

questions regarding the character and extent of the obligations of the United States under international law to pay amounts assessed by the United Nations.

The Office of the Legal Adviser has prepared the enclosed document, which responds to your questions.

Please let us know if we can provide further information.

Sincerely,

BARBARA LARKIN,
Assistant Secretary,
Legislative Affairs.

Enclosure: As stated.

RESPONSE TO REPRESENTATIVE HAMILTON'S QUESTIONS REGARDING THE STATUS OF UNITED STATES DUES TO THE UNITED NATIONS

(1) On what basis does the United States owe money to the United Nations?

In what document does the obligation arise?

Does Article 17 of the United Nations Charter, which states "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly," impose a treaty obligation?

From a legal perspective, how does Congress' power of the purse under the Constitution square with any legal obligation to pay dues to the United Nations?

When a treaty and a law conflict, which prevails?

Does the power of Congress to withhold funds release it from treaty obligations to pay dues?

Does the lack of an enforcement mechanism on the part of the United Nations to compel payment nullify any legal U.S. obligation to pay dues to that institution?

Answer: The international legal obligation to pay such assessments arises under the United Nations Charter, a treaty made with the advice and consent of the Senate. The Charter is binding on the United States under international law. Article 17(2) of the Charter states that: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly" (emphasis added). The consistent position of the United States has been that Article 17 creates an obligation under international law to pay amounts assessed by the United Nations. While any particular assessment is not itself a treaty, it is made pursuant to treaty (the Charter), and legal obligation to pay it derives from that treaty.

In the early 1960's, when the former Soviet Union, France and some other States refused to pay assessments for Congo and Mid-East peacekeeping operations, the United States insisted that they had an obligation to do so under international law. The United States at that time said that:

The language of the provision [Article 17(2)] is mandatory: expenses "shall be borne." (Emphasis added.) Accordingly, the General Assembly's adoption and apportionment of the Organization's expenses create a binding international legal obligation on the part of States Members to pay their assessed shares.

The history of the drafting of Article 17(2) demonstrates that it was the design of the authors of the Organization's constitution that the membership be legally bound to pay apportioned expenses.

Written Statement of the United States, at 193, *I.C.J. Pleadings, Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)* (1962). When the International Court of Justice gave an advisory opinion affirming the international legal obligation to pay such assessments in the *Certain Assessments* case, Congress passed a resolution expressing its satisfaction with the International Court of Justice's opinion, 22 U.S.C. 287k, and a res-

olution calling on the United Nations to take "immediate steps to give effect" to the Court's opinion, 22 U.S.C. 287l.

This has remained the consistent legal position of the United States and has been reaffirmed by successive administrations. For example, a 1978 published opinion of the State Department's Legal Adviser reiterated that Article 17(2) of the United Nations Charter imposes a legally binding obligation on Member States to pay the amount assessed to them by the General Assembly. Nash, *Digest of United States Practice in International Law 1979*, 225 (1979).

While nothing in the Constitution compels the Congress to refrain from passing a law inconsistent with an existing international legal obligation of the United States, U.S. courts when faced with a conflict have—as a matter of domestic law—applied the later-in-time rule. Thus, Congress can, as a matter of U.S. law, decline to appropriate amounts sufficient to pay United States assessments made pursuant to Article 17 of the Charter. However, such action by Congress does not relieve the United States of its responsibility under international law. Instead, the failure to pay renders the United States in breach of its international obligations.

Article 19 of the Charter establishes that, where a Member of the United Nations is two years in arrears in paying its financial contributions, it shall lose its vote in the General Assembly. The United Nations Secretariat determines when a State is two years in arrears such that this sanction applies. No vote of the General Assembly is involved. Indeed, the United States has insisted that Article 19 should operate automatically and without a vote or other implementing action by the General Assembly.

(2) A portion of the arrears owed by the United States to the United Nations result from "policy withholdings" by the executive branch, not legislatively mandated withholdings. In addition, the Administration has recognized, through seeking the creation of a "contested arrear" account, that we simply intend to "write off" some \$400 million in arrears to the U.N.

Why does this portion of U.S. arrears not constitute a legal treaty obligation?

By what rationale do we argue that some arrears are legally binding and others are not?

Do past U.N. actions in suspending the requirement for payment of arrears by other countries provide a precedent for our arguments?

Answer: As your letter notes, the United States has not paid certain assessments because of differences with the United Nations regarding matters of policy. A significant amount of these non-payments reflects an ongoing dispute between the United States and the United Nations as to the specific amounts that the United States is to provide with respect to certain tax reimbursements. Other non-payments reflect policy differences regarding particular UN programs or actions. Some of these "policy withholdings" have been implemented by the Executive Branch. Others, such as the 25% ceiling on the amount the United States will pay for peacekeeping operations, arise under statute. Whatever their policy justification, these withholdings do not relieve the United States of its continuing international legal obligation to pay the amount assessed.

(3) What are the legal consequences of our failure to pay our arrears?

Who determines what the U.S. legal obligation is, the U.S. or the U.N.?

Answer: The only legal sanction for failure to pay arrears specified in the Charter is the loss of vote under Article 19, as previously mentioned. Some governments have urged that the United Nations adopt additional

measures to sanction countries that are significantly in arrears, such as limitations on procurement or on recruitment of their nationals. The United States has opposed all of these proposals. Thus far, none has been adopted. However, sustained U.S. non-payment of its assessments has led to growing criticism that the United States does not abide by international law.

COMMITTEE ON
INTERNATIONAL RELATIONS,
Washington, DC, May 15, 1998.

Hon. MADELEINE K. ALBRIGHT,
Secretary of State, Department of State, Washington, DC.

DEAR MADAM SECRETARY: I want to ask clarification of the status of United States dues to the United Nations.

Some commentators have suggested increasingly that the United States may not be obligated legally to pay its assessed dues to the United Nations. The Administration has stressed that these dues are international legal treaty obligations of the United States. I would appreciate answers to the following questions, in hopes of clarifying discussion of this issue.

(1) On what legal basis does the United States owe money to the United Nations?

In what document does the obligation arise?

Does Article 17 of the United Nations Charter, which states "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly," impose a treaty obligation?

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I appreciate your cooperation in providing answers to these questions.

With best regards,

Sincerely,

LEE H. HAMILTON,
Ranking Democratic Member.

FAMINE IN SUDAN

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 24, 1998

Mr. HALL of Ohio. Mr. Speaker, I rise today to let our colleagues know about the people in

southern Sudan, who are dying of starvation by the tens of thousands. The prospects are especially dim for the million Sudanese who are facing deaths in the next three months.

I was in Sudan a few weeks ago, visiting people in the famine-stricken region and meeting with aid workers and government officials. Since then, one of the feeding centers I went to has been bombed, and a village—where I watched the United Nations' biggest humanitarian airlift in history in operation—has been attacked. The small amount of food captured was turned into a funeral pyre for the people who were too weak to run from the raiders. It was a small village, and I'm sure that some of the people I met were among those who either died or fled.

As all of us know who visit people in such situations, their faces stay with you long after their bodies surely have failed. The faces of Ethiopians I saw during that country's great famine inspired the humanitarian work that I am privileged to do. Since then I have seen others suffer similar fates. Many other Africans, Koreans, Bangladeshis, too many other countries' citizens. Many of them elderly people; many more of them children.

But for me, nothing had rivaled Ethiopia in the depth of its famine, until I saw the people of southern Sudan a few weeks ago. It was not my first trip to that country, so I know what is happening is extraordinary.

The feeling of slowly starving is unimaginable for most of us. Thankfully, so is the agony of watching our own children slide into the nightmare of famine. But the wrenching images of their fate confront us more and more in our media, and we all are diminished by the fact that this tragedy was not prevented.

The problems that have brought famine to 2.6 million Sudanese people are complex. Sudan's civil war has not merely split the nation into two groups; it has splintered it into many factions. The hatreds are racial and religious, and atrocities committed on all sides have deepened the divisions.

Some observers blame Sudan's problems on the National Islamic Front, which controls its government; but all parties to this conflict have blood on their hands. But blame won't save the people of southern Sudan—and time spent trying to parcel it out threatens to distract us. The only endeavor that can ease these innocent people's suffering is whatever can get relief to them immediately. Beyond that, our time would be best spent in pressing for a political settlement, so that this famine does not spill into next year.

The United States has led the international community in humanitarian aid to Sudan this year, I am proud to report. European nations, except for Great Britain, have lagged shamefully. And nations such as Japan and those in the Middle East—who have ample resources to share, and whose own security is threatened by turmoil in Sudan—have been downright niggardly. Our allies and others should do far more to respond to this crisis, and America's generosity gives us the moral authority to press them harder. We have contributed nearly half of the total raised so far by the United Nations, and an even greater share of the assistance delivered by Christian and other charities.

Of course, the percentages that well-fed nations use to track progress toward filling United Nations appeals mean little to people who are starving. In the end, what it means—

that half of the appeal remains unmet, that the United Nations is struggling to get food to those in need—is that “stick people” who have walked for days to reach feeding centers are being turned away every day.

Two more facts are equally clear. First, a million more people are likely to die—as many as in Ethiopia's two-year famine. Second, our nation and our citizens can do far more. We have given generously, but the amount of food still needed is well within our capacity to provide.

The grain-purchase initiative that President Clinton announced last week may help some American farmers significantly, but it will be the difference between life and death for hundreds of thousands of people facing starvation and malnutrition. In Sudan, our donation will be welcome relief, because war has prevented planting throughout much of this fertile region and so food shortages will continue even after the fall harvest. But it will not save those facing starvation, because it will arrive too late.

The only aid that will make a difference to these people is food that can be purchased in the region, and the urgent immediate loan of additional cargo planes to Operation Lifeline Sudan, so that the United Nations can get the food to those in need. Our law permits such action, and the urgency of this crisis certainly warrants it.

In addition to aid, though, the people of Sudan sorely need peace. This is the second catastrophic famine to strike the same area this decade. We cannot let “donor fatigue” dampen our response to the plight of so many people, but neither can we ignore what observers have been saying for years: that humanitarian aid cannot be a substitute for a political solution to Sudan's war. We have a moral obligation to respond generously to the immediate needs, but we have an equal obligation to step up our efforts to help end the war that has caused—and sustained—this famine and the last one.

Frank Wolf and I, along with other Members who share our concern, have called on President Clinton to make peace in Sudan a higher priority. When the need for peace in Northern Ireland became acute, President Clinton sent one of our nation's leading negotiators. Former Senator George Mitchell traveled to that country 100 times to secure an agreement. In Bosnia, and again in Kosovo, Richard Holbrooke was dispatched. Former Secretary of State James Baker III is making superb progress in western Sahara's dispute.

But when it comes to black Africa, our “A Team” has remained on the bench. Those Americans who are involved are dedicated, but they do not move in the high-level circles where decisions are made that can make a difference in Sudan. Our allies in Kenya and Britain (the regional leader and the former colonial power, respectively) are doing their best to press for peace. But they lack the high-level American counterpart that could lend momentum to their work.

A few days ago, Sudan's government and rebels agreed to a cease-fire. This might help aid workers do their jobs—if they can get the food and medical supplies they need. But this first cease-fire in four years also dangles the possibility that this three-month truce could be extended into a lasting one, or allow confidence-building measures on which to base peace talks.

Next month, Sudan and its neighbors will return to peace negotiations. It is an opportunity

we should not squander. Naming a well respected special envoy—someone with stature who can work with our allies toward peace, and who can inform policy making in our country—would let us seize that opportunity.

It would show that Sudan is on the priority track that the situation warrants. And it would uphold the commitment that President Clinton made on his historic trip to Africa earlier this year. He promised then that the United States would never again let atrocities like we saw in Rwanda go unanswered. Yet the slavery and butchery that happens every day in Sudan rival Rwanda's violence. And the number of people who already have died is three times the number of Rwandan dead.

Mr. Speaker, a peaceful Sudan could feed its own people—and much of Africa. It almost certainly would stop undermining the fragile progress of its many neighbors. Peace would allow Sudan to flourish without relying on terrorists and their client states for support. Most importantly, peace would cap Sudan's rising death toll, which already has passed the two million mark.

Mr. Speaker, it is in America's national interest to help provide such hope to Africa's largest nation, and especially to the 2.5 million people there who face starvation this year. We cannot afford to see Khartoum continue to be the “viper's nest of terrorists” that Secretary of State Albright has described. We should not consign ourselves to merely continuing to support Sudan's neighbors in their battles against it—until we exhaust the opportunities for peace. And we certainly cannot afford to feed Sudan and vast areas of Africa that Sudan's people could feed without U.S. aid if they were left in peace.

I have found that when Americans learn about what is happening in Sudan, they agree that helping to ease suffering there is in keeping with their own values. Christians in particular hear this call to help, because it was our missionaries brought our faith to the people of Sudan. We cannot turn our back on their suffering now, because it is in part inflicted on them because their religion differs from their fundamental Islamic enemies.

I have appreciated the kind offers of help that have been extended by our colleagues, Mr. Speaker, as well as the many concerned Americans who have contacted me. There are strong, responsible humanitarian organizations working to relieve suffering in Sudan, and some of the most heroic and dedicated aid workers I have ever met are on the job every day there.

I would like to close by listing these organizations, along with ways for people who share my concern can contact them to learn more about their good work: Adventist Development and Relief Agency; CARE; Catholic Relief Services; Christian Reformed World Relief Committee; Church World Service; Doctors Without Borders; Friends of the World Food Program; International Rescue Committee; Islamic African Relief Agency; Jesuit Refugee Services; Lutheran World Relief; Mercy Corps International; Norwegian People's Aid (c/o U.S. Committee for Refugees); Oxfam International; Oxfam U.S.A.; World Concern Development Organization; World Vision U.S.; U.S. Committee for UNICEF.

For additional information, those interested also can contact Interaction, the American Council for Voluntary International Action, at 202/667-8277.