

*Provided further*, that this declaration may be terminated with effect at the moment of expiration of six months after notice has been given to the Secretary-General of the United Nations, except that in relation to any state with a shorter period between notice and modification or termination, that shorter period shall apply as well to the United States.

ANTHONY D'AMATO

### UNNECESSARY UN-BASHING SHOULD STOP

No doubt in part because the United Nations is widely perceived in the United States to have been harassing the U.S., the United States is now being beastly to the United Nations. We are doing so in a manner, and to a degree not previously encountered except during the darkest days of the McCarthy period. This is in the interest neither of the United States nor of the United Nations, and should stop.

First there was the "Kassebaum amendment" which, in pursuit of the impossible dream of forcing weighted voting on fiscal matters based on budgetary contribution, has mandated deep, progressive cuts in the amount the United States is asked to pay the United Nations. This despite the fact that the basis for making the allocation is a capacity-to-pay formula that, while not beyond criticism, was designed primarily at Washington's behest.

Next there was the Gramm-Rudman formula, which also calls for deep, across-the-board, progressively implemented cuts over several years.

Then there is section 151 of the 1986-1987 Foreign Relations Authorization Act, which requires the United States to withhold a portion of its contribution equivalent to the amount of salaries Soviet and other Secretariat personnel are compelled by their governments to "kick back" to those governments. This is an old, deplorable practice and the Secretary-General has been insufficiently strenuous in efforts to put a stop to it. The section 151 approach, however, is a heavy-handed, mean-spirited way to get his attention.

Finally, there was last December's ukase to the UN requiring specific U.S. authorization for travel outside New York by several Communist-country and other nationals who are UN staff members and mandating that their travel arrangements not only be notified to, but booked by, the U.S. Government.<sup>1</sup>

Across-the-board unilateral cuts in the U.S. contribution to the United Nations are a violation of Article 17 of the UN Charter and, thus, of a cardinal U.S. treaty commitment. They are not even justified by the "Goldberg corollary," which merely holds that, since the United Nations has not punished the USSR for selectively withholding parts of its contribution in response to Soviet allegations that specific UN peacekeeping ac-

<sup>1</sup> Note verbale from the United States Mission addressed to the Secretary-General, Dec. 13, 1985, UN Doc. ST/IC/85/74, Ann. I (1986). For earlier correspondence on the subject, see Note verbale addressed to the Secretary-General by the Acting Permanent Representative of the United States, Aug. 29, 1985, *reprinted infra* at p. 438; and the Secretary-General's reply of Sept. 9, 1985, *reprinted infra* at p. 440.

tivities were *ultra vires*, we are entitled to a comparable privilege. Neither Kassebaum nor Gramm-Rudman is a surgical excision made in pursuit of a plausible theory of *ultra vires*. Aside from being illegal, these across-the-board cuts are self-defeating. America's leverage at the United Nations depends mightily on the size of our budgetary contribution. These cuts, by reducing our ability to withhold for clearly targeted purposes—the UN activities in support of the PLO are an example—constitute something akin to the fiscal equivalent of unilateral disarmament.

As for the travel restrictions, one cannot quarrel with the legality of controls on private travel of UN civil servants. The Charter-prescribed impartiality of that civil service is seriously undermined, however, when the United States seeks to control the official travel of senior Secretariat personnel and makes it significantly more difficult, say, to send a Bulgarian to a development-planning seminar in San Francisco than a French citizen. The Secretary-General, rightly, has responded by making the controls applicable equally to all staff; and Washington, mercifully, seems to have backed off from becoming the official travel agent for some four thousand UN employees.

Nevertheless, the embittering conflict over this issue need never have arisen. For obvious reasons, the legitimate security interest of the United States is focused on the unofficial travel of UN employees, some of whom are suspected of doing more than admiring the Grand Canyon. Requiring notification of such unofficial travel by all employees would not have assaulted the principle of an independent Secretariat or have antagonized a Secretary-General whose sympathetic attitude towards the United States is now a rapidly wasting asset.

THOMAS M. FRANCK

JUDGE PHILIP C. JESSUP (1897–1986)

As this issue went to press, the editors learned with great sadness of the death of Judge Philip Jessup, one of our most illustrious colleagues and a beloved friend. The July issue will contain a special section in tribute to the work and memory of Judge Jessup.