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LETTER DATED 11 SEPTEMBER 1964 FROM THE DEPUTY PERMANENT REPRESENTATIVE
OF THE UNION OF SOVIET SOCIALIST REPUBLICS ADDRESSED TO THE PRESIDENT
OF THE SECURITY COUNCIL

Please arrange for the attached Memorandum from the Ministry of Foreign
Affairs of the USSR concerning "The question of the financial situation of the
United Nations" to be circulated as an official document of the Security Council.

(Signed) E. MAKEEV
Deputy Permanent Representative of the
USSR to the United Nations

THE QUESTION OF THE FINANCIAL SITUATION OF THE UNITED NATIONS
(Memorandum from the Ministry of Foreign Affairs of the USSR)

The financial situation of the United Nations has been attracting universal attention lately. Frequent references are even made to "the financial crisis of the United Nations".

This problem is taking on especial significance for the United Nations, and not only because the financing of the United Nations is important in itself. The main point is that, in this matter as in others, some States are trying to compel the United Nations to violate its Charter, in order to justify illegal acts which have been committed under the United Nations flag in the past, and in order to make it easier to violate the Charter in the future.

The effectiveness of the United Nations as an instrument of peace and international co-operation can be assured only if individual States, as well as the Organization as a whole, abide by the provisions of the United Nations Charter. Violation of the provisions of the Charter, on the other hand, may have serious adverse consequences for the international situation and may even lead to the collapse of the United Nations.

It is universally known that the existing financial difficulties of the United Nations have been caused by the expenses incurred in maintaining the Emergency Force in the Middle East and the operations in the Congo.

What would the position be with regard to the payment of such expenses if the United Nations Charter was adhered to?

I

The operations of the United Nations Emergency Force in the Middle East and the United Nations operations in the Congo lay no financial obligations on Members of the United Nations, inasmuch as these operations have been conducted otherwise than in accordance with the requirements of the United Nations Charter

The United Nations was established in the same way as other international organizations; namely, through the conclusion of an international treaty - the Charter. This treaty determines, in particular, the competence of United Nations

organs, their procedure, and so forth. Under the United Nations Charter, States have assumed certain obligations which cannot be altered without a new agreement among the Members of the Organization. It is perfectly evident - and this situation is universally recognized - that the Charter does not place the United Nations above States, that it does not authorize it to act without regard for the provisions of the Charter.

It is natural, therefore, that financial obligations for the Members of the United Nations can arise only out of such actions of the United Nations as conform to its Charter. As to expenses connected with actions which do not conform to the Charter, such actions cannot give rise to obligations for Member States with regard to the payment of expenses.

It is precisely to this category of expenses that the cost of maintaining the United Nations Emergency Force in the Middle East and the cost of the United Nations operations in the Congo belong.

The United Nations Emergency Force in the Middle East was established on the basis of resolutions 998 (ES-I) of 4 November 1956 and 1000 (ES-I) of 5 November 1956, adopted at the First Emergency Special Session of the General Assembly.

The USSR Government has repeatedly emphasized that the establishment of the Emergency Force in the Middle East was carried out in violation of the United Nations Charter.

In matters relating to the maintenance of international peace and security, the United Nations Charter clearly delimits the competence of the Security Council and of the General Assembly. According to the Charter, only the Security Council is empowered to decide questions relating to the taking of action to maintain international peace and security; the establishment of the United Nations Emergency Force in the Middle East falls into this category.

In order to ensure prompt and effective action by the United Nations, the Members of the United Nations have conferred on the Security Council "primary responsibility for the maintenance of international peace and security", and have agreed that "in carrying out its duties under this responsibility the Security Council acts on their behalf" (Article 24). The States Members of the United Nations have assumed an obligation to accept and carry out the decisions of the Security Council (Article 25).

The General Assembly may, as provided in Article 11, "discuss any questions relating to the maintenance of international peace and security" and "may make recommendations with regard to any such question". However, as stated further on in the same Article, "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion".

Under Article 39 of the Charter, it is specifically the Security Council which "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security". Each succeeding Article of Chapter VII of the Charter contains provisions confirming, reinforcing and crystallizing the proposition that all questions relating to the establishment and use of United Nations armed forces lie within the competence of the Security Council.

Guided by these provisions of the Charter, the USSR representative at the First Emergency Special Session of the General Assembly in 1956 had the following to say about the decision to establish the Emergency Force in the Middle East:

"As regards the creation and stationing on Egyptian territory of an international police force, the Soviet delegation is obliged to point out that this Force is being created in violation of the United Nations Charter.

"The General Assembly resolution on the basis of which it is now proposed to form this Force is inconsistent with the Charter. Chapter VII of the Charter empowers the Security Council, and the Security Council only, not the General Assembly, to set up an international armed force and to take such action as it may deem necessary, including the use of such a force, to maintain or restore international peace and security."

The Government of the Union of Soviet Socialist Republics, in a Memorandum on the procedure of financing the operations of the United Nations Emergency Force in the Middle East and the United Nations operations in the Congo, transmitted to the International Court of Justice in 1962, drew the following conclusion:

"Thus, as the Emergency Force for the Middle East was set up in violation of the United Nations Charter, circumventing the Security Council, its financing cannot be regarded as an obligation upon the Member States of the United Nations under the Charter."

The basis for the conduct of the United Nations operations in the Congo was the Security Council resolution (S/4387) of 14 July 1960, which was adopted at the request of Patrice Lumumba's Government in consequence of the Belgian aggression in that country. Thereafter, however, in the course of the operations of the United Nations armed forces in the Congo, both this resolution and the United Nations Charter were grossly violated.

According to the Charter, the Security Council shall determine which States shall take part in carrying out its decisions for the maintenance of international peace and security. Article 48 of the Charter provides that: "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine". In violation of these provisions of the Charter, the Secretary-General of the United Nations, bypassing the Security Council, himself determined the group of States which were invited to take part, with armed forces or otherwise, in the United Nations operations in the Congo. As early as the Security Council meeting of 20 July 1960, the USSR representative was compelled to protest against the actions of the Secretary-General, which were undertaken in violation of the Security Council resolution of 14 July.

Furthermore the provisions of the Charter were not observed in relation to the direction of the United Nations operations in the Congo.

The decisive criterion for the legality of the actions of a United Nations armed force in any eventuality is, of course, their consistency with the purposes and principles of the United Nations. It is possible to conceive a situation in which the requirements of the Charter are satisfied as regards the establishment of United Nations armed forces, but the activity of those forces is so directed as to produce results which are diametrically opposed to the purposes set forth in the Charter. This is precisely what happened in the Congo.

The then Secretary-General and the United Nations Command in the Congo, acting in the interest of the colonizers and in flagrant contradiction to the

United Nations Charter, frustrated the implementation of the Security Council decision of 14 July 1960, which - as was repeatedly pointed out by USSR representatives and as is required by the Charter - should have put an end to interference by the colonizers in the domestic affairs of the Congo and served to strengthen the independence of the new Congolese State. The USSR Government, in its statement of 14 February 1961, roundly condemned the actions of the Secretary-General of the United Nations and proposed the prompt withdrawal of all foreign troops from the Congo so as to enable the Congolese people to settle their domestic affairs themselves.

The sequel to these violations of the Charter was that the Secretary-General, ignoring the Security Council, asked the General Assembly for appropriations to cover the cost of the United Nations operations in the Congo; the General Assembly, in its turn, without being competent to do so under the Charter, took a decision to make an appropriation for these operations and to apportion the cost they entailed among the States Members of the United Nations in accordance with the scale of assessment for the regular budget of the United Nations.

Obviously, however, resolutions of the General Assembly cannot make the reimbursement of expenses, incurred on measures carried out otherwise than in accordance with the United Nations Charter, into an obligation upon States Members of the United Nations.

II

Expenditure for United Nations armed forces does not come under Article 17 of the Charter

All questions connected with the establishment and operations of United Nations armed forces, including the question of expenditure for such forces, come under Chapter VII of the Charter and are within the competence of the Security Council.

Article 17 of the Charter reads:

"1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

It is perfectly obvious that paragraph 2 of Article 17 is closely linked to paragraph 1 and refers to the budgetary expenses of the Organization. The General Assembly apportions the expenses of the United Nations budget among the Member States and these are required to bear such expenses in accordance with that apportionment.

The phrase "expenses of the Organization" as used in Article 17 of the Charter does not by any means signify "all the expenses of the Organization" but only the expenses under the budget, i.e. the "normal" expenses of the United Nations. The apportionment of such expenses among the Members of the United Nations is decided by the General Assembly. Expenditure for United Nations armed forces and other matters connected with the establishment and operations of such forces are governed by the provisions of Chapter VII of the Charter and fall within the competence of the Security Council.

That is precisely what the participating States had in mind at the San Francisco Conference at which the Charter was drafted. That explains why the provisions dealing with the contributions of Members of the United Nations to the maintenance of international peace and security (Chapter VIII, Section B), including the financing of United Nations armed forces, were referred to Committee 3 of Commission III - the committee which drafted the present Chapter VII of the Charter on actions with respect to threats to the peace, breaches of the peace and acts of aggression, i.e. matters within the exclusive jurisdiction of the Security Council.

During the discussion of these matters in the Committee, a proposal was introduced which provided that the expenses of enforcement measures against an aggressor State should be borne by that State. In that connexion, the Committee, in a unanimously adopted report, after recognizing as legitimate the proposal that "the expenses for enforcement action carried out against a guilty State should fall upon that State", declared itself "satisfied with the provisions of paragraphs 10 and 11" (Articles 49 and 50 of the Charter).^{1/} This opinion of the Committee was approved, again unanimously, by the plenary Conference.

^{1/} UNCIO (Documents of the United Nations Conference on International Organization, San Francisco), v. 12, p. 513.

Thus, the Committee considered that, in the solution of the problem of meeting the expenses of United Nations armed forces, account should be taken of the principle of the political and material responsibility of the aggressor State for its aggression and for the material damage resulting from that aggression. This is the question of sanctions, which includes evaluation of the actions of States in cases of aggression, determination of a State's responsibility or degree of responsibility, and settlement of the question of compensation for the damage it caused to other States and for expenditure borne by the United Nations. These are matters within the competence of the Security Council.

The reference in the Committee's report to Articles 49 and 50 of Chapter VII of the Charter also underlines the fact that the expenses of United Nations armed forces were regarded by the Committee as coming under Chapter VII and not under Article 17 of the Charter and, consequently, as falling within the exclusive jurisdiction of the Security Council.

The principle that any United Nations action undertaken on the basis of Chapter VII falls within the exclusive jurisdiction of the Security Council is laid down in the Charter clearly and unequivocally. Chapter VII speaks only of the Security Council and does not even mention the General Assembly. When at the San Francisco Conference the proposal was made by the New Zealand delegation that "in all matters of the application of sanctions, military or economic, the Security Council associate with itself the General Assembly", it was not adopted.^{1/} During the discussion on the proposal, it was pointed out, in particular by the United States representative, that the General Assembly should not encroach on the Security Council's powers and the Security Council should be the main agency to prevent aggression.^{2/}

For a long time after the adoption of the United Nations Charter and until the Western Powers, and especially the United States, began their violations of the provisions of the Charter on this matter, no one questioned the fact that under the Charter measures relating to the establishment and operations of United Nations armed forces, including the question of expenditure for such forces, did not come under Article 17 and had no connexion with the "budget" mentioned in that Article.

1/ Ibid., p. 296.

2/ Ibid., p. 316.

In their analysis of Article 17, paragraph 2, the well-known commentators on the Charter, Goodrich and Hambro, who had participated in the San Francisco Conference, flatly assert that the expenses referred to in the paragraph do not include expenses for enforcement action.^{1/}

While illegally considering questions of financing United Nations armed forces, the General Assembly was nevertheless forced to recognize the special nature of these expenses and the fact that they are not part of the "regular" budget of the United Nations.

First, at no time has the General Assembly placed the expenditure for the United Nations Emergency Force in the category of expenses of the Organization within the meaning of Article 17, paragraph 2.

In a resolution adopted at the First Emergency Special Session on 7 November 1956 (resolution 1001 (ES-1), operative paragraph 5) the General Assembly approved "the basic rule concerning the financing of the Force laid down in paragraph 15 of the Secretary-General's report". Paragraph 15 of that report (A/3302) reads:

"... A basic rule which, at least, could be applied provisionally, would be that a nation providing a unit would be responsible for all costs for equipment and salaries, while all other costs should be financed outside the normal budget of the United Nations."

General Assembly resolution 1122 (XI) of 26 November 1956 provides for the establishment of "a United Nations Emergency Force Special Account", to which funds received by the United Nations, outside the regular budget, for the purpose of meeting the expenses of the Force would be credited, and from which payments for that purpose would be made.

As to the expenditure for the forces in the Congo, there again the General Assembly was compelled to note the special nature of such expenditure.

In resolution 1619 (XV) of 21 April 1961, the General Assembly stated that

"... the extraordinary expenses for the United Nations operations in the Congo are essentially different in nature from the expenses of the Organization under the regular budget and therefore a procedure different from that applied in the case of the regular budget is required for meeting these extraordinary expenses."

Similar wording is used in resolution 1732 (XVI) of 20 December 1961.

^{1/} L.H. Goodrich, E. Hambro - "Charter of the United Nations. Commentary and Documents. Second and Revised Edition," Boston, 1949, p. 134.

In resolution 1954 (XVII) of 19 December 1962, that is to say, after the International Court's advisory opinion of 20 July 1962, the General Assembly again drew a distinction between the "regular" budget of the Organization and expenditure for the United Nations Emergency Force and the United Nations operations in the Congo, emphasizing that peace-keeping operations of the United Nations accompanied by heavy expenditure, such as those in the Congo and in the Middle East, required a different financing procedure from that applied to the regular budget.

Thus, expenditure for United Nations armed forces even in cases in which their establishment and operation conform to the Charter, must be regarded as special expenses which are not part of the budget dealt with in Article 17, do not in fact, come under Article 17, and therefore are not within the competence of the General Assembly. They are expenses governed by the provisions of Chapter VII and are an inseparable part of the measures taken under that Chapter by decision of the Security Council.

III

There can be no question of applying Article 19 of the Charter not only in connexion with the cost of maintaining the Emergency Force in the Middle East and the armed force in the Congo, but also in cases where United Nations armed forces are created and employed in accordance with the United Nations Charter

The question is sometimes raised, in connexion with the cost of maintaining the Emergency Force in the Middle East and the armed forces in the Congo, whether Article 19 of the Charter can be applied against States which are allegedly in arrears in defraying such expenses.^{1/}

It is obvious, however, that Members of the United Nations can be said to be in arrears only in cases where they are under an obligation to defray the expenses in question. In the present case, no such obligation exists.

^{1/} See, for example, Article 19 of the Charter of the United Nations.
Memorandum of Law. Department of State. Washington, D.C., February 1964.

There could be no obligation for Members of the United Nations to pay the cost of maintaining the armed forces in the Middle East and the Congo because, in any case, the question of the cost of maintaining United Nations armed forces does not come under Article 17 of the Charter and is within the competence of the Security Council and not of the General Assembly. When it considered matters connected with defraying the cost of maintaining armed forces in the Middle East and the Congo, the General Assembly exceeded its powers (ultra vires). Hence, the General Assembly's resolutions on these matters cannot impose any financial obligation on Members of the United Nations.

Article 19 of the United Nations Charter provides that a Member of the United Nations which is in arrears beyond a certain amount in the payment of its financial contributions shall have no vote in the General Assembly. The arrears to which this Article refers are arrears in the payment of expenses under Article 17 of the Charter, which, as has already been pointed out, do not include expenditure on the maintenance of United Nations armed forces.

It should be recalled that at the San Francisco Conference Articles 17 and 19 of the Charter were regarded as parts of a whole. The Committee first approved the provisions which later became Article 17 and then approved supplementary provisions which today constitute Article 19.

Article 19 was drafted on the basis of Indian, Netherlands and Norwegian amendments, which were submitted as additions to the present Article 17 and Article 18, paragraph 1. The purpose of these amendments was stated as follows: "It should come under consideration whether the right of voting of Member States which do not pay their contribution should be suspended".^{1/}

It will be recalled that, in this Committee, Australia introduced an amendment to the present Article 19 for the purpose of extending its application to obligations of Member States under Chapter VII of the Charter.^{2/} However, that amendment was not incorporated into the Charter.

Thus, it is quite clear that Article 19 of the Charter applies only to the financial obligations of Member States with regard to expenses governed by Article 17. This further bears out the proposition stated above that Article 17

1/ United Nations Conference on International Organization, vol. III, p. 356.

2/ Ibid., vol. VIII, p. 470.

does not apply to the costs of maintaining United Nations armed forces, which are governed by Chapter VII of the Charter.

IV

Strict compliance with the provisions of the Charter relating to the establishment, employment and financing of United Nations armed forces is of particular importance

In its "Memorandum regarding certain measures to strengthen the effectiveness of the United Nations in the safeguarding of international peace and security", the USSR Government made a number of proposals designed to increase the effectiveness of the United Nations in safeguarding international peace and security. The basic idea of these proposals is, as was emphasized in the memorandum itself, the following:

"The United Nations Charter contains the essential principles for peaceful and good-neighbourly relations among States. Therefore, to enhance the effectiveness of the United Nations in keeping the peace means first of all putting an end to violations of the Charter, permanently ridding the Organization of all remnants of the 'cold war' period, creating within the United Nations a situation favourable to the co-operation of all States as equals."

This is particularly important as regards action to maintain international peace and security and, above all, as regards the employment of armed forces.

The employment of United Nations armed forces is an emergency measure which can greatly affect the international situation. At the same time, employment of such forces entails substantial expenditure.

The question of the payment by Members of the United Nations of expenses connected with such operations must be decided in accordance with the provisions of the United Nations Charter, which, in this as in other matters, are based on the principles that all States enjoy sovereign equality, that the situation and capacities of each State must be taken into account, and that the armed forces must truly be employed for the purpose of maintaining or restoring international peace and security.

In the above-mentioned Memorandum, the USSR Government stated that the question of the reimbursement of expenditure required for the execution of

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emergency measures adopted by the Security Council to deter or repel aggression through the use of United Nations armed forces should be decided in conformity with the generally recognized principle of international law that aggressor States bear political and material responsibility for the aggression they commit and for the material damage caused by that aggression.

The Memorandum went on to state:

"Nevertheless, the Soviet Government does not rule out the possibility that situations may arise where, in order to execute the above-mentioned emergency measures of the Security Council, it will be necessary for States Members of the United Nations to take part in defraying the expenditure involved in the maintenance and use of United Nations armed forces established in order to maintain international peace and security. In such future cases when the Security Council adopts decisions to establish and finance United Nations armed forces in strict compliance with the provisions of the Charter, the Soviet Union will be prepared to take part with other States Members of the United Nations in defraying the expenditure involved in the maintenance of those armed forces."

The question of reimbursing United Nations expenditure on the maintenance of armed forces is tremendously important, and affects the very foundations of the Organization. For that reason, it is of the utmost importance that the provisions of the United Nations Charter should be observed in deciding this question.

Being convinced that compliance with the Charter is essential to the viability of the United Nations and guarantees the effectiveness of its activities in safeguarding peace and developing international co-operation, the Soviet Union does not intend to depart from the provisions of the Charter.

11 September 1964

