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Middle East

Meeting on Advisory Committee on UNEF

25 Feb. 57

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CONFIDENTIAL

MEETING OF THE ADVISORY COMMITTEE ON UNEF  
(Meeting held in the Secretary-General's  
Conference Room on Monday, 25 February  
1957 at 5.00 p.m.)

The SECRETARY-GENERAL: Gentlemen, you know very much of the development of discussions outside the United Nations with the Government of Israel. They were switched back this morning to the United Nations.

Together with Dr. Bunche and Mr. Cordier I had a talk with Ambassador Eban and his associates. I consider that the situation as it emerged from that discussion is such that I would like to inform the Advisory Committee of it. I would, of course, very much appreciate whatever advice you may care to give on the points which have arisen.

I ask Dr. Bunche to give a brief summary of the main results of the discussion.

Dr. BUNCHE: The main points may be summarized as follows: The first has to do with the Gulf of Aqaba and the Straits of Tiran. On this issue, the representative of Israel raised three questions. He prefaced these questions with a statement that his Government's primary concern in this area was with measures designed to reduce the risk of the reoccurrence of acts of belligerency after the withdrawal of Israeli forces.

Mr. PEARSON (Canada): When you say he raised three questions, do you mean this morning?

Dr. BUNCHE: This afternoon at the meeting. These were the three questions on the Gulf of Aqaba:

First, following the withdrawal of Israel's forces, would the function of UNEF be as described in the Secretary-General's memorandum of 5 January, a memorandum which had been prepared by the Secretary-General in the form of responses to certain questions which had been put to him by Ambassador Eban, namely, the prevention of possible acts of belligerency as the function of the force in the area?

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(Dr. Bunche)

Secondly, in connexion with the duration of UNEF's deployment in the Sharm el-Sheikh area, would it be certain that the Secretary-General would give notice to Members of the United Nations before UNEF would be withdrawn from the area, whether this withdrawal would be with or without Egyptian insistence or before the Secretary-General agreed to the withdrawal of the Force from the area?

And thirdly, there was this question, which he pointed out had been bruited about, though not formally proposed, of adding a naval component to UNEF for purposes of instituting a United Nations naval patrol in the Gulf of Aqaba and the Straits of Tiran for the purpose of ensuring free and innocent passage.

The Secretary-General responded to these three questions as follows:

With regard to the function of UNEF in the prevention of belligerency in the area, he said the answer is affirmative, subject, however, to the qualification that UNEF is never to be used, as pointed out in his report, in such way as to force a solution of any controversial political or legal problems.

On the second question concerning notification to Members, the Secretary-General stated that he would give his view at a later meeting, which is to be held at six o'clock this afternoon. The indicated procedure would be for the Secretary-General to inform the Advisory Committee on the United Nations Emergency Force, which would determine whether the matter should be brought to the attention of the Assembly.

The response to the third question was with regard to the naval unit. The Secretary-General pointed out that since this implies a function for UNEF which would go beyond the prevention of belligerent acts as envisaged in the basic General Assembly resolutions, this would be beyond the competence of the Secretary-General on the basis of these resolutions.

With regard to Gaza, the representative of Israel defined the policy of his Government as follows:

He said, first, that the policy of Israel is -- and I am not quoting here because this is a summation. There was no verbatim. But the word "overridingly" is a direct quote -- "overridingly" one of opposition to Egyptian civilian administration or military control in Gaza. He added that Israel cannot compromise on the direct or indirect return of Egypt to Gaza.

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(Dr. Bunche)

Secondly, he said, in response to the Secretary-General's statement that the Secretariat was bound by the resolutions of the Assembly and by international agreements and had to operate within that context, that Egypt, having violated continuously the Armistice Agreement and in fact being in a state of belligerency against Israel, cannot claim any right in Gaza under the Armistice Agreement.

Thirdly, he raised the question whether a de facto United Nations administration might be possible in Gaza, as outlined in the recent statement of the Secretary-General. Would this include Egypt's return to the area? That is, whether a de facto United Nations administration in Gaza, as he put it, as outlined in the statement of last Friday of the Secretary-General, would in fact exclude Egypt's return to the area. The Secretary-General answered that by pointing out that Egypt's rights could not be affected, that the withdrawal of Israel from the area was being discussed by the Government of Israel on the assumption that there would be no return of Egypt, that his statement obviously had to be made within the framework of the legal situation which was established by international agreement, and that he, the Secretary-General, could neither detract from nor annul any rights existing under the Armistice Agreement. His statement indicated that only practical arrangements envisaged within the framework of Egyptian control of the territory flowing from the Agreement might be undertaken, and could, therefore, not be understood as limiting Egyptian right within the area under the terms of the Armistice Agreement.

Finally, the Israeli representative suggested that the General Assembly should send a "fact-finding commission" to Gaza to investigate the situation and to make recommendations to the General Assembly for the achievement of its objectives. But in response to a direct question it could not be said by the representative of Israel whether such fact-finding commission would be sent before or after the withdrawal of Israel from Gaza.

To these points of definition of Israeli policy, the Secretary-General responded by stating that Egypt was given the right to control the Gaza Strip by the Armistice Agreement, and this being binding on the Secretariat, the Secretary-General's concentration was on arrangements to secure peace and quiet in the area, and this always on the assumption of the Egyptian legal position.

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(Dr. Bunche)

In the light of Israel's stand on Gaza, he pointed out, it may be seriously doubted that the question of Aqaba can be solved separately, as intended by the Israeli statement.

On the question of the deployment of UNEF, as envisaged in the second resolution of 2 February, based on the Secretary-General's report submitted at that time -- the stationing of UNEF on both sides of the line and in the El Auja area -- the representative of Israel stated that he had not considered this question urgent or related to the major question of withdrawal from Gaza and Aqaba, and that he had had no opportunity recently to discuss it with anyone.

The SECRETARY-GENERAL: As you gather, we will meet again at six o'clock with the Israeli representatives. Pending that meeting, we have, of course, not been able to cross check with them on this report, which, however, I think is complete and accurate. In that situation and also because of the very character of the matter we are discussing, I would again remind you of the fact that it is in this rather delicate negotiation situation imperative that we do not get any speculation running around it. I trust that you will observe all the sometimes rather difficult and unpleasant restrictions that that puts upon us all, we who happen to be on the inside.

There is one question which obviously is of direct practical concern to the Committee -- that is this one about information to the General Assembly in case the UNEF was to be withdrawn from Sharm el-Sheikh. As Dr. Bunche has said, it seems to me that the proper procedure is not to single out that special phase of withdrawal which gives it a very peculiar character, but to treat this part of deployment as part of the general deployment, and to make it a point that the Advisory Committee is informed about it. It is very difficult for the Secretary-General to decide whether or not, in the view of the delegations, of Governments, withdrawal from Sharm el-Sheikh is a proper move. To go straight to the General Assembly, playing safe, so to say, in that way, strikes me as a somewhat dangerous procedure because it may create a problem out of what should not be a problem. Therefore, it seems to me that this is a typical case where the judgement of the Advisory

(The Secretary-General)

Committee should be decisive, and where the Advisory Committee may well find it appropriate to use its right of initiative to the General Assembly, as it was established in the first resolution on the Advisory Committee. That is to say, my own recommendation to the Advisory Committee would be that a reply on that point should be that the Advisory Committee will be kept informed, and if the Advisory Committee considers that the situation is such a one as requires a decision by the General Assembly, the matter undoubtedly will be brought to the General Assembly within the terms of reference of that Committee.

Mr. URRUTIA (Colombia): I have only one comment about this naval unit. I would think that the prevention of belligerent acts is more or less an obligation for the United Nations in the future. We want to implement the Armistice Agreement, so of course it has to be worked out. But I do believe that, if everybody agrees, we will not have any difficulty in having a naval unit patrolling that because the prevention of belligerent acts is what we ought to try to have, both in Aqaba and Gaza; that is to say, we do not want to have any more belligerent acts, and we want to implement the Armistice Agreement.

Mr. LALL (India): The Aqaba situation does not, so far as my understanding goes, arise out of the Armistice Agreement. The point there is that it is claimed that juridically the waters are territorial waters and whether there was any question of war or not, these are territorial waters. The Egyptians claim, therefore, that they and the Saudi Arabians presumably have the right to control shipping in those waters. This is a question which stands on quite a different footing from belligerent acts arising out of the Israeli-Arab war and so on, which led to the Armistice Agreements.

In my view, therefore, this question of a naval patrol does not arise because the determination there has to be a juridical one as to what is the position regarding those waters. Are these territorial waters? Who has the right to control shipping through these waters? That is the question and, as I say, it is not a question which is directly connected with this issue.

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(Mr. Lall, India)

That has to be determined in another way. I do not want now to go into how it should be determined, but there obviously are ways in which it can be determined. At the right time, we shall state what we think those ways are. I am not trying to say that the problem does not exist. The problem exists and a solution independent of this question of withdrawal has to be found. But it cannot in our view be linked up with the question of withdrawal for the basic reason which I have tried to explain.

I am also somewhat in doubt about the Sharm el-Sheikh proposition, Mr. Secretary-General. Correct me if I am wrong. I understand that Sharm el-Sheikh is along the Aqaba Gulf.

The SECRETARY-GENERAL: South of it, really.

Mr. LALL (India): Yes, in this coast. Now, the purpose of the Force is to separate the Israeli troops from the Egyptian troops. Once the Israeli go behind the armistice line -- which is what they have been asked to do by numerous resolutions of the General Assembly -- the question of a force remaining in Sharm el-Sheikh does not arise to my mind. Because if they go beyond the armistice line and the armistice line is properly manned by the UNEF, what is the point in keeping a pocket of UNEF in Sharm el-Sheikh? It does not arise, to my mind. That is the way I look at it. So I would have thought that the position with regard to Sharm el-Sheikh is the same as the rest of Sinai and the areas which came under occupation. Once Israel goes behind the armistice line and the line is properly manned, then there is no question of keeping forces of the UNEF in Sharm el-Sheikh. That is the way I see it.

I do not quite see what reason there is for any other position here unless it is this question of freedom of shipping in the waters of the Tiran Straits; and that, as I have already said, is a separate issue. It is a problem that must be dealt with, but it is not a problem that can be dealt with by the UNEF.

The SECRETARY-GENERAL: May I give a clarification of the last point. There is in one report, as you know, a description of what will happen

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(The Secretary-General)

to Sharm el-Sheikh when the Israeli troops withdraw. The UNEF comes in. The UNEF, so to say, hangs around a little bit. It did it in Port Said; it will do it here. I do not understand the Israeli question in this case to go beyond a request for information to the General Assembly before the UNEF moves on. I consider it somewhat difficult to single out that move on and say in advance that that is a question which does require General Assembly consideration. But I do not consider it to be an abnormal procedure if on a point which has attracted so great interest as this one the Advisory Committee is informed. Then, at that stage, the Advisory Committee can say whether or not it feels that this is a matter which should be treated in some different way. I could very well have taken the same stand on Port Said at that stage. It never developed into a problem at all. I would be surprised if this developed into a problem, but of course we cannot tell. There is a difference between that proposition -- that is to say, the procedure involving the Advisory Committee -- and the idea about a naval patrol, because the naval patrol may be said to be a patrol intended to prevent acts of belligerency. Its real purpose in this proposition would be, of course, to safeguard innocent passage.

My reply, as Ambassador Urrutia will have observed, is a very limited one. I found that the inclusion of a naval unit in this context went beyond the authorization I had in the basic resolutions of the General Assembly. I think that is a perfectly safe statement. Nobody had it in mind at that time. There are rather delicate issues involved and, for that reason, I think it would be rather an extraordinary move for the Secretary-General suddenly to build up a little UNEF fleet to patrol the Straits of Tiran.

Mr. ENGEN (Norway): May I ask a point of clarification? What status, so to speak, do you consider that these questions and statements by Mr. Eban actually have? Is this a submission of suggestions or proposals for discussion, or is it in the form of an answer to something which has been requested of them? What do they have in mind by these positions which they put forward?

The SECRETARY-GENERAL: Primarily, I think, to get clarification of points on which the judgement of the United Nations, in their view, is decisive -- with the implication, of course, that a reply which from their point of view is satisfactory would lead to withdrawal. That is the only way in which I can interpret it.

I do not think that there is more than the clarification aspect to it as regards Sharm el-Sheikh. But it is quite obvious that, when we move to the Gaza question, in that case the question itself, because of the assumptions on which it is built, goes far beyond a question for clarification.

Mr. BUNCHE: I would add, if you will permit me, my assumption that implicit in it was also the desire to divide these two questions. You will recall that the statement was made that Sharm el-Sheikh will apparently cause no difficulty -- but Gaza, much more so.

The SECRETARY-GENERAL: There is perhaps one point that I should mention in addition to what Dr. Bunche says: that, if Israeli occupation of Gaza continues, that means, of course, a kind of continued state of active belligerency, and that would have obvious legal consequences in the Straits of Tiran. I would not like to go into them -- it is a lawyer's question -- but I think that the possibility for Israel to gamble on safe passage in the Straits of Tiran, and for us to present any kind of guarantees for it, will be heavily influenced by what happens in Gaza. That is the reason why, without passing personal judgement on it, I cannot help finding it extremely difficult to separate the two issues.

Mr. ENGEN (Norway): May I ask one more point of clarification -- and a crucial one -- on the question of withdrawal from Gaza? Is there any significance in the expression which was used in the sentence that Dr. Bunche read out, that they are opposed to Egyptian civilian administration and military control? Is there any distinction between the two?

The SECRETARY-GENERAL: No.

Mr. BUNCHE: No, this was only part of the statement. Later on, they made another statement which was perhaps even broader: that is impossible for Israel to accept any arrangement envisaging the return of Egyptian control or civilian or military elements to Gaza.

Mr. ENGEN (Norway): In other words, am I correct in understanding this point that they have made to mean that they are opposed to a reassertion of Egyptian de jure --

The SECRETARY-GENERAL: De jure and de facto.

Mr. BUNCHE: They deny that Egypt has any more right to it.

Mr. MIR KHAN (Pakistan): There was some discussion of the possibility of the United Nations<sup>t</sup> exercising, on behalf of Egypt, the de facto administration.

Mr. BUNCHE: Not on behalf of Egypt -- but the United Nations taking over.

Mr. MIR KHAN (Pakistan): Was it elaborated by the Israelis or by --

Mr. BUNCHE: Well, the question was tied to the Secretary-General's statement of last Friday. It was a question which gave a very broad interpretation to the Secretary-General's statement, namely, as to whether this involved the possibility of a de facto United Nations administration -- exclusively United Nations -- in Gaza.

The SECRETARY-GENERAL: And the reply was, as you will remember, that the statement naturally was made within the legal framework which I cannot put in question. That it is to say, it in no way implied that Egypt was excluded. It indicated a possible line of co-operation -- which is, of course, an entirely different thing.

Mr. LALL (India): What is going to happen at 6 p.m., Mr. Secretary-General? I mean, what is the purpose of the 6 p.m. conversation?

The SECRETARY-GENERAL: Part of this was, of course, of such a nature that I wanted to think it over. First of all, the reply concerning Gaza was something I wanted to think over, because I did not like to improvise on this question of procedure, especially as the Advisory Committee itself was involved. For that reason, I obviously wanted to put the question before the Advisory Committee.

The second point is that I would, of course, like to have the opportunity to qualify the first replies if, on afterthought, there was a reason for such qualification -- the situation being, as we all know, a rather serious one. That refers especially, I think, to this question of the character of the administration. I myself do not see any possibility of revising or modifying that. I think I am on perfectly safe ground there.

A third question was, of course, the one concerning a naval unit. On afterthought, I still feel that that is something I cannot do. The General Assembly would have to do it.

Over and above that, there is, of course, the need for us to agree with them on how to handle this situation procedurally. First of all, I should like to check with them that we have understood them correctly on these various points. There was no verbatim record, and I must have something which is solid enough to use as material in the continued discussion.

Further, there is a need, I think, for some kind of report. I do not know how the Israelis look at it. Of course, the obvious thing is for them to state, themselves, what views they hold on it. On the other hand, it is very difficult, from the Secretariat angle, not to go on record somehow with the situation as it is now.

For these various reasons, I felt it was useful to have a new meeting with them.

Mr. BUNCHE: There was also the question of notification.

The SECRETARY-GENERAL: Yes, that was the first one -- the question of how the Advisory Committee comes into the picture.

Mr. BUNCHE: But that notification was with regard to withdrawal from Sharm el-Sheikh, not Gaza.

The SECRETARY-GENERAL: I'm sorry -- I meant Sharm el-Sheikh.

Mr. URRUTIA (Colombia): I think it is completely correct that we must insist that all acts of belligerency must stop. When we say "all", that means that we must stop the occupation of Gaza, because that is an act of belligerency, and, secondly, we must stop any acts of belligerency against innocent passage, even in territorial waters.

As to Gaza, of course, the only way out is that they must get out of Gaza. On the question of Tiran, the situation is this: Innocent passage in territorial waters, if there is no belligerency, must be admitted.

What we must get is an agreement by the parties that, to implement the Armistice Agreement, they will not commit any more acts of belligerency. We must have the agreement of both on that, because that is the only way out. We must have a commitment both by Israel and by Egypt that no more acts of belligerency will occur.

If we have that commitment, then I think the United Nations has every right to say "And now we are going to be sure that this commitment is enforced" -- and on that basis we could have a naval unit. It could be done on that basis.

But both things are involved. First of all, we must have everybody agreeing that there will be no more acts of belligerency -- and the first thing is withdrawal from Gaza. I agree with that completely.

The SECRETARY-GENERAL: Unconditionally, of course, you mean?

Mr. URRUTIA (Colombia): Yes, unconditionally, because that is the worst act of belligerency -- that is the worst thing of all.

Mr. LALL (India): I am sorry, but the position does not seem to me to be quite as clear as that, if I may say so. In the Straits of Tiran, even if there are no acts of belligerency, and there is observance of the Armistice Agreement, the question arises whether the state of war between Israel and Egypt continues or does not continue -- and, if there is a state of war which has not been obliterated by the Armistice Agreement, what rights does the territorial Power have in terms of the continuance of the state of war? You see, this might or might not, juridically or judicially, be touched --

Mr. URRUTIA (Colombia): But I think that, with the Armistice, there is a difference. For instance, when the armistice was signed between the United States and Germany and the peace treaty had not been signed, all acts of belligerency stopped between the time of the armistice and the peace treaty. Even in territorial waters here, the submarines surrendered. You remember all that. I therefore think that there is a situation between the time of the Armistice and general peace that can be considered. But, of course, it must be agreed to by the parties. We must say that all acts of belligerency must stop as a consequence of the cease-fire and the Armistice.

The SECRETARY-GENERAL: You will remember that in my next to last report, discussing the situation in Aqaba, I ventured to suggest that, if there was a withdrawal behind the armistice lines, it meant re-establishment of an armistice regime at least to such an extent that interference with freedom of passage should not be permitted. That is very close to your stand, Mr. Urrutia.

Mr. URRUTIA (Colombia): Yes.

The SECRETARY-GENERAL: Now, regrettably enough, we are far from it.

Mr. URRUTIA (Colombia): That is the problem.

Mr. LALL (India): My feeling would be that, if the parties were to agree that they could cover innocent passage by saying that the Armistice Agreement actually will apply in the waters, and so on, that would be fine.

But if one party is taking its stand on a different position altogether, then this becomes an issue which perhaps could be resolved --

Mr. URRUTIA (Colombia): That is why we agree with you that, until they get out of Gaza unconditionally, there is no way out.

Mr. LALL (India): But what I mean is this: If the position of Egypt is that they have the right to stop Israeli shipping from going into these waters, even within the terms of the Armistice Agreement, then it is a question of the interpretation of a document, of a treaty -- and that is something over which someone must take Egypt to court. If the International Court supports that position, then you get the answer. That is the situation unless both parties agree.

Mr. URRUTIA (Colombia): I do not exactly follow you there. We had something even worse than the territorial waters, and that was the Suez Canal itself -- and, on that, we had a Security Council resolution. So there is a doctrine there of the United Nations, a doctrine of the Security Council.

Mr. LALL (India): There may be the doctrine of the Security Council, but the question arises whether the Security Council, which is not a judicial body, is in a position to make a judicial pronouncement about the validity of Egypt's claim, which is that she has a right, under the Convention of 1888, to stop Israeli shipping from going through the Canal. That is her position. It is therefore a question, in that case, of the interpretation of the Convention of 1888. And there, too, our view is that this is a matter in which the parties should be encouraged to seek a decision by the International Court.

Mr. PEARSON (Canada): By the same token, the Israelis could argue, if they so desired, that the Egyptians have forfeited whatever rights they may have had under the Armistice in Gaza because of using Gaza as a base for assault on them -- and that, since there is a difference of opinion, there should be a legal interpretation of that part of the Armistice before they move out of Gaza.

They can do the same thing if they want -- by asking for interpretations of the Armistice and the effect of those interpretations on their action at present.

Mr. LALL (India): The substantial difference, to my mind, is this: They moved into Gaza by an overt act of aggression which began on 29 October and which is part of the situation which is under direct consideration by the General Assembly, and the General Assembly has affirmed and reaffirmed repeatedly that they must go behind the Armistice Lines. This is a different proposition.

Mr. PEARSON (Canada): And the Security Council has made affirmations about freedom of passage. So it is the same kind of non-legal determination that you have in the Assembly. I am not suggesting that the Israelis would have a good case -- but I am suggesting that, if we take our stand on that legal interpretation in respect of the Straits of Tiran, they might attempt to take a stand in other areas.

Mr. LALL (India): No court of law is going to allow them any rights by aggression. I mean, this is perfectly patent. If the Israelis had a legal case of that description, they would go to the Court. But they know perfectly well that the International Court of Justice is not going to look at any rights arising out of an act of aggression. The thing just does not arise.

The SECRETARY-GENERAL: For another reason, I do not think it is very useful to go deeply into this problem. The immediate issue is this simple one: Would I -- on my own, or with your advice -- be entitled to include such a unit? I gather that nobody feels that I am wrong in saying that that would really be a little bit rash.

On the Gaza situation, there is additional information which I think puts it very squarely before us. It is the speech of Ben-Gurion in Parliament today, where, within quotes, he said that "Israel cannot, on any account, permit the Egyptians to return to Gaza". He said, concerning the Commission, that he did not want to close the door against such a Commission to go to Gaza and recommend a solution to that area's future. "This is the reason why I do not repeat and will not repeat now the demand for an Israel administration in Gaza".

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That is, he makes the withdrawal of the Israeli administration dependent on a fact-finding Commission going to Gaza.

Mr. ENGEN (Norway): Is that another condition?

The SECRETARY-GENERAL: Yes. As for the Gulf of Elath, as he says, "the most important guarantee which we would consider for the freedom of passage of Israel shipping in the Straits is recognition of Israel's right to defend her freedom of passage herself in accordance with Article 51 of the Charter.

Mr. URRUTIA (Colombia): That is completely out. I want to make a point in connexion with Article 51. As you know, Article 51 was suggested by a number of the American countries -- Dulles and Vandenberg, and so on. It is very important to know this. We had put, in the first draft, "aggression" -- and then European countries insisted that it had to be "armed aggression". Article 51, then, works only when you have an army moving in, but just an ordinary act of aggression is not covered by Article 51. It is a pity, but that is how it is. We tried to have simply the word "aggression". After that, for five or six years, we tried to have a definition of aggression arrived at in the Sixth Committee, and everybody opposed it. For the time being, then, Article 51 can work only when you have an army going into another country. So that would never work --

Mr. LALL (India): If an armed attack occurs --

Mr. PEARSON (Canada): It might work if you had an armed ship attacking a merchant ship. That would be aggression. What is the difference?

Mr. URRUTIA (Colombia): If you follow the minutes of the Conference in San Francisco you will see that the French and the British opposed that. They were very clear that they would accept only the case of an army moving into another country.

Mr. PEARSON (Canada): I sat on the committee when we argued all night about that.

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The SECRETARY-GENERAL: Well, at all events, you now have as clear a picture as exists at this hour of this day.

Mr. PEARSON (Canada): Are you going to make a report tomorrow at the opening of the plenary?

The SECRETARY-GENERAL: I would like to discuss with the Israelis how they look at it. I must say that, in a certain sense, Mr. Ben-Gurion has made the report, and I do not know whether it is necessary to confirm what he has said.

Mr. PEARSON (Canada): I would not expect you to do that. But it might be a useful thing if you could make a short report to the Assembly about your talks. There is a great deal of speculation as to what is being talked about.

The SECRETARY-GENERAL: It might even be that we would have to make a press release on it, because there is so much speculation. That is really what I had in mind. Some kind of presentation to the General Assembly is obviously necessary.

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