



# UNITED NATIONS GENERAL ASSEMBLY



Distr.  
GENERAL

A/7146  
26 July 1968

ORIGINAL: ENGLISH

Twenty-second session

NOTE VERBALE DATED 26 JULY 1968 FROM THE SECRETARY-GENERAL  
ADDRESSED TO THE PERMANENT REPRESENTATIVE OF THE UNION OF  
SOVIET SOCIALIST REPUBLICS

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations, and has the honour to acknowledge the receipt of the communication of 13 June 1968 addressed to the Secretary-General by the Chairman of the Delegation of the Union of Soviet Socialist Republics to the twenty-second session of the General Assembly. As requested in the letter of 18 June 1968 from the Permanent Representative of the Union of Soviet Socialist Republics, the communication of 13 June 1968 was circulated as a document of the General Assembly (A/7111).

In the communication just referred to, reference is made to the roll-call votes which took place at the 1582nd meeting of the First Committee, on 10 June 1968, and at the 1671st and 1672nd plenary meetings of the General Assembly, on 12 June 1968. In the course of these roll-call votes the competent officials of the Secretariat did not call out the names of two Member States which, as previously reported by the Secretary-General to the General Assembly by letters of 24 and 27 April and 3 and 6 May 1968 (A/7086 and Add.1-3), were "in arrears in the payment of their contributions to the United Nations regular budget within the terms of Article 19 of the Charter".

In the absence of any specific determination by the competent organs of the United Nations, it is the responsibility of Secretariat officials to discharge their duties in the light of their understanding of the relevant provisions of the Charter. It has always been the understanding of the Secretary-General that the express language of the first sentence of Article 19 does not call for a decision of the General Assembly prior to deprivation of vote, and is a

provision entirely distinct and separate from Article 18, paragraph 2, of the Charter. The Secretary-General believes that voting under Article 19 is only required in two possible instances, neither of which occurred in the cases under consideration. The first instance would be if the Secretary-General's reports indicating that one or more States were in arrears were challenged as factually incorrect. The second instance would be if a Member State in arrears were to request the Assembly to exercise the discretion accorded in the second sentence of Article 19 to permit that Member State to vote, provided the Assembly is satisfied that failure to pay was due to conditions beyond that Member State's control. In order to arrive at a finding of the nature just indicated, the Secretariat assumes that a necessary prerequisite to action under the second sentence of Article 19 would be a request by the Member State in arrears, accompanied by the submission of such data as to satisfy the Assembly that failure to pay was due to conditions beyond the control of that Member State.

The foregoing conclusions are based upon legal considerations which are set out in a detailed opinion of the Legal Counsel. A copy of this ..... opinion, in which the Secretary-General concurs, is annexed to the present note.

In the light of the foregoing, the Secretary-General considers that the Secretariat is obliged to continue to act in accordance with its understanding of the relevant provisions of the Charter and with the precedents which are cited in the annexed legal opinion until such time as the General Assembly indicates that it does not share that understanding and that different procedures should be followed which may release the Secretariat from this otherwise unavoidable responsibility.

The Secretary-General is having this note also circulated as a document of the General Assembly.

ANNEX

Opinion of the Legal Counsel

1. In recent correspondence reference has been made to the roll-call votes which took place at the 1582nd meeting of the First Committee, on 10 June 1968, and at the 1671st and 1672nd plenary meetings of the General Assembly, on 12 June 1968. In the course of these roll-call votes the competent officials of the Secretariat did not call out the names of two Member States which, as previously reported by the Secretary-General to the General Assembly by letters of 24 and 27 April and 3 and 6 May 1968 (A/7086 and Add.1-3), were "in arrears in the payment of their contributions to the United Nations regular budget within the terms of Article 19 of the Charter".
2. In the absence of any specific determination by the competent organs of the United Nations it is the responsibility of Secretariat officials to discharge their duties in the light of their understanding of the relevant provisions of the Charter. It has always been the understanding of the Secretariat, based on a legal analysis of Article 19 of the Charter, that the first sentence of that Article has automatic application and is a provision entirely distinct and separate from Article 18, paragraph 2, of the Charter.
3. The provision of Article 18, paragraph 2, concerning a two-thirds majority with respect to "the suspension of the rights and privileges of membership", obviously relates to Article 5 of the Charter, which provides: "A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council." Article 18, paragraph 2, lists successively admission of new Members, suspension of rights and privileges of membership and the expulsion of Members, which are covered respectively by Articles 4, 5 and 6 of the Charter, all of which, unlike Article 19, require action both by the Security Council and the General Assembly. The wording of Article 19 does not contain the phrase "suspension of rights and privileges" and obviously does not necessitate

/...

any action by the Security Council. It provides only for a specific sanction or penalty if a Member is two years in arrears in the payment of its contributions. This sanction is that it "shall have no vote in the General Assembly" but does not affect its other rights and privileges including participation in discussions in the General Assembly and voting in organs of the United Nations other than the plenary meetings of the General Assembly and of its Main Committees.

4. The express language of the first sentence of Article 19 does not call for a decision of the General Assembly prior to the deprivation of vote, since it provides simply that a Member "shall have no vote" if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. Had the contrary been intended, Article 19 would have been drafted in a quite different way in order to provide for a decision by the General Assembly. For example, instead of saying that the Member "shall have no vote" it would have said "may have its votes suspended by the General Assembly" or "the General Assembly may decide that [such Member] shall have no vote...", as it does in cases where it intends that the General Assembly exercise discretion such as in Article 5.

5. The position of Articles 18 and 19 in a single section is due to the fact that each relates to different aspects of voting in the General Assembly and does not therefore indicate a connexion between the requirement of a two-thirds vote in Article 18, paragraph 2, and the loss of vote in Article 19. The questions specifically enumerated in Article 18, paragraph 2, relate to decisions under articles which appear in different chapters and sections throughout the Charter.

6. The foregoing position is fully borne out by reference to the second sentence of Article 19. The first sentence provides that a Member "shall have no vote" upon the happening of a specified event - becoming two years in arrears in the payment of contributions. The second sentence provides that, nevertheless, the General Assembly "may permit" such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond its control. Shall is used in the first sentence, while may is used in the second. Likewise, only in the second sentence is reference made to action to be taken by the General Assembly. Thus, it is clear that a positive decision by the General Assembly, presumably following a

request by a Member which is two years in arrears, is required to permit that Member to vote - not a decision by the General Assembly to "suspend" its vote. The rule of loss of the vote as a mandatory penalty is provided in the first sentence, while the second sentence permits the General Assembly to make an exception to this rule in a specifically defined circumstance, i.e., if it is satisfied that the failure to pay is due to conditions beyond the Member's control. Thus, on the request of the Member concerned and on the basis of adequate data, the General Assembly might exercise a discretion to waive or lift the penalty, for example, in case of natural disasters, such as earthquakes, floods, revolutions or economic depressions. The only other case in which the Assembly might be required to take a decision is in exceptional circumstances in which a Member State disputes the basis of the calculation by which it is determined to be in arrears. For example, this may arise in a case where a question of State succession is involved. It was doubtless for instances such as these that rule 161 of the rules of procedure of the General Assembly provides that the Committee on Contributions, which deals with financial and economic - not political - aspects, shall "advise the General Assembly... on the action to be taken with regard to the application of Article 19 of the Charter".

7. In the circumstances giving rise to the present reply, it should be noted that the two Member States concerned had not contested the amounts of their arrears specified in the letter from the Secretary-General contained in document A/7086. They had not requested that the General Assembly permit them to vote under the second sentence of Article 19. Nor had they submitted data regarding "conditions beyond the control of the Member", which would permit the Assembly to arrive at a decision under the second sentence of that Article.

8. It should also be recalled that the procedure followed at the 1582nd meeting of the First Committee, on 10 June 1968, and at the 1671st and 1672nd plenary meetings of the General Assembly, on 12 June 1968, is not without precedent and is not based solely on decisions by the Secretariat. Reference may be made, in this connexion, to a letter of 15 May 1963 from the President of the General Assembly at its fourth special session to the Secretary-General, which was communicated to all Member States under cover of a note verbale. In this letter

/...

the President noted that a Member State was in arrears in the payment of its financial contributions within the terms of Article 19 of the Charter and pointed out that this would have given rise to a loss of voting rights had there been an occasion to take a formal vote on any question. While a number of States subsequently indicated their disagreement with this letter, the matter was never raised in the General Assembly and the Assembly never issued instructions that the presiding officer or the Secretariat should act in a manner contrary to that indicated in the President's letter.

9. Reference should also be made to the precedent which occurred at the 1518th plenary meeting of the General Assembly, on 19 May 1967, during the fifth special session. On that occasion, the name of a Member State at that time in arrears within the terms of Article 19 of the Charter was not called out during a roll-call vote. No question was raised on that occasion.

10. In the light of the foregoing, it is apparent that if the Secretariat had during a roll-call vote called the names of those Members which were two years in arrears in the payment of their contributions, it would have been asking them how they voted, while the Charter states categorically that they "shall have no vote". Had it acted thus, the Secretariat would have disregarded Article 19 of the Charter. It is therefore clear that the Secretariat is obliged to continue to act in accordance with its understanding of the relevant provisions of the Charter and with the foregoing precedents until such time as the General Assembly should take a contrary decision. It may be added that, although Member States would have been fully within their rights in raising questions during or after the voting at the 1582nd meeting of the First Committee, on 10 June 1968, and at the 1671st and 1672nd plenary meetings of the General Assembly, on 12 June 1968, none of them did so.

-----