

Congo: Congo – 6

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Congo

Legal papers on the legal questions relating to the authority of the U.N's Force to use arms in regard to tribal warfare in the Congo.

- 1 Sept. 1960.

UNITED NATIONS • NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

FROM: Oscar Schachter, Director
General Legal Division

Date: 1 September 1960

SUBJECT: Question of United Nations
authority in regard to tribal
warfare in the Congo

FILE NO.: _____

... I am attaching a brief note on the legal
question relating to the authority of the United
Nations Force to use arms in regard to tribal
... warfare in the Congo. I am also attaching a copy
which you may wish to pass to Ambassador Dayal.

1 September 1960

Memorandum on the duty of the United Nations
to maintain law and order in the Republic of the
Congo and the means which may be employed thereto

1. It has been the generally accepted view in the Security Council that the United Nations Force was introduced into the Republic of the Congo, with the consent of the Government for the purpose, inter alia, of maintaining law and order. In his initial request to the Council, which gave rise to the resolution of 14 July 1960, the Secretary-General stated that the Force would be "serving . . . for the maintenance of order and the protection of life".^{1/} As a co-sponsor of the Council resolution of 9 August 1960, the representative of Ceylon likewise said that "the United Nations is there in the Congo to maintain the security of the people of the Congo and to maintain law and order . . ." ^{2/}

2. On the other hand, the Council, by its resolution of 9 August 1960, reaffirmed "that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise" (S/4426). It also emerges from the Secretary-General's statements and reports,^{3/} from the views of the majority of Members of the Council,^{4/} and from orders issued to the Force,^{5/} that the United Nations Force is not "authorized to action beyond self-defence".^{6/}

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1. S/4389, p. 3.
 2. S/PV.886, p. 21. See, also, China, S/PV.886, pp. 39 - 40, and United Kingdom, S/PV.886, p. 78.
 3. S/PV.873, pp. 11 - 12; see also S/4417, p. 6, para. 6; S/PV.884, p. 6; S/PV.885, p. 62; and S/4417/Add.4, p. 2.
 4. See, for example, Tunisia, S/PV.885, p. 38; Ecuador, S/PV.886, pp. 28 - 30; Argentina, S/PV.886, p. 41; and Italy, S/PV.886, p. 64.
 5. See Dr. Bunche's statement, S/4451, p. 2, referring to an operations directive to the effect that "on no account, are weapons to be used unless in cases of great and sudden emergency and for the purpose of self-defence."
 6. See the Secretary-General's statement, S/PV.873, pp. 11 - 12.

3. While the general principles set out in the two preceding paragraphs are clear, their specific application in certain situations may give rise to certain difficulties. As the Council has not precisely indicated where the line is to be drawn between a duty to maintain law and order, and an obligation not to interfere in internal conflict, this duty falls upon the Secretary-General as the agent of the Council. The present memorandum is concerned with the stand which should be taken by the Force in relation to tribal warfare.

4. The Security Council resolution of 9 August 1960, in reaffirming the principle of non-intervention in internal conflict was directed to the situation arising at that time as a result of a conflict between the Central Government and the authorities in control of a province. "Internal conflict, constitutional or otherwise," should thus be construed as conflict of an essentially political character. There is nothing in the record of the Security Council which leads to the conclusion that the principle of non-intervention applied to internal conflicts of a private nature. Such conflicts fall undoubtedly in the law and order field, and to interpret the principle of non-intervention as applicable to them would render it impossible for the United Nations Force to carry out its task of maintaining law and order. This, in turn, would be contrary to the view of the Security Council as set out in paragraph 1 above.

5. A situation has arisen in certain parts of the Republic of the Congo where, in the absence of action by the United Nations Force, a complete breakdown of law and order is threatened by tribal warfare and in which it may be well-nigh impossible to ensure the safety of any individuals. While such warfare might appear, in some respects, to bear upon internal constitutional conflicts, it is primarily motivated by a long history of animosity between various tribes. Group conflict thus motivated would seem to fall essentially in the law and order field rather than in the field of political conflicts.

6. As an authority charged with the duty of maintaining law and order in relation to conflicts of an essentially non-political character it would appear, therefore, that the United Nations Force has the authority, under the decisions of the Security Council, to take the steps necessary to bring tribal warfare to an end so as to restore order. In so doing, it must be deemed to possess the powers necessary to achieve its purpose. Thus, in emergency or in the critical situation arising out of large-scale tribal fighting, weapons may have to be employed as a measure of self-defence taken pursuant to a command to restore law and order.

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