

**Middle East - Suez story No
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Middle East/Suez story - Nr. 4.

(as put together by Dag Hammarskjöld
and kept in his safe in his office, U.N. HQ)

1955 - 23 March 56

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Preliminary III

(Under papers etc.)

binds mostly up with
correspondence with
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~~(Papers before S. C.)~~

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Middle East / Suez story - 4

21 May 55

Burns, E.L.M. (Gen., Chief of Staff, UNTSO)

- 1 letter from D.H.
- 2 aide-memoire sent by D.H.

STRICTLY CONFIDENTIAL

21 May 1955

Dear General Burns,

..... I enclose two copies of the aide mémoire on the question of the Banat Yakoub canal project in the Demilitarized Zone. Attached to the aide mémoire is a note on legal aspects.

You will observe that the aide mémoire now takes into account the comments made by the Government of the United States. It has been very carefully reviewed internally, and this morning I had a further consultation with the representatives of France, the United Kingdom and the United States. The aide mémoire can now be regarded as final.

It is clear that this aide mémoire should be presented only if there is some initiative on the part of Israel. This initiative might be either (a) a communication from the Government of Israel concerning the resumption of work, (b) actual resumption of work, or (c) substantial evidence which, in the judgment of the Chief of Staff, indicates that resumption of work is imminent. In its present form the aide mémoire is intended to meet situation (a). In situations (b) or (c), paragraph 1 of the aide mémoire should be replaced by paragraph 1 following, a new paragraph 6 inserted after the present paragraph 5, and paragraphs 6 and 7 renumbered accordingly:

General E. L. M. Burns,
Chief of Staff,
United Nations Truce Supervision Organization,
Jerusalem,
Palestine.

"1. It has come to my attention that work in connection with the Banat Yakoub canal project has been resumed (may be resumed) in the Demilitarized Zone established by Article V of the Israel-Syrian General Armistice Agreement. My position as Chief of Staff and Chairman of the Israel-Syrian Mixed Armistice Commission with respect to this work must be governed by the following main considerations:

.....

"6. I must, therefore, for the considerations set forth above, request that the Government of Israel ensure the immediate cessation of the work (that work is not undertaken) in the Demilitarized Zone to which I have referred."

If and when the aide mémoire is presented, the following point may be added orally:

"I have taken advantage of my visit to Headquarters in connection with the Gaza incident to review a number of problems, among them that of the Demilitarized Zone. The position set forth in this aide mémoire has the support of the Secretary-General. The Governments of France, the United Kingdom and the United States have given me to understand that they concur in the aide mémoire and are prepared to support the Chief of Staff in this position."

It will be noted that the resolution of the Security Council of 27 October 1953 refers to the suspension of work "during the urgent examination of the question by the Security Council." In spite of the fact that the argument is based on the position taken by General Bennike, Israel may refer to this resolution and argue that it is no longer in effect. If they should take this line, the following reply might be made:

"Whether or not the operative paragraph of that resolution continues to retain its validity may be open to doubt in view of

the qualifying phrase 'during the urgent examination of the question by the Security Council.' It is not, however, for the Chief of Staff to interpret the resolutions of the Security Council or to express judgments regarding their validity. Only the Security Council can interpret its own resolutions."

One minor point may create some misunderstanding. In paragraph 4 of the aide mémoire, there is reference in the last sentence to paragraph 8 of the draft resolution. In the previous drafts, the reference was to paragraph 10. This was an error in the Official Records of the Security Council, and no attempt was made to correct it in the earlier drafts to avoid any confusion. Now the Security Council's Official Records have been corrected, and the number of the paragraph has also been changed to conform with this correction. The Soviet Representative in his intervention in the Security Council made a reference to paragraph 8. Similarly, in the reference in brackets at the end of paragraph 4 of the aide mémoire, there is in the previous drafts a reference to page 16 of the Security Council record. This was a reference to the provisional record. Page 21 is the correct page in the Official Records.

I am glad to learn from your letter of 5 May that you have no reason to believe that the Israelis may be proposing to resume work in the Demilitarized Zone in the near future. I hope this situation continues until the question can be solved in a broader context. I should be grateful if you would continue to keep me informed of the situation in the Demilitarized Zone and if you would advise me urgently of any developments which may call for the presentation of the aide mémoire to the Israeli Government.

Yours sincerely,

/s/

Dag Hammarskjöld
Secretary-General

STRICTLY CONFIDENTIAL

FINAL TEXT

21 May 1955

AIDE MEMOIRE FOR POSSIBLE USE BY THE CHIEF OF STAFF

1. My position as Chief of Staff and Chairman of the Israel-Syrian Mixed Armistice Commission on the question of the possible resumption of work in the Demilitarized Zone in connection with the Banat Yakoub Canal project must be governed by the following main considerations:

2. A decision on this matter was made by my predecessor, General Vagn Bennike, on 23 September 1953. In paragraph 9 of this decision, the Chief of Staff requested the Israeli Government "to ensure that the authority which started work in the Demilitarized Zone on 2 September 1953 is instructed to cease working in the Zone so long as an agreement is not arranged."

3. Following a Syrian request dated 16 October 1953 the matter was placed on the agenda of the Security Council. On 27 October 1953, the Security Council adopted a resolution in which it deemed it desirable "that the works started in the Demilitarized Zone on 2 September 1953 should be suspended during the urgent examination of the question by the Security Council." By the same resolution the Security Council noted with satisfaction the statement of the Israeli representative regarding the undertaking of his Government to suspend the works in question during that examination.

4. On 22 January 1954 a draft resolution (S/3151/Rev.2) was put to the vote in the Security Council. This draft resolution, although not adopted, is of interest as it reflects the attitude of members of the Council. The draft resolution endorsed the request of the Chief of Staff addressed to the Government of Israel, and requested him "to explore possibilities of reconciling the Israeli and Syrian interests involved in the dispute over the diversion of Jordan waters at Banat Yakoub." The draft resolution also requested the Governments of Israel and Syria to cooperate with the Chief of Staff to this end. Although the draft resolution obtained the support of seven members of the Council, it was not adopted owing to the negative vote of one of its permanent members. In the discussion which preceded the vote, the representative of the permanent member concerned made it clear that the basis of his negative vote was the absence of a reference in paragraph 8 of the draft resolution to the principle of mutual consent of the Parties, namely, the Governments of Israel and Syria. (656th meeting, P. 21)

5. In October 1953 the United States Government initiated efforts to secure the acceptance by Israel and the Arab States concerned of an overall plan for the utilization of the waters of the Jordan. These efforts were actively pursued during 1954 and are now entering a final phase. The Chief of Staff has been kept informed, since the negotiations may have a bearing on the question of the construction of the Banat Yakoub Canal. Unilateral

action by one of the Parties would inevitably have a serious effect on the negotiations.

6. The question of the resumption in the Demilitarized Zone of work connected with the Israeli Canal project, if not resolved in a wider context, should be taken up in the first instance with the Chief of Staff of the United Nations Truce Supervision Organization, in his capacity as Chairman of the Israel-Syrian Mixed Armistice Commission, in accordance with Article V, paragraph 5 of the General Armistice Agreement between Israel and Syria.

7. If the question were taken up formally with the Chief of Staff, the latter would consider it. Bearing in mind the Security Council's resolution of 27 October 1953, he would have to take into account (a) whether or not the conditions posed by his predecessor on 23 September 1953 had been satisfied; (b) the present and future plans for and use of the diversion project in the Demilitarized Zone; (c) the immediate consequences of any new decision on the integrity of the Demilitarized Zone under the Armistice Agreement; and (d) any possible consideration and action by the Security Council which is still seized of the matter following the Syrian request of 16 October 1953. The Chief of Staff considers that during his examination of the matter and pending his decision, work in the Demilitarized Zone must remain suspended.

21 May 1955

NOTE ON LEGAL ASPECTS

Reference is made to the interpretative procedure of Article VII, paragraph 8. General Bennike in his letter of 20 October 1953 to the Israel Minister of Foreign Affairs also referred to this interpretative procedure (paragraph 8). Article VII, paragraph 8 was also noted by the Security Council in its resolution of 18 May 1951 (S/2157).

Israel has, however, questioned the relevance of this paragraph to the interpretation of Article V of the General Armistice Agreement, since Article V refers to the Chairman of the Mixed Armistice Commission and not to the Commission itself, as having the responsibility for ensuring the implementation of Article V. Its position appears to be that the Demilitarized Zone is sovereign Israeli territory subject only to the limitations of Article V, that all matters relating to the Zone are the concern only of Israel and the Chairman of the Mixed Armistice Commission, and that Syria is completely excluded from any interest in the Zone.

This position is not supported by the terms of the General Armistice Agreement. Article VII, paragraph 8 provides:

"Where interpretation of the meaning of a particular provision of this Agreement, other than the preamble and Articles I and II, is at issue, the Commission's interpretation shall prevail."

As General Bennike pointed out in his letter of 20 January 1953,

"Article V is not one of the articles which the Mixed Armistice Commission may not interpret." Articles I and II are expressly excluded from interpretation by the Commission, but there is no exclusion of Article V. Article V is an integral part of the Agreement between Israel and Syria, and neither of the Parties which made the Agreement can be excluded from an interest in its interpretation and execution without a clear provision to that effect. The Chairman of the Mixed Armistice Commission is given express authority with relation to the Demilitarized Zone which he does not have with relation to other parts of the Agreement. But this express authority of the Chairman is not inconsistent with the interpretative function of the Commission, and therefore does not exclude that function.

Furthermore, the General Armistice Agreement does not provide a basis for a claim of sovereignty over the Demilitarized Zone by either Party. In fact Article II, paragraph 2, and Article V, paragraphs 1 and 5 (a) negate such a claim. The reference to Israeli and Arab administration in the authoritative comment of 3 July 1949 is solely within the context of local administration. The same comment specifically states that "Such civilian administration, including policing, will be on a local basis, without raising general questions of administration, jurisdiction, citizenship and sovereignty."

Therefore, should Israel question an interpretation of Article V

made by the Chief of Staff in his capacity as Chairman of the Mixed Armistice Commission, the Chief of Staff would be correct in suggesting that the issue be considered by the Mixed Armistice Commission under Article VII, paragraph 8.