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Middle East

Meeting of Advisory Committee on UNEF

7 Feb. 57

CONFIDENTIAL

MEETING OF THE ADVISORY COMMITTEE ON UNEF
(Meeting held in the Secretary-General's
Conference Room on Thursday, 7 February
1957, at 5:00 p.m.)

The SECRETARY-GENERAL: - The immediate reason for a meeting just now is that we have the text of the agreement with Egypt on the Force and we wanted to report to the Advisory Committee. It is a matter of some urgency because it should, of course, in proper form have gone before the General Assembly, and we did not want to delay that unnecessarily. At the same time, I felt that it would be a good idea to follow up our discussion from Tuesday; that is to say, to tell you exactly how matters stand now on the question of withdrawal and related matters. If you could think aloud again and, in that way, help our own thinking, I should be very grateful indeed because, as we realized on Tuesday, the situation is one of considerable political complication -- where some great interests are at stake -- for the General Assembly and for everybody, and so I think it is right and proper to continue in consultation with the Advisory Committee on the steps taken.

We should perhaps wait for Mr. Mir Khan and Mr. Lall before we go on with the substance of the matters.

Mr. BUNCHE: To save time, it might be well to distribute the papers so that people could be reading them in the meantime.

The SECRETARY-GENERAL: I think that is a good idea. These are the texts of the exchange of letters and the agreement. Over and above that, I felt that as the Israel representatives had given publicity to the main part of their memorandum, there was no reason why that and related correspondence should not be put before you. Of course, they are strictly confidential documents, but all the same, I do not think that it is in any way out of order to circulate them.

What will interest you most is article 11. This is what makes it a pioneer document. It is, as you know, unique internationally in its present form.

I would ask Mr. Schachter to give his comments on the UNEF agreement.

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Mr. SCHACHTER: The agreement before you, which was initialled the other day, is substantially the same as the agreement originally distributed to the Committee in that it covers the same subject matter and, for the most part, deals with the questions in the same way. There have been a number of drafting changes and a few of them affect the substance of the agreement.

You might note that there is now a definition of "area of operations", which follows the definition given by the Secretary-General in his report and adds to it the installations and the lines of communications supplied. That is in paragraph 5.

The SECRETARY-GENERAL: It makes the area of operations depend upon the performance of its functions, which, I think, is the only formula we can use because we cannot add to the report in this legal text.

Mr. SCHACHTER: There is a new provision in paragraph 9 which relates to the case of a member of the Force who has left the service of the Force and has not been repatriated. In that case, in the event of an expulsion order by Egypt, the Commander is responsible for ensuring that the man shall be received within the territory of the participating State concerned. That is a new point, but it is similar to the provisions in the other "status of Force" agreement. It is not a novel provision but it was not included in our previous draft.

The criminal jurisdiction provision is precisely the same as the earlier draft. There is a complete immunity from criminal jurisdiction. That is in paragraph 11.

On civil jurisdiction there is a change of some substance. There is still an immunity from civil jurisdiction with respect to any act relating to official duties, but in the earlier draft, you may recall, the immunity proposed would have extended to any matter arising out of acts occurring in the areas in which the Force operates. That was a broader immunity and it has been narrowed in this way.

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There are two other cases on civil jurisdiction, but essentially the situation is that in any official matter brought against a member of the Force, the case must be handled by the Claims Commission; that is mandatory. If it is not a question concerning an official matter, then it remains under civil jurisdiction, but the claimant may elect to bring the case before the Claims Commission. That right of election is slightly changed. There are a few other technical changes on civil jurisdiction which I do not think it is necessary to go into.

The SECRETARY-GENERAL: You might perhaps point out that there is a rather important immunity also mentioned in the paragraph on civil jurisdiction:

"... the personal liberty of a member of the Force shall not be restricted by an Egyptian court or authority in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath of disclosure, or for any other reason."

Added to the one on criminal jurisdiction, it is, of course, a very strong protection for the nationals -- a kind of habeas corpus in that respect.

Mr. SCHACHTER: That was in the original.

The SECRETARY-GENERAL: But it is very important for the judgement of the whole balance of the agreement.

Mr. SCHACHTER: We have added a slight change, a provision which may be of some interest, namely, that when the Claims Commission has made an award against the Force or a member thereof, or against the Government of Egypt, that shall be notified to the Commander or the Egyptian authorities, as the case may be, to make satisfaction thereof. In other words, if a member of the Force loses a case before the Claims Commission and it does not pay, it would be referred to the Commander to make satisfaction. It extends the obligation a little more.

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There is a slight change in the article on military police. Military police may be employed in other areas outside the areas where the Force is deployed, only in agreement with the Egyptians. That provision, in some ways, has been broadened to the advantage of UNEF, and narrowed in other ways.

I think this Committee was also interested in the question of flags. You may note in paragraph 20 that the agreement contains a sentence -- the second one -- which is, I think, pretty much what the members of the Committee desired regarding the use of national flags: "Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Commander." Then a new sentence has been added: "Sympathetic consideration will be given to observations or requests of the Egyptian authorities concerning this last-mentioned matter."

The SECRETARY-GENERAL: Jurisdiction remains with the Commander?

Mr. SCHACHTER: Yes.

The article on freedom of movement has been slightly changed. Freedom of movement extends now within the area of operations -- paragraph 32 -- "and to and from points of access to Egyptian territory agreed upon or to be agreed upon by the Egyptian Government and the Commander". In the earlier draft it said "ordinary points of access". This makes it more precise in the form of an agreement.

There is a new provision in article 42 which the Commander requested concerning "the right to take charge of and dispose of the body of a member of the Force who dies in Egyptian territory" and to "dispose of his personal property after the debts of the deceased person have been settled".

The SECRETARY-GENERAL: Is it not possible to say that, with the exception of greater precision in some details, the agreement is, on all points of significance, like the original? The redrafting has been mainly in the direction of greater precision. If I may be permitted to say so, I think that we should congratulate ourselves on it because it is a forward-looking

agreement, and I think it is highly satisfactory and gratifying that the Egyptian Government has taken this rather advanced stand upon it in accepting the rules of jurisdiction as they are here. And I think that, from the point of view of a precedent for the future UN Forces, this will prove most useful. It would be a lot easier to have it on this basis than on any other. For that reason, my recommendation would be that we should approve of this.

One constitutional question does arise which I should like to mention. We have, of course, three possibilities in the handling of it. Either the text can be submitted directly for approval to the General Assembly before signature, which, of course, is constitutionally a somewhat unusual procedure, or it can be signed subject to approval by the Assembly -- that is to say, if we use regular diplomatic language, subject to a ratification clause; or it can be signed after submission to the Advisory Committee. My recommendation would be in favour of the second line, which corresponds very closely to what would have been the procedure, I think, in any national state, and, for that reason, seems to me to be perfectly appropriate here. And it has another advantage. It gives expression to the fact that a text which has been negotiated in this way, of course, is not something, which can be revised or discussed in detail by a parliamentary body. It has to be approved, or disapproved with a request for new negotiations. When that is the case, it seems to me that the ratification procedure is the indicated constitutional way of handling the matter.

My suggestion would be -- or rather, I submit it to you for consideration and advice -- that we should now report to the General Assembly that this should be annexed to the report, with the few comments necessary, as a signed document, but subject to the approval of the General Assembly. Of course, it should be mentioned that it has been submitted to the Advisory Committee.

I should like to have your opinion on this question. It is not a new situation, but a situation which gives us certain liberty of action constitutionally. May I ask you, Mr. Schachter, what procedure was used, for example, in the case of the Headquarters Agreement?

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Mr. SCHACHTER: That was authorized by the General Assembly before signature -- it was submitted and then authorized for signature.

Mr. URRUTIA (Colombia): I think that was a different matter. We had a Committee then and we negotiated in that Committee ... I think in this case that the procedure would be the one suggested by the Secretary-General. It has to be signed by the Secretary-General so that it has his responsibility and support, and then it has to be submitted to the General Assembly.

The SECRETARY-GENERAL: His signature is covered as an executive duty by general authorization from the General Assembly. It is just the question of how the Assembly comes in in order to confirm it.

Mr. MIR KHAN (Pakistan): I agree with that view of the Secretary-General. If not, we can take the view that perhaps the General Assembly may have to be -- it does not have to be -- informed, but do we need its confirmation? I am very much in doubt about that. I think that you will perhaps help us on the legal side of it from the earlier resolutions. This has not the same status as the Headquarters Agreement, which was a more or less permanent document. This is more of a working arrangement and I think the Secretary-General has the authority to deal with it. If it is submitted for approval to the General Assembly I doubt whether it might not raise a long debate on the details.

The SECRETARY-GENERAL: I wonder. You see, constitutionally, I think the situation is that it is perfectly clear from the basic resolution that executive action necessary for the operation of UNEF can be taken by the Secretary-General in consultation with the Advisory Committee. There is no limitation to it. On the other hand, this is a document which is decisive for individual rights of citizens of Member nations in the area, and I think there is a weakness if that is taken only on the basis of an executive decision. It goes against my own feeling of how you do safeguard an individual's rights. For that reason I have also, even in the light of previous decisions, felt that an approval by the General Assembly of the agreement after signature gives it a

(The Secretary-General)

kind of, what we might call, sanctity, the kind of sanctity which it should have, and also gives to Member nations the possibility, not to enter into details of the text, but if they had any reason for disapproval of the protection to their citizens, to express such views. I do not think the question will arise; I shall be surprised if we get a debate on this.

Mr. URRUTIA (Colombia): One of the good things is that if we had it approved by the General Assembly, then for the future we would definitely have something -- we could say it was approved by the Assembly when we made this arrangement with Egypt.

Mr. MIR KHAN (Pakistan): For that reason I am fully in accord with the suggestion that it should go to the General Assembly for its blessing because, as I said some time ago, we are really developing a new kind of international law. But then, would you raise any point about any special agreement from the countries which have contributed to the Force, the countries whose personnel are perhaps more directly involved? Will there be any occasion for those contributing countries to ratify it or to give it a special O.K.?

The SECRETARY-GENERAL: I would say no, because if there is an affirmative vote in the General Assembly it has given them the opportunity that is needed. That is another reason why it should be submitted to the General Assembly. As you know, concerning the three basic points, we used that procedure. There was no agreement between Egypt and us, but we said in the text that if this is approved by the General Assembly with the concurrence of Egypt it does constitute an agreement. So that point, I think, is covered.

Then may we conclude that we will handle it in this way? If anything, we should be proceeding on the side of caution. I would be happy to see this as part of United Nations legislation, and that would require the approval of the General Assembly, and I think that is wise in a case like this one. I would like us to keep on the side of caution and I would be glad to see it approved by the General Assembly.

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The other point we have to raise today is the one covered by the five documents circulated to you. I read to you last time the aide memoire in its main parts. It does not contain anything new. The second document is the only official reply received to the two questions I mentioned at our last meeting, and, as you see, there is no reply at all. It is just a reference to the questions put by Israel as a prerequisite for a reply to the questions I raised. The third document is the full text of the press statement circulated yesterday by Israel, which in fact is a political document in this context because it repeats and partly comments on the letter to us. The fourth document is my reply to the letter from Israel concerning our two questions, which points out the fact -- at least for the present I must consider the assumption to be -- that the reply to the two questions is negative. The final document is the press statement which we considered necessary in the light of the press statement of Israel. That is to say, we are now in a situation where we still have on the table the two requests from Israel, where on the other hand we have got no affirmative reply to the two questions we put, which I considered as prior questions.

The whole problem of whether or not action can be or should be taken under resolution No. 2 for that reason so far has not arisen. As you will see from our press release of yesterday, the final phrase is that the Secretary-General is awaiting clarification of the points that he views as prerequisites for further consideration of the Israeli aide memoire. It does not state that, given a reply, we should take action. There is a difference between the first and the second questions raised by Israel, as the first one undoubtedly requests action under Resolution 2, that is to say, a démarche from the Secretary-General in order to get a formal assurance. In that form at least I consider it to represent an inversion of the order between the two resolutions. The second question refers to Resolution No. 2 but is more of the character of clarification, whereas the problem which arose last time -- clarification given across the board and being the basis of action -- was the difference between such clarification and an assurance.

I think that we should anticipate a meeting of the General Assembly, let us say, early next week, and by that time, of course, some kind of report on

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the developments in the course of the week would have to be submitted. I myself feel that things cannot be left in the shape in which we now find them. Some further action is necessary also from the Secretariat, although I guess that all sorts of discussions are going on at diplomatic levels. Such a formal démarche from our side, I think, is called for before the matter is ripe for consideration in the General Assembly. What I have thought about is, of course, to try in a formal way to clarify the stand of the parties on Resolution No. 2. That, however, has become exceedingly difficult in the light of developments over the past few days. I would, for example, have found it perfectly in order and natural to raise informally with the Egyptian Government the question of belligerency in general terms, not in order to give their reply to Israel or even to this Advisory Committee but in order to know how they argue about it. You can easily see that such an informal exploration, has become, negotiation-wise, for all practical purposes impossible once the formal request of Israel is on the table and has been given publicity, because Egypt must regard even such an informal approach as directly related to the Israel question and for that reason a matter which gives rise to a rather difficult problem of principle.

In fact, I think, even if there were no problems of principle involved between any two parties -- Egypt or Israel or whatever party it may be -- it would be considered exceedingly difficult to give a reply to such a question while the other party is still in occupation. It might be said that the occupation might cease in case of a positive reply, but if the implication is that it will not cease in case of another reply, of course, from the point of view of negotiations it is a reply given under duress, which is difficult for any Government in the world to give, even under much less tense circumstances than those at present prevailing.

I am sorry to say that what I have put before you, apart from this information which I think should be in your hands, is nothing but a big question mark, plus the indication that I feel that somehow one further round is indicated before the matter comes before the General Assembly. But here again I am, just like last time, in bad need of good advice, and at least in need of hearing your informal and noncommittal views on how you look at the best way of proceeding.

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Mr. URRUTIA (Colombia): Reading the minutes of the last meeting, I think that the only advance -- it is not very much but it may be considered -- would be this. Maybe the only thing that could be authorized in your conversations with Israel would be to explain to them what is our opinion as far as the implementation of the Armistice Agreement is concerned. The fact of putting the troops in Aqaba is something that must be agreed to by Egypt. But the only thing we could say is that according to our opinion we consider that any raid is an act of belligerency and to stop any ships going through a free way is an act of belligerency because that is a decision by the Security Council and the General Assembly in that regard. That is as far as we can go on that.

The SECRETARY-GENERAL: Would you give the same reply or make the same statement if Israel is still in Gaza? If Israel is still in Gaza and the United Nations cannot get them out, the other country is partly occupied. Article 51 certainly does apply. For that reason the extent of the right of self-defence comes up as a question which is very difficult to solve.

Mr. URRUTIA (Colombia): I completely agree with you. First of all, on the basis of Resolution No. 1 --

The SECRETARY-GENERAL: If fully carried out.

Mr. URRUTIA (Colombia): One of the questions is this. They ask you to try to find out what is going to be the position of Egypt after Resolution No. 1 is fulfilled. I think that in that case the only thing we can say is, "No, we do not know what Egypt would say. We cannot tell you what our opinion would be after Resolution No. 1 is implemented." We could say, "If you get out of Gaza and out of Aqaba, then we go back strictly to the Armistice Agreement." That is our opinion, but after?

The SECRETARY-GENERAL: That is strictly in accordance with the report, as you know.

Mr. URRUTIA (Colombia): Exactly.

The SECRETARY-GENERAL: From that point of view, it is not a new fact. It is just a confirmation of the stand already taken by approval of the report. That, in your view, would mean that we would say that in accordance with the decisions we consider that, provided that there is full withdrawal, also from Gaza, of course, UNEF should be stationed in Sharm el-Sheikh. It will depend, as I see it, on two things: first, on the consent of Egypt -- that is recognized -- but, second, on the recommendation of the need. There is, of course, the other possibility, no act of belligerency, which makes it all so hypothetical. There are so many provisos in the statement that it does not add a thing to the resolution.

Mr. URRUTIA (Colombia): Another thing is this. I see in all the press that the focus of the criticism is more or less that they say that Israel does not want to accept that, because they are afraid that after a few months Egypt could tell the United Nations to take its troops out of Egypt. I think it is one of the most absurd things that could be said. Egypt will never ask the United Nations troops to get out of Egypt until a definite settlement is carried out, because it knows that if they get out of Egypt it will probably be invaded again. Once we get the approval of Egypt, I do not see any reason why we need to worry about the possibility that we are going to be thrown out of Egypt. That will never happen.

The SECRETARY-GENERAL: I can see only one situation in which the problem would arise, and that would be if we tried to enforce the stationing of the forces with functions which are clearly beyond the defined functions. Then their only way of self-defence against such pressure would be to respond to requests from our side for withdrawal, but that is an extremely hypothetical case. I cannot see any reason why one should expect the General Assembly to take a stand which involves departing from the functions as defined.

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Mr. Lall, we have discussed the UNEF Agreement, which is before you, and there is no news of any consequence. The idea is that after signature it will be submitted to the General Assembly for full approval.

Now we have discussed the question which is facing us on the withdrawal side. We have still the two Israeli questions on the table, with the reply to prior questions from our side, to which there is no reply. If we are looking forward to a situation where the General Assembly -- as it undoubtedly will at some time, perhaps next week -- will go into the matter again, we shall then have the question of whether some sort of action, at least formal, from the Secretariat is not necessary before the Assembly meets. I am not intending in any way to raise questions of tactics, but this is a question of principle on which the Committee might wish to express itself.

Mr. BUNCHE: You have said, "The questions to which there is no reply."

The SECRETARY-GENERAL: No substantive reply.

Mr. BUNCHE: No positive reply. The reply as it stands at the moment is negative.

The SECRETARY-GENERAL: Presumably a negative reply.

Mr. LALL (India): So far as I know -- and this is very tentative -- the position on the Arab side is that they would have preferred a meeting today but they are convinced that it is wiser to wait until Monday. So they are expecting a General Assembly session on Monday. However, there has been some effort to make it known to the Arabs that even Monday might be too early and that what might be done is to have a meeting some time next week. The last time I talked to Mr. Fawzi it was suggested that it would be all right to hold a meeting by Tuesday. I do not know whether it has got any further than that.

As to the resolution, there are two views. One is that the Asian-Africans might think of a resolution, and the other is that the seven sponsors might

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keep in touch, which sounds very logical, and then come up with a resolution in the light of all the known factors some time early next week.

Mr. GUNewardene (Ceylon): There was a meeting today, and the position is that a resolution will be considered. Of course, the Secretary-General is given plenty of time. Nobody wants a resolution if it can be avoided. But it must be distinctly understood that the Foreign Minister of Egypt or the Government of Egypt will not give any prior assurance or will not like to make any statement which would be tantamount to acceptance of a condition laid down. He certainly does not want to appear to conform to any conditions laid down.

Mr. MIR KHAN (Pakistan): There was a meeting of the group. I was not present, but I think they are considering a resolution, as far as I know. I was sitting next to Dr. Fawzi for lunch, and I had the news from him at about 2 o'clock that he had not yet decided when he is going to ask for a meeting, and he preferred to have time because he thought that the conversations going on might produce some results.

The SECRETARY-GENERAL: This observation applies also to possible démarches in the Secretariat. We are at present in the deadlock which is fully described in the five documents before you. I cannot make any concession in relation to what I think is the extremely reasonable stand we have taken. On the other hand, of course, there might be arguments in favour of at least giving the Israelis another chance to express their views, and it is easier for them to express them at our invitation than spontaneously.

The reasons which indicate a later meeting rather than an earlier one are, of course, indications which also mean that it may be wise not to rush around with any formal invitations on the Secretariat side -- we could let things ripen a little -- that is, invitations to a further clarification of the Israeli stand.

Mr. LALL (India): I agree with that.

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The SECRETARY-GENERAL: Before a meeting of the General Assembly, I think the Secretariat must take some further action, but I do not feel it is a very good idea to do it prematurely. It is better to let things work themselves out over a few days before we rush in again.

Mr. GUNewardene (Ceylon): There is no feeling of undue haste about it, except that it must be done.

The SECRETARY-GENERAL: Perhaps I may again ask for your indulgence. If we keep in touch in this way, with these meetings where the agenda is a little uncertain, where we can really do nothing but think aloud together, it is certainly of very great assistance to us, and I thank you for your kind attendance.