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Press Release

- Progress Report by the Sec. Gen. to the Economic and Social Council on negotiations with USA conc. the interpretation of the H. Q. Agreement
- Supplementary notes to the Progress Report.

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27 July 1953

PROGRESS REPORT BY THE SECRETARY-GENERAL TO THE ECONOMIC  
AND SOCIAL COUNCIL ON NEGOTIATIONS WITH THE UNITED STATES  
OF AMERICA CONCERNING THE INTERPRETATION OF THE  
HEADQUARTERS AGREEMENT

Although the negotiations with the United States on the interpretation and application of the Headquarters Agreement are not yet concluded, it is appropriate that a brief report be made on the matter to the Economic and Social Council.

It will be recalled that earlier this year the United States, invoking a reservation it claimed to have made in becoming party to the Headquarters Agreement, declined to grant visas for transit to United Nations Headquarters to representatives of two non-governmental organizations in consultative relations with the Economic and Social Council. On 9 April 1953, the Council requested a legal opinion on the matter. A memorandum by the Legal Department (E/2397), issued the next day, concluded that under section 11 of the Headquarters Agreement, representatives of non-governmental organizations with consultative status were entitled to transit to and from the Headquarters District, and that this right had not been made the subject of any reservation. The Council later included an item on the provisional agenda of its sixteenth session relating to a report on the result of my negotiations with the United States.

*Principle 1*  
Since then, I and my representatives have been carrying on discussions of the problem with the Permanent Representative of the United States and his staff. It was recognized from the outset that the provisions of the Headquarters Agreement should not be permitted to serve as a cover to enable persons in the United States to engage in activities, outside the scope of their official functions, directed against the security of that country. It was also recognized that under the Agreement, and subject to its purposes, the United States can protect its security

*Principle 2*

(more)

by granting visas valid only for transit to and from the Headquarters District and sojourn in its immediate vicinity, in accordance with section 13(e); the United States also has the authority to make any reasonable definition, consistent with the purposes of the Agreement, of the "immediate vicinity" of the Headquarters District, of the necessary routes of transit, and of the time and manner of expiration of the visa following the completion of official functions. As provided in section 13(b), the United States can carry out deportation proceedings under its laws and regulations against persons admitted under the Headquarters Agreement who abuse the privileges of residence in activities in the United States outside their official capacity.

*See section 27*

In the case of aliens in transit to the Headquarters District exclusively on official business of, or before the United Nations, the rights of the United States are limited by the Headquarters Agreement to those mentioned. However, other cases may arise, the treatment of which under the Agreement will raise questions. I refer to cases in which there is clear and convincing evidence that a representative of a non-governmental organization is coming to the United States purportedly for United Nations business but also, or primarily, for a purpose outside the scope of such activities, and where further the competent authorities of the Government of the United States are satisfied that the admission of that person would be prejudicial to the national security of the United States. In the opinion of the United States representatives, such cases are outside the scope of the Headquarters Agreement, and they therefore hold that in such cases the United States Government is entitled to refuse a visa.

*Special cases*

The United States representatives have assured me that, if in the future there should arise any serious problem with respect to the application in special cases of provisions concerning access to the Headquarters District or sojourn in its vicinity, the matter will receive the most prompt and careful consideration at the highest levels, that timely decisions will be made, and that the United States will consult me and keep me as fully informed as possible, in order to assure that the decision made is in accordance with the rights of the parties concerned.

Also from the United Nations point of view it should be recognized that a person should be excluded from the host country if there is clear and convincing evidence that he intends, in bad faith, to use his trip as a cover for activities against that country's security. This particular problem may well not have been studied and resolved when the Headquarters Agreement was drafted. However,

*SG's opinion*

(more)

I would consider it proper for me to accept a method of application of the Headquarters Agreement which is in accordance with the interpretation put forward by the United States representatives only if such method of application had been explicitly authorized by the competent organ.

In giving this account of the negotiations to the Economic and Social Council, I have therefore to report that there is a measure of agreement which may help to remove difficulties over the matter in the future, and I venture to express the hope that any remaining questions will be resolved satisfactorily in the application of the Headquarters Agreement or in further negotiations with representatives of the United States.

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SUPPLEMENTARY NOTES TO THE PROGRESS REPORT

TO THE ECONOMIC AND SOCIAL COUNCIL

I. The purposes of the Headquarters Agreement

The principal purpose of the Headquarters Agreement is set out in section 27, which provides:

"This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently to discharge its responsibilities and fulfil its purposes."

It is obvious that this provision has two aspects. On the one hand, it ensures that the application of the Agreement by the host country shall be such as to give effect to this purpose; on the other hand, the United Nations cannot claim rights under the Agreement which are not necessary for the primary purpose of enabling it at its Headquarters fully and efficiently to discharge its responsibilities and fulfil its purposes.

II. Right of the United States to grant restricted visas

Section 11 of the Headquarters Agreement provides that the United States is obligated not to impose "any impediments to transit to or from the Headquarters district" of persons in the classes named in that section. Section 13 provides that United States laws and regulations shall not be applied in such manner as to interfere with the privilege of transit to or from the Headquarters district provided in section 11.

Under section 13(d), however, the United States otherwise retains full control over the entry of persons into its territory and of the conditions under which they may remain or reside there, and under section 13(e) the United States has full discretion to decide to grant a visa restricted to transit to and from the Headquarters district and sojourn in its immediate vicinity, instead of an unrestricted visa valid for all its territory. It is, of course, understood that these provisions should be interpreted in a reasonable manner and in the light of section 27.

III. Position of the United States on cases which may raise questions

The position of the United States, as understood by the negotiators

for the United Nations, was that the United States has a right to deny a visa only if it shows clear and convincing evidence that the extraneous purpose of the voyage outside the scope of United Nations business is prejudicial to the national security of the United States.

IV. Right to arbitration maintained

The procedure of information and consultation to be followed by the United States does not supplant the arbitration procedure provided in section 21 of the Headquarters Agreement. In accordance with that section, if a dispute is not settled by negotiation recourse to arbitration may be had either in a particular case or with respect to a particular legal principle.

V. Meaning of "it should be recognized"

The report states that "Also from the United Nations point of view it should be recognized that a person should be excluded..." etc. As shown by the last sentence of the paragraph, this does not mean that this principle is now recognized by the Secretary-General as a valid interpretation of the Headquarters Agreement, but merely that it would be reasonable and proper for the competent United Nations authority to recognize it.

VI. "The competent organ"

The United States interpretation could properly be accepted on behalf of the United Nations by the General Assembly alone, which originally approved the Headquarters Agreement.

VII. "A measure of agreement"

The United Nations and the United States are in agreement on the legal rights of the parties in all cases where clear and convincing evidence cannot be shown that there is an extraneous purpose for the voyage outside

the scope of United Nations business, which purpose is prejudicial to the security of the United States. The United States will take timely action on the highest levels to reach its decision whether a particular case really falls within this category.

VIII. "Remaining questions"

The remaining questions which may have to be settled in the future relate to the special category of cases where there is clear and convincing evidence that the national security of the United States is involved. These questions may be settled by acceptance of the United States interpretation by the appropriate authority, by negotiation, or by arbitration.