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Dag Hammar skjöld's saml.

South Africa

5 April 60

Memorandum re the "Peking Formula"

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Memorandum regarding the "Peking Formula".

1. The validity of a decision of the General Assembly, or the Security Council, giving instructions to the Secretary-General, is a matter exclusively between him and the other main organ concerned. That is to say, only he and not any third party can reject action in accordance with these instructions on the basis that the decision is not legally valid.
2. Whether or not he has received instructions from the General Assembly or the Security Council, the Secretary-General functions on the basis of his authority under the Charter, unless there is a formal delegation of authority. A challenge of his right to act must, therefore, be based either on the allegation that he acts ultra vires or on a refusal to acknowledge the Charter itself.
3. Even a non-member of the U.N., like Mainland China, has recognized that it has to accept the Charter as a universally valid international instrument. In view of this, it would seem impossible for a Member nation to reject an initiative of the Secretary-General on any other basis than that he acts beyond his authority under the Charter. In this context Article 2.7 is a possible basis for such an allegation. However, if the Security Council has found that a domestic situation presents a threat to peace and security, the Secretary-General can not accept a challenge to his authority on that basis.
4. Moreover, as the Secretary-General, under the Charter, is entitled to decide what in his view constitutes a threat to international peace and security, an acceptance of the Charter, and of the authority of the Secretary-General under the Charter, leads to a situation where an action by the Secretary-General, within his general authority, regarding a domestic matter has to be accepted when he himself maintains that the situation may involve a threat to peace and security provided that his stand has been submitted to and approved by the Security Council or that he would be prepared so to submit it.

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