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Dag Hammarskjöld's sand.

South Africa

17 May 60

Lloyd, Selwyn (Secy of State, England)

- 1 letter from D.H.
- 1 encl. (memo conc. meeting D.H. - Louw in Lou-
- dau)

17 May 1960

Dear Selwyn,

This is to thank you for the time you gave me Friday morning. I appreciated this opportunity for an exchange of views, and I look forward to the opportunity to see you again at the end of the month.

As your colleagues may have reported, the discussions with Mr. Low turned out surprisingly well, and the road is paved to Pretoria, not only through good intentions but, I hope, also by some solid realisation of the need for substantive progress, be it ever so modest.

Seeing you I forgot to mention your note of 3 April 1960, enclosing the curriculum vitae of Major-General Bols. His qualifications are certainly very interesting and I will keep him in mind. On the other hand, to fit him into an administrative structure like ours is not an easy matter and I find it difficult to count on any significant prospect of his finding a suitable niche with us.

Dag Hammarskjöld.

The Rt.Hon. Selwyn Lloyd, C.B.E.,
T.D., Q.C., M.P.,
1 Carlton Gardens,
London, S.W.1,
England.

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 Secretary-General to expose his lines of thought on the problem.
2. The Secretary-General said that he felt that it would be wise to have on record his interpretation of the constitutional situation. He stated that the Security Council 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 Security Council, but solely on the basis of the Charter, using his powers under the Charter for the purpose indicated to him by the Security Council. The Council 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 Secretary-General 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 Secretary-General "in consultation" with the Union Government. It could be added that the Secretary-General 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 Secretary-General 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 Secretary-General 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 United Nations from

interference in essentially domestic affairs, it was addressed solely to the United Nations and not to Member Governments and, therefore did not bar such Governments from inviting the cooperation of the United Nations in the solution of a domestic matter (in fact, recent practices showed many examples of such a cooperation between a government and the Secretary-General, based on an invitation by the government within the framework of its exercise of sovereignty).

3. The Secretary-General 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 Secretary-General and the Union Government and he had an obligation to the United Nations to see what could reasonably be done about it, as "an independent and impartial consultant".

4. Mr. Low inquired whether there were any precedents to the Secretary-General acting in a similar capacity. The Secretary-General 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. Low asked how the Secretary-General interpreted "arrangements" in the resolution. Was it a question of "condition or of directive"? The Secretary-General regarded them as directive, indicating a means to an end. This interpretation gave the discussion a wide scope. The events that had given rise to reactions which were behind the resolution were known to us all. He considered himself to be instructed by the Security Council 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 Secretary-General or arrangements of such primarily administrative nature as would be in harmony with the limits to the Secretary-General's authority under the Charter (excluding for example, various steps of a purely political nature reserved for the Security Council under the Charter). According to para.5

of the resolution, the arrangement 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 Secretary-General'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 Secretary-General 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 Secretary-General could reflect the experience of the United Nations and the legal principles of the Charter. The Secretary-General stressed that in defining the purpose of the "arrangements" he left aside the aspirations of nationalism as well as the "professional trouble-makers". What we had to deal with were the existing serious, legitimate concerns in regard to human rights.

6. By way of an example of his preliminary thoughts, the Secretary-General "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 Secretary-General referred to the institution of a somewhat similar 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 United Nations represented by the Secretary-General. 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. Low obvious difficulties, but the Secretary-General 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 Secretary-General, 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. Low 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 Secretary-General had mentioned. The Secretary-General 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. Low, in fact brought us half-way from para. 5 to para. 4 of the resolution. Mr. Low did not refer to any possible link between the commission and the Secretary-General but may have considered that such a link could be the personage suggested by the Secretary-General.

9. The Secretary-General was invited by Mr. Low 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 Secretary-General 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 Secretary-General 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 Secretary-General 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 Secretary-General'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 these 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 Secretary-General's statement.

13. Mr. Louw stated that on his visit to the Union, the Secretary-General would be given all facilities to see everything. The Secretary-General 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. Mr. Louw conceded the principle and stated that there would be no strings on whatever contacts the Secretary-General might consider necessary. ("We will welcome you and you will be given all facilities. We doubt, however, whether it would be wise of you on this occasion to engage in discussions with representatives of the other political parties and subversive groups. If you insist on doing this we will not put any stone in your way. But I would not be frank with you if I did not mention these doubts to you.") He seemed, however, to rule out discussions with the opposition in Parliament as "having no responsibilities". When he elaborated further certain risks and possible objections against other contacts, the Secretary-General replied by pointing 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

Secretary-General 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 Secretary-General 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 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).

.....

The Secretary-General 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.

15. The Secretary-General and Mr. Low agreed on a release to the press (Annex I) and on an "Aide Memoire" (Annex II) which would be for the "inner record". If necessary, this latter paper obviously could be used for the report to the Security Council.

ANNEX I

PRESS STATEMENT

Release: Sunday midnight London time, 15 May 1960

As previously agreed between the South African Government and the Secretary-General of the United Nations, Mr. Eric Louw, Minister of External Affairs, and Mr. Dag Hammarskjöld, 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 session of the Economic and Social Council in July 1960.

ANNEX I I
AIDR MEMOIRS

The following stage was reached in the preparatory discussions:

- (i) The Secretary-General's consultations with the Union Government flow from paragraph 5 of the Secretary-General's report to the Security Council.
- (ii) These consultations are undertaken with the Secretary-General within the framework of his general authority under the Charter.
- (iii) The Secretary-General outlined the purpose of the further consultations which would be to attempt to make such arrangements as would adequately help in upholding the purposes and principles of the Charter, and to report to the Security Council whenever necessary and appropriate.

Mr. Low without committing himself or his Government agreed that it would be useful to see whether an arrangement of the type envisaged by the Secretary-General could be devised in a form which would be acceptable to the Union Government.

- (iv) Any such arrangement would require the voluntary action of the Union Government.
- (v) While consultation throughout will be with the Union Government, no restrictive rules were imposed on the Secretary-General. (The action taken by him in the Union would naturally be in consultation with the Union Government).