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**LES IMPLICATIONS INDUSTRIELLES & ECONOMIQUES
DES REGIMES PETROLIERS D'EXPLOITATION INDIRECTE
DANS LES PAYS ARABES**

**(La souveraineté pétrolière et les contrats de concession,
d'association et d'entreprise).**

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tion des Nations Unies pour le
Développement Industriel.

A l'arrière plan, nous retenons implicitement la thèse que la tutelle étrangère sur les secteurs pétroliers arabes a longuement vécu «sa phase historique» pour créer, encore moins aujourd'hui, une situation économique favorisant l'aboutissement des projets nationaux d'industrialisation pétrolière et pétrochimique dans les pays producteurs. Par ailleurs, nous considérons ici l'exploitation nationale, directe et intégrée, comme étant la stratégie pétrolière et gazière susceptible de réunir, de concours avec d'autres composantes, les conditions, certes nombreuses mais non moins indispensables, pour servir la finalité économique d'une telle stratégie. Cette finalité est en l'occurrence le renforcement et l'accélération, grâce à l'industrialisation pétrochimique, du processus de libération et du progrès économique. En fait, nous reconnaissons là le phénomène politico-historique déjà entamé dans les pays arabes et appelé à se développer par une progression accumulative, engendrant de radicales mutations successives, promouvant ainsi un développement industriel et économique national à caractère global, donc intégré.

Les implications inhérentes à l'industrialisation pétrolière et pétrochimique, fondamentalement technologiques et très souvent financières, se doublent d'une deuxième catégorie d'impli-

(Ce texte est la version remaniée d'un rapport présenté au Colloque organisé par l'Association Internationale des Juristes Démocrates et de l'Ordre National des Avocats Algériens sur le thème : «Droit pétrolier et Souveraineté des pays producteurs»).

cations externes, essentiellement commerciales, liées à la concentration oligopolistique que les entreprises multinationales expriment de nos jours. Or, toutes ces implications imposent aux projets spécifiquement nationaux, d'industrialisation pétrolière et pétrochimique, une dimension régionale, voire sous-continentale. Dans le cas des pays arabes, celle-ci ne saurait que couvrir la totalité de la Nation arabe, à partir d'un sous-ensemble maghrébin et d'un autre arabe oriental.

Pétrole et souveraineté

La question pétrolière est sous-jacente dans les problématiques de la libération économique, de la récupération de la souveraineté politique du monde arabe et du dépassement de l'irrationalité économique et politique que constitue sa partition géopolitique par les puissances impérialistes. Là est la source de toute l'importance historique que revêt le discours émancipateur constituant l'aspect fondamental de la question pétrolière arabe et le thème de ce Colloque.

Il importe de définir, au départ, ce que nous entendons par industrie pétrolière. Certes, la dimension manifeste à nos yeux, prioritaire dans la hiérarchie de l'action, est bien celle de la politique, donc celle de la revendication d'une souveraineté, en l'occurrence pétrolière. D'ailleurs, les pays arabes constituent le lien de choix de ce discours de souveraineté nationale. Mais, contre un contenu limitatif qui réduit l'industrie des hydrocarbures à la seule activité d'extraction et de production de brut ou même à celle couvrant le gaz naturel et le raffinage, nous mettons en relief la deuxième dimension de la question pétrolière. Economique, celle-ci doit être logiquement projetée et étendue en aval pour couvrir la pétrochimie dans ses phases de base, intermédiaire et de produits finis. De plus, pour une véritable intelligibilité de la question, cette dimension économique doit englober aussi les effets d'entraînement, technologiques et économiques, ainsi que ceux de la restructuration de l'ensemble de l'économie grâce à cette mise en valeur des ressources pétrolières et gazières, avec ce qu'elle implique de contribution à l'accumulation systématique industrialisante, à la modernisation et à la motorisation de l'agriculture, et plus généralement, à l'équipement des divers secteurs de l'activité économique.

C'est à partir d'une mise en cause d'essence foncièrement nationaliste et politique que le problème crucial de la nationalisation a été véritablement posé et popularisé⁽¹⁾. Deux catégories de responsabilités de l'Occident (surtout anglo-américains) sont toujours évoquées d'ailleurs pour entreprendre l'endoctrinement pétrolier nationaliste : d'abord la persécution du peuple palestinien par le sionisme allié aux puissances impérialistes, ensuite la partition du monde arabe avec ce qui s'ensuit comme mainmise politique et militaire et de construction des semblants d'Etats minuscules. C'est ce que nous appellerons le modèle révolutionnaire Celui-ci traduit une ferme volonté de récupérer et d'affirmer une souveraineté totale sur les hydrocarbures d'une part, et de promouvoir une société égalitaire moderne et unifiée en mobilisant, en toute indépendance de l'extérieur, les ressources pétrolières dans le cadre d'une industrie intégrée. Cependant, celui-ci présente deux variantes : l'une à l'élan global et immédiat, la Syrie en fournit l'unique exemple jusqu'ici, et l'autre pragmatique à offensives échelonnées et dont l'Algérie constitue l'exemple le plus représentatif. Sa stratégie consiste en une prise en mains du secteur pétrolier par une escalade basée sur un changement constant des rapports de force. Le modèle révolutionnaire échelonné traduit en réalité une approche dynamique du problème de l'exploitation indirecte⁽²⁾. La participation financière résultant d'une nationalisation partielle donne à l'exploitation bilatérale associée un caractère temporaire annonçant une prochaine récupération totale et définitive de la souveraineté pétrolière du pays concerné.

Un deuxième modèle de quasi-démission, traduit, dans les pays à grandes concessions pétrolières, tels l'Arabie Séoudite, le Koweït, l'Irak et les Emirats du Golfe, une option de base caractérisée par le maintien d'un secteur étranger prédominant, le développement d'un secteur mixte associant outsiders et sociétés nationales locales et enfin, promotion d'un secteur marginal, entièrement national. Ces deux derniers sont trop modestes en face

(1) EL-ZAIM, Issam : « Les politiques pétrolières des Etats arabes », in *Le Monde Diplomatique*, Paris, novembre 1971.

(2) EL-ZAIM, Issam : « Fi As-Siyassât An-'Naftiyyah Al-'Arabiyyah », (Des politiques pétrolières arabes), in *Al-Ma'arifah*, Damas, Ministère de la Culture, septembre 1971, (en arabe).

du secteur de concessions pour attribuer à cette pratique un caractère offensif en matière de liquidation de l'exploitation indirecte.

Le renforcement des tendances radicales au sein des pays producteurs, grâce notamment à l'Algérie, à la Syrie et de plus en plus, à la Libye, et à la radicalisation par l'OPEEC, de son action globale, autant de prémisses promettant le passage de l'amélioration en cours des divers systèmes de l'exploitation indirecte à l'affirmation de l'exploitation nationale et directe comme unique régime d'exploitation pétrolière, de promotion industrielle et économique et d'exercice véritable de la souveraineté pétrolière par les pays arabes producteurs.

La prédominance dans les faits, des premières, nous autorise à mettre l'accent, dans l'analyse qui suit, sur ce qui est en opposition antagoniste avec une pratique véritable, par l'exploitation nationale et directe, de la souveraineté pétrolière. Ce faisant, nous demeurons attentifs à la dynamique politique qui donne à la démission totale ou partielle d'un pays, en matière d'exploitation pétrolière, un caractère tactique, provisoire et promet une mutation profonde, une métarmorphose de la réalité pétrolière dans le sens de la nationalisation comme finalité politique. Les derniers développements constatés sur le front pétrolier international, de l'Amérique Latine au monde arabe, et plus particulièrement en Algérie et en Libye, nous confirment dans cette compréhension précise de l'évolution en cours.

Cependant, en dépit de ce renforcement accru du courant radical de l'exploitation nationale et directe, par un élargissement horizontal, géopolitique de son champ d'action et son approfondissement échelonné, c'est le deuxième modèle de la quasi-démission, dont l'essence est le système de l'exploitation étrangère indirecte qui continue à prédominer au sein de l'ensemble des secteurs pétroliers des pays arabes, comme nous venons de le souligner.

Qu'est-ce qu'une exploitation indirecte ?

Dès qu'un pays doté d'hydrocarbures démissionne d'exploiter lui-même et directement ses ressources, il opte, en fait, pour une modalité juridique et économique d'exploitation indirecte.

Dans la pratique, nous en discernons trois modalités, à savoir le régime concessionnaire, la participation financière (joint-venture) et les contrats d'entreprise. Si ces formes indirectes de l'exploitation co-existent, en réalité, presque toujours avec l'exploitation nationale et directe⁽¹⁾.

PREMIERE PARTIE :

Les formes d'atteinte à la souveraineté pétrolière dans l'exploitation indirecte

Il n'est pas inutile de rappeler le caractère inaliénable du droit reconnu aux Etats possesseurs de ressources pétrolières, d'en être à la fois les propriétaires et les dispositaires. La déclaration solennelle de l'Assemblée Générale des Nations Unies rendue définitive en 1962, démontre l'actualité politique et conjoncturelle de ce principe juridique de base.

La division capitaliste internationale du travail trouvait son expression, dans le secteur pétrolier, par les concessions au premier chef et par les autres formes de l'exploitation indirecte. Les pays arabes sont baptisés pays producteurs, alors que la fonction qui leur était réservée se bornait en cédant leur souveraineté pétrolière à percevoir royalties et autres revenus financiers annuels. Cette fonction « productrice » n'avait pour base que l'assertation formelle que l'extraction et la production de brut se situaient physiquement dans les territoires de ces pays. En vérité, les sociétés pétrolières multinationales décidaient des politiques d'investissement, de recherche, de production, de commercialisation et de distribution. La mise en valeur industrielle des pétroles ainsi produits se faisait toujours par ces sociétés par

(1) C'est le cas aussi bien de l'Irak, de l'Algérie que du Koweït et de l'Arabie Séoudite. Voir à cet égard notre article « Fi As-Siyassat An-Naf-tiyyah Al-'Arabiyyah » (Des politiques pétrolières arabes), op. cit.

le raffinage et la vente localisée en dehors des pays arabes⁽¹⁾. Dans ces conditions, la souveraineté pétrolière de ces pays était aliénée par quatre aspects de l'exploitation indirecte qui étaient les suivants :

Le système d'exploitation demeure encore dominant dans les industries pétrolières des pays arabes. Leurs dispositions font que : «...les compagnies concessionnaires sont constituées dans des pays étrangers et régies par leurs lois. Leurs sièges sociaux se trouvant hors des pays arabes, elles ne sont en somme qu'un instrument entre les mains des compagnies-mères pour la production et l'exportation du pétrole brut... N'étant pas sujettes aux tribunaux nationaux, elles ont recours à l'arbitrage international pour le règlement des litiges».⁽²⁾

En effet, une première forme d'atteinte à la souveraineté nationale en matière pétrolière dans les deux modes d'exploitation : la concession et la participation financière ; c'est la cessation qui en résulte par le pays producteur, totalement ou en partie, de la propriété juridique et du droit de disposition de sa richesse nationale en hydrocarbures.

Dans le cas des concessions, cette cessation se mesure par le critère de l'étendue territoriale, donc dans l'espace et par celui de l'étendue chronologique, donc dans le temps. Quant à l'association financière, elle implique une cessation partielle du droit de disposition se mesurant, elle aussi, par son étendue géographique et par sa durée.

(1) La transformation des sociétés pétrolières multinationales intégrées en société à double vocation pétrolière et pétrochimique entraîne, entre autres, une modification partielle de la fonction traditionnelle du grand centre de production pétrolière arabe dans le Golfe arabo-persique, périphérie géographique et politique du monde arabe. Cette modification implique un accès de ce centre régional de la production aux industries associées et de faible charge technologique de la pétrochimie, engrais notamment, au profit de la stratégie commerciale des sociétés, donc sans risque pour les sociétés multinationales.

(2) SULEIMAN, Dr. Atef : «Le contrat d'entreprise et le développement économique des pays producteurs», Colloque sur le Pétrole et le Développement des Economies Arabes, Fédération des Unions des Economistes Arabes, Alger, octobre 1970.

Toujours en raison de la domination politique aggravée par un découpage de pragmatisme hégémonique, les concessions arrachées par les sociétés internationales aux pays arabes revêtaient un deuxième aspect d'arbitraire, à savoir les incroyables durées de ces concessions. Il n'est point question ici des conventions de projection dites de long terme, mais purement et simplement d'une main-mise que l'on veut perpétuelle. Les trois filiales de l'Iraq Petroleum Company détiennent des concessions pour 75 ans en Irak, de même que celles du Koweït et de Qatar. Un accord fut signé en 1955 portant la durée pour la concession koweïtienne à 82 ans, tandis que l'ARAMCO (intérêts exclusivement américains) obtint une concession de 68 ans.

Les sociétés internationales accaparaient des superficies extrêmement vagues. C'est ainsi que les concessions arrachées à l'Irak par les sociétés Iraq Petroleum Company, Mossoul Petroleum Company et Basrah Petroleum Company en 1925, 1932 et 1938 couvraient la majorité du territoire irakien. De même, la concession de Qatar Petroleum Company couvrait tout le territoire de Qatar. L'on peut dire de même de la Bahrein Petroleum Company et de la Koweït Petroleum Company. Quant à la société ARAMCO, sa concession englobe la quasi-totalité du territoire excepté la zone occidentale de l'Arabie Séoudite. Or, cet accaparement territorial interdit à l'Etat toute prospection éventuelle des Pétroles dans ces zones.⁽¹⁾

La deuxième forme de démission de la part du pays producteur condamné à l'exploitation indirecte, non-nationale, de ses hydrocarbures, apparaît dans le financement des investissements. Démission totale dans le cas des concessions, nous en distinguons une autre, quantitativement partielle, mais qualitativement réelle la plupart des cas, dans celui des associations financières.

En réalité, la participation financière généralisée constituerait un grave fardeau pour les économies arabes à l'heure actuelle. Le Cheikh Tariqi et Nicolas Sarkis l'ont d'ailleurs souligné à plusieurs reprises.

(1) 'ALLAM, Sa'ad : «Vers l'exploitation par l'Etat de son pétrole», Communication au 6ème Congrès Arabe du Pétrole, Baghdad, mars 1967.

Enfin, une troisième forme d'atteinte à la souveraineté économique résulte de la démission totale du pays producteur pour tout ce qui concerne l'exploitation et la production de ses hydrocarbures. Cette totalité de la démission au profit des sociétés étrangères, privées ou mixtes, est présente autant dans les concessions et dans les associations financières, donc simultanément avec la démission temporaire, totale ou partielle du droit de disposition de la richesse pétrolière, que dans les contrats d'entreprise où la technologie, la gestion et, à la limite, la commercialisation relèvent de la compétence de la société étrangère.

Les gouvernements-hôtes ne participent pas au capital des compagnies et n'ont pas de représentations actives au sein de leur conseil d'administration⁽¹⁾. Ils n'exercent aucun pouvoir réel sur le contrôle technique ou sur l'orientation du projet, et les ressortissants nationaux n'occupent que rarement des postes administratifs et techniques importants.

Les compagnies concessionnaires jouissent de la liberté la plus complète dans la direction des opérations et dans la délimitation des niveaux de production, tandis que les prix de vente sont fixés par les compagnies-mères.

DEUXIEME PARTIE

Les répercussions de l'exploitation indirecte sur le patrimoine pétrolier et sur l'industrie pétrolière

Sous les régimes de l'exploitation indirecte, les sociétés pétrolières multinationales jouissaient de concessions territoriales à durées exceptionnelles; elles disposaient de sources colossales de financement, maîtrisaient et contrôlaient la technologie, le know-how et les marchés mondiaux de consommation. Grâce à ces atouts exceptionnels, elles appliquaient la stratégie suivante :

1) exercer une tutelle absolue ou presque sur les activités locales de recherche, d'extraction et d'exportation du pétrole

(1) SULEIMAN, Dr. Atef : «Le contrat d'entreprise et le développement économique des pays producteurs», op. cit.

brut, en vertu des régimes d'exploitation indirecte. Ceci écarte de toute activité le pays dit producteur qui n'est ni plus ni moins, qu'un percepteur de rentes ; comme il n'intervient aucunement dans les aspects financier, technique, gestionnaire et commercial de l'exploitation.

2) limiter en amont l'activité globale sur le territoire du pays producteur. Le pétrole y est produit en très grandes quantités mais à l'état brut. Le secteur pétrolier étranger fournit, dans le cas de l'exploitation indirecte, du pétrole qui, de par ses quantités disproportionnées, ne saurait être absorbé par un marché local marginal et de surcroît, non stimulé. Laissé à l'état brut, non raffiné, son secteur, au départ étranger, ne s'articule point avec le secteur agricole et l'ensemble de l'économie locale. Par contre, les secteurs d'exploitation indirecte s'intègrent bien dans l'économie capitaliste internationale par le biais des sociétés concessionnaires et opératrices, fortes de leur contrôle du raffinage et de sa technologie, des ventes industrielles du naphta et du gaz naturel, de ceux aussi de la consommation courante des produits raffinés avec leurs réseaux de distribution.

Cette stratégie rendue possible par l'exploitation indirecte a des répercussions évidentes et néfastes sur les structures et l'évolution en cours des économies arabes dépendant de ces régimes d'exploitation : -

A — Des effets sur le patrimoine national, pétrolier et gazier ;

B — Des effets sur l'industrie pétrolière, ses caractéristiques et son développement vertical, à base nationale :

A. Les Effets sur le patrimoine national pétrolier et gazier :

Les conditions techniques de l'extraction et de l'exploitation du brut traduisent l'esprit d'aventure et la course avide vers les gisements arabes qui caractérisent l'entreprise étrangère dans les secteurs d'exploitation indirecte des pétroles arabes.

1 — Les conditions techniques de l'extraction du brut :

Les règles de l'exploitation rationnelle ne sont pas suffisamment respectées notamment quand les sociétés étrangères exploi-

tatrices jugent comme instable leur rapport politique avec l'Etat producteur ou trouvent élevé le coût de maintenance et de développement des réserves prouvées. Les autorités algériennes et libyennes ont prêté attention à ces problèmes qui d'ailleurs figurent dans le programme d'action de l'OPEEC. Les spécialistes arabes ont dénoncé à maintes reprises le non-respect des impératifs du maintien de l'eau et du gaz à une pression suffisante en les réinjectant dans les gisements.

2 — La délapidation des richesses gazières :

Le gaz associé est brûlé le plus souvent à la torche dans les pays arabes, alors que le gaz naturel doit être récupéré, liquéfié et vendu sur le marché local et surtout exporté à l'étranger.

L'on estime que plus de 70% des gaz associés sont brûlés à la torche dans les champs pétrolifères du Moyen-Orient, à l'heure actuelle⁽¹⁾. Rien qu'en Libye, on brûle encore 1690 millions de mètres cubes de gaz associé dans ses champs pétroliers.⁽²⁾

3 — La reconstitution et le développement des réserves et l'accroissement de la production :

Les systèmes de l'exploitation indirecte avec ce qu'ils impliquent comme droit de décision, formellement ou concrètement, unilatéral en matière de production et de commercialisation, ont pour effet de contrecarrer la souveraineté pétrolière des pays arabes producteurs pris collectivement ou séparément. En effet,

(1) United Nations : «Petrochemical Industries in Developing Countries», Report of the International Petrochemical Symposium on the Development of the Petrochemical Industries in Developing Countries, Baku, USSR, 21 - 23 October 1969, New York, United Nations, 1970 ID/46, Vol. I, p. 16.

L'expert libanais Ghassan QAANSOUH évalue, quand à lui, à 80% la quantité totale des gaz arabes délapidés à l'heure actuelle. Sa valeur chimique et industrielle serait, selon lui, de 6025 millions de dollars, in «L'industrialisation pétrolière et son rôle dans le développement du monde arabe», Rapport au Colloque «Pétrole et Développement des économies arabes», Alger, octobre 1970, (en arabe).

(2) Al-Betrol Wa Al-Ghâz Al-'Arabi, Vol. 5, No. 10, Beyrouth, 1971 en arabe.

les sociétés concessionnaires fixent les sommes à investir ou plutôt à réinvestir dans la prospection et la production du brut arabe en fonction de leur stratégie internationale dont le contenu profond est la diversification géographique des sources comme arme à la fois de sécurité et de discussion⁽¹⁾. C'est ainsi que nous comprenons la mobilisation d'une part très importante des bénéfices réalisés sur le dos des pays arabes, dans la recherche en Alaska, en Mer du Nord, en Asie du Sud-Est, etc...⁽²⁾. Mais l'impact est fondamentalement le même sur chacun des producteurs arabes pris séparément. C'est ainsi que la production de l'Irak fut condamnée à la quasi-stagnation tout au long des années 60 après qu'il ait décrété la récupération de 99% de ses territoires au Groupe concessionnaire de l'Iraq Petroleum Company. La décision stratégique prise tout récemment par le groupe entièrement américain de l'ARAMCO de tripler la production de l'Arabie Séoudite dans les quatre années à venir est une éloquente démonstration de l'utilisation d'un pays arabe producteur, par les sociétés, comme agent de pression et de dissuasion contre les pouvoirs arabes qui se mettent à appliquer des plans pétroliers de dégagement de l'emprise étrangère.

Deux catégories de facteurs président au choix prioritaire par les investissements étrangers, des secteurs d'extraction pétrolière des pays arabes :

- 1 — les conditions économiques de la production du brut et du gaz, et plus spécialement la grande rentabilité de cette production et les acquis du passé (concessions, découpage territorial et présence politico-militaire) ;

Or, la stratégie pétrolière des sociétés étrangères dans les pays arabes s'explique verticalement par une volonté de maintenir autant que possible le sens en amont de l'activité

(1) Dans les contrats d'entreprise (qu'on appelle quelquefois des contrats de service), la société étrangère d'entreprise ne se soucie point de la reconstitution et du développement des réserves, qui n'incombent donc qu'au pays producteur.

(2) Expenditures for fixed assets : Year 1970 by Area. In «Financial Analysis of a Group of Petroleum Companies, 1970,» The Chase Manhattan Bank. August 1971.

pétrolière dans les pays arabes producteurs et de la réduire au secteur de la prospection, du forage, de la production et de l'exportation à l'état brut des hydrocarbures arabes. Horizontalement, cette stratégie implique l'accaparement juridique et de fait, du maximum du territoire national, l'emploi des cadres supérieurs étrangers et le contrôle du maximum des ressources pétrolières et gazières.

C'est ainsi que nous expliquons pourquoi le taux de bénéfices nets réalisés par les sociétés dans les investissements pétroliers dépasse les 60% dans ces derniers, alors qu'il ne dépasse guère les 12% dans les autres industries situées aux Etats-Unis, au Japon et en Europe Occidentale. Ceci explique d'ailleurs le fait que 90% des investissements des Etats-Unis en 1968, dans les pays arabes l'ont été dans les industries arabes pétrolières.

Toujours à la fin de 1968, les investissements privés et directs des Etats-Unis ont totalisé 1803 millions de dollars. Si nous regardons le tableau des revenus des investissements étrangers (américains dans leur quasi-totalité) au Moyen-Orient, nous constatons que sur un total de 1854 millions fructifiés, 1088 l'ont été en Irak et en Arabie Séoudite, contre 434 millions en Libye⁽¹⁾.

En effet, les pays arabes sont incomparativement riches en réserves pétrolières. Pour ce qui est des réserves prouvées, les pays arabes disposaient à la fin de l'année 1968, d'environ 70% des réserves prouvées de l'ensemble des pays capitalistes et des pays sous-développés. Ces réserves représentaient 66 années de production pour les gisements des pays arabes (86 ans pour le Machreq et 36 ans pour le Maghreb) contre 26 ans en moyenne, pour les réserves mondiales⁽²⁾. Or, la part des pays capitalistes à cette époque n'était que de 8,7% des réserves mondiales. Le pourcentage des succès par puits foré est de 71,5 % pour le mon-

(1) «Balance of Payment Yearbook», vol. 20, 1969, et 21, 1970, Washington, D.C.

(2) Comité Professionnel du Pétrole : «Pétrole 1969 : Eléments statistiques», Paris, Comité professionnel du pétrole, 1970.

de arabe (83,5% au Machreq et 65,5% au Maghreb) alors que la moyenne mondiale n'est que de 42,5%. La productivité annuelle des puits pétroliers arabes est de cent fois supérieure à celle du monde : 176.000 tonnes par puits et par an en 1969 (208.404 tonnes au Machreq moins Dubai et 130.290 tonnes pour la Libye et l'Algérie). En 1968, la productivité moyenne par puits était de 3168 barils par jour pour l'ensemble du monde arabe (13.350 barils par jour en Irak, 66 barils au Koweït, 958 barils par jour en Syrie et 35 barils par jour au Maroc), contre 14.164 barils par jour en Iran, 361 barils par jour au Venezuela, 52 barils par jour au Canada et 12 barils seulement aux Etats-Unis.⁽¹⁾

C'est dans ce contexte d'ailleurs qu'il convient d'insérer le fait que la production arabe pétrolière soit passée de 185 millions de tonnes environ en 1959, à plus de 600 millions de tonnes environ en 1969, soit une augmentation de 253%. Quant à la contribution des Etats arabes dans la production mondiale, elle est passée dans la même période, de 18,4% à 31%.

2 — les conditions de la commercialisation du brut, la structure intégrée de l'industrie à l'échelle mondiale, la proximité privilégiée des grands marchés mondiaux de consommation et le contrôle déjà réalisé sur les marchés mondiaux de consommation avec des perspectives rassurantes pour l'avenir.

D'autre part, les investissements pétroliers étrangers dans le monde arabe constituent, en plus de leur vocation stratégique, un atout exceptionnel pour les sociétés pétrolières de nationalité américaine et d'origine européenne et japonaise dans leur course vers la pétrochimie dont le financement hautement capitalistique et l'alimentation en naphta ou en gaz sont assurés en grande partie par les bénéfices et la production pétrolière et gazière originaires des pays arabes.

(1) International Petroleum Encyclopaedia in Oil & Gas Journal, 29 décembre 1969, cité in «L'hégémonie pétrolière étrangère et l'industrialisation pétrolière arabe», Rapport au Colloque sur la Renaissance du Monde Arabe, Université Catholique de Louvain, novembre 1970, 71 pages, texte définitif, in «Les Actes du Colloque: Renaissance du Monde Arabe», Editions belges Duculot, 1972.

Simultanément avec les impératifs internes, financiers et économiques et ceux de sécurité stratégique, les impératifs de caractère international, liés aux contradictions inter-impérialistes, rendent nécessaires la présence en force des investissements des Etats-Unis dans l'industrie pétrolière ouest-européenne et japonaise, 25 à 30% du chiffre total de l'industrie pétrolière en Grande-Bretagne et dans la Communauté Economique Européenne ont été réalisés par des sociétés nord-américaines implantées dans ces pays⁽¹⁾.

B.—Les répercussions sur l'industrie pétrochimique nationale, ses structures et son développement en aval

Le pétrole et le gaz naturel sont à la fois des produits énergétiques et industriels. Le raffinage est indispensable à leur utilisation à des fins énergétiques. Le traitement chimique à multiples phases qu'implique l'activité en aval est la clef de l'utilisation industrielle, pétrochimique ou gazochimique des hydrocarbures. Dans tous les cas, la mise en valeur de cette précieuse matière première nécessite son industrialisation poussée par son traitement chimique. Elle nécessite également que les opérations de cette industrialisation se situent physiquement dans le pays ou la région de production. Or, à la période des concessions et en gros, de l'exploitation indirecte, correspondait la vocation spécifiquement pétrolière des sociétés multinationales réunies dès 1928 dans le fameux cartel. Le caractère d'activité de ces sociétés était intégré mais cette intégration se limitait presque exclusivement à l'utilisation énergétique du brut ; elle ne comprenait donc qu'une seule phase de traitement d'activité en aval, celle en l'occurrence du raffinage. Ce qui est non moins important, c'est la politique d'implantation extra-territoriale des raffineries qui se sont ainsi multipliées, en Europe Occidentale et au Japon après les Etats-Unis. Aujourd'hui encore, la nation arabe

(1) LAYTON, Christopher : «L'Europe et les investissements américains», Paris, Editions Gallimard, Collection Idées, 1968, p. 95, cité in JALEE, Pierre : «L'impérialisme en 1970», Petite Collection Maspéro, 1971, p. 89 et p. 95.

ne raffine que 13,6% de ses pétroles et sa capacité totale ne représente que 4% environ de la capacité mondiale⁽¹⁾.

La Guerre de 1939-1945 consacra l'affaiblissement des puissances capitalistes ouest-européennes affirmant l'ère nord-américaine du capitalisme international. Sur le front pétrolier, les sociétés multinationales des Etats-Unis ont ravi aux intérêts ouest-européens, notamment britanniques, la position dominante que ceux-ci occupaient dans l'industrie internationale de l'extraction au Moyen-Orient, et principalement dans les pays arabes producteurs. Au moment où la part des réserves nord-américaines baissait dans le total mondial, celle du monde arabe ne cessait d'augmenter.

Entre 1940 et 1967, les réserves pétrolières du Moyen-Orient sont multipliées par 41.5. Mais à cette multiplication globale correspond un renversement des rapports de force entre sociétés multinationales américaines et britanniques. En effet, en 1940, les réserves pétrolières de cette région étaient contrôlées à 72% par la Grande-Bretagne, à 9,8% par les Etats-Unis et à 18,2% par d'autres pays⁽²⁾. En 1967, la Grande-Bretagne ne contrôle plus que 29,3% des réserves, le groupe pays divers 12,1% contre 58,6% aux Etats-Unis.⁽³⁾

D'autre part, le pétrole vénézuélien était déjà sous le contrôle des sociétés nord-américaines qui donnaient lieu à une internationalisation de la production capitaliste internationale dans ce secteur à dominance américaine⁽⁴⁾. Au niveau du raffinage et de la commercialisation des produits raffinés, la défaite japonaise a donné lieu à un contrôle du marché japonais, l'un des plus importants et des plus dynamiques marchés de consomma-

(1) HARRA-KROUHA, Mahmoud : «Le rôle de l'industrie du pétrole et du gaz dans le développement de l'économie algérienne», Rapport au 7ème Congrès Arabe du Pétrole, Koweït, 1970.

(2) MIKDASHI, Zuhayr : «A Financial Analysis of Middle East Oil Concessions», New York, Frederick A. Praeger, 1966.

(3) Oil and Gas Journal, December 25, 1967. Egalement : LENOZOWSKI, Georges (Edited by) : «United States Interests in the Middle-East — Special Analysis», Washington, American Enterprise Institute for Public Policy Research, October 1968, 132 pages.

(4) LENOZOWSKI, Georges (edited by) : op. cit.

tion du monde. Ce contrôle était et est soit direct, soit par des joint-ventures américano-nippones⁽¹⁾. Par ailleurs, la promotion des intérêts américains dans les activités de l'extraction au Moyen-Orient, donc en amont, s'était traduite par le renforcement de leurs positions sur les marchés de l'Europe Occidentale dont l'économie, palliée par les capitaux des Etats-Unis, demandait à un rythme bien soutenu, des quantités accrues des pétroles moyen-orientaux⁽²⁾. Cette même Guerre de 1939 provoqua à vrai dire, aux Etats-Unis et sous la pression des besoins militaires, la première révolution pétrochimique. A la carbochimie, celle-ci substituait progressivement et en grande partie, la pétrochimie de base qui a l'avantage de fournir à la chimie non seulement du naphta pétrolier à bon marché, mais également d'incomparables possibilités techniques : un grand éventail de produits en nombre et en qualité infinis, une meilleure maîtrise des spécification des produits, enfin des productions de masse à des prix de revient relativement bas. Alors, nous assistons à un double processus : dans la chimie, celui de la substitution, aux matières brutes carbochimiques, du naphta et du gaz naturel ; dans le pétrole, celui du développement progressif de l'industrie en aval, à partir des produits de base obtenus dans les raffineries. Ce deuxième processus signifie une accentuation de l'intégration des sociétés pétrolières par leur accès, d'abord à la pétrochimie associée (fabrication d'engrais et de produits pour l'agriculture notamment), plus récemment à la pétrochimie lourde avec sa structure arboresque des traitements chimiques, fabriquant les produits intermédiaires, tels les monomères, et finis, tels les polymères : plastiques et élastomères. L'on estime que 90% de la production mondiale des produits chimiques organiques est à la base pétrolière et gazière, et ce pourcentage continue à s'accroître. Cette production pétrochimique a progressé entre 1959 et 1969 à un rythme annuel moyen de 15% (10,5% pour les Etats-Unis contre 25% pour l'Europe Occidentale, 33% pour le

(1) Pour le Japon : Nouvelles Economiques du Japon, No. du 29 avril 1968. Egalement, EL-ZAIM, Issam : « La Concentration Internationale et la planification inter-arabe d'industries pétrochimiques intégrées », In (L'Hégémonie pétrolière étrangère et l'industrialisation pétrochimique arabe, 3ème Partie), op. cit. p. 18.

(2) GUILLAUMAT, Pierre : « L'Industrie du pétrole à l'horizon 80 », In Revue de la Défense Nationale, vol. 26, Octobre 1970, Paris.

reste du monde, Japon inclus)⁽¹⁾. Les produits plastiques occupent une place privilégiée dans les produits pétrochimiques finis de toutes catégories puisqu'ils en représentent 40%. Comme aux Etats-Unis mais avec un déphasage chronologique, les taux de croissance des produits pétrochimiques tendent à baisser. C'est ainsi que la moyenne annuelle de croissance en Europe Occidentale est passée de 40% à 20% entre 1959 et 1969.

A présent, l'Amérique du Nord⁽²⁾ compte pour environ 7% de la population mondiale, mais elle produit environ 40% de la production pétrochimique mondiale et si cette part pourrait baisser en raison de l'expansion et de la nouvelle implantation des unités pétrochimiques dans les autres pays, notamment en Europe Occidentale, au Japon et en Amérique latine, ses taux de croissance demeureront élevés (entre 7 et 9%)⁽³⁾.

C'est par une évolution progressive et échelonnée du processus pétrochimique que les sociétés pétrolières multinationales ont engagé leur processus d'intégration poussée en aval, du raffinage à la chimie finie. Ceci s'explique certes, par de multiples considérations, dont leurs activités florissantes d'extraction, de raffinage et de consommation. Mais il y a des raisons de croire que la nouveauté de l'activité chimique pour ces sociétés, impliquant des problèmes d'acquisition et de maîtrise des procédés, du know-how et de l'ingénierie, les a obligées à procéder par étapes, d'autant plus que les sociétés spécifiquement chimiques qui procédaient à la conversion pétrochimique, disposaient d'infrastructures technologiques et commerciales solides.

Situé essentiellement aux Etats-Unis, ce processus du développement des activités en aval, au-delà du raffinage, gagna le Japon et dès les débuts des années 60, les pays de l'Europe Occidentale notamment la Grande-Bretagne, l'Italie, la France et les Pays-Bas. Mais vers la fin de la dernière décennie, il déborda les

(1) Royal Dutch Shell : «The Economics of Chemicals derived from Oil» 1971, (brochure).

(2) Il s'agit pour l'essentiel de l'industrie des Etats-Unis, celles du Canada et du Mexique ne représentant qu'une petite partie de l'ensemble.

(3) United Nations : «Petrochemical Industries in Developing Countries», op. cit. p. 18.

pays capitalistes industrialisés pour toucher les pays comme l'Amérique latine, l'Asie et l'Afrique, certes avec une spécificité inhérente à la dépendance, comme nous verrons dans ce qui suivra. C'est dans ce cadre que nous aborderons maintenant l'industrialisation pétrolière et pétrochimique des pays arabes.

L'expansion économique extérieure des firmes industrielles américaines après la Guerre donna lieu à la transformation de plusieurs géants de l'économie américaine et à l'apparition d'une nouvelle forme d'organismes multinationaux. Trente-sept sociétés possèdent environ 90% des actifs des cinquante premières firmes industrielles des USA. Dans ces cinquante entreprises américaines engagées dans des opérations économiques internationales et d'approvisionnement en biens militaires, nous trouvons **douze** dans les pétroles, **trois** dans l'industrie chimique et **trois** autres dans le caoutchouc, **cinq** dans l'aéronautique, **trois** dans l'acier, **trois** dans l'automobile, **huit** dans l'équipement électrique et électronique⁽¹⁾. Aujourd'hui, les sociétés pétrolières multinationales développent et affirment leur vocation pétrochimique en poussant en aval leurs structures industrielles déjà intégrées. Elles consolident ainsi davantage la place de choix qu'elles occupent déjà dans l'économie capitaliste et sa technologie internationale. Leur rôle va en se renforçant, imprégnant de son cachet technologique, organisationnel et gestionnaire les économies des pays capitalistes les plus industrialisés.

L'industrie chimique est un secteur de choix pour le phénomène de la concentration. Dix-huit sociétés chimiques mondiales réalisent actuellement des chiffres de vente supérieurs à un milliard de dollars USA, et la moitié de ces sociétés sont américaines. La société nord-américaine Du Pont de Nemours & Co. est la première firme chimique inter-territoriale avec un chiffre de vente de 3.632 millions de dollars en 1969, suivie de très près par la firme inter-territoriale, d'origine britannique Imperial Chemical Industries (ICI) avec 3.253 millions de dollars en 1969. Sur les 200 plus grandes sociétés chimiques en 1969, le nombre des firmes américaines est de 84. Des 10 premières sociétés, quatre sont d'origine nord-américaines, et dans les 20 premières, nous

(1) MAGDOFF, Harry : «The Age of Imperialism», New York, Monthly Review Press, 1969, Introduction.

trouvons 13 américaines. Après les Etats-Unis, viennent les sociétés ouest-allemandes, 25 sociétés sur les 200, suivies par celles de la Grande-Bretagne et du Japon : 14 pour chaque⁽¹⁾.

Cependant, nous assistons depuis quelque temps à un développement intégré en aval, c'est-à-dire dans la chimie, des sociétés pétrolières internationales. Aux Etats-Unis même, la Standard-Oil of New Jersey (ESSO) a occupé, grâce à son chiffre de vente, spécifiquement chimique, de 1.101 millions de dollars en 1969, la huitième position dans ce pays et la seizième dans le monde, dépassant une société chimique, l'American Cyanamid, qui recula ainsi à la 17ème position. En Europe Occidentale, l'on estime que la Société Royal Dutch-Shell a occupé la huitième position pour l'Europe Occidentale et la 14ème dans le monde, grâce à ses ventes spécifiquement chimiques de 1.260 millions de dollars. En France, la société SNPA s'est placée huitième par ses ventes spécifiquement chimiques, toujours en 1969.

Deux sociétés pétrolières dites du Cartel, la Royal Dutch-Shell et la Standard-Oil of New Jersey figurent dans les vingt premières sociétés chimiques par la catégorie chimique de leurs ventes en 1969, 14ème pour la Shell et 16ème pour ESSO. Mais nous constatons de plus en plus une nette tendance chez les pétroliers à développer une activité chimique dans les pays occidentaux et au Japon.

C'est donc précisément dans les secteurs pétrochimiques et de raffinage aux profits maxima, que les investissements des Etats-Unis et des pays capitalistes sont omniprésents. L'intégration chimique en aval complète celle déjà réalisée en amont au détriment des possesseurs du brut et du gaz arabes au premier chef. Des filiales des sociétés américaines et inter-territoriales pétrolières et pétrochimiques opèrent dans les grands ensembles régionaux de consommation pétrolière, gazière et pétrochimique: Europe Occidentale, Japon, Amérique latine, Inde, etc...

(1) Chemical Age, 31 July 1970. Cité dans EL-ZAIM, Issam : «La concentration internationale et l'industrialisation pétrochimique arabe», Rapport au Colloque sur la Renaissance du Monde arabe, op. cit., 3ème Partie.

Ces sociétés internationales transfèrent la valeur ajoutée en décidant du degré de traitement des produits pétroliers arabes exportés. Or, c'est toujours à l'état brut que ces produits sont vendus à l'étranger.

Car les sociétés internationales, contrôlant les secteurs pétroliers des pays arabes exportateurs, ne favorisant guère une industrialisation pétrolière systématique et à vocation exportatrice qui risque de concurrencer, dans le cas où elle se ferait d'une manière nationale et indépendante, la production de leurs filiales implantées dans les régions industrielles notamment occidentales mais aussi asiatiques. En vérité, cette rupture géographique et d'environnement entre les grands centres de production-exportation de pétrole et de gaz d'un côté, et ceux du raffinage, de la pétrochimie, apparaît comme l'un des principaux aspects de la stratégie industrielle et commerciale des grandes sociétés ; elle est la contrepartie de la structure doublement intégrée, en amont et en aval, des sociétés internationales.

En 1969, 342 projets pétrochimiques étaient prévus ou en cours de réalisation. L'Amérique du Nord (Canada et Etats-Unis) comptait pour 76 projets, l'Europe Occidentale 87, l'Amérique latine 45, l'Inde 36 projets, le Moyen-Orient et l'Afrique 13 projets⁽¹⁾.

(1) Bulletin Analytique Pétrolier, Paris, 15 septembre 1969, Comité Professionnel du Pétrole.

Année	Pays	Nombre de projets
1969	Amérique du Nord	76
	dont : Canada	14
	Etat-Unis	62
	Amérique latine	45
	dont : Argentine	12
	Bésil	8
	Mexique	7
	Venezuela	5
	Chili	4
	Europe Occidentale	87
	dont : Grande-Bretagne	22
	Allemagne	13
	Pays-Bas	12
	Espagne	12
	France	9
	Italie	8
	Belgique	4
	Autriche	3
	Japon	71
	Australie	4
	Inde	36
	Moyen-Orient et Afrique	13
	dont : Turquie	2
Libye	2	
Algérie	1	
Iran	1	

Le nombre est un premier indicateur quantitatif de la rupture géographique et technologique entre les industries pétrolières en amont et à leur aval, les nouvelles implantations pétrochimiques en fièvre de croissance dans les pays occidentaux. Cependant, pour mesurer la gravité de la politique poursuivie par les

sociétés internationales, il convient de faire les observations suivantes :

- a) L'appartenance politique, réelle, des projets réalisés actuellement aux régions suivantes : l'Amérique du Nord, l'Europe Occidentale, le Japon, l'Australie et en grande partie, l'Amérique latine et l'Inde. Ces projets appartiennent bien entendu aux grandes firmes dont celles pétrolières entrées dans la sphère de la chimie.
- b) La nature de ces projets, donc le niveau technologique auquel le traitement chimique est opéré, et corrélativement, leur degré d'intensité capitalistique. En effet, une division du travail pétrochimique s'instaure entre les pays arabes et afro-asiatiques qui se voient condamnés à une vocation quasi-exclusive de produire des hydrocarbures et des engrais (Koweït et Emirats du Golfe notamment), alors que les pays capitalistes et leurs suzerains latino-américains s'accaparent la production véritablement pétrochimique.

L'on estime que si le prix d'un kilogramme de pétrole brut est de 2 cents, raffiné, il devient de 4 cents. Quand nous en tirons ses dérivés pétrochimiques, son prix varie entre 22 et 33 cents et atteint quelquefois, 66 cents⁽¹⁾. Si nous considérons que la valeur des produits pétrochimiques représente 12,5 fois celle du pétrole brut, M. Qaansouh estime que les pays arabes auraient pu doubler leur production totale de 1969 s'ils l'avaient vendue sous forme de produits raffinés. Dans l'hypothèse où ces pays avaient traité chimiquement les mêmes pourcentages de leur production en hydrocarbures que ceux de la production mondiale, toujours en 1969, traitée dans les usines pétrochimiques, soit 3% de brut et 7% de gaz naturel, ces pays auraient réalisé 2096 millions de dollars ; prix d'une production pétrochimique équivalente pour la seule année 1969.

- (1) En 1967, l'Arabie Séoudite, un des plus grands producteurs-exportateurs du monde, n'avait exporté que 15,89% de sa production sous forme de produits raffinés, contre 84,11% exportés à l'état brut.
- (2) QAANSOUH, Dr. Ghassan : «L'industrialisation pétrolière et son rôle dans le développement dans le monde arabe», Rapport au Colloque «Pétrole et Développement des économies arabes», Alger, octobre 1970, citant PROHASKA, B : «Procesi Petrokemijake Industriji, Skripta, 12, Zaghreb, 1965.

**Tendances sectorielles préférentielles et géopolitiques des
projets pétrochimiques prévus et en construction dans le
monde (année 1969) ⁽¹⁾**

Region	Ethylene	Ammoniac	Styrene	CV	PB	Poigpropylene	PCV	PS	Para-Xylene	Ortho-Xylene
Pays capitalistes industrialisés :										
Amerique du Nord, Europe, G.B. inclus et Japon	17	14	7	12	20	12	7	8	1	3
Amerique Latine (2)	9	7	1	3	7	1	2	1	5	1
Asie, Afrique et Australie(3)	4	9	2	2	10	3	8	3	1	1
Total monde sauf pays socialistes	30	30	10	17	37	16	17	12	7	5

Chlorure de Vinyle CV = produit intermédiaire, un monomère permettant l'obtention des plastiques (PVC).

PVC, PE, PS = produits finis (plastiques).

Ethylène : produit de base obtenu du pétrole par le raffinage ou du gaz naturel.

Ammoniac : produit de base utilisé essentiellement pour la fabrication des engrais azotés, de l'urée et des engrais complexes.

(1) AALUND, Léo R., Petrochemical Editor : «Petrochemical Report : 1969», Oil & Gas Journal, September 1, 1969.

(2) Notons qu'il s'agit là le plus souvent, de filiales des sociétés pétrolières et chimiques multinationales, d'origine américaine.

(3) L'Australie appartient davantage à la première catégorie : pays capitalistes, tandis que l'Asie et l'Afrique se trouvent à quelques exceptions près, dans la même situation que celle de l'Amérique latine ; mais la part de cette dernière catégorie est néanmoins très faible.

En effet, dans les pays arabes grand producteurs de brut et de gaz naturel, à l'exception de l'Algérie, les entreprises pétrochimiques sont montées sur la base d'associations financières entre capitaux locaux et des filiales de sociétés internationales pétrolières et pétrochimiques. De plus, celles-ci contrôlent la gestion tantôt dans la phase du démarrage commercial, tantôt pour une période assez longue. L'orientation de la production vers les marchés d'exportation, contrôlée d'ailleurs par ces grandes sociétés se voit ici confirmée, «institutionnalisée» en quelque sorte. La rupture est en conséquence, double : avec les impératifs d'une dynamique interne de développement harmonieux, comme avec ceux d'une coopération et d'une intégration régionale arabe.

Il est vrai que les industries pétrochimiques en Europe Occidentale et au Japon, celles des Etats-Unis à plus forte raison ; n'importent que des quantités faibles de matières premières pétrolières et gazières, en comparaison avec les quantités destinées à la consommation spécifiquement énergétique de ces pays. Mais les investissements pétroliers internationaux s'efforcent de pénétrer les secteurs de la pétrochimie : plastiques, protéines synthétiques, sans parler des engrais et des produits pharmaceutiques, d'accentuer contre les investisseurs de la carbochimie européenne ou de la pétrochimie américaine, leur concentration verticale en aval à partir de leurs raffineries pétrochimiques intégrées. Dans la nouvelle ruée vers l'or pétrochimique, les pétroliers se sentent financièrement et industriellement bien armés grâce à leur contrôle de la matière première arabe, à sa commercialisation et à son traitement chimique dans le monde capitaliste avancé. Les filiales européennes et japonaises, et plus généralement en dehors des Etats-Unis, s'attribuent une nouvelle vocation pétrochimique.

Des projets pétrochimiques sont également envisagés et réalisés par les sociétés internationales dans les pays non-industriels. En y implantant les unités géantes de fabrication, ces sociétés réduisent au minimum les coûts de transport et de la commercialisation des produits chimiques. Simultanément, elles mettent à profit cette coupure géographique entre les pays arabes (sources de la matière première) et les autres pays (où les unités sont installées, c'est-à-dire les marchés de consommation

finale), aussi bien pour dissuader les uns comme les autres de toute action anti-hégémonique éventuelle.

Certes, des industries associées d'engrais, rares, sont créées dans certains pays arabes, ceux notamment dont les options politiques et les données géo-politiques sont «rassurantes». Mais ce ne sont que des postes avancés des sociétés internationales parties à la conquête des marchés chimiques et agricoles de l'Asie en rupture avec l'environnement économique arabe.

Les firmes pétrolières multinationales, engagées dans le développement chimique de leurs activités intégrées, jusqu'ici pétrolières, montent des usines pétrochimiques et gazochimiques dans les pays arabes dont elles exploitent les hydrocarbures dans le cadre des concessions qui incarnent avec éloquence le régime de l'exploitation indirecte. Les multinationales et les «indépendantes» du pétrole et du gaz s'associent à ces Etats dans des «joint-ventures» qui traduisent au niveau de la pétrochimie les retombées de la cessation initiale de la souveraineté industrielle. En effet, les tailles des unités ne sont pas déterminées en fonction des possibilités d'absorption actuelles et potentielles des marchés arabes ni des critères techniques de la capacité moyenne, critères conformes aux conditions spécifiques des pays non industrialisés dans la région et adaptés en même temps aux perspectives réalistes d'une exportation partielle et progressive. Tout au contraire, les choix sont faits par les sociétés tutrices en fonction de leurs stratégies de pénétration chimiques sur les marchés mondiaux, suivant des critères financiers, technologiques et de fiabilité propres à leurs tailles et susceptibles de les rassurer dans leurs affrontements avec les multinationales plus anciennes de la chimie ainsi qu'avec les pays qui développent des industries exportatrices mais indépendantes⁽¹⁾. Le résultat est un choix très net pour l'exportation qui implique dans la pratique la soumission aux aléas des marchés mondiaux caractérisés par la concurrence inter-capitaliste actuellement vive. Cette option expor-

(1) EL-ZAIM, Issam : «Les économies de grande taille et le problème de marketing, deux impératifs d'une politique arabe régionale d'intégration et de complémentarité pétrochimiques.» Rapport au Colloque des Economistes Arabes sur le Pétrole et le Développement économique des pays arabes, Alger, octobre 1970, 33 pages.

tatrice qui obéit à la toute récente stratégie commerciale des multinationales risque par contre, d'aggraver les difficultés des balances commerciales des pays producteurs déjà déséquilibrés par la prédominance des matières brutes dans leurs exportations et industrialisées dans leurs importations. En outre, si les choix des sous - secteurs de la pétrochimie et des capacités optima de production se situent dans l'optique d'affrontements chimiques actuels et futurs entre multinationales, ces choix s'avèrent beaucoup plus catastrophiques pour les pays arabes qui se lancent dans une course déraisonnable à la production en sommes colossales des mêmes produits avec l'espoir de les écouler presque entièrement sur les marchés mondiaux, et de surcroît sur les mêmes marchés par ailleurs intégrés dans les circuits des sociétés multinationales géantes. Nous touchons là une question véritablement cruciale, demeurée longtemps en dehors des préoccupations profondes des centres de décision pétrochimiques dans les pays arabes poursuivant des politiques pétrolières et industrielles nationales et radicales.

Jusqu'ici, le secteur pétrochimique arabe comparativement le plus avancé, est celui des engrais. Cela doit être un atout de coordination et d'intégration des industries pétrochimiques arabes, car les engrais constituent une exception possible à l'affirmation générale relative aux obstacles politiques, structurels et d'orientation de l'intégration⁽¹⁾ pétrochimique arabe.

Le rapatriement des bénéfices par les sociétés pétrolières étrangères en exploitant les pétroles arabes est inhérent à la structure intégrée de ces sociétés. En fonction d'une stratégie de rentabilité qu'elles sont les seules à décider, les sociétés acheminent les bénéfices réalisés vers les pays et les secteurs de l'industrie qui leur semblent les plus aptes à assurer la sécurité politique de l'approvisionnement et une meilleure rentabilité de l'intégration. La démission d'exercer la souveraineté qu'impliquent les régimes de l'exploitation indirecte est le meilleur en-

(1) EL-ZAIM, Issam : «Les économies de grande taille et le problème de marketing, deux impératifs d'une politique arabe régionale d'intégration et de complémentarité pétrochimique», Rapport au Colloque des Economistes Arabes sur le Pétrole et le Développement économique des pays arabes, Alger, octobre 1970, op. cit.

couragement aux sociétés étrangères pour le transfert de l'essentiel de la valeur ajoutée que constituent l'implantation de leurs raffineries et leurs usines pétrochimiques, non point près des centres arabes de l'extraction, mais dans les pays capitalistes lointains.

Outre la dépendance financière découlant du marketing de brut par les sociétés pétrolières, celles-ci constituent par leur hégémonie un obstacle devant l'expansion des exportations industrielles arabes. Cette exportation des produits pétroliers finis et ceux de la pétrochimie est en principe, le moyen efficace pour les pays arabes de sortir de l'état d'inégalité dans lequel leurs commerces extérieurs, voire toutes leurs économies nationales sont enfermées.

L'hégémonie économique des puissances occidentales est un grave obstacle à l'expansion des exportations industrielles arabes, notamment celles d'origine pétrolière et pétrochimique⁽¹⁾.

Car la fonction «confortable» de percepteur de rentes et d'impôts que confie aux pays producteurs leur démission totale ou de fait en matière de souveraineté pétrolière, se traduit également par une démission industrielle. Celle-ci se manifeste par une option bancaire hors du pays, consistant en un placement des recettes pétrolières accumulées dans les banques étrangères, au service des économies capitalistes et, entre autres, au service des sociétés industrielles internationales. C'est ainsi que les pouvoirs publics déposent d'énormes capitaux dans les banques suisses, britanniques et américaines, privant de la sorte leurs pays et généralement, la région arabe des sources de finance-

(1) Notons à ce propos une déclaration commune présentée le 5 octobre 1971 au comité spécial des préférences de la Conférence des Nations Unies sur le commerce et le développement (CNUCED), par l'Union Soviétique, la Bulgarie, la Hongrie, la Pologne et la Tchécoslovaquie. Ces pays s'y déclarent favorables à l'établissement d'un système de préférences généralisées, destiné à favoriser les exportations d'articles manufacturés et semi-finis des pays en voie de développement et sont décidés à continuer de soutenir, comme ils l'avaient fait dans le passé, les efforts des Etats «moins développés» pour obtenir la création d'un pareil système. Cette déclaration insiste en même temps sur la nécessité pour les pays en voie de développement de procéder à de profondes modifications économiques et sociales s'ils veulent tirer le maximum de bénéfices d'un tel système.

ment dont manquent cruellement ses industries et ses plans de développement. Il suffit de considérer le fait que la pénurie de capitaux est le premier et le plus sérieux handicap devant la promotion des industries pour l'achat des infrastructures, celui des procédés et le financement à long terme des projets pétrochimiques dans les pays arabes⁽¹⁾.

Les régimes de l'exploitation indirecte remontent à la même époque que celle de la création par un découpage artificiel de la nation arabe en entités politiques dont l'irrationalité est consacrée précisément par ces régimes d'exploitation. Ceux-ci aggravent par leur survie, la désarticulation industrielle et commerciale de la région. En effet, la fréquente réduction de l'activité pétrolière à sa dimension fiscale et rentière sous les régimes de l'exploitation étrangère, indirecte, explique les ruptures actuelles entre les pays arabes, souvent les plus peuplés, importateurs de produits énergétiques et pétrochimiques, et ceux qui exportent les hydrocarbures à une grande échelle. En effet, les premiers importent ces produits aux marchés capitalistes lointains, contrôlés d'ailleurs par les sociétés multinationales, à des prix exorbitants, au lieu de s'approvisionner dans la région auprès des pays producteurs frères, à des prix modérés non grevés de lourds coûts de transport et de marketing.

En 1967, année où la production libyenne de brut atteint 150 millions de tonnes, les importations énergétiques et de produits chimiques de la Libye ont représenté successivement 3,5% et 4,1% des importations totales.

Or, les pays arabes producteurs, grands ou petits, comme ceux de transit, ont tout intérêt à édifier collectivement, des industries pétrochimiques complémentaires et intégrées, tant du point de vue technologique que de commercialisation. Mais l'on ne peut atteindre pareil objectif tant que sévit dans les pays arabes producteurs, la souveraineté pétrolière et politique des sociétés multinationales.

(1) Le Fonds Koweïtien pour le Développement Economique, est un organisme public, le seul dans le monde arabe dans le genre. Il a consenti au total, 200 millions de dollars de crédits industriels aux pays arabes alors que les avoirs publics arabes dans les banques étrangères dépassent 4 milliards de dollars.

L'avenir des industries pétrochimiques et leur promotion dépendent de la réalisation d'une communauté arabe pétrochimique régionale et intégrée offrant la taille légale et rationnelle nécessaire tout comme l'est le marché pour l'industrie⁽¹⁾.

En octobre 1971 s'est tenu au Koweït la Deuxième Conférence inter-arabe pour le Développement Industriel. Six résolutions ont été prises à issue :

- 1) libéraliser le mouvement des capitaux entre les pays de la Communauté Arabe et y assurer la libre circulation des matières premières et des produits semi-fabriqués et finis.
- 2) achever les préparatifs en vue de mettre sur pied le Fonds Arabe pour le Développement Economique et Social FADES dont la création avait été décidée lors de la Première Conférence tenue en 1966 au Koweït également.
- 3) coordonner les plans de développement industriel entre les divers pays arabes.
- 4) créer une série d'entreprises industrielles inter-arabes à capitaux mixtes, orientées vers l'exportation, avec pour principaux produits les engrais, les plastiques et les textiles, et établir des sociétés conjointes de transport.
- 5) établir plusieurs organismes avec pour charge de surveiller la qualité des produits industriels et l'améliorer.
- 6) collaborer dans tous les domaines techniques à tous les échelons.

En réalité, la promotion d'une industrie pétrochimique communautaire (horizontalement complémentaire) et intégrée (verticalement, donc technologiquement complémentaire) ne saurait être réalisée dans l'état actuel des choses. Certes, une coordination minima est possible, encore qu'il faille au départ une volonté

(1) EL-ZAIM, Issam : «An Approach to Problems of Petrochemical Planning of Arab Countries — A case study in Regional Petrochemical Planning», Report to the Second UNIDO Symposium on the Promotion of Petrochemical Industries in Developing Countries, Baku, October, 1969.

politique. Les pays arabes peuvent renforcer leurs échanges bilatéraux ou triangulaires ; ils peuvent aussi se prêter une assistance financière, ne serait-ce que minime, par exemple l'octroi de crédits industriels ou l'aide technique, comme l'envoi d'ingénieurs et du personnel qualifié. Cependant, la promotion pétrochimique ne saurait s'accomplir tant que l'exploitation pétrolière, gazière et pétrochimique, nationale et intégrée n'est pas devenue la clef de l'industrialisation.

Ceci est valable à l'échelle d'un même pays, le cas de l'Irak par exemple, où la législation économique oblige les Pouvoirs publics à consacrer 50% au moins de ses recettes pétrolières à l'industrialisation et au développement, en fait 80 à 90% vont au Plan de développement, mais où le budget dépend, au départ, pour 35 à 40% des recettes de l'exploitation étrangère et indirecte de l'IPC.

C'est vrai aussi pour ce qui est de l'industrialisation pétrolière de toute la communauté arabe, car la conformité des options fondamentales de ses membres et la coordination de leurs stratégies dans les domaines du financement des projets, des choix des tailles des unités, des produits à fabriquer et des procédés à retenir ainsi que de leurs politiques du marketing local, régional et d'exportation⁽¹⁾, s'avèrent vitales pour la réalisation et le succès d'un projet industriel pétrochimique aussi grand que complexe.

(1) EL-ZAIM, Issam : «An Approach to Problems of Petrochemical Planning of Arab Countries — A case Study in Regional Petrochemical Planning», op. cit.

TROISIEME PARTIE

Les répercussions de l'exploitation indirecte sur l'économie générale.

A. Les répercussions structurelles sur le revenu national.

Les pays arabes grands exportateurs de pétrole sont jusqu'ici, soit très peu, soit comparativement peu peuplés. Leurs économies sont très souvent à base exclusivement pétrolière. C'est notamment le cas de la Libye, du Koweït, des Emirats de Qatar, de Bahrein, d'Abu Dhabi et de Dubai. Les économies de l'Arabie Séoudite, voire même de l'Irak et de la Libye pourraient y être rattachées en raison de l'omniprésence du pétrole dans leurs budgets et dans leurs balances commerciales et de paiements, ainsi que dans la structure de leurs revenus nationaux respectifs. Les chiffres expriment avec éloquence le phénomène structurel que constitue la dépendance de leurs revenus nationaux à l'égard du pétrole brut. La valeur nette de la production du brut, sous le régime concessionnaire représente dans le cas de l'Irak, environ un tiers du produit intérieur brut (PIB).

Le produit intérieur brut (PIB) est très largement dépendant des recettes provenant des secteurs étrangers de l'exploitation pétrolière, dans les différents pays arabes producteurs. Trop frappant est l'exceptionnel contraste entre une production pétrolière remarquable, quelquefois gigantesque d'une part et une minuscule dimension territoriale et démographique, pour que nous cherchions à prouver le caractère structurel de la dépendance financière vitale des économies des Emirats vis-à-vis de leurs secteurs pétroliers étrangers.

Au Koweït, le secteur pétrolier a contribué en 1966 - 67 pour 93,4%, au revenu national, contre 4% seulement pour le secteur industriel (raffinage non inclus) et 0,5% pour l'agriculture⁽¹⁾.

(1) JALEE, Pierre : «Le Tiers-Monde en chiffres», op. cit. pp. 150 - 165.

Mais nous observons le même phénomène, à des degrés différents, dans les autres pays arabes producteurs dont les économies sont relativement plus viables, en tout cas plus diversifiées. En ce qui concerne l'Arabie Séoudite, en 1968 le produit intérieur brut (PIB), provenait pour 55% du sous-sol, contre 32% des services, 8% de l'agriculture et 6% de l'industrie⁽¹⁾.

**RECETTES PETROLIERES & PRODUIT INTERIEUR
BRUT (PIB)⁽²⁾**

Année	Pays	Part du sous-sol dans le revenu national en %	Le reste de l'industrie en %	Produit Intérieur Brut PIB (en dollars)
1968	Libye	55 %	10 %	1227
1968	Irak	36 %	9 %	285
1968	Arabie Séoudite	55 %	6 %	1227
1966/67	Koweit	93,4%	3,9%	—

B.—Le destin des recettes fiscales

L'application depuis 1954 du principe du fifty-fifty dans le partage des bénéfices entre pays producteurs et sociétés opératrices étrangères entraîna l'augmentation des revenus pétroliers des Etats arabes producteurs qui passèrent ainsi de 2554 millions de dollars à 3639 millions⁽³⁾.

(1) Le Pétrole et le Gaz arabes, vol. 3, No. 60, Beyrouth, 16 septembre 1971, p. 14, op. cit.

(2) JALEE, Pierre : «Le Tiers-Monde en Chiffres», Paris, 1971, Petite Collection Maspéro, pp. 150 - 165, op. cit.

(3) SARKIS, Dr. Nicolas : Rapport présenté au 7ème Congrès Arabe du Pétrole, Koweit, 1970.

Les négociations de Téhéran et de Tripoli à la fin de 1970 et aux débuts de l'année en cours, ont abouti à une requantification de la fiscalité en faveur des pays producteurs : relèvement à 55% du taux de l'impôt sur le revenu net des sociétés, augmentation immédiate de 35 cents par baril et supplément annuel de 5 cents des prix affichés avec une autre augmentation de 2.5% par an pour corriger les effets de l'inflation occidentale et enfin, suppression des réductions consenties jusqu'ici aux sociétés, par les pays producteurs, sur les prix d'exportation⁽¹⁾.

L'augmentation de la production et l'amélioration des conditions financières des contrats pétroliers ont pour effet, la hausse des revenus des pays arabes de 492 millions de dollars en 1952 à 3640 millions en 1968 et à environ 5 milliards en 1970⁽²⁾.

REVENUS PETROLIERS DES PAYS PRODUCTEURS
EN 1970⁽³⁾

(en millions de dollars)	
Abu Dhabi	230,5 ⁽⁴⁾
Arabie Séoudite	1200,3
Irak	513,3
Koweït	896,5
Qatar	122,0
Bahrein, Oman & Dubaï	150,2
Total	3112,8
Libye	1294,8
Iran	1076,4
Total M.O. (sauf Libye)	4189,2
Venezuela	1486

(1) EL-ZAIM, Issam : «Les Politiques pétrolières des Etats arabes», *Le Monde Diplomatique*, Novembre 1971, op. cit.

(2) SARKIS, Dr. Nicolas : «L'industrie pétrolière et la planification économique dans les pays arabes», rapport au 7ème Congrès Arabe du Pétrole, p. 2.

(3) Revenus pétroliers des pays du M.O., de la Libye et du Venezuela, Tableau 1, in *Le Pétrole et le Gaz Arabes*, vol. III, No .60, Beyrouth, 16 septembre 1971, p. 36, op. cit.

(4) Le Dr. Hassan Abbas Zaki, conseiller économique auprès du Gouvernement d'Abu Dhabi, annonça en octobre 1972 des revenus de l'ordre de 420 millions de dollars pour 1972.

Quantitativement, la production progresse constamment, voir à des rythmes accélérés dans les pays arabes producteurs dont les secteurs pétroliers sont contrôlés et exploités par les sociétés multinationales, non seulement dans le cadre excentrique des Emirats du Golfe, mais aussi et surtout en Arabie Séoudite, c'est-à-dire où l'exploitation indirecte comme forme dominante, n'est pas mise en cause ni à court ni à moyen termes. Cette progression de la production se double de revalorisations successives de la rente et de l'impôt pétroliers de tous les pays de l'OPEC, d'où une progression spectaculaire des recettes pétrolières dans les pays producteurs pratiquant une politique de démission vis-à-vis des sociétés concessionnaires. Le revenu national de l'Arabie Séoudite va augmenter de 9,7% au cours de l'exercice 1971 - 72⁽¹⁾, grâce à la croissante spectaculaire de la production dans le secteur des 4 sociétés américaines concessionnaires de l'ARAMCO, et également aux revalorisations des prix décidés en 1971⁽²⁾.

Cependant, toutes ces augmentations n'ont pu avoir l'effet souhaité sur le développement économique. En effet, les bénéfices réalisés par les sociétés sur l'exploitation continuaient à être transférés des pays arabes producteurs vers l'étranger en toute liberté⁽³⁾, sans qu'ils ne soient ne serait-ce qu'en partie, réinvestis dans ces pays où ils ont été réalisés. Pis encore, une part impor-

(1) Le Pétrole et le Gaz Arabes, Vol. III, No. 60, Beyrouth, 16 septembre 1971, p. 14.

(2) En fait, ces revalorisations sont le fruit de la détermination et de la persévérance des pays producteurs engageant des batailles pour récupérer leur souveraineté pétrolière aux agents internationaux de l'exploitation pétrolière. En dépit des chutes dans leurs productions nationales qui résultent dans l'immédiat de la nationalisation, les recettes pétrolières des pays concernés ne tardent pas à revenir à leur niveau initial et à s'accroître sensiblement, soutenues en cela par la commercialisation directe du brut nationalisé et par les revalorisations des prix auxquels ces pays précisément, ont contribué le plus. A titre d'exemple, l'Algérie voit ses revenus pétroliers doublés en 1972 par rapport à l'année précédente, année de la nationalisation au cours de laquelle la production baisse de 22,8%. Cela, sans parler des perspectives industrielles que la nationalisation ouvre devant eux.

(3) SARKIS, Dr. Nicolas : «Rapport au 7ème Congrès Arabe du Pétrole, Koweit, 1970 op. cit.

tante des revenus de certains Etats arabes s'achemine vers les pays étrangers par l'importation, en contrepartie des biens finis ou se voit déposée dans les banques étrangères et placée sur les marchés financiers. A tel point que d'aucuns ont pu parler de l'existence purement géographique et non point économique des pétroles arabes. Les recettes pétrolières permettent aux pays arabes producteurs dans le cadre des concessions, d'accumuler constamment de nouvelles ressources financières. En 1969, les recettes pétrolières des pays arabes furent de 4,2 milliards environ. Si nous prenons les pays arabes suivants : L'Irak, le Koweït⁽¹⁾, les Emirats du Golfe, l'Arabie Séoudite et la Libye⁽²⁾ ainsi que le Liban et la Jordanie⁽³⁾, leurs capitaux, placés en 1969 à l'étranger approchaient 1,5 milliards de dollars ; les fonds des gouvernements et des banques centrales arabes, placés également à l'étranger, représentaient plus de quatre milliards de dollars, les réserves en or de ces banques centrales y étant comprises. Nous arrivons à un total des avoirs arabes à l'étranger de l'ordre de six milliards de dollars environ⁽⁴⁾. Il s'agit d'ailleurs d'avoirs nets dont ont été déduits donc les engagements et les dettes financières. Les pays arabes à régimes pré-socialiste tels l'Algérie, l'Egypte et la Syrie n'y sont pas inclus. Un économiste libanais

- (1) Selon un rapport soumis par le Ministère Koweïtien des Finances et du Pétrole à l'Assemblée Nationale, indique que les réserves monétaires de l'Etat, à la fin de l'année 1970, totalisaient 1.582 millions. 27% en étaient investis à l'étranger sous forme de dépôts, de titres et d'actions, 28,2% l'étaient dans les autres pays arabes et 2% en souscriptions à des organisations internationales, 20,2% dans des organismes publics koweïtiens et 22,6% dans les compagnies d'investissement, des prêts à ces compagnies et des subventions aux banques koweïtiennes, in *Le Pétrole et le Gaz Arabes*, vol. III, No. 60, Beyrouth, septembre 1971, p. 15.
- (2) En décembre 1971, la Libye nationalisa la British Petroleum (10 à 12,5 millions de tonnes par an, soit la moitié de la production commune BP/Bunker Hunt) et retira des banques britanniques ses avoirs s'élevant à 250 millions de Livres Sterlings, par mesure de représailles après l'invasion iranienne de trois îlots arabes dans le Golfe, de connivence avec la Grande-Bretagne qui venait d'en retirer ses troupes.
- (3) Le Liban et la Jordanie sont des pays de transit et perçoivent à ce titre, des redevances pétrolières. De plus, les pays producteurs acheminent vers ces deux pays, vers le Liban surtout, des capitaux constitués par la perception de la rente et de l'impôt pétroliers.
- (4) International Monetary Fund: *International Financial Statistics (Monthly)*, Washington, IMF.

évalue les investissements et les placements individuels des pays arabes (pétroliers en fait) à 750 millions de dollars en Suisse et dans les entreprises suisses, et à 1420 millions aux Etats-Unis et en Grande-Bretagne, ce qui donne au total 2,17 milliards qui monte à 2,5 milliards lorsque nous considérons les placements individuels arabes dans la totalité des pays capitalistes⁽¹⁾.

Les avoirs arabes à l'étranger en 1969 (en millions de dollars)

Capitaux privés individuels	2500
Capitaux des sociétés privées	700
Capitaux des banques arabes	1500
Capitaux publics des gouvernements et des banques centrales	4300
Total	9000

Ce qu'on appelle coût de revient est essentiellement constitué par les biens d'équipement importés des pays industrialisés ainsi que par les salaires et les dépenses qui retournent aux mêmes pays. Pour une année comme 1966, ce poste a représenté dans l'ensemble des pays arabes, plus d'un milliard de dollars⁽²⁾. Or, sur la base de la production actuelle qui est, pour l'ensemble des pays arabes, de l'ordre de 10 millions de barils par jour, le total des revenus des pays arabes est d'environ 2,5 milliards de dollars par an.

Enfin, le placement de ces sommes colossales se fait en devises; dollars américains, livres sterlings et francs suisses pour

(1) CORM, Dr. Georges : «Les investissements privés à l'étranger -- Deuxième partie», in Al-Betröl Wal-Ghaz Al-'Arabi, vol. 5, No. 11, Beyrouth, août 1971, pp. 39 et 40, en arabe.

(2) SARKIS, Dr. Nicolas : «En marge des événements du Moyen-Orient, le pétrole arme de dissuasion», in Syrie et Monde arabe, No. 151, Damas, juin 1967 ; Office Arabe de Presse et de Documentation.

l'essentiel. Leur valeur est à la merci des fluctuations monétaires, nous en avons vu la démonstration avec la dévaluation du dollar et ses effets sur les avoirs koweïtiens aux Etats-Unis⁽¹⁾.

C.—Les répercussions sur les secteurs non-pétroliers.

La dépendance de l'économie à l'égard du pétrole brut, extrait dans le cadre de l'exploitation indirecte, a des implications pour l'agriculture et pour les industries non extractives. Ces implications se manifestent par des déséquilibres entre les valeurs nettes des secteurs nationaux, agricole et industriel et celles du secteur étranger de l'extraction pétrolière. Dans tous les pays où sévit le régime de l'exploitation indirecte, le rôle du secteur étranger d'hydrocarbures est quantitativement supérieur aux secteurs nationaux non pétroliers. Pour l'Irak⁽²⁾, le secteur étranger des hydrocarbures est supérieur aux deux secteurs nationaux réunis, ceux de l'agriculture et de l'industrie.

Ceci s'explique par le fait que le secteur pétrolier d'exploitation étrangère et indirecte, réunit l'activité dans les pays arabes producteurs, à la production de brut, prive leurs économies des stimulants industriels et économies globaux ainsi que des recettes qu'engendrerait une promotion des industries pétrochimiques, ne serait-ce qu'en partie, exportatrices. En effet, l'exportation des hydrocarbures arabes à l'état brut, élimine logiquement

(1) Selon les estimations de la revue koweïtienne Al-Majâless (No. du 26, 12.1971) la dévaluation du dollar coûtera au Koweït, du fait de la diminution des revenus pétroliers, environ 97 millions de dollars par an, auxquels s'ajoutent les pertes subies par le gouvernement et les citoyens koweïtiens, sur les sommes déposées par eux dans les banques américaines.

(2) En 1969, la valeur nette de la production agricole, celle du forage et de la pêche comprise, a été d'environ 198 millions de dinars irakiens, soit 534,4 millions de dollars; la valeur nette des produits industriels transformés, produits raffinés compris, a été de 94 millions de dinars, soit 277,2 millions de dollars. Ceci donne un total de 292 millions de dinars ou 817,6 millions de dollars pour les secteurs nationaux, alors que la valeur nette de la production du brut contrôlée par le groupe commissionnaire IPC a atteint environ 333 millions de dinars soit 932,4 millions de dollars.

raffineries et usines pétrochimiques et par conséquent, des industries sidérurgiques et d'autres productrices de machines et d'appareils nécessaires à l'industrie pétrolière, à l'agriculture devenue motorisée, aux équipements industriels et à l'habitat.

Toute amélioration de la part des secteurs agricole et industriel dans le revenu national et dans le budget général, nécessite l'accroissement de la production et l'amélioration de la productivité dans chacun des dits secteurs. Cela est conditionné à son tour par l'industrialisation à finalité économique nationale de l'industrie pétrolière, industrialisation qui est le seul moyen d'impulser le développement de l'économie nationale en y intégrant cette industrie développée en aval. Ce qui est certain, c'est que les régimes de l'exploitation étrangère indirecte ont autorisé une activité extractive qui a interdit, comme nous l'avons constaté, de pareilles transformations ; ces régions autorisent actuellement, comme nous l'avons vu également, une activité pétrochimique marginale et uniforme, concurrentielle donc, coupée de ses marchés naturels de la région, ceux des pays arabes.

D'aucuns ont écrit des livres sur les bienfaits des sociétés concessionnaires dans l'environnement arabe⁽¹⁾ qui, présentant la mouche comme un éléphant, gonflent les effets très limités des secteurs de l'extraction véritablement étrangers, sur les économies arabes de la région. Les apologistes des sociétés multinationales semblent renoncer à cette attitude désuète pour semer des doutes sur les chances économiques d'une industrialisation pétrolière et pétrochimique arabe nationale. Certes, le défi pétrochimique est réel et son envergure bien grande, car elle embrasse toute l'action historique de l'industrialisation, mais les pays arabes pétroliers ont besoin non point de capituler sur le plan pétrochimique aux sociétés multinationales, cédant ainsi à leur chantage, mais bien d'approfondir leur connaissance des aspects complexes de cette industrialisation et de coopérer sur tous les

(1) FINNIE, David N. : «Desert Enterprise : The Middle East Oil Industry in its Local Environment», Cambridge, Massachussets, 1958.

Voir aussi, MEYER, A.J. : «The New Capitalism : Companies as Innovators», In : «Middle Eastern Capitalism», Cambridge, Massachussets, Harvard University Press, 1959, pp. 80 — 92.

plans entre eux pour profiter du caractère industrialisant et stimulant de la promotion nationale des industries pétrochimiques inter-arabes. Plus l'industrialisation pétrochimique est orientée vers le marché intérieur, plus elle jouera ce rôle de stimulation à la croissance⁽¹⁾.

La première des conditions indispensables à l'exercice véritable de la souveraineté nationale dans le domaine industriel est son appropriation exclusive par l'Etat national. L'importance de la propriété publique est très variable dans les secteurs pétrochimiques des pays arabes. Ceux de la Syrie et de l'Algérie sont notamment nationaux et étatiques. L'appropriation publique est également une nécessité de base pour la planification du développement pétrochimique et pour l'élaboration, en toute indépendance, d'une politique pétrochimique susceptible de promouvoir l'industrialisation nationale, la modernisation de l'agriculture, l'équipement pétrochimique des secteurs agricole et industriel et la transformation des balances commerciale et de paiement du pays.

D.—Les répercussions sur le commerce extérieur.

L'extraction des pétroles dans le cadre de l'exploitation étrangère, celui de la concession essentiellement, n'est qu'une version minière de la vocation coloniale de monoculture à vocation exportatrice. Comme celle-ci, l'extraction du pétrole et son acheminement à l'état brut, vers les centres capitalistes de consommation industrielle (raffineries, usines pétrochimiques et industries en général) et usagère, relèvent tous deux de la fonction

(1) La fonction absorbante et stimulante des produits pétrochimiques ne saurait être obtenue du marché national, sans que l'on procède à des réformes de structures notamment agraires, à la mécanisation et au regroupement coopératif et collectif des activités agricoles, à une mutation pétrochimique de l'équipement industriel et des matériaux de construction. L'expérience des pays arabes qui ont procédé à une réforme agraire parallèlement à l'exploitation nationale et directe de leurs hydrocarbures amorçant par ailleurs une industrialisation pétrochimique, c'est le cas de la Syrie, montre qu'il faut également s'assurer au départ, d'une planification nationale règlementant et orientant les échanges et effets inter-sectoriels.

typique de l'économie dépendante dans la division internationale et capitaliste du travail⁽¹⁾.

Deux phénomènes simultanés caractérisent en conséquence, les exportations pétrolières et le commerce extérieur des pays arabes producteurs-exportateurs d'hydrocarbures :

1 — **un déséquilibre structurel** : la prédominance, souvent la présence unique, du pétrole brut dans les exportations principales. Très souvent, le pétrole est la principale exportation du pays. A titre d'exemple, en 1969, le pétrole fut la seule et principale matière exportée par l'Irak et la Libye⁽²⁾. successivement 92% et 99%.

Mais le problème est en réalité plus grave encore. En effet, si le poste d'hydrocarbures est prédominant dans les exportations arabes, les produits raffinés n'y occupent qu'une place bien secondaire, comme le montre le tableau suivant :

**PREDOMINANCE DU BRUT ET DES PRODUITS RAFFINES
DANS LES EXPORTATIONS (FOB) DE QUATRE PAYS
ARABES, EN 1967.**

PAYS	PART DU BRUT dans les exportations globales	Part des produits pétroliers (brut et raffinés) dans les exportations globales
Algérie⁽³⁾	69.15%	76,85%
Arabie Séoudite	80.30%	93,06%
Irak	92,88%	—
Libye	99.76%	

(1) A ce propos, plus des trois quarts des exportations des pays dits du Tiers-Monde, consistent en produits primaires. Voir CERM : «L'aide, les termes de l'échange et l'organisation des marchés,» Centre d'Etude et de Recherche Marxistes : CERM, Paris, mai 1970, Cahier No. 77, 45 pages.

(2) International Monetary Fund : International Financial Statistics (monthly), Washington, IMF, July, 1968.

(3) Le grand renforcement depuis 1967 notamment du secteur de l'exploitation nationale par les nationalisations successives, totales, des intérêts anglo-saxons et du secteur gazier et la diversification de l'économie, ont renversé les rapports de force pétroliers de l'Algérie avec les sociétés.

Car, la rupture géographique entre l'extraction, activité en amont située dans les pays producteurs, et le raffinage, activité en aval, située dans les pays importateurs, se traduit dans le commerce extérieur des pays arabes exportateurs par une part dominante du brut par rapport aux produits raffinés et au gaz naturel. En 1967, les pourcentages successifs du brut et des produits raffinés ont été les suivants : 89.48% et 10.52% pour l'Algérie, 84.11% et 15.89% pour l'Arabie Séoudite.

Le Moyen-Orient importe les produits pétrochimiques, en grande partie à base du pétrole moyen-oriental, des différentes parties du monde. Sur la base des chiffres d'importation des matières brutes pour les plastiques, le caoutchouc synthétique et les fibres synthétiques, la consommation effective per capita a été estimée de 2 à 3 kg (mais celle-ci ne comprend pas la consommation des plastiques, des caoutchoucs et fibres traités)⁽¹⁾.

L'absence d'industries pétrochimiques nationales explique le niveau très bas de la consommation pétrochimique par les pays arabes condamnés à importer les produits de la pétrochimie. (voir tableaux).

(1) UNITED NATIONS : «Petrochemical Industries In Developing Countries», New York, United Nations, 1970, No. ID/46, Vol. I, Report of the International Petrochemical Symposium on the Development of the Petrochemical Industries in Developing Countries, Baku, USSR, October 21 - 31, 1969, p. 16.

DEFICITS PETROLIERS ET CHIMIQUES DES PAYS ARABES EN 1967
 (Emirats du Golfe non-inclus)⁽¹⁾
 (Solde des exportations FOB et des importations CIF en millions de dollars)

Pays	Importations				Exportations		Solde
	Energetiques	Chimiques	totales	pétrolières	Chimiques	Total des pétrolières gazières et raffinées	
Soudan	8,7 M.	24,07 M.	32,77 M.	0	0	0	— 32,77
Mauritanie	11,7 M.	12,74 M.	24,44 M.	0	0	0	— 24,44
Maroc							
Algérie ⁽²⁾	—	—	—	503,35 M.	58,795 M.	562,145 M.	+ 562,155
Tunisie ⁽³⁾	10,45 M.	20,9 M.	31,35 M.	—	—	22,04 M.	
Libye ⁽⁴⁾	16,8 M.	19,6 M.	36,4 M.	1164,8 M.	0	1164,8 M.	+ 1128,4 M.
Egypte ⁽⁵⁾	55,2 M.	69 M.	124,2 M.	—	—	20,7 M.	103,5 M.
Arabie							
Séoudite	—	—	—	1352,34 M.	214,94 M.	1567,28 M.	+ 1567,28 M.
Jordanie ⁽⁶⁾	9,8 M.	10,36 M.	20,16 M.	—	—	—	—
Liban							
Irak	—	—	—	659,2 M.	—	659,2 M.	+ 659,2 M.
Syrie ⁽⁷⁾	24,869 M.	23,821 M.	48,69 M.	—	—	—	— 48,69 M.

- (1) JALEE, Pierre : «Le Tiers-Monde en chiffres», Paris, 1971, petite Collection Maspéro, pp. 150 — 165.
- (2) Un complexe d'engrais azotés et un autre d'engrais phosphatés à Annaba, plus récent, fonctionnent déjà.
- (3) La Tunisie a exporté en outre des phosphates à l'état brut pour 23.94 millions de dollars.
- (4) Le cas de la Libye illustre parfaitement la pratique des entreprises multinationales du pétrole dans les pays arabes en vertu des régimes de l'exploitation étrangère indirecte.
Seule, une raffinerie locale d'ESSO existait jusqu'ici dans le pays. Destinée à servir cette société essentiellement, elle ne pouvait guère approvisionner le marché libyen (consommation annuelle - 1250.000 tonnes). Sous la pression du Gouvernement, les sociétés opératrices ont finalement accepté de faire raffiner en Sicile (Italie) au prorata de leur production en Libye, le pétrole nécessaire à la consommation libyenne. Toutefois, ce pays entreprend actuellement la construction de deux raffineries.
- (5) L'Egypte exporta des articles de textiles de toutes catégories pour 103.5 millions de dollars en 1967.
- (6) La Jordanie exporta pour 9.733 millions de dollars de phosphates naturels.
- (7) Un an après la Syrie devient un petit producteur de pétrole brut : 3.5 millions en 1969 ; 7 millions, en 1971 et l'on prévoit 15 millions pour 1975. En outre, elle vient de commencer à produire des engrais phosphatés et azotés.

**Importations pétrolières et chimiques (CAF) des pays faiblement
ou non producteurs d'hydrocarbures en 1967.**

IMPORTATIONS (CAF) 1967

Pays	Energie	Produits chimiques	Total
Soudan	4%	11,17%	15,17%
Mauritanie année 1966	5,88%	6,41%	12,29%
Jordanie	6,36%	6,73%	13,09%
Liban	—	—	—
Maroc ⁽¹⁾	4,85%	8,45%	13,30%
Tunisie ⁽²⁾	4,02%	8,05%	12,07%
Egypte ⁽³⁾	6,98%	8,75%	
Syrie ⁽⁴⁾	9,41%	9,02%	18,43%

Source: JALEE, Pierre : «Le Tiers-Monde en chiffres», Paris, Petite Collection, Maspéro No. 74, 1971, 181 p., Format de Poche pp. 155 - 165.

- (1) La même année le Maroc exporta des engrais phosphatés, donc chimiques pour 53 millions de dirhams (1 dirham valait 0,198 dollars à l'époque), tout en important des produits chimiques, au total pour 221 millions de dirhams, soit environ 4 fois la valeur de ses exportations. Par ailleurs, le Maroc a exporté également des phosphates bruts pour 546 millions de dirhams.
- (2) En 1967, la Tunisie a cependant exporté des produits pétroliers (bruts et raffinés) pour 1106 millions de dinars (1 dinars vaut 1,9 dollars) soit un peu plus que le double de ce qu'elle a importé. Quant à sa balance commerciale des produits chimiques, elle était légèrement excédentaire, car ses exportations d'engrais phosphatés représentaient 11,1 millions de dinars contre 11 millions d'importations chimiques diverses. Cependant, ce pays a exporté des phosphates brutes pour 12,6 millions de dinars.
- (3) Cette année-là, l'Egypte a exporté des produits pétroliers bruts et raffinés, pour 9 millions de Livres Egyptiennes (1 Livre = 2,3 dollars), tout en important des produits énergétiques pour 24 millions et chimiques pour 30 millions, soit au total 6 fois ses exportations pétrolières.
- (4) Depuis 1968, la Syrie est devenue un pays producteur : 7 millions de tonnes en 1971. D'autre part, elle doit commencer cette année à produire des engrais phosphatés et azotés. Voir EL-ZAIM, Issam : «L'expérience pétrolière syrienne d'exploitation nationale et directe», Grenoble, mai 1971, 49 pages.

2 — **Un déséquilibre d'orientation** : comme nous l'avons développé au début de cette étude, l'exploitation étrangère des hydrocarbures arabes est une entreprise extrêmement profitable, organisée et contrôlée par des sociétés multinationales, oligopolistiques et intégrées, qui approvisionnent les marchés grands consommateurs des pays capitalistes industrialisés, le mécanisme de cet approvisionnement étant l'exportation par les pays arabes producteurs de leurs pétroles à l'état brut. Or, nous touchons là précisément, au deuxième phénomène inhérent à cette stratégie, celui du déséquilibre d'orientation dans les commerces extérieurs des pays arabes producteurs.

Au drainage des hydrocarbures arabes vers les pays capitalistes grands consommateurs s'ajoute une politique arabe d'approvisionnement à ceux-ci. Les importations des pays arabes, en particulier, celles des grands producteurs d'hydrocarbures, se font aux pays capitalistes consommateurs des pétroles arabes, comme nous le voyons dans ce tableau :

LES ECHANGES DES PAYS ARABES VERS LES PAYS CAPITALISTES, 1967, EN %
 Répartition géopolitique des exportations arabes FOB en 1967 en %
EXPORTATIONS FOB & IMPORTATIONS CAF

Pays	Japon	USA	G.-B.	RFA	France	Pays-Bas	Italie	Suisse	Espagne
Algérie(1)									
Exportations			5,5%	12 %	59 %		3,5%	3,5%	3,5%
Importations		8 %		3 %	60 %		3 %		
Arabie									
Séoudite									
Exportations	16,5%	5,5%	8 %				13 %		5 %
Importations	6,5%	22 %	7,5 à 8%	6 %			7,5 à 8%		
Irak									
Exportations			5 %		23,5%	8 %	16 %		5,5%
Importations	6 %	9 %	13 %	10 %					
Libye									
Exportations		—	12,5%	23 %	12,5%	8,5%	20,5%		
Importations		12,5%	11 %	7,5%	6 %	—	28,5%		

(1) Après l'Égypte et la Syrie, l'Algérie procède à la diversification de son commerce extérieur. Les pays socialistes et les pays arabes et plus généralement, ceux en voie de libération, sont les deux groupes à bénéficier de ce rééquilibrage. Notons qu'à la différence des deux premiers pays, l'Algérie opère cette mutation alors que le secteur pétrolier joue un rôle directeur dans son économie et que le pays est déjà exportateur d'une cinquantaine de millions de tonnes de pétrole en plus du gaz naturel.

L'on nous affirme que les données quantitatives des balances commerciales des pays arabes avec les Etats occidentaux importateurs des pétroles arabes favorisent ces pays par rapport à leurs clients pétroliers. Certes, il importe cependant, de considérer la structure qualitative par marchandise, de ces balances et surtout les échanges extérieurs non pétroliers du monde arabe pour comprendre les vraies bases de ces échanges. Car si nous prenons les statistiques du commerce extérieur des pays arabes avec la France⁽¹⁾ en 1968, nous constatons que :

- a) les hydrocarbures ont constitué 73,60% des exportations arabes à destination de la France ;
- b) les exportations non pétrolières n'ont représenté que 26,39% des exportations arabes globales en France⁽²⁾ ;
- c) les mêmes exportations non pétrolières n'ont représenté en outre, que 43,31% du total des importations arabes à la France (19,09% seulement des importations du Machreq arabe⁽³⁾ par rapport à ses exportations non pétrolières).

Fournisseurs des matières premières pétrolières, les pays arabes sont dépendants des économies capitalistes occidentales. Ils sont victimes des mécanismes directs de cette dépendance : fluctuations de la demande et des prix des hydrocarbures sur le marché mondial se répercutant sur les revenus et les recettes financières des pays producteurs. Bien plus, la protection du marché intérieur des Etats-Unis par des droits des quotas pétroliers et des traités spéciaux constitue un élément essentiel de la politique pétrolière de ce pays. Ses barrières douanières protègent la prospérité et la sécurité des investissements locaux sur le territoire des Etats-Unis. Quant aux pays grands importateurs des hydrocarbures arabes, tels les Etats-Ouest-européens et le Japon, ils frappent les exportations pétrolières arabes de taxes qui représentent plus de trois fois les recettes des pays producteurs

(1) BALTA, Paul : «La France et le Monde Arabe», in Revue de la Défense Nationale, Paris, mai 1971.

(2) EL-ZAIM, Issam : «L'impact de l'hégémonie pétrolière sur les économies arabes», 2ème Partie, in «L'hégémonie pétrolière étrangère et l'industrialisation pétrochimique arabe», op. déjà citée, pp. 38 et 39.

(3) Pays arabes asiatiques, Egypte, Soudan et Libye réunis.

exportateurs. Il en découle une aggravation des difficultés d'exportation et du rôle de fournisseur des pétroles bruts, mais aussi celui de débiteur vis-à-vis des pays occidentaux.

Les pays arabes subissent les effets néfastes de ce qui est convenu d'appeler l'échange inégal et le déficit commercial est un fléau dont souffrent les pays arabes. Ceux qui exportent le pétrole ou le gaz sont d'ailleurs de grands importateurs de biens de consommation courante et d'articles qu'on pourrait appeler de luxe, vue la situation sociale prédominante dans ces pays.

Par conséquent, le véritable enjeu se situe dans le secteur pétrolier. C'est là en effet, que le drainage des richesses nationales arabes vers les sociétés capitalistes occidentales s'effectue. Le taux de rentabilité, l'état brut dans lequel l'exportation des hydrocarbures s'effectue et le rythme de rapatriement financier suffisent pour illustrer l'envergure de cet enjeu. En effet, le transfert des bénéfices résultant des investissements privés dans les pays sous-développés s'ajoutant au déficit commercial, crée un déficit de 6 à 7 milliards de dollars par an dans les comptes extérieurs de l'ensemble de ces pays⁽¹⁾. Il s'agit là, en fait, d'un phénomène qui embrasse toutes les économies dépendantes des pays dits du Tiers-Monde.

Au cours de la période 1962 - 1966, les Etats arabes ont exporté du pétrole pour environ 21,5 milliards de dollars⁽²⁾ ; cependant, le revenu réel de ces pays était d'environ 9,9 milliards de dollars soit de 46% seulement de la valeur des exportations, le reste, soit 11,6 milliards ou 54% du total était retenu à l'étranger par les sociétés.

(1) JALEE, Pierre : op. cit. p. 101.

(2) SARKIS, Dr Nicolas : «Rapport présenté au 7ème Congrès Arabe du Pétrole, Koweït», mars 1970, p. 8.

THE UNITED NATIONS EMERGENCY FORCE

An analysis of the theory and the practice

Dr. IBRAHIM DARWISH

How are problems to be settled when neither force nor the threat of force is used? Time is needed, more time than in any other period of history when the fragmentation of the diplomatic field allowed the full exploitation of a local superiority.

Raymond Aron
On War

Chapter I

BACKGROUND TO U.N.E.F.

A. The San Francisco Conference ; Charter Provisions :

When the United Nations Conference was convened in San Francisco in 1945, to codify and formalize the wartime allied alliance, there was little doubt concerning the chief purpose of the Organization which was to be created. As stated in the preamble to the Charter, it was "to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind".

The United States delegation suggested to the President of this country that "if any single provision of the Charter has more substance than the others, it is surely the first sentence of Article 39, which places upon the Security Council the duty to determine the existence of «any threat to the peace, breach of the peace, or act of aggression» and to make recommendations or decide upon measures to be taken «to maintain or restore international peace and security.»⁽¹⁾

This "prime function" of preserving the peace was structurally centered in Chapter VII of the Charter, entitled "Action

(1) Noted in Goodrich, Leland, *The United Nations*. New York : Thomas Y. Crowell Co., 1959. It is interesting to note in this regard that President Wilson made several similar statements concerning Article 10 of the League Covenant. This is a quite natural view, as collective security is the central point, if any international organization is effectively to preserve the peace.

with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Agression." The provisions of this Chapter constitute a solid and, on paper, quite adequate codification of the concept of collective measures to check aggression by a state⁽²⁾. They constitute, in William Frye's words, "unquestionably mankind's most far-reaching blueprint for world collective security."⁽³⁾

Let us briefly examine these provisions, and then attempt to determine just how they have developed in actual practice.

Significantly, the powers bestowed by Chapter VII are placed entirely in the hands of the Security Council. The Council is to determine both what has happened and what is to be done. (Article 39). It is, in the category of action, to consider non-military solutions first (Article 40), and then — if non-military solutions are thought, or have proven, inadequate — the Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." (Article 42)

Article 43 (1) stipulates: "All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."

These agreements are, according to Article 43 (3), to be "negotiated as soon as possible on the initiative of the Security Council" between the Council and Member states. When a Member is called upon to make forces available, he is entitled, if he so desires, "to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces." (Article 44) However, there is no

(2) The contention is not that the machinery is so adequate that the U.N. will successfully solve all problems brought before it. Like any machinery, it must first be turned on. The rule of unanimity in the Council (of the Permanent Members) makes it most difficult to activate the mechanisms of the Charter. However, once activated, they are equal to the tasks.

(3) Frye, William, *A United Nations Peace Force*. New York: Oceana Publications, Inc., 1957, p. 52.

provision for that Member to exercise a veto over the use of his forces.⁽⁴⁾

Article 47 establishes the Military Staff Committee. This Committee has already been referred to in Article 46: "Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee."

This Committee "shall consist of the Chiefs of Staff of the permanent members of the Security Council or their Representatives." (Article 47, Section 2). The provision continues: "The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council." (Article 47, Section 3).

In effect, thus, collective measures are to be taken by the five permanent members of the Security Council when they, in unanimity, so desire. And the mechanics of implementing their decision(s) are also, through the structure of the military Staff Committee, left in their hands.

Finally, Article 51 of Chapter VII, as well as Chapter VIII in its entirety, should be mentioned. These clauses provide for regional arrangements, structurally outside of, but functionally working in conjunction with, the United Nations Organization.⁽⁵⁾ The role of these regional groupings will be discussed later.

(4) This is an interesting point of comparison with procedure in the League. Article 4 (5 and 6) of the Covenant gave the Member in question a vote as well as a voice in Council deliberations. Since complete unanimity was required this gave the member a veto over the use of his forces. At San Francisco, several delegations insisted that any member called upon to contribute forces should at least be permitted to join the deliberations. See Goodrich, Leland M. and Hambro, Edward, **Charter of the United Nations: Commentary and Documents**. Boston: The World Peace Foundation, 1949 (Second and Revised ed.), pp. 287-288.

(5) The point made here is a crucial one. Under the provisions of Chapter VIII, certain requirements were made of regional organization. For instance, Article 54 states: "The Security Council shall at all times be kept fully informed of activities undertaken or contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security." Largely for this reason, such =

What, then, did the Charter envisage ? It foresaw a concert of powers, supported by the five permanent members of the Security Council, standing to preserve the peace. This concert, operating within the framework of the United Nations, would be more powerful than any potential aggressor. The United Nations, in short, was given, through specific Charter provisions, the authority to enforce any decisions which it might make, providing that such decisions were made by the Security Council.⁽⁶⁾

There is, of course, one glaring weakness in such a system. The five permanent members are immune from punishment. This was, to be sure, largely because the permanent member-to-be would not have signed any document which did not afford them such immunity. However, this condition is also part and parcel of a certain attitude of confusion which held sway at San Francisco, in 1945, as to just what the role of collective security would be. The tenth report of the Commission to Study the Organization of Peace, entitled **Strengthening the United Nations**, analyzes this attitude :

No better example of the confusion about method, which has overshadowed the clear objectives of the United Nations, can be found than the uncertainty which has surrounded the subject of organized resistance to armed aggression. The Charter is am-

= organizations as NATO are said to be formed under Article 51 of Chapter VII, rather than under Chapter VIII. The justification for this important legal distinction is that the prime justification for such regional arrangements is self-defense, an item covered in Article 51. See, Goodrich and Hambro, *op. cit.*, pp. 297-318. Further comment on regional organizations will be made later in this paper.

(6) Lester Pearson observes that, under the Covenant "the Assembly and the Council had concurrent jurisdiction over the peaceful settlement of disputes and recommendations of enforcement action. Under the Charter of the United Nations, however, the Security Council has primary responsibility in this field and, within certain well-defined limits, has the power to direct members to take action. The League Covenant made no provision for the compulsory enforcement of its decisions; any decision which might require the use of force could be taken only with the unanimous approval of all members, including the state against which it was to be used." «Force for U.N.» **Foreign Affairs**, 35 (April 1967), p. 396.

biguous in this regard. It proclaims in general terms the intent to establish a system of collective security against aggression, but it also includes provisions suggesting that the system was not designed to operate in opposition to the will of any one of the Great Powers... Members of the Organization have wavered in uncertainty about the feasibility and desirability of assigning significant responsibilities to the Organization for dealing with the problem of aggression.

The Commission thus concludes :

The Charter contemplates no global Leviathan, but neither does it imagine that all swords are really plowshares.⁽⁷⁾

This is not the place to detail just why the Charter provisions relating to collective security became inoperative. To do so would be to recall a good bit of world history since 1945. However, perhaps a brief statement can be made through use of the "vacuum" concept, suggested by Walter Millis and others.

The collapse of German, Japanese, and Italian militarism, along with the fall of France and the near exhaustion of the United Kingdom, created a "great vacuum of power... over large areas of the globe". Into this vacuum flowed the upsurge of "an impassioned Asian nationalism."⁽⁸⁾ Communist policy has been continually to exploit this situation. Millis concludes that the "inappasable division between the Communist and the non-communist worlds was the inevitable result"⁽⁹⁾

Add to this the tremendous strides in nuclear power — not in itself, necessarily a cause of conflict, but a means of accelerating the conflict — and one has the basic formula which has ren-

(7) Holcombe, A. N., ed., *Strengthening the United Nations*. Tenth report of the Commission to Study the Organization of Peace, New York : Harper's 1957, pp. 16-20. In regard to these points, see Articles 1 (1) and 27 (3) of the Charter.

(8) This was written in 1954. Were the author to update it, I am sure that he would add African nationalism to that of Asia.

(9) Millis, Walter, "The Road from War, 1945-1854." In *the US Stake in the UN*, Proceedings of the Fifth American Assembly, New York : American Assembly, 1954, p. 12.

dered the United Nations Charter provisions for the maintenance of peace and security virtually meaningless.

There is one point which should perhaps be made clear at this time. Concerning the requirement for unanimity of the Permanent Members of the Security Council before action could be taken on a substantive matter, many have asked: Did the delegates at San Francisco not see the many signs of impending differences between the Soviet Union and the Western world? Commentaries speak at length of the poor analysis and lack of foresight which characterized the San Francisco meetings. There was some confusion, and uncertainty, as I have noted. However, an analysis of this particular point does not bear out the findings of some analyses.

All evidence suggests that the delegates were aware of the distinct possibility, even probability, that sharp differences would arise between East and West. The point is simply this: **unanimity had to be assumed.** It was a minimum: without this assumption, embodied as it was in the voting rules of the Council, the Great Powers would never have consented to writing in such great authority for the Council.

Sir Leslie Munro notes: "Even at San Francisco in 1945 the existence of potentially serious differences among the Great Powers was plain enough. But if unity did not then exist, it still was necessary to presuppose it for the future if any real teeth were to be given to the organization. The Security Council has never grown its teeth."⁽¹⁰⁾

Lester Pearson observes that the deadlock on the Military staff Committee, which came as early as 1947, "merely reflected the general breakup of their wartime cooperation and its replacement by the fears and dissensions of the cold war." Article 43 thus became inactive, and the United Nations "today entirely lacks that particular type of international force envisaged in the Charter."⁽¹¹⁾

Speaking to this point, Professor Goodrich notes that "since the requirement of Security Council authorization made

(10) Munro, Sir Leslie, *United Nations: Hope for a Divided World*. New York: Henry Holt and Co., 1960, p. 146.

(11) *Op. cit.*, p. 397.

it possible for a permanent member to prevent any action from being taken by the Council, this might lead to a situation in which a state would be deprived of any protection against an attack directed or supported by a permanent member." He continues: "Clearly, the... objection was based on some skepticism as to whether relations between the Soviet Union and the Western Powers would be such as to permit the close cooperation which the effective functioning of the Security Council required."

This situation clearly called for an "escape clause." It was provided by Article 51, and by Chapter VIII. These, in effect, provided for collective action. But it was not true international, or, if you will, "universal" action. It could rather be undertaken under Article 51, without prior approval of the Security Council. Concerning Article 51, Goodrich notes: "Significantly, it was placed at the end of Chapter VII and not in Chapter VIII, thus stressing its function of introducing an exception to the total responsibility of the Security Council as well as to the special responsibility of the Council in authorizing enforcement action under regional arrangements."⁽¹²⁾

B. Secretary-General Lie's Proposal.

Events in the Middle East in 1948 spurred Secretary-General Lie to consider the creation of a U.N. Force. In his autobiography, he notes: «All through the first half of 1948 I was acutely conscious of how different things in Palestine could have been had the United Nations had an international force at its disposal.

The assassination of Count Bernadotte in September of 1948 led the Secretary-General to place a proposal on the agenda of the Third Session of the Assembly for the creation of a U.N. Force, or "Guard". However, the proposal ran into stiff opposition. The Soviet Union asserted that the United Nations should either comply with article 43, or have no force at all. Others opposed the idea because of cost; still others because of what Lie calls "inertia". He states that "an internationally recruited police force was too radical an idea for many governments." The Assembly finally agreed to a watered-down pro-

(12) Goodrich, Leland, *The United Nations*. New York: Thomas Y. Crowell Co., 1959, p. 163.

posal of some three-hundred men which bore little resemblance to the original Lie proposal.

This creation was christened the United Nations Field Service. It was simply a branch of the Secretariat with special training in the use of communications and transportation equipment. Lie observed that this Field Service, limited as it is, "renders invaluable auxiliary service to United Nations missions in the field; and, although unarmed, it is capable of maintaining a modest guard over premises occupied by the United Nations and valuable buildings located in demilitarized areas, such as Government House in Jerusalem, which has no other protection than the twenty Field Service men together with a few United Nations military observers who are stationed there."⁽¹³⁾

However, valuable as the Field Service may be, it is not, as Lie noted, a true force. The next step in the direction remained to be taken in the United Nations' response to aggression in Korea in 1950.

C. The Korean Intervention, and Its Consequences.

In the troubled days of June, 1950, following the invasion in Korea, the United Nations was able to act swiftly and, for the most part, effectively. However, two important qualifications to this action should be noted.

First, the Korean intervention was made possible by what Lester Pearson has termed two "accidents of history." These created "a temporary but significant change in the pattern of U.N. action to preserve the peace."

The first of these was the absence of the U.S.S.R., with its veto, from the Council table at the time the decision to intervene was taken. The Soviet delegate was conducting a boycott of the Council in protest to the continued seating of the Representative of Nationalist China.

The second "accident" was the presence in Korea, at the time of the outbreak of hostilities, of a United Nations Commission. This group was thus able to make an immediate report on the situation to New York.⁽¹⁴⁾

(13) Lie, Trygve, *In the Cause of Peace*. New York: The MacMillan Co., 1954, pp. 192-3.

(14) *Op. cit.*, p. 397.

It should be noted that whether the Soviet boycott of the Council was continued intentionally during the debate over Korea, with the knowledge that this would render positive Council action possible, or whether the Soviet Union was simply caught napping, or with slow reflexes, is immaterial for this discussion. For whatever reason, Mr. Malik absented himself until August. Once he returned — to assume not only his seat but, by rotation the chair — he personally tied up the entire Council, and rendered further action impossible. However, the Council had already, in the opinion of most members, including, most significantly, that of the United States, given the Organization sufficient mandate for the Korean action.

Second, it should be noted that what was legally a United Nations action was, in fact, largely a United States action. This was true partly from necessity — only the United States had both the strength and the will to pursue the action — and partly from U.S. insistence.

Unfortunately, the Pentagon rather than the United Nations, or even the State Department, called the show. Suggestions for a joint U.N. command, drawn from the 16 participating Members, were firmly rejected in favor of an all- U.S. command. And after the invasion had been turned back, it was a unilateral U.S. decision, with no U.N. sanction, which pressed the action into North Korea. Finally, only vigorous and, at the time, highly unpopular action by President Truman prevented a further foolish extension of the war into China.

The point to be made is simply this : it was only by accident that any United Nations action in Korea could be taken. When it was taken, it became, rather quickly, United States action. Had the United Nations not acted, it appears certain that the United States, upon request from the South Korean government, would have gone it alone.

It is important to distinguish the action in Korea from a true collective measures action. Turning again to the study, *Strengthening the United Nations*, we see the following three attributes assigned to collective measures :

First, their aim is to counteract an initial resort to armed force, as opposed to peaceful means of settling a dispute.

Second, they are directed, not by a single nation against a rival, but by the United Nations as a whole.

Third, their function is to halt violence, rather than to impose a settlement.⁽¹⁵⁾

Speaking to the subject of regional arrangements, as well as to that of collective security, Clark Eichelberger observes :

Strictly speaking, Article 51 contains no provision for a permanent regional arrangement... Article 52 of the Charter contemplates regional arrangements created to settle disputes and deal with problems within the region... What has frequently been referred to by the United States as collective security arrangements have been military alliances. They lack thir-party judgement and the other elements of true collective security.⁽¹⁶⁾

To this point, finally, an observation by Lester Pearson is applicable :

By the time of the Korean operation, it had become clear that where an important, not to say vital interest of a Great Power was at stake, that Power would not readily subordinate its decision to a collective judgement. Because of this and because of the veto, the earlier idea of collective security through the Security Council became impossible to realize.⁽¹⁷⁾

(15) Report of the Committee on "Organizing UN Resources to Preserve Peace," Richard R. Wood, Chmn., in **Strengthening the United Nations**, *op. cit.*, p. 85.

(16) Eichelberger, Clark, **UN : The First Fifteen Years**. New York : Harper's, 1960, pp. 27-8.

(17) *Op. cit.*, p. 397.

Thus, it would appear that, in several vital respects, the 1950 action in Korea could be considered unique. The necessary conjunction of time, place, and events which made this United Nations action possible are not likely to be repeated. It is apparent that the forces which formally flew the U.N. flag in Korea cannot be considered a model for the true U.N. Force of the future.

At this time, it is important to consider the consequences of the Korean action on United Nations practice.

The motivating factor for the changes which took place was the growing knowledge of the impotency of the Council. This was driven home emphatically when Ambassador Malik returned to the Council in August. Thus, following Korea, two distinct alternatives to Security Council action emerged.

The first of these was a wider use of Article 51, which led to greatly expanded Regional Organizations.

The second was the passage, on 3 November, 1950, of Assembly resolution 377 (V), known as the "Uniting for Peace" resolution. It is with this resolution that I wish to deal at this time.

Sponsored by the United States, this important resolution was based on a rather liberal interpretation of Articles 10, 11, and 12 of the Charter. In essence, it gave authority to the General Assembly to deal with situations upon which the Security Council could not reach a decision, due to the veto. This created a modified United Nations system which would be more effective under the conditions that have existed since the War than that spelled out in the Charter."⁽¹⁸⁾

According to the resolution, the Assembly could, when the Council failed to discharge its responsibility for the maintenance of peace, consider the matter immediately with a view to making "appropriate recommendations to Members for collective

(18) *The United Nations*, *op. cit.*, pp. 168, 176.

measures, including in the case of a breach of the peace or act of aggression the use of armed force where necessary.”⁽¹⁹⁾

The resolution further made provision for an emergency special session, to be called within twenty-four hours of the failure of the Council to act. Member states were to examine their resources in order to determine the nature and scope of the assistance which they might render. They were directed to designate special units in their national armed forces, and to so organize, train, and equip them that they could be made available promptly for the use of either the Security Council or the General Assembly.⁽²⁰⁾

In the latter part of the Korean crisis, these provisions were called into use, to deal with the problem of Chinese intervention.⁽²¹⁾ It was not necessary to call the Assembly into emergency session, as the body was in regular session at the time.

The reasoning behind this resolution — largely a product of Dean Acheson — was as simple as it was brilliant. He noted that Article 24 (1) states that the Security Council has “primary responsibility for the maintenance of international peace and security...” Thus, if the Council has **primary** responsibility, somebody must have **secondary** responsibility. Had the framers of the Charter intended the Council to have sole responsibility, the adjective “primary” would not have been used.

Moving further, Acheson reasoned that the Assembly was the only logical body to have this secondary responsibility. Thus, the “Uniting for Peace” resolution merely bestowed upon the Assembly rights which had been intended for it.

Thus, Lester Pearson could conclude that the resolution “meant simply that the General Assembly had decided to provide machinery for utilizing certain powers which it already pos-

(19) *Ibid.*, p. 178.

(20) U.N. Doc., G.A. Res. 377 (V), 3 Nov., 1950.

(21) U.N. Doc., G.A. Res. 498 (V), 1 Feb., 1951, and G.A. Res. 500 (V), 18 May, 1951.

sessed." Pearson, incidentally, links this concept to the concept of a permanent force — the latter being an idea definitely foreseen in the "Uniting for Peace" resolution. He states: "Surely, it was thought, some way could be found for the U.N. to provide a force which would at least halt a drift to war by helping to carry out an Assembly recommendation when the Security Council failed to act."⁽²²⁾ Resolution 377(V) provides that machinery.

There is, of course, one major difference between action by the Assembly, and that of the Council. The Council has certain positive and enumerated powers, which I have noted, to implement its decisions. The Assembly can only make recommendations. Thus, decisions made by the Assembly can never have the force of decisions made by the Council, insofar as being of a binding nature is concerned.

We can see from the provisions of the "Uniting for Peace" resolution that it actually set forward much of the blueprint for a U.N. Force. However, various attempts to implement these provisions have failed. When the Collective Measures Committee made inquiries as to what forces the Members were prepared to designate and maintain for a U.N. Force, the answers of Members were generally vague and evasive. Even the United States, making reference to its commitments in Korea and to N.A.T.O. would not make a firm statement as to what it would do in the future.⁽²³⁾

The Collective Measures Committee, itself a product of the "Uniting for Peace" resolution, soon faded into inactivity. From 1956 to 1961, it held no meetings of a substantive nature.

Clark Eichelberger concludes that the failure of the U.N. to conclude the Korean action decisively, was because of the growing feeling that the Korean intervention was a U.S. affair.

(22) *Op. cit.*, p. 399.

(23) Goodrich, *The United Nations*. *Op. cit.*, p. 179.

Chapter II

THE UNITED NATIONS EMERGENCY FORCE⁽²⁴⁾

On Wednesday 7 November, 1956, at 7 p.m. Rudecindo Ortego of Chile, President of the General Assembly of the United Nations, gave the Emergency Force its legal birth by announcing : "Sixty-four in favour, none opposed, twelve abstentions. The resolution [endorsing Hammarskjöld's] is adopted." Just eight days later, forty-five Danes landed at Abu Suweir airfield ten miles west of Ismalia, Egypt. The amazing thing is that they could have been there in three days — by 10 November — but Egyptian consent was lacking.⁽²⁵⁾

It will not be necessary to go into minute detail concerning the creation of U.N.E.F. However, a few selected points should be made in this regard. They will be followed by some brief comments concerning the way the Force functioned : and, this will be followed by an evaluation of U.N.E.F.'s activities.

A. The Politics of Creation.

If any creation of the United Nations deserves to be called an improvisation, it is the Emergency Force. A bit caustically, Frye comments :

Putting a United Nations police force together from scratch in eight days is like visiting the Louvre in 15 minutes. It is better than not doing it all — but that is about all that can be said for it. No one in his right mind would do it that way if he could help it.⁽²⁶⁾

(24 - 25) Frye, *op. cit.*, p. 21. The following discussion of U.N.E.F. is largely based on Frye's analysis in the source cited here. His study, while a bit out of date, remains the basic document in print on this topic.

(26) *Ibid.*, p. 32.

However, this is precisely what happened.

The machinery for creating what would have been at least the beginning of a Permanent Force had been set up by the "Uniting for Peace" resolution, in 1950.⁽²⁷⁾ However, it can be argued — as Stephen Goodspeed does — that U.N.E.F. had no connection at all with this resolution. He suggests that perhaps "the powers exercised by the Assembly in establishing UNEF stemmed not from the "Uniting for Peace" resolution but from authority already possessed through Charter provisions, since that document permits the Assembly to 'establish such subsidiary organs as it deems necessary for the performance of its functions.' (Article 22)"⁽²⁸⁾

Whatever the basis for the creation of the Force, it is reasonably certain that the efforts of the "Uniting for Peace" resolution had virtually no effect in persuading Members to set aside special units for United Nations use. Goodspeed notes :

The various studies and reports of the Committee (on Collective Measures) have been available for the Secretary-General in his development of plans for the United Nations Emergency Force in the Middle East and undoubtedly contained suggestions which have proved to be of assistance. The voluntary contributions to U.N.E.F. do not appear to have been special units designated for United Nations service as contemplated by "Uniting for Peace" and the Committee reports.⁽²⁹⁾

A consideration of U.N.E.F. as a subsidiary body of the Assembly gives it certain advantages. As such, it is not dependent for life on a resolution — "Uniting for Peace" — the constitutionality of which has been challenged by a permanent Member of the Council — the Soviet Union.

(27) See above, p. 15.

(28) Goodspeed, Stephen S., *The Nature and Function of International Organization*, New York : Oxford Press, 1959, pp. 233 - 4.

(29) *Ibid.*, p. 236.

In this regard, Quincy Wright comments :

The value of an embodied UN force to patrol cease-fire lines, protect U.N. agencies, and tranquilize disturbed areas, is widely recognized. Such a force has been used in Kashmir, Palestine, and Sinai, and there is little doubt of the capacity of the Security Council and the General Assembly to provide such a 'subsidiary agency' if the General Assembly is ready to make the necessary appropriations.⁽³⁰⁾

Professor Wright's comment raises, of course, the additional difficult question of appropriations. This will be dealt with later in this study.

Let us now continue a consideration of the creation of the Force.

The undisputed author of the Force was Lester Pearson, of Canada. His original idea was to have the U.N. flag wave over a Force comprised mostly of British and French troops — with benefit of hindsight — like nonsense. And Pearson, after one look at the mood of the Assembly, concluded the same thing immediately. He then, "believing that some increment to the bargaining power of London and Paris, was vital to break the dangerous deadlock and bring lasting peace to the area, began to explore the idea of a U.N. force, made up of small countries, to separate the belligerents, provide a cooling-off period, readjust the political balance and rescue Britain and France from the worst consequences of their desperate act."⁽³¹⁾

This attitude was closer to what would happen. But it was not close enough. The process which would bring pressure to bear on the invader should also bring pressure on the invaded.

However, Pearson ran into trouble with John Foster Dulles. Dulles insisted that the cease-fire must come immediately; it must not, he felt, be delayed in order to link it to a Force.

(30) "The Role of Law in the Organization of Peace." In **Organizing Peace in the Nuclear Age**, Eleventh Report of the Commission to Study the Organization of Peace, A.N. Holcombe, Chmn. New York : New York University Press, 1959, p. 42.

(31) Frye, *op. cit.*, p. 72.

Pearson bowed to this, and then launched his trial balloon. It looked something like this :

Peace is far more than ceasing to fire, although it certainly must include that essential factor..... I regret the use of military force in the circumstances which we have been discussing, but I regret also that there was not more time, before a vote had to be taken, for consideration of the best way to bring about that kind of cease-fire which would have enduring and beneficial results. I think that we were entitled to that time, for this is not only a tragic moment for the countries and peoples immediately affected, but it is an equally difficult time for the United Nations itself...

The armed forces of Israel and of Egypt are to withdraw or, if you like, to return to the armistice lines, where, presumably if this is done, they will once again face each other in fear and hatred. What then? What then, six months from now? Are we to go through all this again? Are we to return to the *Status quo ante* ? Such a return would not be to a position of security, or even a tolerable position, but would be a return to terror, bloodshed, strife, incidents, charges and countercharges, and ultimately another explosion which the United Nations Armistice Commission would be powerless to prevent and possibly even to investigate.

I therefore would have liked to see a provision in this resolution ... authorizing the Secretary-General to begin to make arrangements with Member Governments for a United Nations force large enough to keep these borders at peace while a political settlement is being worked out. I regret exceedingly that time has not been given to follow up this idea, which was mentioned also by the representative of the United Kingdom in his first speech, and I hope that even now, when action on the resolution has been completed, it may not be too late to give considera-

tion to this matter. My own government would be glad to recommend Canadian participation in such a United Nations force, a true international peace and police force”(32)

By mid-morning, on Friday 2 November, it was clear that the cease-fire resolution had been ignored. Pearson then persuaded Secretary-General Hammarskjold that the Force was both practical and desirable. Next, the necessary lobbying began. The key group to swing was the Afro-Asian “bloc”. Pearson swapped his support for a new and quite strong cease-fire resolution for Afro-Asian support of “his” Force.

In the early morning hours of Sunday, 4 November, the following resolution was passed :

The General Assembly,

Bearing in mind the urgent necessity of facilitating compliance with the (original cease-fire) resolution adopted by the Assembly on 2 November 1956 (A/3256),

Requests, as a matter of priority, the Secretary-General to submit to it within forty-eight hours a plan for the setting up, with the consent of the nations concerned, of an emergency international United Nations force to secure and supervise the cessation of hostilities in accordance with all the terms of the aforementioned resolution.⁽³³⁾

This resolution, and many others which were to follow, illustrate one overwhelming fact. Tremendous executive power was placed in the hands of Secretary-General Hammarskjold. Frye notes : “It was little short of a political miracle he was being asked to bring off.”⁽³⁴⁾

(32) General Assembly Official Records, First Emergency Special Session, Agenda Item 5, pp. 35-36, 1 Nov., 1956.

(33) Gen. Assembly Res. 998 (ES 1). 563rd Plenary Meeting, 4 November, 1956.

(34) *Op. Cit.*, p. 7.

Consider this statement by Leland Goodrich and Gabriella Rosner :

What was particularly notable in connection with the establishment of the United Nations Emergency Force was the extent of the responsibility which the Secretary-General and his staff were asked to assume. In addition to proposing a plan for the Force, the Secretary-General was asked to negotiate with member states regarding national contributions, to advise the Chief of Command with respect to Organization, and to issue all regulations and instructions essential to effective functioning, subject only to consultation with the Advisory Committee. Furthermore, the Secretary-General was expected to arrange with the parties to the hostilities for a cease-fire and for the withdrawal of forces, and to make necessary arrangements with them to permit UNEF to enter into the performance of its functions.⁽³⁵⁾

Just what did the Secretary-General do ?

First, the "United Nations Command" was established, and Major-General E. L. M. Burns, the Chief-of-Staff of the U.N. Truce Supervision Organization in Palestine, was designated to head it. This appointment was to be augmented by that of a staff of officers. From that nucleus, foot soldiers were to follow.⁽³⁶⁾

The details were worked out, and the blueprint was ready in twelve rather than forty-eight hours. On Sunday night, 4 November, it was approved, the vote again being 57-0-19. However, Egypt — the key state among those abstaining — later accepted the resolution — on Monday — by cable from Cairo.⁽³⁷⁾

(35) "The United Nations Emergency Force," *International Organization*, XI (1957), p. 146.

(36) Armstrong, H., "UN Experience in Gaza," *Foreign Affairs*, 35 : (July 1957), p. 604.

(37) Gen. Assembly Res. 1000 (ES 1). 565th Plenary Meeting, 5 November, 1956.

This, however, was just the beginning. Frye enumerates the following questions, which remained to be answered :

What functions would the force perform ? Where would it be stationed? How long could it expect to be there? Under what conditions would it withdraw? How would it affect the political and military balance in the area? Who would pay the expenses? Who would be in control? ⁽³⁸⁾

One thing was certain : Cairo held strong cards in this particular diplomatic game. The Assembly had definitely decided that Egyptian consent would be required for entry into Egyptian territory. Egypt's hand was strengthened considerably on 4 November by strong Soviet support, and the stirrings of considerable American support.

This question of the relation of U.N.E.F. to the host country should be examined. It is clear that, if an organization such as U.N.E.F. be created by the Assembly, consent of the host must be obtained for its entry, since an Assembly resolution must be considered only a recommendation.

Speaking at the time of U.N.E.F.'s founding, Dr. Mahmoud Fawzy of Egypt said : "Our clear understanding... is that this force is in Egypt ... to help Egypt, with Egypt's consent."⁽³⁹⁾

This attitude, though extremely limiting, is quite understandable. Branded firmly in the minds of most newly-independent states is the image of the not-too-far-past days when foreign troops occupied their soil. This perhaps explains a great deal of India's reticence to accept a Permanent Force.

Rebert Good notes the strong emotional overtones in India's view, overtones "which India's Krishna Menon did not try to conceal from the General Assembly." He quotes Menon : "We could

(38) *Op. cit.*, p. 9.

(39) Quoted in Good, Robert C., "A United Nations Police Force," *Commonwealth*, LXIX, 24 (13 March, 1959), p. 616.

not consent to the taking of troops to the soil of other countries even though they are United Nations troops — they are still foreign troops. It may be that some delegations may regard this as an excess of nationalism, but the experience of foreign troops on the soil of our land is too fresh for us to forget.”⁽⁴⁰⁾

Both Lester Pearson and John Foster Dulles felt that once a state had accepted U.N.E.F., it could not insist on its withdrawal until the General Assembly as a whole felt that the mission had been completed. However, several states — including India, Yugoslavia, and Indonesia — noted specifically that their troop contributions to U.N.E.F. would be withdrawn whenever Egypt requested it.

Significantly, the Secretary-General — perhaps a bit more aware, in this instance, of the facts of political life than Messrs. Pearson and Dulles were — has sided with Egypt, and agreed that the troops would not stay should Cairo request their departure. Fortunately, the issue has not arisen.⁽⁴¹⁾

The Secretary-General, it should be added, does qualify this point slightly. Sir Leslie Munro :

Although the Secretary-General says that U.N.E.F. entered Egypt only with the consent of the Egyptian Government and can stay in the Gaza Strip and the area of Sharm el-Sheikh only so long as the Egyptian Government agrees, he affirms that a decision by the Egyptian Government to ask the force to leave would require discussion with the United Nations. The wisdom of the Egyptian Government would not incline it otherwise.⁽⁴²⁾

(40) *Ibid.*, p. 617. India's stand has been most paradoxical. While she will never agree to the creation of a Force, she consistently contributes units to the Force, once created. There is, of course, some political basis to this : India fears what a Force could do in Kashmir.

(41) Armstrong, *op. cit.*, p. 608. Also, n. 3, p. 608.

(42) “Can the U.N. Enforce Peace ?,” *Foreign Affairs* 38 (January, 1960), p. 217.

This is, however, more of an apparent qualification than a real one.

In his second report, the Secretary-General attempted to deal with some of the problems which had arisen. In it, he made it clear that U.N.E.F. would not be used in any fashion to exert political pressure on Egypt. He made it clear that Britain, France and Israel could not expect an improved bargaining position by virtue of U.N.E.F. His statement :

It follows from its (U.N.E.F.'s) terms of reference that there is no intent in the establishment of the force to influence the military balance in the present conflict and, thereby, the political balance affecting efforts to settle the conflict.⁽⁴³⁾

This brought forth, predictably, violent Anglo-French-Israeli objections; they got absolutely nowhere. The pressure from Moscow, Washington, and the East River in New York forced Paris and London to accept a cease-fire on these terms.

However, we should not assume that the invaders did not save any face. Frye notes : "It did afford them a certain amount of face-saving, inasmuch as it provided for, and foreshadowed the dispatch of a 'peace force' similar to the one they had been asking. And by this time Britain, at least, was eager for a convenient way out of a very difficult predicament."⁽⁴⁴⁾

We can summarize the two reports of the Secretary-General by noting certain key points which emerge :

1. The great powers were not to participate in the force, either directly or indirectly, i.e., either through combat troops or support units, to be stationed on Egyptian territory. However, United States aircrafts were used for transport.

2. The political control of U.N.E.F. was placed almost solely in the Secretary-General's hands, subject only to ultimate Assembly approval and/or censure.

(43) Frye, *op. cit.*, p. 9.

(44) *Op. cit.*, p. 11.

3. U.N.E.F. was not to be a fighting army. It was to be a "buffer force," with certain police duties. It would not attempt to impose the U.N.'s will — or anybody's will, for that matter — on Egypt, Israel, Britain or France. It would, rather, assist in bringing about the results those governments desired. It thus assumed cooperation among those four states. A settlement was to be facilitated, rather than imposed.

4. The Force was, therefore, to be as nearly neutral politically as possible. Hammarskjöld's definition of the role of the Force made it clear that the restoration of the *status quo ante* was its goal. If not ideal, this was certainly realistic.

5. The starting point and continuing basis for the action was, according to the Secretary-General, recognition by the General Assembly of the unlimited sovereign rights of Egypt. As noted earlier, this meant, in effect, that every step of the operation had to have Egyptian approval.

6. Concerning financing : the initial rule was that the state contributing a unit would pay for equipment and salaries. The other costs would be paid by the U.N., by a special levy on member states. Thus, the U.N. portion of the costs was to be outside the normal budget of the Organization.⁽⁴⁵⁾

In this fashion, the Force received final Assembly endorsement, Egyptian approval, and went to work.

B. The Functioning of the Force.

This can be dealt with very briefly.

U.N.E.F. moved into its positions, entirely on the Egyptian side — Israel has never permitted the Force on her soil — and, with some initial misgivings, went to work. The force has

(45) *Ibid.*, pp. 11-20. The financing provision has since been supplanted by provisions which place more of a burden on the contributing states. Now, it is expected that they will pay all costs which would have incurred in any event — salary, basic equipment, etc., while the U.N. pays only those expenses which are attributable to the fact that the troops are servicing away from their home base.

served effectively as a buffer. And, with the exception of minor skirmishes, the peace has been kept.

It is, perhaps, a favorable commentary on the work of U.N.E.F. to state that the biggest problem the Force has faced has been, not belligerents, but boredom. Frey comments :

UNEF has proved that there can be a severe problem of morale with men whose duties are routine and who are stationed far from normal entertainment. The glamour of a U.N. armband can wear off very quickly for a man who has to patrol a barren desert in 100-degree heat and sandstorms, and has nothing to look forward to when he is off duty except poker and shooting craps on a blanket in his tent.

A serious problem, in fact, arose — serious, but not without overtones of humor — when certain U.N.E.F. soldiers were apprehended fraternizing with Israeli WACs across the demarcation line. It appears that, in this one regard, U.N.E.F. did make an incursion into Israeli territory.⁽⁴⁶⁾

However, this problem was soon recognized and dealt with as well as could be expected. Entertainers, amusements, etc., were furnished, and a leave center set up just outside Beirut.

C. An Evaluation of U.N.E.F.

A great deal of the previous discussion has, in fact, been of an evaluative nature. However, there are some specific comments which should be made here.

First, a serious study of the U.N.E.F. experience will force one to qualify one common view concerning a U.N. Force. It is far too easy to assume that the mere presence of the Force will prevent violence, since no nation will fire on U.N. troops. Of course, this view has been severely qualified by the Congo experience. But we will hold that particular potpurri for later. The experience in Gaza will do for now.⁽⁴⁷⁾

(46) *Ibid.*, p. 86.

(47) *Ibid.*, p. 34.

Robert Good has stated that U.N.E.F. is "not an international army ; it is an international burglar alarm."⁽⁴⁸⁾

Granted, there is a great deal of truth in these views. If there were none, a U.N. Force would be meaningless and useless. My point is this : while it is safe to assume that states will be hesitant to fire on U.N. forces, it is not so safe to assume that the mere presence of these troops will assure tranquility. Let us look at the experience in Gaza.

In this particular case, the local U.N.E.F. Commander — Colonel Engholm—issued an order, completely without authority from New York, forbidding unauthorized persons in the Strip from possessing arms. However, there was no decision as to what should be done with violators. There was no authority to put them in jail. And there were no courts, to try them, had they been imprisoned.⁽⁴⁹⁾

Perhaps this section of U.N.E.F. should be concluded by an overall picture of just what the Force is. Let us start construction of this frame by reference again to Stephen Goodspeed :

What emerged from this is not an armed force in the sense that it has a truly military mission. It was established 'to secure and supervise the cessation of hostilities' and was to be located in 'an area extending roughly from the Suez Canal to the [Egyptian-Israeli] armistice line.' The United Nations Emergency Force (UNEF) was not instructed to enforce the cease-fire or compel the Anglo-French and Israeli military units to leave Egyptian soil. It was not equipped with weapons or supporting elements which would make possible any enforcement action other than policing activities. In essence, it was not much more than a greatly expanded U.N. Truce Supervision Organization with no clearly defined functions other than to serve in the field presumably as a deterrent to further

(48) *Op. cit.*, p. 616.

(49) *Armstrong, op. cit.*, p. 616.

hostilities... It cannot act against either the United States or the Soviet Union, or any partner of either of these powers unless, as was the case in the Middle East in 1956, one of them — the United States — temporarily abandons its partners in an attempt to uphold the code of the Charter... The development and use of UNEF cannot be construed as enforcement action since it does not possess the mandate to compete compliance with Assembly recommendations.⁽⁵⁰⁾

This limited role might thus be described as an attempt to facilitate the possible. Cooperation was assumed.

Goodspeed comments: "What actually happened in the Middle East crisis is that the United Nations entered the conflict as the greatest face-saving device, to which Britain, France, the U.S.S.R. and even the U.S. should be indebted."⁽⁵¹⁾

In the same vein, Goodrich comments:

In the Middle East ... the Assembly was ... successful. But its success in dealing with the Israeli invasion of Egypt and the intervention of British and French armed forces in 1956 was not due to the use of collective enforcement measures, but rather to the willingness of the states concerned, for many reasons, to yield to the Assembly's demand that hostilities cease and armed forces be withdrawn.⁽⁵²⁾

Robert Good:

What then is U.N.E.F.? It is a tool or device, for making less volatile any situation in which the disputants mutually desire to reduce the likelihood of violence. As one knowledgeable observer suggested, 'Its role is merely one of assuring that what everyone wants to happen does happen.'⁽⁵³⁾

(50) *Op. cit.*, p. 605, pp. 233-4.

(51) *Ibid.*, p. 272.

(52) *The United Nations. Op. cit.*, p. 181.

(53) *Op. cit.*, p. 616 He does not identify the "knowledgeable observer" to whom he makes reference.

One final point — implicit in all the remarks concerning the Force thus far — should be stressed.

When the explosion came in 1956 in the Middle East, the U.N. was completely unprepared for it. This was, and remains, the basic problem. Nations refuse to allow the organization to construct a Force in advance, and have it standing in readiness. With the exception of the section concerning the Congo intervention, the balance of this paper will center around the theme of preparing a Force in advance.

This is not to say that U.N.E.F. was unsuccessful. On the contrary : it was one of the more successful operations in U.N. history. Lester Pearson notes : "This amazing example of international improvisation showed what can be done by the U.N. when the collective will to action is strong and united". However, Pearson continues to state that the "action also emphasized... the need to be better prepared to meet future situations of a similar kind. Even if governments are unable to give the United Nations a 'fighting' force ready and organized to serve it on the decision of the Security Council, they should be willing to earmark smaller forces for the more limited duty of securing a cease-fire already agreed upon by the belligerents. We might in this way be able to construct a halfway house at the crossroads of war, and utilize an intermediate technique between merely passing resolutions and actually fighting."⁽⁵⁴⁾

(54) *Op. cit.*, p. 401.

Chapter III

THE SECRETARY-GENERAL'S REPORT OF
9 OCTOBER, 1958

This report,⁽⁵⁵⁾ entitled "Summary study of the experience derived from the establishment and operation of the Force," is so important as to merit specific consideration.

It begins by stressing that the Force was created as "a temporary measure." Also, "its characteristics were determined by the nature of its role, and its functions were defined and limited by decisions of the General Assembly applying to a particular set of circumstances." (Par. 2). Then, the history of the creation of the Force is noted. (Par. 5-7).

Next, its role is mentioned :

This new instrument was charged with a dual role : initially to secure and supervise the cease-fire and the withdrawal of armed forces from Egyptian territory, and later to maintain peaceful conditions in the area by its deployment along the Egyptian-Israel armistice demarcation line in the Gaza area and to the south along the international frontier. This dual role determined the size, organization, equipment and deployment of the Force. (Par. 10).

These previous two sections — 2 and 10 — are quoted to make one point. This illustrates the wide and general mandate given to the Secretary-General. He was left free by the Assembly to determine these basic points mentioned, subject only to rather broad guide lines.

(55) General Assembly Official Records, Thirteenth Session, Agenda Item 65, Annexes, A/3943, 1958. Further references will be made by paragraph of this document.

The report then reiterates the feeling that the Force should not influence political or military questions. (Par. 12). In this regard, he notes : "The deployment of the Force along the Israel-Egyptian armistice demarcation line and the international frontier south of Gaza, and in the Sharm el Sheikh area, was not meant to and could not effect any change in their prior *status juris*; its sole purpose was to maintain quiet and prevent the recurrence of incidents."

Let us pause a moment, and comment on this.

Sir Leslie Munro notes :

The Secretary-General concludes that U.N.E.F. is much more than an observer corps but much less than any army having military objectives. It can fire only in self-defense and can never take the initiative in the use of arms. Mr. Hammarskjold is at pains to say that U.N.E.F. is not to be used to enforce any specific political solution or to influence the political balance decisive to such a solution. But the fact is that U.N.E.F. does exercise a political influence because it is preserving the peace in the Gaza Strip and the Straits of Tiran. An international force must and should produce political consequences.⁽⁵⁶⁾

In another sources, Sir Leslie expands on his line of reasoning: he notes that since U.N.E.F. has been stationed in the Sharm el Sheikh area, the Egyptian blockade to Israeli shipping through the Strait of Tiran to Eliat on the Gulf of Aquaba has not been reinstated.⁽⁵⁷⁾

The report continues to stress, in clear terms, that the consent of the host country must be obtained before the Force can enter. (Par. 15).

Paragraphs 20-107 are a rather detailed and, for our purposes, unnecessary history of the practice of U.N.E.F. once in Egypt — procurement of equipment, troop transport and rotation, etc.

(56) "Can the UN Enforce Peace," *op. cit.*, p. 217.

(57) *United Nations : Hope for a Divided World*. *Op. cit.*, p. 146.

Paragraphs 108-124 concern financial aspects. The chief point is the need for Members to be consistent in their support of the financial side of the operation.

Paragraphs 125-147 constitute a discussion of the legal aspects of the operation. Here, again, the important point stressed is respect for the full sovereignty of the host state.

In the "Concluding Observations and Principles," (Par. 148-193), the Secretary-General stresses the unique character of U.N.E.F. His conclusion — and it is a most controversial one — is expressed in Paragraph 152 :

The foregoing leads to the obvious conclusion that, in considering general stand-by arrangements for United Nations operations of the kind envisaged in this report, a course should be followed which would afford a considerable degree of flexibility in approaching the varying needs that may arise. This could be achieved if standby arrangements were to consist of an approval of those general conclusions regarding principles which can be reached in the light of the U.N.E.F. experience, and which would provide a setting within which, with the necessary variations of approach, personnel in units or otherwise could be recruited and an operation organized without delay and with full adjustment to the specific situation requiring the action.

Cutting through this tangle of official verbiage, we can see that the Secretary-General is actually proposing severe limitations on a standing Force. He favors not prior action, regarding designation of units, and the like, but rather prior agreement on the principles on which units will be offered, if needed.

This is, on the surface, puzzling. One of the longtime advocates of well-organized United Nations structures and practices to handle situations that might arise seems to be going in the other direction.

This stand, however, is quite understandable. Again, if not ideal, it is realistic.

Robert Good notes : "The many technical difficulties clearly identified in the Secretary-General's report reflected perhaps an underlying political difficulty which could not be publically identified — the fear of some states that the child of their ingenuity would somehow emerge like Frankenstein's monster to overwhelm its parent"⁽⁵⁸⁾

We may return to the example of India. As has been mentioned, this state has contributed generously to both the Congo and Middle Eastern operations. However, India consistently refuses to support a standing force. Why? Because India is herself in a vulnerable position in Kashmir. If a standing force were formed, with, say, units adding up to some twenty or thirty thousand troops designated for the force, and under the General Assembly, this force could be sent into Kashmir to "police" a plebiscite, against India's will. Since the territory is disputed, there could be some argument over whether approval be necessary. In any case, should the Assembly take the view that troops could not come onto Indian territory, their presence in Pakistan could put India in a bad light.

The point is this : India, like many states, favors strongly the principle of collective action, in the fashion of observation, or a "presence," to keep East and West apart. But India, again like many states, wants to preserve the right to evaluate each situation when it arises, before deciding whether to favor a U.N. Force in that situation. A standing force, especially with strong executive powers assigned to the Secretary-General, could easily prejudge some situations, in that the Force might be sent in with rapid Assembly approval. And, it is not too far-fetched to imagine the Assembly giving the Secretary-General an overall mandate, were there a standing Force, to dispense it first and answer questions later.

This attitude forms one of the serious obstacles to be a standing Force. In the light of such an attitude, it seems that the Secretary-General's approach can be, if not agreed with, understood.

(58) *Op. cit.*, p. 17.

Chapter IV

THE UNITED NATIONS OPERATION IN THE CONGO
AND CYPRUS

1. The Congo

The question of peace and stability in the Republic of the Congo is, of course, one of the most pressing problems the world had faced. Not only has the smoke not cleared; the fires are still raging. However, I will make some comments, and attempt to show some of the chronology, as it bears on the question under discussion.

A. The Development of the U.N. Action.

On 12 July, 1960, a cable was received at United Nations headquarters from the President and Prime Minister of the Congo, requesting the "urgent despatch by the United Nations of military assistance."⁽⁵⁹⁾ It is significant that internal disorder was not the reason for the request. Rather, it was said to be justified by "the despatch to the Congo of metropolitan Belgian troops in violation of the Treaty of Friendship signed between Belgium and the Republic of the Congo on 29 June, 1960."⁽⁶⁰⁾ The cable continued to state that "the essential purpose of the requested military aid is to protect the national territory of the Congo against the present external aggression which is a threat to international peace." This point was reiterated in a cable received on 13 July.⁽⁶¹⁾

The Secretary-General convened the Council, and noted that his request for an immediate meeting had been made under Article 99 of the Charter.⁽⁶²⁾

(59) U.N. Doc. S/4382.

(60) *Ibid.*

(61) *Ibid.*, p. 2

(62) U.N. Doc. S/P.V. 873, p. 7.

At the meeting, the Secretary-General reported that it was the breakdown of order which "had created a situation which through its consequences imposed a threat to peace and security justifying United Nations intervention ... Whether or not it was also held that the United Nations faced a conflict between two parties was," he continues, "under these circumstances, in my view, legally not essential for the justification of the action"⁽⁶³⁾

We thus have an important framework established from the beginning. Article 2 (7) of the Charter forbids the U.N. to interfere with matters "which are essentially within the domestic jurisdiction of any state ..." It was thus necessary to identify the action as one motivated by outside interference — Belgian — in Congolese affairs.

However, Secretary-General Hammarskjold placed a different interpretation on the matter — the interpretation noted above. He felt that the threat to international peace and security posed by the situation justified U.N. intervention.

This raises an interesting constitutional point — perhaps the most interesting one to rise from the Congo experience. May the U.N., by resolution of the Council, which can act regarding threats to international peace and security, violate 2 (7) to do so?

There is really no need to worry about a constitutional answer to this constitutional question : a political answer will suffice. The situation would determine the answer. For instance, there would be no difficulty in obtaining Assembly approval for an action against South Africa. And, should the actions of the Union government become even more dangerous and offensive—passing a point which does exist but must remain undefined — it is not hard to imagine Council intervention.

There were three important early resolution concerning the Congo; these defined, however incompletely, the mandate for the United Nations.

(63) U.N. Doc, 3/4389, p. 2.

The first, dated 14 July, called upon Belgium to withdraw its troops, and 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 United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks."⁽⁶⁴⁾

The second resolution, dated 22 July repeated the call for Belgian withdrawal. It further requested states "to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and the political independence of the Republic of the Congo." This resolution also notes specifically that "the complete restoration of law and order in the Republic of the Congo would effectively contribute to the maintenance of international peace and security."⁽⁶⁵⁾

The third resolution was passed on 22 August. It called upon Belgium to withdraw from Katanga, and called upon all Member States, in accordance with Articles 25 and 49 of the Charter, to accept and implement the decisions of the Security Council and to give assistance to the Council where requested.⁽⁶⁶⁾

The framework provided by these three resolutions is important.

First, there was never any act specifically creating a Force. The Council simply called upon the Secretary-General to take "necessary steps."⁽⁶⁷⁾ E.M. Miller comments :

While the principles governing the United Nations Force are based on the decisions of the Security Council, the resolutions themselves contain only

(64) U.N. Doc. S/4387.

(65) U.N. Doc. S/4405.

(66) U.N. Doc. S/4426.

(67) U.N. Doc. S/4387.

brief and general indications of such principles. To find the legal considerations applicable to the Force, we must look mainly to the reports submitted by the Secretary-General to the Council, the communications between the Congolese Government and the Secretary-General, and the views of governments expressed in the proceedings of the Council.⁽⁶⁸⁾

In his opening statement to the Council, at the very beginning of consideration of the Congo troubles, the Secretary-General had requested this type of broad mandate.⁽⁶⁹⁾ The Council gave him, in S/4387, this type of mandate. In asking for it, he said that, should he be given the authority, he would create a Force based on the principles established in the U.N.E.F. experience. Thus, the Force was created indirectly : the Members of the Council did not vote specifically for it; but they knew that it would be established.

The significant point here is, of course, that once again sweeping executive powers were placed in the hands of the Secretary-General.

There are some important areas of contrast between U.N.E.F. the Korean operation, and the Congo operation.

In Korea, the Council entrusted one Member — the United States — with the responsibility for setting up a multi-national force to implement the Council resolutions.⁽⁷⁰⁾ Miller notes :

In that situation, the military forces were described as United Nations Forces, but the command was entirely the responsibility of the United States and the personnel in the national contingents were not subject to the obligations or discipline of an international military service.⁽⁷¹⁾

(68) "Legal Aspects of the United Nations Action in the Congo," *American Journal of International Law*, 55 (1 Jan., 1961), p. 9.

(69) U.N. Doc. S/P.V. 873, pp. 11-12.

(70) See the Security Council resolution of 7 July, 1950, in U.N. Doc. S/4588.

(71) *Op. cit.*, p. 10.

U.N.E.F. was established by the General Assembly as a subsidiary organ. The U.N. Commander, who is appointed by the Assembly, acts directly under the Secretary-General. Expenses, unlike the case of Korea, were borne by the U.N.⁽⁷²⁾

In this regard, E.M. Miller notes that the Congo Forces was established by the Secretary-General, under authority of the Security Council. It is thus a subsidiary organ of the Council, and the Secretary-General acts exclusively as an agent of the Council. Its personnel thus have an international status, and must carry out their duties "in accordance with the orders and principles of the U.N. Command."⁽⁷³⁾

With U.N.E.F., the point of consent of the host country was always stressed. In the Congo, it was stressed at first, but soon faded into unimportance. It has, however never been repudiated.

In this regard, the Government of the Congo entered into a basic agreement with the United Nations. In this document, the Congo government stated that "in the exercise of its sovereign rights with respect to any question concerning the presence and functioning of the United Nations Force in the Congo, it will be guided, in good faith, by the fact that it has requested military assistance from the United Nations and by its acceptance of the resolution of the Security Council of July 14 and 22, 1960; it likewise states that it will ensure the freedom of movement of the Force in the interior of the country and will accord the requisite privileges and immunities to all personnel associated with the activities of the Force."⁽⁷⁴⁾

The resolution of 9 August should also be noted.⁽⁷⁵⁾ In the operative paragraph the Council called upon "all Member states, in accordance with Articles 25 and 49 of the Charter, to accept and carry out decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council."

(72) General Assembly, 13th Session, Off. Records, Annexes, Agenda Item 65, U.N. Doc. A/3943. This has been discussed in Section III of this paper.

(73) *Op. cit.*, p. 11.

(74) U.N. Doc. S/4389, Add. 5.

(75) U.N. Doc. S/4426.

This is repeated to make an important point : it clearly means that the decisions of the Council were mandatory under Chapter VII of the Charter. Though the Republic of the Congo was not, at that time, a member of the United Nations, it had specifically acknowledged that Article 49 of the Charter would be the basis for cooperation with the U.N.⁽⁷⁶⁾

Thus, the host state, it would seem, would not have the right to terminate unilaterally the action. Of course, it may be assumed that the Council would take the views of the host state into account at all stages of its deliberations.

From the beginning, there is little question that the chief legal difficulty of the Congo operation has been the definition of the sometimes obscure line between maintaining order — for that soon became the goal of the Force — and openly intervening in the internal conflicts of the state.

In this regard, Hammarskjöld stated :

In the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council did not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council has not specifically adopted enforcement measures under Article 41 or 42 of Chapter VII.⁽⁷⁷⁾

In the same statement, he reaffirmed that the U.N. had no mandate to “take any action which would make them a party to internal conflicts in the country.”⁽⁷⁸⁾

In the resolution of 9 August the Council had “reaffirmed” that the United Nations Force “will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise.”⁽⁷⁹⁾

(76) U.N. Doc. S/4417, Add. 3.

(77) U.N. Doc. S/P.V. 887, p. 17.

(78) U.N. Doc. S/P.V. 873, pp. 11-12.

(79) U.N. Doc. S/4426.

By now, this point has been labored beyond due. The reason for this undue stress is simple : the point — that the U.N. could not interfere in the internal affairs of the Republic of the Congo — is so absurd, in the light of the events of the past four years in that unhappy land, that the continued statements of non-intervention are meaningless. For all intents and purposes, the U.N. is running the country. When an Organization takes over the national university, herds what is left of the Parliament inside, posts guards, bans beer, women, and money, and tells the inmates that they do not leave until they agree on a government, it is pretty senseless to speak of non-intervention. 2 (7) has been put silently to rest, in this particular situation.

Of course, many events prior to the assemblage noted above complicated matters. The Katanga secession, or attempted secession; the ludicrous spectacle of the President firing the Prime Minister and the Prime Minister reciprocating by firing the President : the recognition, after the death of Lumumba, by several states of a rebel regime in Stanleyville — all of these things contributed to the confusion.

In the midst of such confusion, people look for stability. States — at least some of them — look for the same thing. The most probable source of what little stability could be hoped for in the Congo was the U.N. Thus constitutional niceties were not of much significance to most of the states.

There is no need to continue this chronologically. One further statement by E.M. Miller will serve as summary

It was evident... that the factional disputes were obstructing the establishment of even minimal government administration, and that the United Nations efforts could not succeed until a reasonably unified and functioning government was achieved. The sponsors of the resolution adopted by the Assembly vigorously supported this analysis. They had no compunction, therefore, about asserting the interest of the United Nations in the attainment of an internal political settlement and in suggest-

ing that United Nations machinery be used for assistance toward that end.⁽⁸⁰⁾

B. Some Observations about the Congo Action :

There are a few things, of a general nature, which may be said.

First of all, the same improvisation which characterized U.N.E.F. was still there. No advance plans had been made.

Second, the U.N. effort is, without doubt, the greatest effort the Organization has made in true United Nations action to preserve peace.

Third, and of great importance, a good — if not totally convincing case — can be made for the proposition that this operation is one not likely to be repeated. There are few areas in which such a complete breakdown could be repeated. There are simply not many states left to go through birth pangs. Angola is the only possibility that comes immediately to mind.

It would seem that an operation of the U.N.E.F. type — claming down troubled areas concerning existing states — would be more likely to recur.

Finally, almost as a footnote, it should be added that the entire Congo affair has proven that the Security Council is not a totally deceased body. There are still areas in which it is to the interests of all the Great Powers to have some collective action taken.

2 — Some Remarks on the United Nations Peace Keeping Force in Cyprus.

The Republic of Cyprus was established on August 16, 1960. It previously was part of the Ottoman Empire. From 1878 to 1960 it was under British administration. There are roughly 400,000 Greek and 100,000 Turkish Cypriots on the Island. The Greek Cypriots favored "enosis" or union with

(80) *Op. cit.*, p. 23.

Greece, while the Turkish Cypriots favored partition. A compromise was reached, guaranteed by the UK, Greece, and Turkey, which created a Republic in which the President is a Greek Cypriot and the Vice-President a Turkish Cypriot, with the status of both communities guaranteed in the Constitution.

On February 19, 1959, an accord was signed in London by the Prime Ministers of UK, Greece, and Turkey which agreed on the future status of Cyprus as a republic. Independence was formally proclaimed following agreement with the United Kingdom, which retains military bases on the island under British sovereignty. Cyprus is a member of the UN and British Commonwealth of Nations. The efforts of Patriarch Makarios, the President of Cyprus, to amend the Constitution resulted in a crisis, since the Turkish Vice-President Kuchuk charges that this would be contrary to existing treaty agreements. The British have landed additional troops to keep peace in Cyprus which was disrupted during December 1963 as a result of fighting between Greek and Turkish Cypriots. The crisis has been developed and President Makarios rejected NATO troops to keep the peace and has insisted in dealing with the UN.

On February 17, 1964, the Security Council began its first meeting to deal with Cyprus crisis. The Security Council reached its decision to send emergency force to keep peace in Cyprus. Many problems faced the Council's decision such as the U.N. members who are going to participate, financial problems etc... Finally Canada declared its desire to send Canadians keeping force to Cyprus, then followed by Swedish and Irish desires.

On March 26 at 10 p.m. the UN troops initially consisting of Canadian, British, Swedish troops become operational under Indian Lt. Gen. Prem Singh Gyani.

On Saturday June 20, 1964, the Security Council voted unanimously to keep the UN peace keeping force on the Mediterranean island for another three months.

Chapter V

PROPOSALS FOR A PERMANENT FORCE

The framework for this concluding section is provided by Professor Arthur Holcombe :

Recognition by the nuclear powers that cold war, like hot war, is obsolete does not necessarily put an end to the danger of war. War between the nuclear powers might break out by accident. A clearer and more imminent danger to peace comes from the lesser states which may still hope for tangible gains from a victorious war fought with the old-fashioned weapons. The classical theory of war is not wholly obsolete in a world where there are many states with ungratified ambitions, weak neighbors, and no access to the new weapons. Under these circumstances the adaptation of the U.N. to the requirements of the nuclear age is an urgent piece of unfinished business.⁽⁸¹⁾

Before going into these proposals, let us make one implicit assumption explicit. We are assuming, simply, that it is better to be prepared than to be unprepared. A Force of this sort is, in its own way, just as much of a deterrent as a nuclear second-strike force. Holcombe notes : "In order that a U.N. police force may realize its full capabilities, it should be organized on a permanent basis. In modern times, no force, national or international, can act as a deterrent unless it is continuously in being."⁽⁸²⁾

Let us now look at some of the proposals to place the Force "continuously in being."

(81) "The Role of Politics in the Organization of Peace", in **Organizing Peace in the Nuclear Age**, *op. cit.*, p. 109.

(82) In **Strengthening the United Nations**, *op. cit.*, p. 87.

One of the oldest is that advocated by Trygve Lie, and noted earlier.⁽⁸³⁾ The basic tenet of this force is individual recruitment. Clark Eichelberger sees such an individually-recruited Legion as a small and highly mobile force which could be rushed in, when needed, and which would, by its very presence, preserve the peace in most cases. He feels, also, that if this Legion could not preserve the peace, contingents from Member states could be rushed in to back them up.⁽⁸⁴⁾

Such proposals sound better than they work out to be. Granted, such a Legion would have a more international character than one made up of contingents from national forces. However, problems of language and custom would weigh heavy. Many states would be reluctant to have their nationals serve in such a force. Finally — and of most importance — once recruited, they would be salaried. The Force would have to be maintained, whether in use or not. If it were to be large enough to be of any use, this would impose a greater expense than the U.N. could bear.

It should be noted here that this does not preclude Secretariat members, especially trained, who might establish a U.N. "presence," as in the case of the recent three-man group sent by the Council to Laos. A Force does not fall into this more limited category.

Most current thinking — based on the examples of U.N.E.F. and U.N.O.C. — leans toward national contingents set aside for U.N. use, with limited staff personnel serving the U.N. on a full-time basis.

The proposals made by Lester Pearson and Sir Leslie Munro fall into this category.

(83) Above, p. 9.

(84) "Collective Security," in the Ninth Report of the Commission to Study the Organization of Peace, A.N. Holcombe, ed.

This concept is also backed by Great Britain. Selwyn Lloyd states it well :

I have realized that it is a topic upon which one must carry with one a consensus of world opinion. The realities impose upon us the necessity to hasten slowly. I understand the limitations. It could only be put into position by a decision of the U.N. Its deployment would depend upon the agreement of the countries concerned. I also acknowledge the practical difficulties. To contemplate such a force in practical being would raise great problems of administration and cost. What, however, I do favor and I hope that serious consideration will be given to it by the Governments of Member States — is the earmarking by Member States, either as individuals or in contingents, who could be quickly made available. I also favor the setting up of a small planning section in the Secretariat to work out in advance plans for dealing with the problems resulting from a decision to assemble such a force for a particular purpose.⁽⁸⁵⁾

Pearson sets up an "essential minimum" for such a Force :

1. Member States, excepting the Great Powers, must show a willingness to contribute contingents for essentially non-combative purposes, such as "the supervision of agreed cease-fire and comparable peace supervisory functions."

2. Members who seek election to the Security Council would be expected to be among those willing to contribute contingents.

3. There would have to be some central machinery, including a permanent military advisor for the Secretary-General, with a small staff.

(85) In the General Assembly General Debate, 17 Sept. 1959. Even though he mentions individuals, this would not fall into Lie's plan, as they would not be individually recruited, but rather "assigned" by Member States.

4. If a Peace Supervision Force were constituted, the Secretary-General would need an advisory committee similar to that connected with U.N.E.F.

5. The Force must have right to defend itself.

6. The force must have the necessary administrative and supporting elements to function.⁽⁸⁶⁾

While Sir Leslie Munro accepts this as the most practical plan, he does not regard it as idea :

I have myself suggested that a substantial force, made up of contributions from members other than those permanently on the Security Council, should be stationed at some strategic point and be available at the request of a member on its territory at the direction of the Assermbly. World opinion may not be ready for this and it does not seem that for the present members would go beyond the proposals made by Mr. Lloyd and Mr. Pearson. Perhaps we have to suffer some before we learn to be provident.⁽⁸⁷⁾

Much of the discussion concerns just what advance training should be given to the contingents.

William Frye suggests that the U.N. run a training base, to which designated units would be sent for the specialized training they would need.⁽⁸⁸⁾

Lincoln Bloomfield also favors such a training area. He favors "a training command located in a facility leased by the U.N. from a neutral nation such as Sweden or Switzerland or perhaps India. At this center a small permanent cadre would conduct six-month training exercises for national contingents furnished in rotation by member countries. The emphasis in training would be in the primary mission of a United Nations Force : observation, patrol, and enforcement of cease-fires. It would emphasize the kind of police-type duties that call for diplomacy, tact, and vigilance, by contrast with the tactical training such troops normally receive."⁽⁸⁹⁾

(86) Pearson Lester : «Force for U.N.»

(87) Munro, Sir Leslie : «Can the U.N. enforce peace.

(88) Frye, W. «A U.N. Peace Force».

(89) Bloomfield, Lincoln P. *The U.N. and U.S. Foreign policy*. Boston : Little, Brown and Co., 1960, pp. 66-67.

It is clear that advance training is necessary. However, cost might preclude such a training center. If this is the case, a small permanent staff could perhaps go to the nations and train them on their own soil. At the minimum, a training manual could be drawn up.

Two final points should be made.

First, further legislation is not necessary. Simply by following resolution 377 (V), the "Uniting for Peace" resolution, the Force could be established. And recent developments suggest a ray of hope that the Council rather than the Assembly might lean toward the creation of a Force. However, this might not be desirable, since the veto would prevent its use. But, again, given the role of the U.N. as one of accommodation rather than coercion, this might be for the best.

Second, there is no easy solution to the problem of finance. It is trite, but still relevant, to compare the cost of U.N.E.F. for one year — it was 19 million in 1959⁽⁹⁰⁾ — to the cost of a nuclear submarine. Arthur Holcombe has noted the growing and disturbing practice in the Assembly "of voting a program, but not contributing to it."⁽⁹¹⁾ There is no easy way out of this. The nations must simply recognize that this is something worth their money.

(90) Bailey, Sydney D., *The General Assembly of the United Nations: A Study of Procedure and Practice*. New York: Praeger, 1961, p. 208.

(91) In *Strengthening the United Nations*, op. cit., p. 257.

Chapter VI

C O N C L U S I O N

Perhaps, in this lengthy but still surface-scratching study of a large and vital topic, one thing emerges : the great problems which beset the U.N. in attempting, in a realistic way, to meet its charge to preserve international peace and security.

However, like many things which are worth having, difficulties do not negate their value. The U.N. has consistently, with some successes and some failures, worked toward the defining in a realistic fashion its role of preserving international peace and security.

William Frye notes : "The world is nowhere ready for genuine collective security ; no country, with a very few exceptions, is ready to promise that it will send its manpower to war at the direction of an international organ..... The most that advocates ask is that the Assembly formally request member states to set aside, within their own armed forces, manpower for use in such a force if called for; and that the thousand-and-one advance preparations be made for its prompt mobilization and assignment."⁽⁹²⁾

A final statement by Arthur Holcombe will define this study :

If the concept is accepted that the U.N. as a security agency is useful primarily as a mediator between opposing points of view and a stopgap of small wars, rather than a superstate capable of coercing the largest and most powerful members of the international community, it follows that collective measures must be designed accordingly.⁽⁹³⁾

(92) *Op. cit.*, p. 164.

(93) In *Strengthening the United Nations*, *op. cit.*, p. 86.

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**COMPARATIVE STUDY
OF MARINE INSURANCE IN EGYPTIAN, FRENCH
AND ENGLISH LAWS**

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**SOURCE OF THE COMMERCIAL LAW OF
THE ARAB REPUBLIC OF EGYPT**

The Egyptian Native Commercial Code came into force in 1883, that of the Mixed Tribunals in 1876. Both are based on the French Commercial Code. The French Code came into force in January 1808. In its turn, it was based on two famous ordonnances of Louis XIV, drawn by Colbert, the ordonnance of 1673 "sur le commerce terrestre" and the ordonnance of 1661 "sur le commerce maritime".

The French Code abrogated these old ordonnances but, only in as far as it is dealt with the same subject. Any point left incomplete by the Code was still governed by the former law.

The French Code served as model code for a number of countries, but in Italy, a new Code came into force in 1865, one in Spain in 1886 and in Portugal in 1888. The present German Code came into force in January 1900. In Belgium, the French Code was originally in force, it has been in great part revised by a number of laws promulgated subsequently.

In England, there is no Code. The common law prevails. But there has been a codification of special subjects, for example "The Merchant Shipping, the act dealing with partnerships and Joint Stock Companies and the Act on bills of exchange and promissory notes.

I N S U R A N C E

General Explanations

General Definition :

Insurance is a contract whereby a person undertakes, in return for a payment, to indemnify another person against a loss which may arise upon the happening of some event or to pay him or his representatives a sum of money on the happening of some event.

The instrument containing the contract to insure is called a policy, the person insured is called the insured or assured, the person who insures is called the insurer, assurer or the underwriter, the latter term being chiefly used in marine insurance, and the payment made to insurer is the premium.

Forms of contracts : There are many forms of the contract of insurance. A person may insure anything from a pane of glass to his own life. Insurance contracts are of two classes, those which are only and essentially contracts of indemnity and those which are not. In certain respects the rules applicable to each class differ.

The principal examples of insurance as a contract of indemnity are marine insurance, life insurance and guarantee insurance. The insurer promises to make good only loss which may arise owing to the occurrence of some event. The insured is only entitled to be paid the actual amount of his loss, no matter what may be the nominal amount for which he insured. In the other class of insurance, examples of which are life insurance and, in practice, accident insurance, the insurer is bound to pay the amount agreed upon, although the insured may have suffered no loss. They are not merely or essentially contract of indemnity.

Ordinary Insurance and Mutual Insurance

There are two methods of organizing insurance :

a) On the one hand, a number of insured persons may deal with a third person as intermediary who guarantees all the

insured against risk by assuming the burden of the loss which is paid out of the amount of the premiums received. If the premiums do not cover the losses, third person bears the loss; if they are more than sufficient to cover them, he reaps the profit. This is the method adopted by limited liability companies. There is on their part an act of speculation at the expenses of the insured. Premiums are paid at a rate calculated as sufficient not merely to meet all obligations arising out of the policies, but also to enable dividends to be distributed among the shareholders out of the remaining surplus.

b) The other method of insurance is by means of mutual insurance. All the insured agree either to bear in common the loss that may befall anyone of the insured or his representative on the happening of some event. No premium is paid but when a loss occurs or the event happens, the amount payable is divided amongst all the insured.

In practice, however, it frequently happens that a sum of money, corresponding to the premium and known as the assessment (cotisation) is contributed at stated intervals, for example, every year, in order to form a reserve fund out of which the sums due to the insured are paid. When life insurance was first practiced in England in the last century, the method of assessment was adopted.

The earliest known life insurance company, established in 1899, was constituted of 200 members who were each to contribute five shillings towards every death that occurred among the members, a sum of £ 500 being thus raised.

The same method, in effect, is practiced by the modern mutual insurance companies, in which there are no shareholders proper. If profits are made, they are accounted for either by a reduction of the premium in the case of indemnity insurance, or in the case of life insurance, by paying to the insured an amount greater than that agreed to in the policy (Planiol 11, 2137. L.C., et R. 969).

Essential Conditions for Validity of Contract

It is essential for the validity of all contracts of insurance :

1. Is that the insured have an interest in the event insured.
2. That he makes a full disclosure of all facts that relate to the risk to be undertaken by the insurer.

Insurable Interest

There must be an insurable interest "on the part of the insured". This means that apart from the contract of insurance, he must stand to lose by the occurrence of the event against which he insured. The term "insurable interest" is thus described in an English case (Lucena v/s. Crawford. 1806, 2 B. & P. N.R. Lawrence J.)

"A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it, and when it imported that its condition as to safety or other quality should continue....."

"To be interested in the preservation of a thing, is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction".

For example, a person may validly insure his furnitures against loss by fire, because he stands to lose the value of the furniture, if it is destroyed. So also, a creditor may insure the life of his debtor, because if the debtor dies he may lose the amount of his debts.

It is this "insurable interest" that distinguishes a legal contract of insurance from an illegal contract, which in effect is a gaming contract or wager, wherein the only possibility of loss or gain to the insured arises by the entering into the wager.

His loss is measured by the amount of premium paid, his gain by the amount for which he insures. Such contracts will not be enforced by the courts, though they are occasionally made and are known as P.P.I. Persons entering into such contracts of marine insurance are punishable criminally in English Law (1909)

Disclosure of Material Facts

Insurance is a contract where the utmost good faith is required from the insured. He is bound to make a complete disclosure of all facts relating to the risk, give the insurer all such informations as would be likely to determinate his judgement in entering the contract. If any material information be withheld it is a ground for avoiding the policy even though the insured was in good faith and unaware that the information was material. Concealment has the same effect as misrepresentation. The courts are strict in the application of his rule, as the facts are generally within the knowledge of the insured alone. For example, a person insuring his life has usually to answer a number of questions as to the state of his health, the number of illness he has suffered from and the like.

If he is guilty of omissions or falsehood in his answers, the policy will be declared invalid if the omission or falsehood related to a material fact, (Com. Fr. 348, Planiol 11. 2138).

Premium. The money-payment in consideration of which the insurer enters into the contract is called the premium. It is the universal practice of insurers, except in the case of marine insurance, to stipulate that the contract shall not take effect until the premium has been paid. The premium may consist of a lump sum or of periodical payment. Where the premiums are payable yearly the insurance is from year : if they are paid half yearly the insurance is from half-year and so on. In the case of insurance extending over a number of years, a certain number of days called days of grace, beyond the day fixed for payment of premiums are allowed for payment.

Unless there is an agreement to the contrary if a loss occurs during these days of grace, the insured has no right of action on the policy. Strictly speaking, the premiums should be paid on the day fixed. Insurance companies, however, as a rule, provide that policy shall hold good during the days of grace allowed.

It is a recognised rule that if the risk be not incurred the premium paid can be recovered by condition *indebiti no risk, no premium*. The risk is the cause of the payment of premium

and if it be not incurred there is no cause and the premium must be returned.

But if the risk once commences, no portion of the premium is returnable. (Planiol 11. 2159).

Nature and proof of contract

In principle, insurance is a consensual contract. As soon as the parties agree, they are bound, the one to pay the premium, the other to pay the sum on the occurrence of the event.

The obligation of the insured is pure and simple, the obligation of the insurer is conditional. The contract is so an aleatory. When the parties enter into it, they do not know whether it will result in gain. The contract is usually contained in the written instrument, the policy. This serves as the proof but it is not necessary for the validity of the contract, which might possibly be even verbal. (Planiol 11. 2146. 2148/2157. L.C. et R. 983.)

Insurance as contract of mere indemnity

The chief examples of this kind are marine insurance, fire insurance, guarantee insurance and insurance against burglary and housebreaking. The insurer undertakes, in consideration of a premium, to indemnify the insured in the event of the latter suffering a loss to the risk of which he is exposed.

Analysis of operation

It may be said that the insurer takes upon himself risk of the event which causes the loss (le sinistre). This is legally the position and it would be actually the case if insurance was, as conceivably it might be an isolated contract between two persons, the insurer contracting in a single case to compensate the insured if the loss occurred within the agreed delay. But this would be an unequal contract and from an economic point of view, this is not the exact position as insurance is worked in practice. The operation may be analysed as follows :

A large number of persons are exposed to the same risk and this risk is realised with a more or less constant regularity which by means of statistics can be precisely calculated according to the law of averages. All such persons agree together that they will share among themselves the losses that result from happening of the event. Each makes a contribution of a small sum of money which can be fixed at a regular amount, the total contribution being sufficient to indemnify all the victims of the losses. In this way each person ceases to be exposed to the risk of ruinous loss.

The loss is born not by the individual victims but collectively by all. Risk disappears and insurance is rather an operation where by the insured mutually guaranteed one another against loss than separate operation between insurance companies and insured. In effect, the companies act as intermediaries. See on the point Planiol 11. 2143.

Results of insurance being contract of indemnity

1 — Only the actual loss suffered need be made good whatever has been the amount for which the insurance was effected.

2 — If the object of the insurance be not totally destroyed but exists in a damaged condition, the insured must surrender or abandon to the insurer what remains before he can demand to have the loss wholly made good.

If he does not surrender, he can only claim the value of the injury actually done. This doctrine of abandonment is applied in marine insurance. Whether it is equally applicable to all insurance on property in French law is doubtful. See Lyon Caen et R. 990.

3 — If the insured recovers the amount of his loss from any other source, the insurer may recover from him pro tanto, and if he has any claim to recover compensation from another he usually subrogates the insurer to such claim on being paid to the full value of his loss. There is, however, no subrogation by operation of law, as in English Law, except in guarantee insurance which is really paid suretyship.

Marine Insurance

The law relating to marine insurance is contained in the Code of Maritime Commerce, title II Arts, 172 - 234, C. Com. Fr. 332 - 306. The English law was codified in the Maritime Insurance act of 1906.

Marine insurance takes place when the insurer undertakes to pay the insured in full up to a fixed amount, for any losses and damage which he may suffer by perils of the sea, in respect of things exposed to the dangers of navigation. See C.M. C. 173.

Methods of Insuring

Marine insurance in France is undertaken by companies. In England it is generally effected with individuals who are called underwriters, from the custom of the insurer entering into the contract by writing under or at the foot of the policy his name and the amount of the risk he undertakes. The best known association of undertakers is known by the name of Llyod's; underwriters individually sign their names at the foot of the policy and opposite thereto the sum insured by each with the date of so doing. This is called underwriting the policy for so much, and each underwriter into a separate contract with the insured for the amount set opposite to his name. Underwriting is also undertaken by limited liability companies. Insurance is also effected by means of mutual insurance as when a number of shipowners joint together for the mutual insurance of their respective ships.

There are no premiums, the losses in each year being made good by the members in proportion to the amount of ship property insured by the association. In entering the contract it is customary both for insurer and insured to make use of the services of a broker.

In French law, when a broker is employed the contract is usually drawn up in a special form. The broker delivers to the insured the policy signed by himself and by the insurer, but not necessarily by the insured. The broker copies the

policy into a special register and has the right to deliver extracts therefrom. By C. Com. Fr. 79, 192 (8) his signature attests truth and an extract has the same force as the policy. The name of the assured must be mentioned in the policy, but it is not necessary to mention the name of the insurer apart from his signature. C. Com. Fr. 332. See Lyon Caen et R. 983.

There are no such provision in the Egyptian Codes. By C.M.C. 174, the contract must contain the name both of insurer and insured and be signed by the parties. The English system is for the broker to prepare a brief statement of the leading particular of the risk to be insured. This statement called the slip, is presented to the underwriters, who initials it for the sum each proposes to underwrite.

In the cases of companies a separate slip is presented to each. A policy embodying the term contained to the slip is subsequently prepared and underwritten.

In English law, the policy is essential for the validity of the contract of marine insurance. In Egyptian and French law by C.M.C. 173 C. Com. Fr. 332, the contract is made in writing, but this only for purpose of proof, not for the validity of the contract. In the absence of writing, proof could not be made by testimony or presumptions.

Subject-matter of Insurance

An enumeration of the subject-matter of insurance is contained in C.M. C. 176, C. Com. Fr. 334. It includes ship, tackle and outfit, the provisions, sums lent upon bottomry or respondentia the goods which form the cargo and all things subject to the risks of navigation which admit of being assessed in money.

A number of exceptions are contained in C.M.C. 190, which enumerates what cannot be made the subject of insurance.

The objects excluded are : the freight of the goods, the wages of the seamen, money, borrowed on respondent. C.M.C. 190 is an exact reproduction of the old article C. Com. Fr. 347,

of which the idea was that the purpose of marine insurance was to guarantee against sustained (*damnum emergens*) but not against failure of profits (*lucrum cessans*).

The insured was entitled to be put, in the event of the realisation of the risk in the pecuniary position occupied before the departure, but not in the position he would have occupied if the objects had arrived in safety. C. Com. Fr. 347. was changed by law of 12 August 1885 and all objects, subject to the risks of navigation may be the subject-matter of insurance, except money borrowed on bottomry or on *respondentia*, L.C. et R. 974.

Freight is the price to be paid by a shipper or consignor of goods to the shipowner for the carriage of goods by ship. It is not due unless the goods are delivered at the place of arrival.

Bottomry and *respondentia* are special contracts of loan whereby money is lent on the security either of the ship (bottomry) or of the cargo (*respondentia*). In French law they are both included in the single term of "*prêt à la grosse*".

The borrower is bound to repay the loan together with "*maritime interest*", that is interest even beyond the rate fixed by law if the property arrives in safety, but if the property is lost, the lender loses both capital and interest. M.C. 194.

Insurable Interest

It is essential that the insured at the time of conclusion of the contract have an interest in the objects on insurance. Examples of persons with insurable interest are :

1 — A shipowner to the extent of the value of his interest in the ship.

2 — Owners of goods to the extent of their interests.

3 — A person who lends money by a contract of bottomry or *respondentia*. He may insure for what he stands to lose by

way of capital in the event of the realisation of the risk, but he is forbidden to insure the interest on the capital.

Clearly, the borrower has no insurable interest, since if the risk is realised he is not called upon to repay either loan or interest.

4 — An insurer who may reinsure with another insurer to the extent of his liability. For example, an insurer fears that the risk against which he insured will be realised. He may insure with another insurer the whole or part of what he stands to pay to the insured in the case of the occurrence of the event insured against. C.M.C. 185, C. Com. Fr. 342.

Exception to rule as to insurable interest

Insurance made after the loss or arrival of the objects of insurance is null, if it be proved that the insured was informed of the loss by the insurer of the objects insured, or if there is a presumption that they could have been informed of these facts before conclusion of the contract.

Clearly either party entering into contract with a knowledge of such facts is guilty of fraud. But if at the moment of conclusion of the contract they are unaware respectively of the loss or of the arrival and expressly stipulate that the things are insured "lost or not lost" (*sur des bonnes ou mauvaises nouvelles*) then the contract is valid. If the objects insured has already arrived in safety at the time the contract was concluded, the underwriter is entitled to keep the premium and to pay nothing, and if they had already been lost, he is liable for the loss. This is an exception to the rule that insured must have an insurable interest at the time he makes the contract see C.M.C. C. 207/210. C. Com. Fr. 365-368.

Kinds of Policies

The principal kinds of policies are valued and open policies, time, voyage and mixed policies, and floating policies.

A valued policy (*police évaluée*) is one in which the value of the object insured is stated in the policy. The statement is proof between the insured and underwriter, but if the underwriter considers the stated value exaggerated or fraudulent, it is for him to prove the fact. If there be no found on the part of the insurer, if he be in good faith, the policy is valid up to the extent of the proved value. If he be guilty of fraud, the policy is null. In English Law the statement of value is conclusive proof, whether it be greater or less than the value in the open market, unless the underwriter can prove that the insured was guilty of fraud, in which case the policy is void. In practice, ships and freight are usually insured in valued policies See C.M.C. 199 - 200. C. Com. Fr. 357 - 359, Lyon Caen et R 973

An open policy (*police ouverte*) is one which the value of the object insured is not stated in the policy, but is left to be proved by evidence. In the case of loss, goods are generally insured by open policies because it is easy to ascertain their value by invoices, valuations and the like.

A time policy (*l'assurance à temps*) is one in which the risk is undertaken during a fixed time specified in the policy for example from noon of the 1st. january 1964 to noon of the 1st. january 1965.

A voyage policy (*l'assurance au voyage*) is one in which the risk is undertaken during a particular voyage between ports specified in the policy, for example, from Marseilles to Alexandria.

A mixed policy is a time policy in which the voyage also is specified, for example, Alexandria to Marseilles for six months.

A floating policy (*police flottante, ou police d'abonnement*) is one in which the insurance is in general terms and leaves the case of the ship and other particulars to be declared subsequently by endorsement on the policy or other customary manner. For example, a merchant may insure himself against the risk of loss of any goods that may be forwarded by him on any ship whatever, provided that they are forwarded within the space of the following twelve months, Cf, C.M.C. 180 C. Com. F. 337 Lyon-Caen et R. 984.

Contents of policy

These are set forth in C.M.C. 174. A policy contains the name and domicile of the party who effects the insurance and the name and domicile of the insurer, the risks insured against, the dates at which the risks are to commence and terminate as regards the insurer, the amount of premiums, the names of the ship and master, a statement of where the voyage is to begin and end, and in general, any terms upon which the parties are agreed.

The policy is only good as an insurance against the risks and perils expressly mentioned. For any which is outside the perils insured against the insurer is not liable.

Warranty

Warranty :

Is either expressed or by operation of law. Express warranty takes place when stipulations are expressly inserted in the policy. The validity of the contract depends upon their truth or fulfilment.

For example, the underwriters in order to protect their own interests often insist upon the insertion of a clause stating that the ship will sail on or before a certain day, and the assured thus assured warrants the sailing which is an essential condition of the contract.

Legal warranty :

Apart from express warranty, there are certain warranties implied by law that have the same force as if they were formally contained in the policy.

The principal warranties are :

- 1 — that the ship is seaworthy.
- 2 — that the ship will not deviate.
- 3 — that the voyage is legal.

Seaworthiness :

By seaworthiness is meant a fit state as to repairs, equipment, crew and all other respects, to encounter the ordinary perils of the voyage and complete the voyage in ordinary weather in a reasonable delay. If the ship is lost and to be proved that it was unseaworthy, the underwriters are not liable. But in the case of a time policy, which is sometimes effected when the ship is at sea no warranty of seaworthiness is implied.

Not to deviate :

A deviation from the proper course of the voyage releases the underwriter, who are even entitled to keep the premium, unless such deviation is rendered necessary by the accidents of the voyage. See C.M.C. 193, C. Com. Fr. 351.

In almost all voyages, experience has prescribed a certain course as to be the best and it is the risk to the vessel whilst taking this course that is insured against.

Legality of voyage : An insurance on a ship engaged in a trade of venture illegal by the law of the country in which the insurance is effected is void, provided the insured knew of or was a party to the illegality. For example, an insurance effected in Egypt on a ship engaged in smuggling goods into Egypt is null.

Concurrent — Insurance

Concurrent insurance is either double insurance or co-insurance. Double insurance takes place when the insured takes out two or more policies covering the same thing against the same risks for a total amount greater than the value of the thing without specifying the portion of the risk which each policy respectively covers. For example, there is double insurance when the same thing is insured by two policies for its full value in cash.

Co-insurance takes place when the same thing is insured by separate policies in determined portions which may be equal or unequal. For example, when a thing is insured by two

policies for half its value in each. In practice, co-insurance is often termed double insurance.

By C.M.C. 185, the insured cannot, on pain of the policy being void, effect a second insurance for the same period and risks upon the property where the whole value has already been insured.

By C.M.C. 201, C. Com. Fr. 359, if there are several contracts of insurance of the same cargo made without fraud and the first contract insures the whole value of the goods shipped, it alone shall continue in force.

If the whole value of the goods shipped is not insured by the first contract, the underwriters of the subsequent policies are liable for the excess according to the order in date of the contracts.

By C.M.C. 202, C. Com. Fr. 390, if goods are shipped to the full amount of the sum insured and part only be lost such loss is paid for by all the insurance in proportion to their respective interests.

Example : four policies, each of the value of L.E. 1000 are taken out to cover goods of the value of L.E. 1500.

The policy first in date holds good for L.E. 1000, but the second only the extent of L.E. 500, if there be a total loss, the insured can recover the full L.E. 1500.

If the goods be lost to the extent of one half their value, there is a claim under the first policy for two thirds of the indemnity and for one third under the second policy because the value of the first policy was twice as great as that of the second.

By C.M.C. 199, C. Com. Fr. 357, if there be a single policy and the goods be insured for an amount exceeding the value the policy is void as regards the insured, if it be proved that there is deceit or fraud on his part. In such case the underwriters are not liable and are entitled to keep the premium. By C.M.C. C. 200, C. Com. Fr. 358, if there be no fraud or

deciet on this part, the contract is valid to an amount equal to the value of the goods. If there be several underwriters to the policy, then in the event of losses they each contribute thereto in the proportion of the sums insured by them.

There is evidently, no double insurance when a person takes out several policies covering the same thing against different risks. For example, a shipowner may by one policy insure his ship for its value against loss by shipwreck or fire and at the same time in another policy against the risks of war. L.C. et R. 973.

Assignment of Policy

Sometimes it happens that the ship and specially goods do not continue to belong during the whole of the period fixed for the duration of the policy to the person who effected the insurance. In such cases, it is very convenient if the policy can be transferred to successive owners. If the policy be made out to a named person, it can only be assigned on fulfilling the formalities of C.C. Civil Code.

In practice, the policy is made either to order or to bearer and so can be assigned by endorsement or by simple delivery. L.C. et R. 984.

Liability of underwriter for loss damage

The underwriter is bound, in accordance with the terms of his contract, to indemnify the insured for loss or damages caused by perils of the sea.

Meaning of averages

Averages is the special term used to signify all damages done to the ship or goods as well as all extraordinary expenditure made on account of the ship or goods, together or separately, between the termination and commencement of the risks. Averages are of two kinds, general averages and particular averages.

General Averages (avaries communes)

Occur when the damage is suffered or the expense incurred for the common safety of ship or cargo, for example, if goods, be cast overboard in a storm in order to preserve the ship and the remainder of the cargo.

In such case, the value of the goods, must be paid to the owner by all who have benefited from the preservation of the ship, including therefore those goods which have been preserved

C.M.C. 238, C. Com. Fr. 400, enumerate what are general averages.

Particular averages (avaries particulières) arise whenever any damage is done, or any expense is incurred for the goods of an individual but which damage or expense is not incurred for the general benefit. Particular average are paid for by the owner of the thing which has suffered the damage or occasioned the expense C.M.C. 239 à C. Com. Fr. 403 enumerate particular averages.

Liability :

The underwriter is liable, in principle, in accordance with the terms of the policy, but his liability in certain cases is restricted by the Law. If the policy contained an insurance generally against perils of the sea without any restriction, then the underwriter is liable for all the risks as enumerated in C.M.C. 162, C. Com. Fr, 350.

They are storm, shipwreck, stranding, accidental collisions, forced changes of route, voyage and ship, jettison, fire, capture, pillage, arrest by order of a sovereign power, declaration of reprisals and in general any other perils of the sea. By special stipulations, inserted in the policy the underwriter may extent or restrict his liability, and in practice this is always the case.

It is well understood that "perils of the sea" include only fortuitous events or force majeure and do not apply to the ordinary action of winds and waves.

Jettison : means the throwing overboard of tackle or cargo in order to lighten the ship in an emergency.

Capture : is part of the risks of war and such risks in practice are expressly excluded in the ordinary policy. War risks entail special rates for the premium.

Barratry, By. C.M.C. 195, C. Com. Fr. 355 is not a peril of the sea for which the underwriter, in the absence of agreement, is liable.

In practice the stipulation covering barratry is inserted. It means any wrongful act committed by the master or crew to the prejudice of the shipowner. For example, setting fire in the ship or employing it for smuggling is barratry. If a clause covering barratry be inserted in the policy, and the subject-matter insured is the ship and the master (captain) is the owner of it in whole or in part, the agreement by C.M.C. 165 C. Com. Fr. 353 is null to an amount equal to his share in the ship.

If the goods insured are of such a kind as to be exposed to special deterioration or diminution, such as grain or salt or goods liable to leakage they must be specially declared in the policy. Otherwise, the underwriter is not liable for loss or damages, save in any case when the insured was ignorant of the nature of the goods at the time the policy was signed C.M.C. 197. C. Com. Fr. 355.

The underwriter is not, in any event, liable for damage, diminution or loss caused by the act or fault of the insured.

C.M.C. 149. C. Com. Fr. 351-352 Lyon Caen et R. are of the opinion that although the insured can in no case claim the indemnity under the policy when he is guilty of gross intentional fault (*faute lourde*) yet he should be allowed to do so, if by express agreement the underwriter assumed liability for the slight faults (*fautes légères*) of the insured. But this is not the French Jurisprudence. L.C. et R. 985 - 988.

Time and place of Risks

The risk must be realised at the times and in the places mentioned in the policy or the underwriter to be liable. If nothing be determined in the contract the risk as regards the ship, runs from the moment at which the ship has sailed until the moment when it is anchored or moored at the place of destination. As regards the goods, it runs from the moment they have been put on board until the moment when they are or ought to have been landed at their place of destination. See C.M.C. 166 C. Com. Fr. 328.

If the voyage is broken off before departure, that is before the risks have been commenced, the insurance is cancelled and the premium is restored by the insurer, subject to his right to receive by way of compensation one half percent of the sum insured, or half of the premium if the whole premium does not amount to one percent. C.M.C. 191, C. Com. Fr. 349.

If after departure, the voyage is voluntarily changed the insurance is cancelled. C.M.C. 193. C. Com. Fr. 351. Then insurer who has begun to run the risk is entitled to keep the whole premium. If there be a forced change of voyage, the insurer remains liable. L.C. et R. 939.

Abandonment

When the risk is realised, the insured has the right to recover from the underwriter an indemnity proportional to the damage suffered.

The whole sum agreed upon will be due when the thing is totally lost for example when the ship founders at sea.

But it may happen that the thing is not totally lost but still exists, though in such a condition as to be useless for its purpose.

In effect, so far as the insured is concerned, it is totally lost. For example, a cargo of hides may be so damaged as to be useless as hides, though it may have some value as manure.

In such a case the insured has an option. Either he may keep what remains of the thing insured and claim an indemnity proportional to the prejudice suffered (l'action d'avaries) or he may give notice to the underwriters that he abandons what remains of the thing and is then entitled to claim the full amount of the agreed indemnity (l'action en délaissement). C.M. C. 211. C. Com. Fr. 369, 379. He will naturally choose that course which offers more profit L.C. et R. 980/1004.

When abandon may be made

a) In case of loss or damage caused by "sinistres majeurs". They are enumerated in C.M.C. 211, C. Com. Fr. 389.

When the ship is wrecked, broken by stranding or rendered innavigable by perils of the sea, in case of capture by enemies or pirates, or of arrest by a foreign power, in case of arrest by the Egyptian Government after the voyage has begun, and in case of loss or deterioration of the subject matter insured, if such loss or deterioration or loss amounts to three fourths at least of its insured value.

This enumeration is not imperative. The causes of abandonment may be extended or limited by the policy. In practice the policy can always make provisions for the cases in which abandonment can be made and the articles will only apply to matters not provided for by the contract.

b) On account of absence news, ships with cargo from time to time, start on a voyage and are never heard of again. Strictly, the insured person cannot claim an indemnity because he is unable to prove positively the loss. But when a certain time has elapsed and no news of the ship has been received, the law presumes a loss and the insured can claim payment of the agreed indemnity without being bound to prove the loss of the ship or cargo. The days after which the loss is presumed are contained in C.M.C. 215, but they may be varied by the terms of the policy. In practice they are shortened L.C. et R. 990 - 1002.

Conditions of abandonment

By C.M.C. 212. C. Com. Fr. 312, abandonment must be pure and simple. It cannot be partial or conditional. It extends only to that property and to that quality which are the subject matter of the insurance and risk.

Partial. The insured is not at liberty to abandon part of goods insured. He must abandon all or none.

Conditional. For example, the underwriter has the right to refuse to accept abandonment of a ship made on condition that the ship must be restored if news concerning it arrives within a certain delay.

Abandonment is irrevocable once acceptance is made. The underwriter cannot excuse himself from paying the sum insured. C.M.C. 223. C. Com. Fr. 385. Lyon Caen et R. 993 - 994, upon pretext that the ship or goods have come back after abandonment.

Effects of abandonment

From the moment of the acceptance of abandonment the property insured belongs to the underwriter. Abandonment is thus a special mode of the acquisition of ownership. It has always been admitted that the underwriter acquires together with the ownership of the property the rights of the insured person against third person who by their fault have been the cause of the loss which gave rise to the abandonment. For example, if the ship was wrecked as a result of a collision with another ship, there is an action against the owner of the ship that caused the collision. C.M. 242. C. Com. Fr. 407. L.C. et R. 995.

Adjustment of Losses

In the case of a total loss followed by abandonment the whole amount of the indemnity is due and so there is no need of adjustment. But abandonment is exceptional. It more frequently happens that the insured person keeps what remains

of the ship or goods and claims an indemnity proportional to the damage or partial loss suffered.

If a ship is damaged or part of cargo is totally lost or if the whole cargo though damaged is not constructively a total loss, there is a partial loss for which only a part of the sum agreed upon is due. There is then a settlement between the insured and the underwriters which is generally conducted by brokers on behalf of the parties. Such settlement is known as the adjustment of losses, in French Law as "règlement par avaries". It is not always easy to settle the exact sum due as indemnity.

The following are some of the rules adopted :

Ship : If the ship is damaged, the underwriters have to pay part of the cost of the repairs. The proportion is generally fixed in the policy. In practice the amount is two thirds, as the insured is supposed to benefit to the extent of the other third by having new materials in his ship instead of the other third by having new ship on the first voyage, the underwriters pay the whole cost of the repairs.

If the ship is not repaired or only partially the insured is entitled to indemnity for the reasonable depreciation in the value of the ship arising from the unrepaired damages, but he cannot recover more than if the ship has been repaired.

Goods : If part of the goods is totally lost the underwriters pay as for a total loss of that part, but in the case of damage (détérioration) to the whole or part of the goods the rule is more complicated. The rule generally adopted is as follows : First three things must be ascertained.

1 — The value of the goods at the place of arrival as if undamaged.

2 — The value at the same place as if damaged.

3 — The original value at the place of loading. This value will be the invoice price, plus the expense of putting the goods on board, premium for insurance and commission. Then a calculation is made. The insured is entitled to receive such proportion of the original value as the difference between the undamaged value and the damaged value of place of arrival.

Example : Goods valued at £ 100 in London are shipped to Alexandria, where they would sell if sound and undamaged for £ 200. Owing to damage incurred on the voyage they sell them for £ 150. The insured thus loses one fourth of the value of the goods at the place of arrival. The underwriters will pay him one-fourth of the original value, namely £ 25.

If the underwriters were called upon to pay £ 50, the amount of the damage as at place of arrival, they would pay for the profit which the insured hoped to make. But C.M.C. 190 which reproduces the old articles Fr. C. Com. 347 expected profits are excluded from the objects of insurance. The French article was amended in 1885 and expected profits can now in France be made the object of insurance. L.C. et R. 999 - 1000.

Questions in general average. It has been explained that general averages are paid for by all who have benefited from the damages or expense sustained. If an insured person is called upon to contribute towards general averages, the underwriters must pay him the amount of his contribution.

If goods belonging to the insured have been sacrificed in whole or in part for general benefit, it is a question, since the persons who have benefited are bound to contribute whether the insured can call upon the underwriters for the value of the goods sacrificed, without taking into account what he is entitled to receive from the contributions.

Lyon-Caen et R. would give him the right on the ground that the obligation of the underwriters must be performed as soon as the risk is realised without any regard to whatever claim for indemnity the insured may have as against others. L.C. et R. 1001.

Partial Insurance

Sometimes a thing is not always insured for its full value. In such a case the insured is said to be his own insurer for the excess of the value of the thing insured over and above the sum insured. In the event of loss or damage, however small, the insured is not, in the absence of agreement to the

contrary, entitled to claim a full indemnity for the damage from the underwriters, but must himself bear the loss in proportion to the uninsured value of the thing.

For example, goods for a sum of L.E. 2000 are insured for L.E. 1000. If half of them to be lost the underwriters will only pay L.E. 400, as indemnity to the insured. But it may be expressly agreed that the underwriters shall indemnify the insured for all prejudice suffered up to the agreed amount of the rule of C.M. C. 202 C. Com. F. 360 L.C. et R. 1003.