tell the story in their own words.

It may be a bit far-fetched for the authors to advance the argument that under the onslaught of the corporate power the nation-state is rapidly becoming obsolete. This may be a somewhat plausible position but governments —slow, cumbersome, and complicated—do require time before they move against disruptive forces, especially when the sudden emergence of the multinational corporations have caught the world by surprise. It is also questionable if global corporations can win the emotional loyalty and become symbols of attachment for people raised in diverse cultural settings, even if the consumption ideology is extensively articulated. It is also likely that consumers may revolt at the gleamingly packeged standardized products, as it is happening among some segments of the American society, or more overtly in Latin America, where foreign companies are targets of guerrilla attacks.

Moreover, despite general political weakness in developing countries, some governments are effectively challenging the hegemony of the multinational corporations. These governments are capable of organizing their own power base, as the authors correctly note, which the OPEC countries have demonstrated to the world. It seems that the writers' colossal disenchantment with national governments may be partly responsible for their too ready acceptance of the limitations of political systems in combating the excessive power of the multinational corporations.

Generally, in developing their major theme, the authors adopt a measured and cautious stance, producing a profusion of data gleaned painstakingly from such widely diverse sources as corporate reports and congressional hearings to demonstrate the proposition that "global corporations are the

first in history with the organization, technology, money and ideology to make a credible try at managing the world as an integrated unit." (p. 13). They provide ample documentation for many of their major points with research notes towards the end of the book consisting of some eighty-nine pages besides the direct quotes from several corporate officials who are identified throughout the text. As a whole, the book is clearly aimed at the popular audience, and on occasion in dealing with the dilemma posed by the multinational corporations the authors seem almost too harsh in their examination, perhaps even sweeping in their indictment. But there is enough of substance in this volume to warrant serious attention by social scientists interested in understanding social and political ramification of the super-business enterprises on the changing structure of global power. In many ways this work is a timely addition to the growing literature on multinational corporations and, despite some shortcomings, this study will reward the careful reader with a staggering amount of information hitherto unavailable in such a systematic form.

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Charles A. Beard and American Foreign Policy. Thomas C. Kennedy. (The University Press of Florida, 1975. 199 pp. $8.50.)

Soon after the eighteen nineties American foreign relationships completed a kind of transitional development which many at first did not comprehend, others severely criticized, some almost completely misjudged, and still others tried to ignore. In time, a growing number insisted that these new foreign relationships required new responsibilities of a moral as well as of a physical character that the nation, because of its Christian character, could not deny. Many also recognized that these new foreign relationships required a substantial remodeling and reorientation of several major American institutions, particularly the presidency and the Congress.

At the start, certain American intellectual leaders were vigorous in their appraisal of these matters and have continued to keep their views at the center of a very stormy discussion. Among these intellectuals none provoked more thought and response than Charles Austin Beard (and his brilliant wife Mary). So imposing were his views that he still remains a *volte force* (though he died in 1948) in any meaningful historiographical study of twentieth century American foreign policy. This worthy contribution by Thomas Kennedy to the study of the historiographical importance of Beard is evidence of that.

Much of what Kennedy writes about Beard is old hat but his study is unique because it is primarily oriented in historical theory and deals mostly with the philosophical basis of Beard's treatment of history, narrowing it down, of course, to the impact of American foreign relations. Along the way, Kennedy convincingly shows that Beard did not deviate appreciably from those philosophical principles he had advocated from the start of the century. Beard did amend his conclusions in the application of those principles as the nation passed from war to war and through other foreign crises. This was for one basic reason. Americans and their leaders, he insisted, were not of adequate moral and philosophical fiber to fulfill the kinds of commitments they had made. Consequently, Beard charged, advertently or inadvertently, much of the moral and humanitarian purpose of the nation's new foreign relationships became undermined, such as the newly adopted course of American enlightened imperialism following the Spanish-American war and finally the righteous reasons why America entered two world wars. Of course the forces of foreign evil collaborated with their American counterparts.

But what was the alternative to this new course of American foreign involvement about which Beard was now so critical? The making of an alternative by Beard and basing it upon acceptable philosophical principles are the main targets of Kennedy's analysis. As Beard, Kennedy notes, was a superior product of rugged American individualism and therefore an antagonist of the formidable forces of nineteenth and twentieth century academic formalism and continued strains of nineteenth century isolationism, he was soon caught between two opposing forces that the twentieth century tended to make more and more difficult to bear: nationalism vs. internationalism. As Beard wrote soon after the Spanish-American war, "never again can the

United States assume the isolated position which once had to be the national destiny." He soon felt forced to retreat from that conclusion, however, because the new course of American foreign relations did not remain enlightened and free from greed. Only a short time later he became even more despaired about the prospects of the widely heralded organized forms of humanitarian internationalism. What especially aroused his criticism was the failure of American and world leaders to achieve an honorable and durable peace following World War I. This was the crowning act of folly, proving that American leadership could not cope with the overpowering evils that had come to control the new course of international cooperation and organization. Even the Open Door Dictrine with its humanitarian principles would have to be abandoned. The Kellogg-Briand Pact was an outrage because its principles of outlawing war was accompanied by a greater determination to rearm. As Kennedy and others have long noted, Beard by the close of the 1920's was becoming more "ambivalent and shifting" in his views about nations, their leaders and their foreign policies. Again this was because he was continuing to lose confidence in the human use of human-made institutions. The Great Depression made him especially cynical about *laissez-faire* economics and the spreading course of national militarism, prompting him at last to conceive an alternative, "continental Americanism." He had become an avowed neo-isolationist—and the brunt of a new storm of criticism.

Beard had become a new kind of cynic and pessimist. As he admitted, his proposed new course of isolationism would limit the extent of the nation's growth and moral uplift. Such was necessary because it was the only way to avoid an American attachment to prevailing corrupt forms of internationalism. Consequently, still clinging to the principle that man is in charge of his own destiny and his environment, Beard advised that the American people reaffirm their faith in their already established nationalistic destiny and in their long established principles of success; to insure continued success the nation must return to a more restricted bilateral course of foreign relations. After all, the nation owed no further credits to "irresponsible governments" or military protection for greedy and irresponsible American investors in foreign lands. And when, it seemed, President Franklin D. Roosevelt became determined to undermine Beard's preferred course of destiny by leading the people again and quite deceitfully into an ever-ready quagmire of foreign military destruction, Beard reached his fullest stage of revolt. FDR's urge to do "good around the world" was, Beard said, the height of deceit and immoral judgment. It was the *coup de grâce* of any semblance of public morality in American leadership.

Beard, of course, had he experienced Watergate, would probably have stormed to even greater heights in his determination to restrict American leadership and the American political process because both had become the most responsible for undermining and destroying the basic philosophical principles and design of the national character. In fact, he had already partially decided that the force of politics was more destructive than economics, which could well be regarded as his one important deviation from his strong economic deterministic views. This was because in the course of politics the most far

reaching decisions affecting society are made—under the influence of corrupt principles.

Many, even Kennedy, still continue to criticize Beard because his conclusions seemed born more of personal philosophical preferences than of judgments resulting from professional research. But Kennedy, because he had access for the first time to certain private papers of the Beard family, does add some new insights and historical perspective to those philosophical preferences. And he does so with such effectiveness that even the sternest of Beard's critics (including this reviewer) will find cause to give more thought to the philosophical basis of foreign policy than they have heretofore thought proper and pertinent in deciding what is in the best national interest.

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Latin America and the United States: The Changing Political Realities. Edited by Julio Cotler and Richard R. Fagen. (Stanford, Calif.: Stanford University Press, 1974. pp. 417. $4.95)

Secretary of State Henry A. Kissinger's recent trip to Latin America (February 16-24, 1976) reflects the true character of contemporary United States-Latin American relations. After endorsing a "new dialogue" in 1973, Dr. Kissinger has aroused resentment in Latin America by promising no less than four times to visit our southern neighbors only to postpone them because of foreign policy commitments elsewhere. Thus, recent relations between the United States and Latin America have involved indifference, neglect, and displeasure, often described by the policy-makers as a "low profile." Dr. Kissinger is now faced with the changing political realities brought about by post-Vietnam foreign policy constraints, confused and contradictory relations with Cuba due to its military adventure in Angola, Latin American vexation over the discriminatory passages of the Trade Act of 1974, and an almost universal backing by Latin American governments of Panama's demands for a new canal treaty. Despite the good intentions of Kissinger's mission, it is obvious that the prevailing pattern of our Latin American policy will continue to reflect economic, security, and political interests that often only indirectly concern the Latin American republics.

Recent interest in understanding the changing patterns of United States-Latin American relations is reflected in the edited volume by Julio Cotler and Richard R. Fagen on political relations between the United States and Latin America. What is interesting and somewhat unique about *Latin America and the United States* is its efforts to combine a view of recent events by both Latin American and North American scholars interested in contemporary hemispheric affairs. The major research for this volume was done prior to and during a conference in Lima, Peru in 1972 sponsored by the Joint Committee on Latin American Studies of the Social Science Research Council, the American Council of Learned Societies, and the Ford Foundation. The twenty-two essays, half of them commentaries on the other half, were aimed at improving the conceptual, informational, and moral bases of our foreing policy toward Latin America. What emerges in the "dialogues" between Latin American and United States scholars is a thorough reexamination of two conflicting paradigms of hemispheric relations, namely, dependency and liberal. The Latin American analysts at the conference had a tendency to interpret and evaluate political relations between the United States and Latin America as a reflection of the structural relationships of the imperialist domination by the United States in inter-American relations. The "liberal" approach, according to Lowenthal (p. 215), "assumes an essential compatibility of interest between the United States and Latin America" as well as the fact that foreign policy is made by a unitary, rational actor who can be accused of policy failures. The articles by Ernest May, Christopher Mitchell, and Abraham Lowenthal call into question the liberal approach by emphasizing *process* rather than purpose or outcomes. Thus, the North American analysts suggest that a "bureaucratic politics" approach be adopted in order to better understand and explain the process of Latin American policy formulation.

Implicit in the papers is the assumption that serious professional work on hemispheric relations will help to equalize the immense power that the United States wields in Latin America. In other words, inequalities and the misuse of power can be offset by social science research and hemispheric think-tanks. Cotler and Fagen set an optimistic tone for the power of social science in the introductory essay (p. 12): "Never too far below the surface lurked the expectation that social science will make a difference, that ideas and information will eventually filter through the subsoil of the policy-making process and contribute in some way to the amelioration of injustice in the hemisphere." While it is certainly true that more research is needed in the area of foreign policy-making toward Latin America, Cotler and Fagen appear to place undue emphasis on Latin America's incapacity for "knowledge-making and knowledge-using." Certainly the contributions by the fourteen Latin Americans reflect a capacity equal to that of the North American scholars. Unfortunately, this kind of statement may simply reinforce the myth of United States superiority in information gathering and evaluation. Perhaps what is more important is the ability to interpret the information in such a way as to guide policy-makers through the maze of forces involved in making decisions that apply to Latin America. It is also true that we need to know more about Latin America and the United States from the perspective of critics and analysts in Latin America and elsewhere. The major contribution of the Cotler and Fagen volume is its concern with explanation of existing patterns of inter-American relations and the mix of viewpoints offered by scholars with different cultural backgrounds. Publishers and international funding agencies should consider and implement this approach with regard to future conferences on inter-American relations and for other geographical areas.

The Cotler and Fagen volume, however, is not without its pitfalls. The book is divided into four parts, each involving North American and Latin American perspectives on inter-American political and economic relations. The first two parts that focus on recent U.S.-Latin American relations are of considerable value because traditional notions of how the hemisphere operates are subjected to close scrutiny. Part three is particularly disappointing in that only two case studies — Brazil and Mexico — are analyzed and both essays fail to match the scholarly level attained by many of the other essays and commentaries. Furthermore, by excluding other countries the reader is unable to grasp the full range of the special relationship involved in the Latin American policy of the United States. Part four on the armed forces, counterinsurgency, and multinational corporations contains two excellent essays by John Saxe-Fernández and Luciano Martins. Both essays represent the Latin American perspective on the increasing political importance of these actors in hemispheric affairs. The reader is also confronted with several papers that fail to address the theoretical arguments and interpretations of the essays which they are supposed to critically comment on. At times there is absolutely no connection between the critical analyst and the ideas of the author of the essay.

Above all, the essays in the Cotler and Fagen volume reflect the importance of economic variables to explaining the politics of inter-American rela-

tions. Of secondary importance are political and security interests even though policy interests vary within the decision-making machinery and with different degrees of political conflict. Frequently, as the Mitchell and Lowenthal papers point out, poor policy coordination, fragmentation of the United States government, and a low level of presidential attention to Latin America, help to explain the cyclical nature of inter-American relations. Since the formulation of the Monroe Doctrine in 1823, the United States has sought to combine economic, ideological, and security interests in such a way as to safeguard United States supremacy within its sphere of influence. The essays in the Cotler and Fagen volume clearly point to the link between bureaucratic pluralism and policy fragmentation evident in the Cold War conflicts in Guatemala, Cuba, and the Dominican Republic.

The problems that Secretary of State Kissinger faces in Latin America in the early months of 1976 reflect a general loss of interest in Latin America as an area of strategic importance coupled with a more aggressive and united set of countries that clearly resent past policies of the United States. This means that U.S. policy toward Latin America will more than likely remain indifferent as long as Mexico remains stable, Fidel Castro contains his revolutionary "adventurism," and future Allende's are not elected south of the Río Bravo. As Luigi Einaudi points out, "The main objective of U.S.-Latin American policy today . . . is not positive, but negative: to avert conflict through compromise. Anything goes as long as it is quiet" (p. 243). Cotler and Fagen, and the twenty-two contributors, have taken a first step toward understanding Latin America on its own terms. All Latin Americanists and students of hemispheric relations should read this book; it provides a set of viewpoints that reflect the importance of improving the conceptual and moral foundations of American foreign policies in Latin America.

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Rich Against Poor: The Reality of Aid. By C. R. Hensman. (Baltimore: Penguin Books, 1971; Pelican Press, 1975; pp. 293; $3.95).

C. R. Hensman is a freelance writer, broadcaster and lecturer. He was born in 1923 and graduated from the University of Ceylon. After four years as editor of the quarterly *Community,* he became Research Secretary of the Overseas Council of London. He has also worked for the B.B.C. as a producer.

In *Rich Against Poor: The Reality of Aid,* Hensman attempts to explain the ever-widening gulf betwen the have and have-not nations of the world. To accomplish this, he brings to bear a rich assortment of economic data laced with neo-Marxian polemics.

He begins by confronting the reader with Four Horsemen of the Apocalypse. Exponential increases in population will, by the turn of the century, bring the number of "backward peoples" of the world to four-fifths of the world's population. This, combined with diminishing food supplies, will result in an increased belligerence among the developing nations towards the affluent societies of the "northern" hemisphere (i.e., East and West Europe, North America, Australia and Japan).

> The less amenable the hungry are to control by the powers of the "developed" world, and the better organized and diligent on their own account, the greater cause for "northern" anxiety. (5)

The inequitable allocation of resources among the people of the world is one of the primary deterrents to an improved standard of living for the poorer countries. The monopolization of 80% of the world's productive resources by 20% of its population is viewed by Hensman as an imbalance that must be corrected in order to further development of the Third World. He states, ". . . if the elimination of all that causes poverty is indeed the highest priority, one may have to be prepared to see the whole international order transformed and shaken up." (40)

Can the international economics be restructured along socialistic guidelines to ensure a more equitable distribution of resources? The prospects are dim according to Hensman, for the forces of anti-development are actively employed to guarantee the status quo. Thus, we arrive at the heart of the matter — anti-development — to which Hensman devotes over a third and the largest segment of this book.

> Our discussion (of anti-development) is really about which group of persons does what in society, who rules, who is ruled over, what the system of production is, what it cannot be, what laws are in operation and whose laws they are, and whose values and interests prevail in practice.(86)

The disparity between affluent and poor societies is ever-increasing because an elite minority within both types of societies seeks to maintain that disparity. This is, to use Morgenthau's terminology, a " 'devil' theory of imperialism . . . a conspiracy of evil capitalists for the purpose of private gain."[1]

[1] Hans J. Morgenthau, *Politics Among Nations: the Struggle for Power and Peace.* 5th ed. (New York, Alfred A. Knopf, 1973, pp. 48-49).

Hensman's inferences that the poor societies are naturally benign and the affluent societies naturally evil are absurd flights from a generally realistic approach. That ". . . the poor can make the whithered life of the feudal, capitalist and imperialist wilderness bloom with new life and hope and perhaps, love" (203) is pure conjecture.

What then are the solutions Hensman proposes to alter the syndrome of increasing disparity between have and have-not nations? He proposes a three point program to eradicate poverty.

1. Confront or educate affluent masses as to the extent of poverty.
2. Refuse to cooperate with the machinery of terror, oppression and exploration.
3. Infiltrate the seats of power and restructure the development process.

Finally, "In the case of the United States in particular, complete isolation from the affairs of the Third World, which are properly the business of its people, would give a great boost to development." (286)

The complete isolation of the United States may not be feasible or desirable for the developing countries who are sorely in need of the exchange of technologies in order to advance at a more rapid pace.

The exhortations of this book detract from an otherwise hard-nosed, sensible evaluation of the economic realities of a world hard pressed for solutions to the seemingly unreconcilable disparities of "rich against poor."

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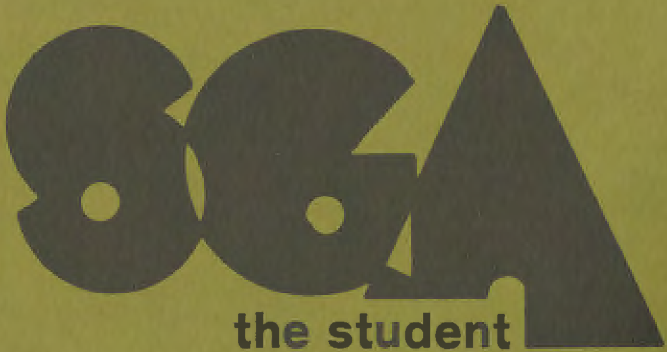

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