UNITED NATIONS

GENERAL ASSEMBLY



Distr. CENERAL

A/5739 8 October 1964

ORIGINAL: ENGLISH

Nineteenth session

LETTER DATED 8 OCTOBER 1964 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to enclose a memorandum by the United States of America, dated 8 October 1964, concerning "The United Nations financial crisis". I would appreciate it if you would arrange to have the memorandum circulated as an official document of the General Assembly.

The memorandum deals with the serious extent of the financial issue facing the Organization, the law on the issue as established by the International Court of Justice and the General Assembly, and the implications which a breach of the Charter on the question would entail.

(Signed) Adlai E. STEVENSON

Permanent Representative

of the United States

to the United Nations

/...

THE UNITED NATIONS FINANCIAL CRISIS

Memorandum by the United States of America

October 8, 1964

\overline{T} \overline{M} \overline{D} \overline{E} \overline{X}

		rage
A.	The Financial Crisis	1
в.	The Middle East Operation UNEF	3
c.	The Congo Operation ONUC	5
D.	Soviet Legal Arguments	7
	1. The Claimed "Exclusive" Peacekeeping Rights of the Security Council	8
	2. The Claimed "Exclusive" Rights of the Security Council as to Peacekeeping Expenses	11
	3. The Claimed "Non-Includability" of Peacekeeping Expenses under Article 17	12
	4. The Claimed "Non-Applicability" of Article 19	16
E.	The Attitude of the U.N. Membership	18
F.	Article 19	50
G.	The Fundamental Issue	22
н.	United States Efforts to Find Solutions	24
ı.	What Other States Have Done	27
J.	Conclusion	29

THE UNITED NATIONS FINANCIAL CRISIS

A. The Financial Crisis

The United States is vitally interested in the survival of the United Nations as an effective institution, and is deeply troubled by the financial crisis facing the Organization.

The crisis is painfully clear. The UN has a net deficit of \$134 million.

On June 30 the UN had on its books unpaid obligations owed to governments and other outsiders totalling some \$117 million. In addition, it owed to its own Working Capital Fund -- which it is supposed to have on hand in order to keep afloat and solvent pending the receipt of assessments -- \$40 million. Other internal accounts were owed \$27 million. Against this total of \$183 million of obligations it had \$49 million in cash resources, or a net deficit of \$134 million.

What does this mean?

It means that the UN does not have the money to pay its debts, and that it would be bankrupt today if it were not for the forebearance of the Member Governments to which it owes those debts.

It means that, unless something is done, the United Nations will have to default on its obligations to Member Governments which, in good faith and in reliance on the UN's promises and good faith, have furnished troops and supplies and services to the UN, at its request, for the safeguarding of the peace. In so doing, these Governments incurred substantial additional and extraordinary expenditures which the UN agreed to reimburse -- an agreement

which the Secretary General referred to in his statement at the opening session of the Working Group of 21 on September 9 (Doc. A/AC.113/29, p.5) as "the commitment which the Organization has accepted, in its collective capacity, towards those of its Members who have furnished the men and material for its successive peace-keeping operations."

Which are those Governments?

The UN owes significant amounts to Argentina, Aústria, Brazil, Canada, Denmark, Ethiopia, Ghana, Indonesia, India, Iran, Ireland, Italy, Liberia, Malaysia, Mali, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, Sierra Leone, Sudan, Sweden, Tunisia, UAR, the United Kingdom, Yugoslavia, and the United States. It is to be noted that 19 of these 29 countries are developing countries.

As the Secretary General said at the opening session of the Working Group of 21 on September 9th (Doc. A/AC.113/29, p.5), these 29 Members "are surely entitled to expect the United Nations to keep faith with them." For the United Nations to keep that faith, it must get the money from its Members, for it has no other practicable source.

These 29 countries will suffer if the UN is forced, by the default of the Members which owe it, into defaulting to those which it owes; the entire organization will suffer if it does not honor its just obligations and becomes morally bankrupt.

The 29 Members would suffer by a default, but the real sufferer would be the UN itself. How could an enfeebled and creditless defaulter maintain peace and security? Indeed, how could any institution that had committed such a breach of faith hope long to survive as a credit-worthy and effective organization?

As the Secretary General said at the opening session of the Working Group of 21, "failure to take care of the past may not leave us with much of a future."

What has caused this crisis?

The crisis has been thrust upon the United Nations by those Members which have refused to pay the assessments for the Middle East (UNEF) and Congo (ONUC) operations as voted by the General Assembly in accordance with the Charter.

It is worthwhile recalling exactly how those operations were authorized and exactly what they were.

B. The Middle East Operation -- UNEF

UNEF grew out of the Suez crisis of 1956. The Security Council found itself unable to act because of vetoes by certain of the Permanent Members. Yugoslavia then, on October 31, 1956, introduced the following Resolution (S/3719):

"The Security Council,

"Considering that a grave situation has been created by action undertaken against Egypt,

"Taking into account that the lack of unanimity of its permanent members at the 749th and 750th meetings of the Security Council has prevented it from exercising its primary responsibility for the maintenance of international peace and security,

"Decides to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377A (V) of 3 November 1950 Note: The Unitingfor Peace Resolution 7 in order to make appropriate recommendations."

The Yugoslav Resolution was adopted 7-2-2, and the Soviet Union voted for the Resolution.

Thus the Soviet Union supported the referral by the Security Council

of the crisis to the General Assembly for "appropriate recommendations" under the very Uniting for Peace Resolution which the Soviet Union now tries to discredit.

The "appropriate recommendations" began with Resolution 997 (ES-I), adopted 64-5-6 (the Soviet Union voting for), calling for an immediate cease-fire, and Resolution 998 (ES-I), adopted 57-0-19 (the Soviet Union abstaining), requesting the Secretary General to submit

"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" (Res. 997) (emphasis supplied).

There followed Resolution 999 (ES-I), adopted 59-5-12 (the Soviet Union voting for), authorizing the Secretary General to arrange for the implementation of the cease-fire, and Resolution 1000 (ES-I), which noted with satisfaction the Secretary General's plan (Document A/3289) for the international force, and provided as follows:

"1. Establishes a United Nations Command for an emergency international Force to secure and supervise the cessation of hostilities in accordance with all the terms of General Assembly Resolution 997 (ES-I) of 2 November 1956;"

The vote on the Resolution was 57-0-19. There was not a single vote against (the Soviet Union abstained).

Further, the General Assembly, by Resolution 1001 (ES-I), which was adopted 64-0-12, approved the Secretary General's second report, Document A/3302. That report specifically indicated (a) that UNEF was intended only to secure and supervise the cease-fire and the withdrawal of forces, and not to enforce the withdrawal, (b) that it was not an enforcement action,

nor was UNEF a force with military objectives, and (c) that no use of force under Chapter VII of the Charter was envisaged. The Soviet Union abstained and did not vote against that resolution either.

Yet now the Soviet Union contends that there was something illegal about an operation (a) which was recommended by the General Assembly pursuant to a referral by the Security Council voted for by the Soviets themselves, (b) which involved no enforcement or military action whatsoever but merely the securing and supervising of a previously agreed to ceasefire, (c) which was consented to by the government concerned, and (d) which was authorized by the Assembly without a negative vote by anyone.

Rejecting the Soviet contentions, the International Court of Justice held (see under heading D 1 below) that UNEF was properly authorized by the Assembly.

C. The Congo Operation -- ONUC

The United Nations operation in the Congo was authorized by the Security Council on July 13, 1960, by Resolution S/4387, reading in part as follows:

"The Security Council ...

"2. Decides to authorize 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;"

The Soviet Union voted for the Resolution, which clearly gave the Secretary-General discretionary authority, in consultation with the Congolese Government, to determine the make-up of ONUC.

On July 18, 1960, the Secretary-General presented to the Security Council his first report (S/4389) in which he recited the steps taken by

him to invite Member States to furnish forces for ONUC.

On July 22, 1960, the Security Council adopted Resolution S/4405, reading in part as follows:

"The Security Council, ...

"Appreciating the work of the Secretary-General and the support so readily and so speedily given to him by all Member States invited by him to give assistance. ...

"3. Commends the Secretary-General for the prompt action he has taken to carry out Resolution S/4387 of the Security Council and his first report;"

The Soviet Union voted for the resolution.

In the face of this record, it is difficult to understand the Soviet Union's present claim (Soviet Memorandum of September 11, 1964, p.5) that it was improper for the Secretary General to invite States to take part in ONUC -- when he did so pursuant to direct Security Council authorization and approval, twice voted for by the Soviet Union itself. There was no "bypassing" of the Security Council (Soviet Memorandum, p.5); on the contrary the Secretary General did exactly what the Council authorized him to do and commended him for having done:

On August 9, 1960, the Security Council adopted Resolution 2/4426, confirming the authority given to the Secretary General by the two prior Resolutions and requesting him to continue to carry out his responsibility. The Soviet Union voted for that Resolution too.

Furthermore, six months later, the Security Council on February 20, 1961, adopted Resolution S/4741 which broadened ONUC's mandate and reaffirmed the three earlier Security Council Resolutions and an intervening General Assembly Resolution. The Soviet Union abstained.

Finally, the Security Council on November 24, 1961, nine months later, adopted Resolution S/5002, which in effect again reauthorized the ONUC operation, recalling the earlier Security Council Resolutions (and intervening General Assembly Resolutions), and again broadened ONUC's mandate. The Soviet Union voted for the Resolution.

Against this record of Security Council authorization and repeated reauthorization, it is difficult to understand how the Soviet Union can now contend that the operation was not legal and was not validly authorized.

As for the Soviet contention that ONUC was not conducted in accordance with the five Security Council Resolutions, it is enough to point out that ONUC was reauthorized by the Security Council's Resolutions of February 20, 1961, and November 24, 1961 -- six months and fifteen months, respectively, after its inception.

If the Security Council had felt that ONUC was not being properly conducted in accordance with its Resolutions, it could at any time have changed or given further explicit instructions. No such instructions were ever given or even suggested by the Security Council, and the record of Security Council authorization and reauthorization, and reaffirmation, of the ONUC operation, remains unchallenged.

The International Court of Justice accordingly held (see under heading D below) that ONUC was properly authorized.

• :

D. Soviet Legal Arguments

Let us now consider the legal arguments which have been made by the USSR.

It should first be noted that every one of the arguments put forward by the Soviet Union in its memorandum of September 11, 1964, and

elsewhere, was made by the Soviet Representative in his submission and argument before the International Court of Justice in the summer of 1962, when the Court considered the question of whether the UNEF and ONUC assessments voted by the General Assembly were "expenses of the Organization" within the meaning of Article 17, paragraph 2, of the Charter, and therefore binding obligations of the Members.

Every single one of those arguments was specifically rejected in the Court's Advisory Opinion of July 20, 1962. That Opinion was accepted on December 19, 1962, by the General Assembly by the overwhelming vote of 76-17-8, after the Assembly had decisively defeated an amendment which would merely have taken note of the Opinion.

Nevertheless, it may be useful to deal briefly with the Soviet contentions.

1. The Claimed "Exclusive" Peacekeeping Rights of the Security Council

The Soviet position is that the Security Council, and only the Security Council, has any right to take any action whatsoever with respect to the keeping of the peace, and that the General Assembly has no rights whatsoever in that area.

It should first be noted that this argument has nothing to do with ONUC, which was authorized and reauthorized by the Security Council by repeated Resolutions, four out of five of which were voted <u>for</u> by the Soviet Union -- it abstained on the fourth. Further, it will be remembered that UNEF was recommended by the General Assembly pursuant to the Security Council's referral of the problem to the General Assembly for its recommendations, by a resolution which the Soviet Union voted for.

In any event, there is no basis for the contention that the Security Council has exclusive rights as to peacekeeping, and the General Assembly none. Article 24 of the Charter gives the Security Council "primary responsibility for the maintenance of international peace and security", but not exclusive authority.

The Charter provisions set forth unequivocally the authority of the General Assembly in this regard. Subject only to Article 12, paragraph 1,*

- --- Article 10 authorizes the General Assembly to discuss and make recommendations on any questions or matters within the scope of the Charter;
- --- Article 11, paragraph 2, authorizes the General Assembly to discuss and make recommendations with regard to any questions relating to the maintenance of international peace and security (except that any question on which "action" is necessary shall be referred to the Security Council);
- --- Article 14 authorizes the General Assembly to recommend measures for the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the purposes and principles of the United Nations; and
- --- Article 35 provides that any dispute or situation which might lead to international friction or give rise to a dispute may be brought to the attention of the Security Council or of the General Assembly, whose proceedings are to be subject to Articles 11 and 12.

^{*}That paragraph reads: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

The word "action" in the exception to Article 11, paragraph 2, clearly applies only to coercive or enforcement action, and therefore not to recommendations by the General Assembly. So the International Court of Justice held in its Advisory Opinion of July 20, 1962, saying at pages 164-165:

"The Court considers that the kind of action referred to in Article 11, paragraph 2, is coercive or enforcement action. This paragraph, which applies not merely to general questions relating to peace and security, but also to specific cases brought before the General Assembly by a State under Article 35, in its first sentence empowers the General Assembly, by means of recommendations to States or to the Security Council, or to both, to organize peacekeeping operations, at the request, or with the consent, of the States concerned. This power of the General Assembly is a special power which in no way derogates from its general powers under Article 10 or Article 14, except as limited by the last sentence of Article 11, paragraph 2. This last sentence says that when "action" is necessary the General Assembly shall refer the question to the Security Council. The word "action" must mean such action as is solely within the province of the Security Council. It cannot refer to recommendations which the Security Council might make, as for instance under Article 38, because the General Assembly under Article 11 has a comparable power. "action" which is solely within the province of the Security Council is that which is indicated by the title of Chapter VII of the Charter, namely "Action with respect to threats to the peace, breaches of the peace, and acts of aggression". If the word "action" in Article 11, paragraph 2, were interpreted to mean that the General Assembly could make recommendations only of a general character affecting peace and security in the abstract, and not in relation to specific cases, the paragraph would not have provided that the General Assembly may make recommendations on questions brought before it by States or by the Security Council. Accordingly, the last sentence of Article 11, paragraph 2, has no application where the necessary action is not enforcement action."

The Security Council does have the sole authority, under Chapter VII, to make binding decisions, obligatory and compulsory on all Members, for coercive or enforcement action, but that does not mean that the General Assembly cannot make recommendations (as opposed to binding decisions) as to the preservation of the peace.

UNEF, as shown by the Secretary General's report and on the face of the Resolutions which authorized it (see pp. 4, 5 above), involved no enforcement action, and was clearly within the recommendatory power of the General Assembly as regards a situation turned over to it by the Security Council by a Resolution voted for by the Soviet Union.

ONUC was authorized by the Security Council, and reauthorized by the Security Council, and no valid objection can be raised to that authorization.

Few Members of the United Nations would ever agree that, if the Security Council proves itself unable to act in the face of an international emergency, the General Assembly can only stand by, motionless and powerless to take any step for the preservation of the peace.

Certainly the record of recent years shows that the General Assembly can take and has taken appropriate measures in the interest of international peace, and that it has done so with the support of the overwhelming majority of the Members, who believe that such measures are fully within the letter and the spirit of the Charter.

2. The Claimed "Exclusive" Rights of the Security Council as to Peacekeeping Expenses

The Soviet Union also contends that the Security Council has sole authority to determine the expenses of a peacekeeping operation, and to assess them on the membership, and that the General Assembly has no such right.

We think it unlikely that many Members would ever agree that the ll Members of the Security Council should be able to assess the other lOI Members without any consent or action on their part -- surely

taxation without representation.

There is not the slightest justification in the Charter for any such contention. The only reference in the Charter to the Organization's expenses is in Article 17, paragraph 2, which provides that "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." The Security Council is never mentioned in the Charter in connection with any UN expenses.

3. The Claimed "Non-Includability" of Peacekeeping Expenses under Article 17

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." (emphasis supplied)

It is clear that if the expenses of UNEF and ONUC, as apportioned by the General Assembly, are "expenses of the Organization", they are obligatory on the Members and must be paid.

This is precisely the question which was decided in the affirmative by the International Court of Justice in its Advisory Opinion of July 20, 1962, accepted by the General Assembly.

Before the Court the Soviet Union contended, as it does on page 7 of its memorandum of September 1, 1964, that paragraph 2 of Article 17 refers only to the <u>budgetary</u> expenses of the Organization. The Court points out, at page 161, that "on its face, the term 'expenses of the Organization' means <u>all</u> the expenses and not just certain types of expenses which might be referred to as 'regular expenses'."

The Soviet memorandum of September 11, 1964, refers, at page 7, to a proposal made at San Francisco as to costs of enforcement action. In point of fact, the proposal was made by South Africa, which suggested an amendment to what is now Article 50 of the Charter.

Article 50 deals with the right of a State (whether a UN Member or not) to consult the Security Council for a solution of any special economic problems arising from preventive or enforcement measures taken by the Council; the Article obviously relates to the situation where, for example, a Security Council embargo or boycott against an aggressor has the side effect of seriously harming the economy of an innocent third country.

The South Africa amendment was to the effect that a guilty country against which UN enforcement action is taken should be required to pay the costs of the enforcement action and to make reparation for losses and damages sustained by the economies of innocent third countries as a result. Countries participating in the enforcement action were to submit their claims for costs and reparation to the Security Council for approval and for action required to ensure recovery. The amendment had nothing whatever to do with the payment of peacekeeping costs incurred by the United Nations itself. Furthermore, the amendment was rejected by Committee III/3 by a vote of 19-2. The two votes in favor of the amendment were presumably those of South Africa, the proposer, and Iran, the seconder, which indicates that both the Soviet Union and the United States voted for rejection. See Documents on UN Conference on International Organization, Vol. 3, p. 478, and Vol. 12, pp. 393, 435, 493, 513.

The full text of Committee III/3's report on the matter (partially quoted in the Soviet memorandum at p.7) was as follows (p. 513):

"Economic Problems of Enforcement Action.
In conclusion, having heard various explanations on the subject of mutual assistance between states in the application of the measures determined by the Security Council and having noted the legitimate concern expressed by South Africa that the expenses of enforcement action carried out against a guilty state should fall upon that state, the Committee declared itself satisfied with the provisions of paragraphs 10 and 11. Note: The present Charter Articles 49 and 50, which contain no provisions as to the treatment of peacekeeping expenses.

"A desire moreover was expressed that the Organization should, in the future, seek to promote a system aiming at the fairest possible distribution of expenses incurred as a result of enforcement action.

"Having duly noted the explanations and suggestions given, the Committee unanimously adopted paragraphs 10 and 11 of the Dumbarton Oaks Proposals without change." (underscoring in the original) (p. 513).

The Committee's rejection of the South African proposal that aggressors pay, and the Committee's omission from Articles 49 and 50 of any reference to expenses, left Article 17 as the only Article in the Charter dealing with expenses. That rejection and omission, and the Committee's emphasis on the fairest possible distribution of enforcement expenses, buttress the conclusion that such expenses are to be included in Article 17, paragraph 2, and apportioned by the General Assembly, and are to be borne by the Members.

The Soviet memorandum of September 11, 1964, p. 9, refers to a statement by Goodrich and Hambro in "Charter of the United Nations,

Commentary and Documents", Boston, 1949, that the expenses referred to in Article 17, paragraph 2, do not include the cost of enforcement action.

In point of fact the statement is found in a footnote, footnote 90 on p. 184.

The footnote refers to Article 49 (which provides that Members are obligated to join in affording mutual assistance in carrying out Chapter VII measures decided upon by the Security Council) and to the discussion of that Article on p. 295 of the same book. Both references, and the discussion, make it clear that the authors have in mind enforcement costs that are to be borne by Members themselves in carrying out measures decided upon by the Security Council under Articles 48 and 49, and not the type of non-enforcement peacekeeping expenses involved in UNEF and CNUC, where, by agreement, primary expenses were to be borne by the States furnishing the forces, but their extra and additional expenses were to be reimbursed by the UN.

The Soviet memorandum contends (pp. 9, 10) that the fact that the General Assembly set up separate accounts for UNEF and ONUC expenses, apart from the regular budget, and, in certain cases, apportioned and assessed those expenses in a manner different from that used in the case of regular budget expenses, took UNEF and ONUC expenses out of the category of "expenses of the Organization" as found in Article 17, paragraph 2.

The International Court of Justice in its Advisory Opinion of July 20, 1962 decisively rejected this contention, saying with respect to UNEF expenses, after a full review (pp. 172-175) of the General Assembly UNEF assessment resolutions from 1956 to date:

"The Court concludes that, from year to year, the expenses of UNEF have been treated by the General Assembly as expenses of the Organization within the meaning of Article 17, paragraph 2, of the Charter." (p. 175)

As to ONUC expenses, the Court said at pp. 178, 179:

"The conclusion to be drawn from these paragraphs is that the General Assembly has twice decided that even though certain expenses are 'extraordinary' and 'essentially different' from those under the 'regular budget', they are none the less 'expenses of the Organization' to be apportioned in accordance with the power granted to the General Assembly by Article 17, paragraph 2. This conclusion is strengthened by the concluding clause of part raph 4 of the two resolutions just cited which states that the decision therein to use the scale of assessment already adopted for the regular budget is made 'pending the establishment of a different scale of assessment to defray the extraordinary expenses'. The only alternative -- and that means the 'different procedure' -- contemplated was another scale of assessment and not some method other than assessment. 'Apportionment' and 'assessment' are terms which relate only to the General Assembly's authority under Article 17." (emphasis in the original).

The clear conclusion is that the UNEF and ONUC expenses are "expenses of the Organization" as referred to in Article 17, paragraph 2, and, as duly apportioned by the General Assembly, "shall be borne by the Members" as obligatory obligations.

4. The Claimed "Non-Applicability" of Article 19

The first sentence of Article 19 of the Charter reads as follows:

"A member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it or the preceding two full years."

The Soviet Memorandum of September 11, 1964, states (p. 11) that the arrears to which Article 19 refers are arrears in the payment of expenses under Article 17. This is of course true.

But the Memorandum contends (pp. 10, 11) that since, according to the Soviet claim, UNEF and ONUC expenses are solely within the competence of the Security Council and are not "expenses of the Organization" under Article 17, they cannot be included in the calculation of arrears under Article 19.

But, as the International Court of Justice has held and as the General Assembly confirmed (see heading D 3 above), UNEF and ONUC expenses are "expenses of the Organization" under Article 17 and were properly apportioned under that Article by the General Assembly. Therefore they are to be included in any calculation of arrears under Article 19.

The Memorandum refers on p. 11 to an amendment to the present

Article 19 proposed at the San Francisco Conference by Australia. The

amendment in question would have added to Article 19 a provision that a

Member shall have no vote if it has not carried out its obligations under

what is now Article 43. In other words, for example, if a Member has

agreed with the Security Council under Article 43 to furnish certain

troops on the Council's call, and later refuses to do so, it should

lose its vote. The proposed amendment would thus have added to Article 19,

which already provided for loss of vote by a member failing to pay its

assessments for UN expenses, a provision for loss of vote by a member

failing to comply with its Article 43 obligations. Expenses were not

involved in the proposed amendment at all.

In point of fact the proposed amendment was withdrawn by Australia and was never voted on. The proposed amendment and its withdrawal have nothing to do with the fact that Article 19 does deprive a member of its vote for failing to pay its assessments for UN expenses, and the fact that those expenses include, as the International Court of Justice has held, the UNEF and ONUC peacekeeping expenses incurred by the UN itself and duly assessed on all Members by the General Assembly. Those interested in the proposed amendment will find the accurate story in the documents of the UN Conference on International Organization, Vol. 8, pp. 470 and 476.

So the conclusion is clear that, in the calculation of arrears under Article 19, UNEF and ONUC assessments are to be included

E. The Attitude of the UN Membership

From the foregoing it is clear that UNEF and ONUC arrears are legal and binding obligations of Members. Furthermore, it is the overwhelming conviction of the U.N. Membership that they should be paid, and that all Members have a collective responsibility for the financing of such operations.

General Assembly Resolution 1854 (XVII), of December 19, 1962, accepting the International Court of Justice Advisory Opinion that UNEF and ONUC expenses are "expenses of the Organization" within the meaning of Article 17, paragraph 2, has already been cited, together with the vote of 76-17-8 in its favor.

By Resolution 1874 (S/I V), adopted on June 27, 1963 by the vote of 90-13-3, the General Assembly affirmed, among other principles, the principle that the financing of peacekeeping operations is the collective responsibility of all Member States of the United Nations.

On July 1, 1963, by the vote of 78-12-17, the General Assembly adopted Resolution 1877 (S/IV), reading in part as follows:

"Noting with concern the present financial situation of the Organization resulting from the non-payment of a substantial portion of past assessments for the United Nations Emergency Force Special Account and the ad hoc Account for the United Nations Operation in the Congo,

"Believing that it is essential that all assessments for these Accounts be paid as soon as possible,

"1. Appeals to Member States which continue to be in arrears in respect of their assessed contributions for payment to the

United Nations Emergency Force Special Account and the ad hoc Account for the United Nations Operation in the Congo to pay their arrears, disregarding other factors, as soon as their respective constitutional and financial arrangements can be processed, and, pending such arrangements, to make an announcement of their intention to do so;

"2. Expresses its conviction that Member States which are in arrears and object on political and juridical grounds to paying their assessments on these accounts nevertheless will, without prejudice to their respective positions, make a special effort towards solving the financial difficulties of the United Nations by making these payments;"

Despite the overwhelming support for the <u>legal</u> conclusion of the International Court of Justice that UNEF and ONUC expenses are legally binding obligations, and for the <u>political</u> conclusion that these expenses <u>should</u> be paid, regardless of legal dissent, to keep the UN solvent, the United Nations is still faced with refusals by certain States to pay their shares of these expenses.

F. Article 19

November 10 is the opening of the General Assembly, and
November 10 presents the inevitable and inescapable issue of
Article 19 unless requisite payments are made before that opening.
Article 19 reads as follows:

"A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

The first sentence of Article 19 says in simple and clear terms that a Member subject to its provisions shall have no vote in the General Assembly. It does not say that the General Assembly has any discretion with respect to such a Member; it does not say that the General Assembly shall vote as to whether the delinquent shall have no vote; it simply says that the delinquent shall have no vote. The first sentence of Article 19 in the French text is even more emphatic: it says the delinquent Member cannot vote -- "ne peut participer au vote".

The second sentence of Article 19 does provide for a vote; a delinquent Member whose failure to pay is due to conditions beyond its control may be permitted by the General Assembly to vote. But there is no discretion as to a delinquent Member whose failure to pay is not due to conditions beyond its control, no discretion as to a Member which refuses to pay.

The United States hopes that those Members about to be confronted by Article 19 will take the action necessary to avoid the confrontation.

The way to avoid the confrontation is for those subject to the terms of Article 19 to make the necessary payments.

The United States does not seek the confrontation -- but if on November 10 the plain and explicit terms of Article 19 do become

applicable, there is no alternative to its application.

It is not only that Article 19 means what it says -- that the Member shall have no vote -- it is that failure to apply the Article would be a violation of the Charter which would have far-reaching consequences.

Failure to apply the Article would break faith with the overwhelming majority of Members who are paying their peacekeeping assessments -- often at great sacrifice -- as obligations binding under the Charter.

Failure to apply the Article would be a repudiation of the International Court of Justice and of that rule of international law whose continued growth is vital for progress toward peace and disarmament.

Failure to apply the Article would mean the discarding of the only sanction which the United Nations has in support of its capacity to collect what its Members owe it.

Failure to apply the Article would undermine the only mandatory power the General Assembly has -- the power under Article 17 to assess the expenses of the Organization on the Members.

Failure to apply the Article would tempt Members to pick and choose, with impunity, from among their obligations to the United Nations, refusing to pay for items they dislike even though those items were authorized by the overwhelming vote of the Members. Indeed, the Soviet Union has already said that it will not pay for certain items in the regular budgets. How could any organization function on such a fiscal quicksand?

Failure to apply the Article to a great power simply because it is a great power would undermine the constitutional integrity of the United Nations, and could sharply affect the attitude toward the

Organization of those who have always been its strongest supporters.

Failure to apply the Article could seriously jeopardize the support of United Nations operations and programs, not only for the keeping of the peace but for economic and social development.

The consequences of not applying Article 19 would thus be far worse than any conjectured consequences of applying it.

We believe that it is the desire of most Members of the United Nations that the situation <u>not</u> arise which makes Article 19 applicable, and therefore we believe that it is up to the Membership to see to it that the confrontation is avoided through the means available under the Charter for avoiding it -- the making of the necessary payments.

G. The Fundamental Issue

The United Nations' financial crisis is not an adversary issue between individual Members; it is an issue between those who refuse to pay and the Organization itself, the Organization as a whole. It is an issue which involves the future capacity of the United Nations as an effective institution. If the United Nations cannot collect what is due from its Members, it cannot pay what it owes; it if cannot collect what is due from its Members, it will have no means of effectively carrying on its peacekeeping functions and its economic and social programs will be jeopardized.

The issue is one which vitally affects <u>all</u> Members of the United Nations.

The United Nations is of particular importance to its developing Members. It is not only a free and open forum where all can defend what they think and urge what they want, it is an

institution which, in response to the interests of all -both large and small -- can act. But it cannot act unless
it has the funds to support its acts. And if it cannot get
from its Members the funds to support its acts, all would be
the losers. So it is to all countries that the United Nations
must look for a solution.

It has sometimes been said that somehow the United States should work out with the Soviet Union a compromise on some of the fundamental issues.

Could the United States -- or should it -- agree that

Member States which are not members of the Security Council

should have nothing at all to say about peacekeeping, even in

cases in which the Security Council cannot act? And nothing

to say about peacekeeping expenses or their assessment?

Could the United States -- or should it -- agree that Article 19, despite its plain terms, should not be applied against a great power in support of General Assembly assessments, simply because it is a great power?

The United States does not see how, without 'violating the Charter, anyone could or should agree to any of these propositions.

H. United States Efforts to Find Solutions

The sincere and earnest desire of the United States to find a way out of the United Nations' financial crisis, and to avoid confrontation under Article 19, is evidenced by the repeated attempts it has made to reach common ground.

On Harch 6 of this year the United States proposed to the Soviet Delegation certain ideas as to the initiation, conduct and financing of future peacekeeping operations which it was hoped -- without sacrificing the rights of the General Assembly -- would emphasize the primary role of the Security Council in peacekeeping and the desirability of according full weight to the views and positions of the Permanent Members of the Security Council and other major contributors to peacekeeping expenses. The United States hope was that agreement as to future peacekeeping operations would facilitate the solution of the present problem.

However, despite frequent inquiries as to when a reply to the United States suggestions could be expected, four months went by without any answer. Then in early July, the Soviet Union circulated a memorandum, dated July 10, 1964 (Doc. S/5811), which merely repeated the familiar Soviet thesis that only the Security Council has any rights under Charter with respect to peacekeeping operations, and that the Gene Assembly and the Secretary General have none. There was no mention

the arrears problem or of any of the ideas the United States had suggested for discussion.

On receipt of that memorandum, and later, the United States Delegation again endeavored to enter into a discussion with the Soviet Delegation as to the United States suggestions. Unfortunately the unvarying answer was that the uncompromising Soviet memorandum of July 10 was the only reply to be expected.

This sincere effort to enter into a dialogue with the Soviet Delegation was in the hope that adjustments as to the arrangements for the initiation and financing of future peacekeeping operations could make it easier to reach some solution as to the present and the past.

Unfortunately, there has been no Soviet willingness to enter into that dialogue.

It is common knowledge that representatives of other Member States also have sought to initiate discussions with the Soviet Union on this subject and also have been met with a reiteration of past Soviet contentions.

Nonetheless, the United States has not given up nope, and it intends to continue its attempts to work out new arrangements in the hope that solutions for the future may make it easier for those in arrears on UNEF and ONUC assessments to clear up in some manner these past arrears. The United States intends to continue its efforts in the Working Group of 21, now meeting under the chairmanship of Chief Adebo of Nigeria, and the United States hopes that all other Members of the Group will join in this attempt.

Accordingly, the United States has tabled in the Working Group, as a basis for discussion, a Working Paper which sets forth examples of

the kinds of new arrangements it has in mind as to peacekeeping operations involving the use of military forces. The following elements were mentioned:

- "1. All proposals to initiate such peacekeeping operations would be considered first in the Security Council. The General Assembly would not authorize or assume control of such peacekeeping operations unless the Council had demonstrated that it was unable to take action. This would be a self-denying ordinance on the part of the General Assembly, emphasizing the primary role of the Security Council.
- "2. The General Assembly would establish a standing special finance committee. The composition of this committee should be similar to that of the present Working Group of Twenty-One *** /The Committee membership would include the Permanent Members of the Security Council, who would thus have a position more commensurate with their responsibilities than in the General Assembly.
- "3. In apportioning expenses for such peacekeeping operations, the General Assembly would act only on a recommendation from the committee passed by a two-thirds majority of the committee's membership. /The Permanent Members of the Security Council would have an influence greater than in the Assembly, but no single Member could frustrate, by a veto, action desired by the overwhelming majority.
- 4. In making recommendations, the committee would consider various alternative methods of financing, including direct financing by countries involved in a dispute, voluntary contributions, and assessed contributions. In the event that the Assembly did not accept a particular recommendation, the committee would resume consideration of the matter with a view to recommending an acceptable alternative.
- "5. One of the available methods of assessment for peacekeeping operations involving the use of military forces would be a special scale of assessments in which, over a specified amount, States having greater ability to pay would be allocated higher percentages, and States having less ability to pay would be allocated smaller percentages, than in the regular scale of assessments." (Doc. A/AC.113/30, 14 September 1964).

The United States hopes that such ideas may lead to a measure of agreement among Members of the United Nations as to how these operations are to be started and paid for in the future. Arrangements of this kind should go a long way toward giving the Soviet Union and others in a similar

position such assurances for the future as should make it easier for them to make their payments relating to the past.

I. What Other States Have Done

It is recognized that the Soviet Union and certain other States in arrears for UNEF and ONUC have strongly-held views against paying these arrears. However, the example of what other States have done when in a similar position indicates that loyalty to the Organization, respect for the International Court of Justice and the rule of law, and consideration for the overwhelming views of Members, should be overriding.

On this point, the following was said by Ambassador Piero Vinci, the Permanent Representative of Italy to the United Nations, in the Working Group of 21 on September 23, 1964:

"But we feel that the correct line is the one that the Latin American countries have chosen to follow, although they did not consider the International Court's ruling consistent with the views they had been upholding. The working paper submitted by the Delegations of Argentina, Brazil and Mexico and circulated as document A/AC.113/3 reads as follows: '... also because they wish to maintain the prestige of the Court, whose objectivity in considering the matters submitted to it is one of the most solid guaranties of the maintenance of international peace and security, the Latin American countries accepted the advisory opinion'. In keeping with this well inspired and wise policy, the distinguished Representative of Mexico informed us, on Thursday, September 17th, that his Government had decided of its own free will -- if I understood correctly -- by a sovereign act which does not affect its position of principle, to pay its arrears. We have here an example and an implicit suggestion that, I believe, should be carefully weighed and even more usefully followed by whomever might still have reservations on the subject." In 1954 the United States itself faced a somewhat similar predicament

in connection with an issue on which it had very strong convictions. This was a matter involving awards made by the United Nations Administrative Tribunal to certain former officials of the United Nations Secretariat. The United States and a number of other countries objected strongly on legal grounds to the payment of such awards by the General Assembly.

To settle the matter, the General Assembly decided to seek an advisory opinion from the International Court of Justice. The United States vigorously argued its position before the Court. Nevertheless, the Court handed down an advisory opinion contrary to that sought by the United States.

Despite its strongly-held views on the issue, the United States voted with the majority to act in accordance with the opinion of the International Court of Justice. It was not easy for the United States to accept the majority view as to the issue, but it saw no real alternative if the rule of law and the Charter, as interpreted by the Court, were to be maintained.

The case illustrates the fact that all Members, large or small, <u>can</u> be called upon and <u>can</u> be expected to comply with an authoritative legal opinion and the clearly demonstrated will of the General Assembly that they should make payments as to which they may have the strongest legal and political reservations.

In insisting that Member States, including great powers, follow the examples cited and find some way to make the necessary payments, all must be prepared to be flexible with regard to the modalities of payment. The only vitally essential ingredient in any solution is that the funds be made available to the United Nations. Most Member States are undoubtedly prepared to be flexible in approach to such a solution, are inclined to be considerate of the interests and prestige of States which have thus far found difficulty in payment, and are ready to negotiate on any reasonable basis consistent with the relevant provisions of the United Nations Charter and Financial Regulations.

J. Conclusion

The United Nations is faced with a financial and constitutional crisis which must be solved if the Organization is to continue as an effective instrument. The Charter cannot be ignored. Faith cannot be broken.

Commitments must be met. Bills must be paid.

The problem is one which is of crucial importance to all Members, and a solution can be found only if all Members work together in a search for common ground.

The issue is one between (a) the countries that have brought on the crisis by their refusals to pay and (b) the other Members of the Organization. It is now the task of all those other Members to get the help of those who have thus far refused to pay in solving the crisis that faces the entire Organization.

This memorandum has dealt, among other things, with Article 19 and its applicability. The consequence of not applying it, if it becomes applicable, would be to undermine the very integrity and capacity of the UN.

Let all Members cooperate in finding that common ground which would make possible the receipt by the United Nations of the funds which would make Article 19 inapplicable and which would enable the Organization, thus strengthened, to look forward to continued effective usefulness and Man's best hope for a peaceful world.