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South Africa

14 May 60

- Meeting on the Question of the Security Council Resolution S/4300 between D. H. and the Foreign Minister of South Africa, Eric Louw in London on 13-14 May 60.
- London discussion (some points re purpose, procedure, arrangements etc.)
- U.N. press release: Statement on talks in London

DRAFT

Meeting on the Question of the Security Council
Resolution S/4300 between the Secretary-General
of the United Nations and Mr. Eric Louw, Minister
of External Affairs of the Union of South Africa
in London
on 13 and 14 May 1960

1. Mr. Louw in welcoming the Secretary-General to South Africa House stated that he appreciated the Secretary-General's desire "to help" the Union in its "difficulties" and that therefore he did not wish to refer to the Union's well-known views regarding Article 2(7) of the Charter. He asked the S-G to expose his lines of thought on the problem.
2. The SG said that he felt that ~~nevertheless~~ it would be wise to have on record his interpretation of the constitutional situation. He stated that the Seco resolution gave him explicit instructions (in para 5) but did so without conferring on him any specific authority. He therefore was not acting as an agent of the Seco, but solely on the basis of the Charter, using his powers under the Charter for the purpose indicated to him by the Seco. The Seco had not asked him to be its spokesman regarding the judgments and interpretations expressed in the part of the resolution which preceded para. 5. It followed already from the fact that the SG was acting under the Charter, that no arrangements, as envisaged in para 5, could be made without the acceptance or, in fact, the voluntary action of the Union Government; that was explicitly recognized in the resolution as it was stated that the arrangements should be made by the SG "in consultation" with the Union Government. It could be added that the SG recognized that it would be impossible for the Union Government to accept an arrangement so to say imposed from the outside on the Government and he, therefore, envisaged not an arrangement made by him and endorsed by the Government, but rather an arrangement made by the Government, although flowing from the consultations with him.

Just as the invitation to the SG was an act in exercise of the sovereignty of the Union Government, further action for the purpose of para 5 of the resolution would be action in the exercise of the sovereignty of the Government; it was in these circumstances unnecessary to discuss 2:7 and its possible application to the tasks which the SG and the Union Government jointly were facing. It might in this context be stressed that one should once and for all discard a misunderstanding on 2:7 which had become prevalent: while the article excluded UN from interference in essentially domestic affairs, it was addressed solely to the UN and not to Member Governments and, therefore did not bar such Governments from inviting the cooperation of the UN in the solution of a domestic matter (in fact, recent practices showed many examples of such a cooperation between a government and the SG, based on an invitation by the government within the framework of its exercise of sovereignty).

3. The SG further stated that he was not primarily concerned about the domestic issue as such, but rather its international aspects. The internal issue was primarily the Union's responsibility, but the international repercussions of the domestic issue was the concern of both the SG and the Union Government and he had an obligation to the UN to see what could reasonably be done about it, as "an independent and impartial consultant".

4. Mr. Louw inquired whether there were any precedents to the SG acting in a similar capacity. The SG noted that his dealings with the Peking Government regarding the American prisoners as well as his dealings with Middle Eastern states presented similarities, but each from different angles. He could see no precedent where, as in the case of South Africa, these different angles were combined.

5. Mr. Louw asked how the SG interpreted "arrangements" in the resolution. Was it a question of condition or of directive? The SG regarded them as

"directive," a means to an end. This interpretation gave it a wide scope, more or less a question of judgment. The events that had given rise to reactions which were behind the resolution were known to us all. The SG registered these reactions as such, as justified or unjustified appearances involving Charter problems. He considered himself to be instructed by the Seco to discuss the situation with the Union Government and try to explore together with the Government possible measures. Although he had so far no determined ideas and would, indeed, hesitate to be in any way precise, as that might tend to limit the scope for further discussion, he felt that he could permit himself to clarify his general interpretation. Arrangements must be either in the nature of informal agreements on certain action between the Government and the SG or arrangements of such primarily administrative nature as would be in harmony with the limits to the SG's authority under the Charter (excluding for example, various steps of a purely political nature reserved for the Seco under the Charter). According to para 5 of the resolution, the arrangements should be such as to help in the safeguarding of the purposes of the Charter. That did not mean that they should aim at such and such a change of the Union's internal policies. The SG's interpretation was that they should be such as to give a feeling of security to the outside world regarding the protection of human rights which would eliminate the risk for further frictions such as those to which the domestic policies had given rise. It followed that the arrangements should have a dual aspect: they should provide for the protection of human rights and they should further do so in a form the international aspects of which gave the outside world a reasonable degree of guarantees regarding such protection; in both respects the arrangements should be so framed as not to represent an external intervention in the domestic policies. The SG felt that the present talks as well as those which would follow in Pretoria, should aim at arrangements of the general character described, arrived at in a joint effort

in which the SG could reflect the experience of the UN and the legal principles of the Charter. The SG stressed that in defining the purpose of the "arrangements" he left aside the Panafrikan politics as well as the "professional troublemakers". What we had to deal with were the existing serious, legitimate concerns in regard to human rights.

6. By way of an example/the SG "played with" the possibility of the Union Government to appoint on its own initiative a high judicial officer who would be entitled to receive, review and act upon complaints in regard to human rights which may be brought to his attention by groups or individuals. Such a person should be entitled to bring complaints to the attention of Ministers, or to initiate court actions, and might report to the South African Parliament. The SG referred to the institution of this type that exists in Sweden.

7. The Secretary-General thought that such an official should also have a fourth line of action: reporting to the UN represented by the SG. He considered that such reporting might usefully cover not only transmission of the report presumably to be submitted annually to Parliament, but also reports on major complaints received and subsequent action. This latter point gave Mr. Louw obvious difficulties, but the SG pointed out that in all probability such reports would on the whole be to the advantage of the Union; in the cases where a specific report was sent to the SG, and he felt that he would have to give it publicity -- the only action he could take apart from addressing the Government itself -- it was probable that the matter had already attracted such international attention as to make it desirable to have the relevant facts on public record internationally.

8. With reference to the question of arrangements, Mr. Louw mentioned that his Government might appoint a new judicial commission to inquire into the underlying causes which had led to such incidents as those at Sharpeville. He felt that this was a step which might be related to the appointment of such

a "Lord protector" as the SG had mentioned. The SG confirmed that such a link might well come to exist, but mentioned that, from his point of view, the judicial commission, of the character described by Mr. Louw, in fact brought us half-way from para 5 to para 4 of the resolution. Mr. Louw did not refer to any possible link between the commission and the SG but may have considered that such a link could be the personage suggested by the SG.

9. The SG was invited by Mr. Louw to present whatever other ideas he might have for arrangements and also to express freely his views on the general situation in and around the Union. The SG said that for the moment he did not want to put forward any other proposals and the one mentioned had been discussed only by way of example. He therefore reserved his right after further thinking to present such further proposals or suggestions which he might consider worth of joint study. As regards the wider observations which he had been invited to make, he would be glad to interpret the views which he considered to be representative of serious opinion regarding the Union problem. He could do so all the more easily as he personally shared those views. He wanted, however, to point out that in entering this field, he went beyond the explicit instruction and was commenting upon the thinking back of para 4 of the resolution.

10. The main points made by the SG under para 4 were the following: While recognizing that both total integration and total and equitable separation may not be objectionable policies from the standpoint of human rights, he doubted that, having regard to the economical and demographical situation in the Union, policies of complete separation could be regarded as realistic. It would probably be unavoidable that even in what the Union regarded as European areas there would always be a non-European majority which, taking the conditions of Africa in the middle of the twentieth century, would wish to play a full part

in Union's affairs. The SG also questioned whether Union policies in regard to the so-called African homelands was in line with the Africans' desire to share fully in the modern developments.

11. Mr. Louw replied lengthily by repeating statements of policy which were designed to give the impression that the Union's racial policy were in fact liberal and had been shaped in the best interest of the African people. He only conceded that a new approach would have to be taken in respect of the Union's policy concerning its Coloured population. He was emphatic, however, in rejecting the granting of any political rights to Africans in European areas. It was characteristic of Mr. Louw's approach that he tended to brush aside completely what was the main point in the SG's presentation, that is that it was impossible to envisage such changes in the situation as would make the Union able to avoid having a mixed community in the so-called white areas and that therefore a solution had to be found to the constitutional and human rights problem of the Africans in those areas, who obviously would claim rights equal to those of others and who also certainly would be supported in such claims by world opinion.

12. It may be noted that both Mr. Jooste and Mr. Fourie stated privately their appreciation of the SG's statement.

13. Mr. Louw stated that on his visit to the Union, the SG would be given all facilities to see everything. The SG made it clear that it was essential for his visit to the Union that, in agreement with the Union Government, he would have to have free access to such non-governmental persons as it might be useful for him to see. While Mr. Louw conceded the principle and stated that there would be no strings on whatever contacts the SG might consider necessary, he seemed to rule out discussions with the opposition in Parliament as "having no responsibilities". He also enumerated certain risks and possible objections against other contacts. The SG's reply pointed out the reasons which might speak in favour of such contacts, especially their importance as the means to

explain the steps taken and to gain confidence in them. However, the SG said that while he must insist on the principle to which Louw had already agreed, he recognized that the extent to which he availed himself of the possibilities opened by the principle was a question of "wisdom" which it was no use to discuss at the present stage; it should be understood that the taking of contacts or the avoidance of contacts with any specific people or groups would have to be decided upon as the means to an end, and that whatever other objections may be made against specific contacts, they should be established if they served the joint purpose.

14. Summing up his observations, the SG said that on the basis of the assumption that their policy as stated was separation, friends and critics alike had to ask the following questions.

In the so-called Bantu homelands: would the people constitutionally be kept to traditional lines or be permitted to take up 20th century constitutional forms with a natural share in the responsibility for their country; how could economic equity be created in view of the exorbitant investments necessary in order to put these regions on the level with the others which the Bantu presumably would have to leave.

For the white regions: how would it be possible to avoid a continued mixed community with the Bantus a strong minority if not -- as was more likely -- a strong majority; could it be envisaged that the native group in the white regions could be barred from rights given to the white population (the argument used to defend the refusal to grant such rights, that is that the Bantu could go to their homelands, just could not be presented or accepted in view of the fact that it would be obvious that their right to return was theoretical and had no practical significance).

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The SG ended by making the following point: if it was recognized that the

rights of the white population should be protected, but the whites felt that that could not be done short of a separation which in practice was unmanageable, if on the other hand it was felt that the rights of the natives had to be safeguarded but that that could not be done without risking the rights of the whites, was not this a situation in which the two groups which were thrown together in the same country, both of them recognizing the impossibility of a one-sided solution in favour of anyone of the two parties, had to get together for consultations.

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15. The Secretary-General and Mr. Louw agreed on a release to the press (Annex I) and on an "Aide Memoire" (Annex II) which would remain confidential until the Secretary-General would have to report to the Security Council.

London discussions with the Union of South Africa

Some points regarding procedure

1. The meetings should be informal and without records.
2. It should be agreed that no statements to the press will be made during the discussions, but that a joint statement may be issued at the end.
3. It will be necessary, however, to formulate an agreement concerning the subject matter to be discussed in Pretoria. Such an agreement need not be released until the Secretary-General reports to the Security Council.

If the meetings in Pretoria should not produce any results, such an agreement would show that the Secretary-General has not been a party to any device on the part of the Union to retard the Secretary-General's report to the Security Council.

Some points on purpose of meeting

4. Consultation between the Union Government and the Secretary-General flows from paragraph 5 of Security Council resolution of 1 April. As has been stated in the last paragraph of the Interim Report to the Security Council these consultations "will be undertaken on the basis of the authority of the Secretary-General under the Charter."
5. As indicated in the informal meeting which took place between Mr. Fourie, the Union's Permanent Representative, and the Secretary-General on 2 April 1960, the Secretary-General should like to make, in consultation with the Union Government, "practical arrangements" concerning the issues raised in the Security Council's resolution, but that he does not construe the language "to make arrangements" as involving him in the policies of the South African Government.
6. It will be appreciated that no useful purpose can be served by reiterating well known views in regard to the constitutional question underlying these

discussion. It must be presumed that the last sentence of the interim report is sufficiently clear (or unclear), namely that it is agreed "that consent of the Union Government to discuss the Security Council's resolution with the Secretary-General would not require prior recognition from the Union Government of the United Nations Authority."

7. It will not be misunderstood if, in the privacy of these meetings, concern is being expressed by the Secretary-General not about the internal situation in the Union as such, but about their international implications. There is no need for elaboration, because these facts are, no doubt, well known to the government and to the leaders of the Union.

8. The Secretary-General is not unaware that the Union Government is firmly convinced of the correctness of its policies and that it believes that these policies are designed eventually to establish harmony between the various races and human groups living within its frontier. On the other hand, it is well known that virtually all member States of the United Nations have made statements about their disagreement with the Union Government in this regard.

9. The Secretary-General, without evaluating the policies of the Union Government, must express his concern with the existing situation because it has led and is likely to continue to lead to a further deterioration of the Union's relationship to the other members of the United Nations.

10. It would therefore appear mandatory that these discussions which are now being initiated and which will be continued in the Union, must lead to some concrete results. It would not appear necessary to have these results appear as a formal agreement between the Union and the Secretary-General. Any "arrangements" may well be made by the Union Government itself, but before long, the Secretary-General must be enabled to draw, in his report to the Security Council, attention to new situations.

11. It will of course be recognized that the Secretary-General cannot be involved in any attempt to by-pass the will and the intentions of the United Nations organs and, therefore, it must be the Secretary-General's duty to insist that these consultations are entered into for the specific purpose of achieving results. If there should be any inclination not to regard these discussions in such a light, it should be clarified at the earliest possible date. (see para. 3 above)

"Arrangements as would adequately help in upholding the purposes and principles of the Charter"

12. "Arrangements" to be made by the Secretary-General, in consultation with the Union Government, must, by necessity, involve questions relating to the "bringing about (of) social harmony based on equality" and to the "policies of apartheid and racial discrimination". (para. 4 of resolution S/4300).

13. In discussing with the Union Government "arrangements", the Secretary-General will have to address himself to the problem as a whole and not to any part of the apartheid policies. If he were, even by inference, to become a party to a mere amelioration of the problem (perhaps along lines now being discussed in the Union by Mr. Sauer and others), he would be accused of having in fact rendered assistance to the continuation of the principles of apartheid policies. Therefore, any policy of amelioration can be taken only on the exclusive initiative of the South African Government and this would in no way be a substitute for the "arrangements" which the Secretary-General is called upon to make.

14. The Secretary-General interpretes "arrangements" as an "agency" designed to assist the Union Government "adequately (to) help in upholding the purposes and principles of the Charter." Such an agency could be a commission or a personal representative of the Secretary-General. It cannot be expected, however, that the Union Government would accept any such agency because it

would regard it as interference in their domestic affairs. Therefore, if the "agency approach" should be deemed feasible, it can only be achieved by the sole initiative and under the authority of the Union Government.

15. Following parallels in Scandinavian countries, the Union Government might be persuaded to appoint on its own initiative a "Commissioner for Human Rights" (or a person with a title more suitable to the Union Government) who should be a high judicial officer, functioning independently from the government and having authority to review legislation, ordinances and practices "with a view to bringing about racial harmony based on equality."

16. In order to create some link to the United Nations, the law or order establishing such an office might give to the Commissioner the right, to be exercised on his own discretion, to communicate with the Secretary-General, whenever, in his opinion, this might be helpful to him in the discharge of his functions and the Commissioner might, on his own initiative, submit to the Secretary-General, for his information, summaries of those services or actions which he may have taken.

17. If the Union should not be willing to agree to such an "agency arrangement" with a link to the Secretary-General, it would be necessary for the Secretary-General, after being informed about the Union's policy intentions, to be invited to inform himself about the affect of such a policy on the "racial harmony" in the Union by consulting with non-official groups or persons, to be agreed upon by both sides. Such consultation would, in the first instance, be for the personal information of the Secretary-General.

18. The information thus gained would be useful for the Secretary-General's discussion with the Union Government in assisting it "in upholding the principles and purposes of the Charter". Such discussions would necessarily proceed over a longer period of time and would necessitate further contacts with the Union.

19. Suitable formulations of agreements between the Secretary-General and the Union Government would have to be worked out, so as to enable the Secretary-General to make a report to the Security Council which would indicate that some "progress" has been made by him.

Joint Statement (see para. 2)

On the proposal of the representative of the Government of the Union of South Africa, the Secretary-General of the United Nations has accepted an invitation to visit the Union of South Africa towards the end of July and to discuss with the Prime Minister and other members of his government matters of common concern.

Agreement concerning subject matter to be discussed
in South Africa (see para.3)

It is agreed that, while in the Union, the Secretary-General will hold discussion with the Prime Minister and other members of his government regarding the manner in which he, in his capacity as Secretary-General of the United Nations, might be enabled to make arrangements which would be helpful to the Union Government in upholding the principles and purposes of the Charter.

Some points which may have to be made at the London meeting

- Wanted I*
1. Consultation between the Union Government and the Secretary-General flow from paragraph 5 of Security Council resolution of 1 April. As has been stated in the last paragraph of the Interim Report to the Security Council these consultations "will be undertaken on the basis of the authority of the Secretary-General under the Charter."
 2. As indicated in the informal meeting which took place between Mr. Fourie, the Union 's Permanent Representative, and the Secretary-General on 2 April 1960, the Secretary-General should like to make, in consultation with the Union Government, "practical arrangements" concerning the issues raised in the Security Council 's resolution, but that he does not construe the language "to make arrangements" as involving him in the policies of the South African Government.
 3. It will be appreciated that no useful purpose can be served by reiterating well known views in regard to the constitutional question underlying these discussion. It must be presumed that the last sentence of the interim report is sufficiently clear (or unclear), namely that it is agreed "that consent of the Union Government to discuss the Security Council's resolution with the Secretary-General would not require prior recognition from the Union Government of the United Nations authority."
 4. As Secretary-General of the United Nations it will not be misunderstood if, in the privacy of these meetings, concern is being expressed not about the internal situation in the Union as such, but about their international implications. There is no need for elaboration, because these facts are, no doubt, well known to the government and to the leaders of the Union.

5. The Secretary-General is not unaware that the Union Government is firmly convinced of the correctness of its policies and that it believes that these policies are designed eventually to establish harmony between the various races and human groups living within its frontier. On the other hand, it is well known that virtually all member States of the United Nations have made statements about their disagreement with the Union Government in this regard.

6. The Secretary-General, without evaluating the policies of the Union Government, must express his concern with the existing situation because it has led and is likely to continue to lead to a further deterioration of the Union's relationship to the other members of the United Nations.

7. It would therefore appear mandatory that these discussions which are now being initiated and which will be continued in the Union, must lead to some concrete results. It would not appear necessary to have these results appear as a formal agreement between the Union and the Secretary-General. Any "arrangements" may well be made by the Union Government itself, but before long, the Secretary-General must be enabled to draw, in his report to the Security Council, attention to new situations.

8. It will of course be recognized that the Secretary-General cannot be involved in any attempt to by-pass the will and the intentions of the United Nations organs and, therefore, it must be the Secretary-General's duty to insist that these consultations are entered into for the specific purpose of achieving results. If there should be any inclination not to regard these discussions in such a light, it should be clarified at the earliest possible date.

U N I T E D N A T I O N S

Press Services
Office of Public Information
United Nations, N.Y.

(For use of information media -- not an official record)

C A U T I O N

Not for release before
6 p.m. (EDT) 15 May

Press Release SG/918
15 May 1960

STATEMENT ON TALKS BETWEEN UN SECRETARY-GENERAL AND
SOUTH AFRICAN MINISTER OF EXTERNAL AFFAIRS

(The following was received here from the UN Information Center in London.)

The following press statement is for simultaneous release in London and New York at 2200 hours GMT (6 p.m. EDT) on 15 May:

"As previously agreed between the Government of the Union of South Africa and the Secretary-General of the United Nations, Mr. Dag Hammarskjold and Mr. Eric Louw, Minister of External Affairs, met in London during the past few days for exploratory discussions, preliminary to the visit of the Secretary-General to the Union of South Africa.

"After a useful exchange of views, they agreed on the character and course of the further consultations, which are scheduled to take place in Pretoria. This visit will follow immediately on the Secretary-General's attendance at the 30th session of the Economic and Social Council in July 1960."

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