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LETTER DATED 30 JULY 1968 FROM THE SECRETARY-GENERAL ADDRESSED TO THE
PERMANENT REPRESENTATIVE OF HAITI TO THE UNITED NATIONS

I have the honour to acknowledge the receipt of your letter of 14 June 1968, concerning the omission of the names of the Dominican Republic and of Haiti in the roll-call votes 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. As requested, your letter was circulated to the General Assembly in document A/7129.

In the light of your observations that "Articles 18 and 19 of the Charter have not been applied" and that "the General Assembly, it alone, having taken into account a Member's difficulty in meeting its obligations to the United Nations, is empowered to take steps to deprive a Member State of the right to participate in voting", I believe that it is necessary to explain fully the reasons for the manner in which the Secretariat has consistently acted in this matter.

You will recall that, by letters of 24 and 29 April and 3 and 6 May 1968 (A/7086 and Add.1-3), I reported to the General Assembly, at its resumed twenty-second session, on those States which were "in arrears in the payment of their contributions to the United Nations regular budget within the terms of Article 19 of the Charter". My reports were not contested at any time during the resumed twenty-second session by the Member States mentioned therein nor, in fact, by any other Member State. None of the Member States involved requested that the General Assembly permit them to vote under the second sentence of Article 19.

The roll-call votes in question therefore took place in circumstances where Haiti and the Dominican Republic remained in arrears, where the General Assembly had received my reports without any question, and where no requests had been made with

respect to the second sentence of Article 19. Taking these circumstances into account, and in the absence of any specific determination by the competent organs of the United Nations, it was the responsibility of the Secretariat officials concerned to discharge their duties in the light of their understanding of the relevant provisions of the Charter. The Secretary-General has never understood the language of the first sentence of Article 19 of the Charter as meaning that loss of the right to vote would require a prior decision by the General Assembly; this provision is entirely distinct and separate from Article 18 (2) of the Charter.

I believe 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 my reports indicating that one or more States were in arrears in the payment of their contributions were challenged as factually incorrect. No such challenge was made in the present case. 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, I assume that a necessary prerequisite to action under 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 the failure to pay is due to conditions beyond the control of the Member". No such request was made and no such data were provided by Haiti to the General Assembly at its resumed twenty-second session.

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 I concur, is annexed to the present letter.^{1/}

In the light of the foregoing, I consider 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.

^{1/} For the opinion of the Legal Counsel, see document A/7146, Annex.

In conclusion, in the light of the remark in your letter that Haiti had been prevented from settling its arrears "because of circumstances beyond its control", I feel that I should direct your attention particularly to the comments in this present reply and in the annexed legal opinion regarding the second sentence of Article 19, under which the Assembly may permit a Member to vote if it is satisfied that failure to pay was due to conditions beyond the control of the Member concerned.

I am having this letter also circulated as a document of the General Assembly.

(Signed) U THANT
Secretary-General
