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17-19 Nov. 56

- Memorandum by D.H.
- Note by D.H.

Shown to Nasser
 as summary draft
 of the preliminary
 report, without com-
 mitment by Egypt.

COPY

MEMORANDUM

17 Nov - 57

1. In view of the urgency for clearing the obstructions in the Suez Canal, and the scope of the task, the Government of Egypt has addressed to the Secretary-General of the United Nations a request for assistance from the United Nations in arrangements for this purpose, as a matter of high priority. The work should be started immediately on the withdrawal of non-Egyptian forces.
2. Under the authority given to the Secretary-General in resolutions adopted by the General Assembly concerning the present situation in the Middle East, the Secretary-General has given assurances, in principle, that the United Nations would seek to provide such assistance. It is the intention of the Secretary-General, on his return to New York, to take the necessary steps with the General Assembly to get the operation started.
3. The Secretary-General intends to request authority from the General Assembly to negotiate and conclude agreements with such firms as might speedily and effectively undertake the clearing. He has, for that purpose, already explored possibilities of obtaining the assistance to the United Nations from Danish and Dutch firms. In his negotiations with these firms he will also try to clarify to what extent they in turn may need assistance by enterprises not directly approached by the United Nations.
4. The Secretary-General will likewise request the General Assembly to give authority, in consultation with the Advisory Committee, to enter into the financial commitments that are unavoidable in this context. He is not prepared to indicate how the costs involved should be shared. As soon as possible he will report to the General Assembly on the outcome of the negotiations and on the estimated cost.

5. The arrangements to be made with the Government of Egypt in order to establish the basis for the assistance, requested from the United Nations by the Government of Egypt, as well as to facilitate the carrying out of the operation, will be discussed with the Government of Egypt as soon as the matter has been considered by the General Assembly and the necessary exploration, as set out in the preceding paragraphs, has been completed.

6. In the course of his direct contacts with the Government of Egypt concerning this matter, the Government of Egypt expressed to the Secretary-General its wish to see the operation completed with the utmost speed. In view of the interest of the Government of Egypt, as well as of the interests of all the users of the canal, the Secretary-General has felt that the most expeditious procedure to achieve the desired results should be followed in connexion with this matter.

Prepared for presentation as
 comments to report on Nam
 points. Used with British and
 French, but not published (on their
 demand). Para 9 and 10 added

N O T E after these discussions.

1. The following considerations have guided the interpretation given to the functions of the UNEF under the relevant General Assembly resolutions.

2. The basic fact is the adoption by the General Assembly, in its resolution of 7 November concerning the UNEF, of the statement on the functions of the Force which is to be found in paragraph 12 of the Secretary-General's Report

3. Paragraph 12 in the Secretary-General's Report quotes from the resolution 2 November, operative paragraphs 1 and 2, concerning the cease-fire and withdrawal. After this quotation follows the statement: "These two provisions combined indicate that the functions of the United Nations Force would be, when a cease fire is being established, to enter Egyptian territory with the consent of the Egyptian Government, in order to help maintain quiet during and after the withdrawal of non-Egyptian troops and to secure compliance with the other terms established in the resolution of 2 November 1956."

4. It is clear that the functions, as determined by this explicit reference in the Report, paragraph 12, to operative paragraphs 1 and 2 in the resolution of 2 November, link the activities to the areas where the dividing line would go between Egyptian and non-Egyptian forces. After the withdrawal of non-Egyptian troops from Port Said and the Canal Area, this dividing line, and therefore the functions, obviously would be outside Port Said and the Canal Area. This was reflected in the explanation given by the Secretary-General in the debate in the General Assembly, where he said: "The United Nations Force will have to come in at what is at present the dividing line between Egyptian and Israeli forces. It is at whatever may come to be the dividing line that they will have to function". This statement did not give rise to any comments or reservations before the vote was taken.

5. However, paragraph 12, as seen from the quote above, also says that the Force, in general, should have the duty "to secure compliance with the other terms established in the resolution of 2 November". In that resolution it is said, in operative paragraph 4: "... urges that, upon the cease-fire being effective, steps be taken to reopen the Suez Canal and restore secure freedom of navigation". Because of this operative paragraph seen in conjunction with the general reference in the Secretary-General's Report, paragraph 12, to the terms of the resolution 2 November, the question arises, whether the Force might have functions in the Area also after the withdrawal of the non-Egyptian forces from Port Said and the Canal Area, irrespective of the opposite conclusion reached on the basis of operative paragraphs 1 and 2.

6. When the resolution of 2 November was adopted, no proposal was on the table concerning the establishment of an international force. It is, thus, clear that the General Assembly then had in mind other steps when it adopted the wording of operative paragraph 4. As a means to the ends established in operative paragraph 4, the Force may yet come into the picture. It may do so as a new element which, by achieving the cease-fire and the withdrawal, helps to maintain a situation in which the other steps, envisaged by the General Assembly, can be taken. Such an indirect responsibility in relation to operative paragraph 4, however, obviously does not give the Force any other functions in the Area than those which follow from operative paragraphs 1 and 2. It follows that the indirect link that may exist with operative paragraph 4 does not lead to any functions in the Area, as soon as the withdrawal is achieved.

7. The steps envisaged in operative paragraph 4 may, in principle, be of two kinds:

either they may be steps taken in cooperation with and in full agreement with the Egyptian Government,

or, they may be steps taken without such cooperation, and against

the wishes of the Government of Egypt.

In the first case it is obviously not excluded that agreements made with Egypt might provide also for certain functions for elements of the Force in the Area. However, if that were to be the case, the functions would derive from a free agreement with the Government of Egypt and not from the General Assembly resolution.

On the basis of the second alternative, it is obvious that the Force cannot have any functions in the Area; the General Assembly has established that the Force should function with the consent of the Government of Egypt, and the General Assembly then cannot at the same time have reserved for the Force functions in implementation of steps which would not have the approval of the Government of Egypt.

8. It thus follows that, on the basis of the General Assembly resolution of 2 November, the Force has no functions in Port Said or the Canal Area after the withdrawal of non-Egyptian forces, and that operative paragraph 4 does not contradict this conclusion, as the Force can have significance in that context only through fulfilling the functions which it will have at the dividing line, or through undertaking additional functions based on a freely negotiated agreement with the Egyptian Government.

9. Another interpretation of the situation, than the one given here, might be attempted on the following basis. The acceptance in principle by Egypt of the United Nations Force, and its functions, was a condition for a cessation of military action by France and the United Kingdom. France and the United Kingdom, however, could not be expected to stop their action short of having a guarantee that their objectives would be achieved by the other means, provided by the United Nations and accepted by Egypt, i.e. France and the

United Kingdom must, in stopping their military action, have assumed that, with Egypt's consent, the United Nations Force would achieve their own proclaimed objectives, also as concerns the Canal. Nothing in the wording of paragraph 12 of the Report on the Force may be said clearly to contradict such an interpretation.

10. However, the standpoint just described is untenable. It would mean that the United Nations, in deciding on the Force, implicitly had condoned the British/French action and endorsed its specific objectives. In fact the opposite is true. The majority, when deciding on the Force, did so in order to put weight behind its demand for a withdrawal, clearly with an implied rejection specifically of one of the objectives of the Anglo/French action, namely the temporary military occupation of the Canal Zone as a means to safeguarding specific interests through an, if necessary enforced, solution of the Canal problem. How could, under such circumstances, the United Nations Force be considered a means to the same end? The alternative interpretation of paragraph 12 of the Report, mentioned in the previous point, thus, is unacceptable as negating the very basis for the United Nations action. The consent of the Egyptian Government, required by the General Assembly, was intended to be a consent freely given.