



TO: The Secretary-General
A:

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REFERENCE: STRICTLY CONFIDENTIAL

THROUGH: Mr. Virendra Dayal
S/C DE: Chef de Cabinet

FROM: Carl-August Fleischhauer *Carl-August Fleischhauer*
DE: Under-Secretary-General for Legal Affairs
The Legal Counsel

SUBJECT: The Union of Soviet Socialist Republics
OBJET: and the United Nations

INTRODUCTION

1. For the present, the old Union of Soviet Socialist Republics remains a member of the United Nations with all the rights and obligations of membership. Its representatives, whose credentials have been approved by the Credentials Committee, continue to occupy the seat of the U.S.S.R. in all organs of the United Nations. In considering the changes which may come about in the near future and their implications within the internal constitutional order of the United Nations, it should be borne in mind that the United Nations will, of necessity, be obliged to proceed from whatever arrangements are made internally in the Soviet Union in relation to the break-up of the U.S.S.R. and the decisions which are taken by the republics regarding their individual status in international law and that of any collective entity which might emerge. The present paper is based on three possible scenarios:

- i) the Commonwealth of Independent States declares itself successor and claims the seat of the U.S.S.R.;
- ii) the Russian Federation declares itself successor and claims the seat of the U.S.S.R.;
- iii) the Russian Federation applies for membership in the United Nations and simultaneously claims the Security Council seat of the U.S.S.R.

FIRST SCENARIO

2. In the first scenario, the Commonwealth of Independent States (currently consisting of the Republic

of Belarus, the Russian Federation and Ukraine but which may expand to include Armenia and the five Central Asian republics) declares itself successor to the Soviet state. This would not involve an application for new membership in the Organization. It could produce as evidence of its successor status the Accord on the Commonwealth of Independent States, in which the parties assume the international obligations of the former U.S.S.R. and agree to coordinate foreign policy.

3. As successor, the Commonwealth would seek to assume the seat of the former U.S.S.R. in the Security Council and General Assembly. If no other Republics join the Commonwealth, Russian representatives could de facto occupy the Soviet seat since Belarus and Ukraine are already members of the United Nations. If other Republics do join the Commonwealth, presumably the Commonwealth leaders would try to work out among themselves an arrangement for filling the seat collectively. However, the Commonwealth in any event would come up against the restriction in Article 4 of the Charter that only "states" are eligible for membership in the Organization.

4. In this scenario, no Republic members of the Commonwealth could apply for independent membership. The existing seats of Belarus and Ukraine could theoretically be relinquished by them but most likely would be retained on the basis of the special historical circumstances in which they became founding members of the U.N.

5. The Security Council would probably be the intergovernmental organ first seized of the matter after 1 January 1992 as it will probably hold a formal meeting before the Assembly has resumed session. Before effect can be given to any changes in the Council, some sort of document from the U.S.S.R. or the new claimant should be received. Without a document, the credentials of the representative sitting behind the nameplate "U.S.S.R." would most likely be subject to challenge or he would be subject to requests for clarification. Assuming a document is received, the Council has a number of options. It could give effect to the transition by taking a specific decision, by taking note of the

relevant document or by issuing a statement in the name of the President of the Council. In the optimal case, it could even tacitly accept the changes announced in the communication. The General Assembly would then be influenced by whatever action the Security Council takes.

6. The union and subsequent breakup of the United Arab Republic are precedents for the procedure in effecting succession to an already existing seat in the U.N. When Syria and Egypt united in 1958 and declared themselves "a single Member of the United Nations", the Secretary-General was notified by the new government. He transmitted the notification to all Members and organs of the United Nations, stating that it was "without prejudice to and pending such action as other organs of the United Nations may take". When Syria became independent again in 1961, the Government cabled the President of the General Assembly requesting the U.N. to take note of its resumed membership in the Organization. The President brought the communication to the attention of the Assembly and, after Members were given the opportunity to object, the delegation of Syria took its seat.

SECOND SCENARIO

7. In the second scenario, the Russian Federation alone declares itself as a continuation of the international legal personality of the former U.S.S.R. and assumes the seat in the Security Council and General Assembly. The loss of one or several republics does not exclude a state succession by Russia to the former U.S.S.R. As long as none of the other Republics or Member states object, the procedure for effecting the transition could be the same as in the first scenario. [See paragraph 5 above.] In addition, the other Republics would be eligible to apply for membership as new states.

8. Problems would arise if any of the other Republics or Member States object to the Russian assumption of the Council seat. A similar issue was considered following the partition of India and Pakistan when certain Members objected to India's automatic

retention of its seat while Pakistan had to apply as a new State. In a Sixth Committee meeting on the issue (convened to consider future cases and not that of India and Pakistan), some delegates distinguished the disintegration of a State and consequent loss of international personality from simple partition or separation of part of the territory. Ultimately the Sixth Committee transmitted a letter to the First Committee (A/C.1/212) setting out three principles. The question asked of the Sixth Committee was worded as follows:

What are the legal rules to which, in the future, a State or States entering into international life through the division of a Member State of the United Nations should be subject?

The answer read in part as follows:

1. ...[A]s a general rule, it is in conformity with legal principles to presume that a State which is a member of the Organization of the United Nations does not cease to be a Member simply because its Constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist.
2. [W]hen a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.
3. Beyond that, each case must be judged according to its merits.

9. The India/Pakistan precedent may not be directly on point because there was little question that the new India embodied the international legal personality of the former India (nor was a Security Council seat at stake); it simply sought to retain the seat it previously held even though the country underwent a basic constitutional change. Russia might have more difficulty claiming that

it embodies the international personality of the U.S.S.R., especially if any of the other republics of the former U.S.S.R. object to that claim. On the other hand, its claim would be strengthened if Russia proclaims that it is a continuation of the former U.S.S.R. assuming all its treaty rights and obligations and consequently all the rights and obligations of membership in the United Nations. In any case, contestations by the Republics against the assumption of the international legal personality of the U.S.S.R. by Russia would be a factor that the Security Council must take into account when it makes its assessment of the situation. An agreement between Soviet and Russian authorities or between the various Republics devolving U.S.S.R. international rights and obligations on Russia would provide evidence supporting Russia's claims. This of course would not exclude the assumption by Republics of certain obligations associated with their particular territory.

THIRD SCENARIO

10. In the third scenario, Russia applies for membership and simultaneously claims the Soviet seat on the Security Council. While it seems contradictory for Russia to present itself as both a "new" state and claimant of the Soviet seat, it may do so in order to assume the U.S.S.R.'s Council seat without necessarily assuming all its international obligations.

11. Russia would have to apply for admission pursuant to Article 4 of the Charter and its application would be decided under the pertinent rules of procedure of the General Assembly and Security Council. The main legal difficulty of this approach is establishing who should cast the vote of the U.S.S.R.

12. In this scenario, two decisions would have to be made, one on the application for membership and the other on the Council seat. Since the decision on the Council seat would have to be taken on political rather than legal grounds, this scenario is to be avoided.

SECRETARIAT CONCERNS

13. Whichever scenario occurs, the danger is that the Secretary-General may have to face the issue first. If he receives a written document from the U.S.S.R. he faces no problem -- it is a Member State until we are told otherwise. Thus, the Secretariat would circulate the document and the scenarios mentioned above would play themselves out.

14. If, however, he receives a letter from the Commonwealth or Russia, claiming the U.S.S.R. seat, the Secretariat has a receivability problem. Neither the Commonwealth nor Russia, so far, are members of a specialized agency and are not considered by the U.N. as non-member or observer States. The Secretary-General would probably have to consult unofficially with the President of the Council, who in turn would consult with Council members. If there is no controversy, the document could be circulated under a covering note by the Secretary-General or by the President of the Council.

15. Whatever entity claims the seat, new credentials for representatives would have to be submitted to the organ concerned. New credentials would also have to be submitted by the new Permanent Representative to the Secretary-General.

16. It should be emphasized that as far as a name change in itself is concerned, as I stated in my memo of 4 September 1991 to you, the U.S.S.R. can change its name without an amendment to the Charter.