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Korea - 1954

6 - 11 Feb.

Menon, Krishna (Perm. Represent.
of India to the U.N.)

- 1 letter to D.M.
- 1 letter from D.M.

C O P Y

INDIA DELEGATION
TO THE UNITED NATIONS
3 East 64th Street
New York 21, N. Y.
Tel.: TRafalgar 9 - 7800

February 6, 1954

Excellency,

I have the honour to inform you that the Government of India have directed me to place before you for your information and for such action as you may consider appropriate and for such guidance as you may feel able to give to the Government of India in the matter of certain prisoners of war formerly under the detention of the United Nations Command.

These aforesaid prisoners are seventeen (17) in number.

Paragraphs 92 and 93 of the Interim Report of the Neutral Nations Repatriation Commission and paragraphs 8, 11 and 13 of the "Separate Interim Report of the Swedish and Swiss Members of the Neutral Nations Repatriation Commission", to which I have the honour to request your reference, set out that these murders and other grave offences were in fact committed.

Annexure XIX to the Interim Report of the Neutral Nations Repatriation Commission sets out the particulars of the nine cases of suspected murder.

After the necessary investigations and in the light of medical and other evidence, the Custodial Force, India, as was its duty and in accordance with the views of the Commission, brought the suspects to trial.

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Prima facie cases in respect of the offences charged have been established, according to lawful procedures, against the prisoners concerned. The prisoners of war have been defended by the United Nations Command.

The trials could not be completed before the 23rd of January. Therefore the seventeen prisoners of war, against whom as aforesaid, prima facie cases in respect of the offences charged have been established and whose trial and punishment if found guilty are enjoined by law and all considerations of justice and public policy, are detained by the N.N.R.C. and are still in the custody of the Custodial Force, India.

It has been the intention and desire of the Neutral Nations Repatriation Commission to complete the trials before the date of the dissolution of the Commission on the 22nd of February. Intimation that the trials would be continued, as is enjoined by Article 119 of the Geneva Convention, and requests to both sides to extend their co-operation, was conveyed to the two Commands by the Chairman of the Neutral Nations Repatriation Commission.

The Government of India direct me to inform you with regret that the United Nations Command have declined to give the essential facilities for the continuance of the trials according to due processes. Entry to personnel whose presence at the trial proceedings is essential has been refused by the United Nations Command.

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On the 21st of January, 1954, the Chairman of the Neutral Nations Repatriation Commission received a communication from the United Nations Command which purported to inform the Chairman of the N.N.R.C. that the jurisdiction of the N.N.R.C. and the C.F.I., which alone would enable the trials to be continued, would terminate absolutely at midnight on the 22nd of January.

The said communication further set out that the Terms of Reference made no exception which would permit the N.N.R.C. or the C.F.I. to retain by force after midnight of the 22nd of January any of the persons transferred as prisoners to their custody, whether accused, or convicted or mere witnesses of alleged crimes.

The United Nations Command further intimated that the N.N.R.C. and the C.F.I. have therefore no legal recourse other than release of the accused and suspects concerned, and to do so not later than 0001 hours on the 23rd of January.

The said communication also made the suggestion that, at the time of the release, the record of the trials, to date, together with any other data and recommendations should be turned over to the United Nations Command for such further action as they may deem appropriate.

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The Government of India, anxious to carry out their obligations arising both from their Chairmanship of the N.N.R.C. and the duties and responsibilities which attach to that office as the Executive Agent of the Commission, as well as from the status and functions of the Custodial Force of India, anxious further to carry out the obligations arising both from the Terms of Reference and enjoined by the provisions of the Geneva Convention, have given the most careful consideration to the situation that has arisen and continues to exist.

The release of prisoners against whom prima facie cases of murder and other grave offences have been established appears to the Government of India to be open to grave objection. To do so, appears to them to amount to the disregard of and connivance at the evasion of law and justice and contrary to considerations of public policy and the provisions of the Geneva Convention.

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It is not evident to the Government of India how the turning over of records of the trials, after the release of the prisoners of war, as demanded by the United Nations Command, can serve the ends of justice and the requirements of the law relevant to the present issue. It is also not evident how further appropriate action can be taken except as continuation of the trial proceedings, in which the United Nations Command, it might be added relevantly, conducted the defence. Other parties who were concerned or

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or participated in the proceedings, hitherto, would also appear to be necessary elements in the further conduct of the trials and to meet the ends of law and justice.

For all these reasons, and as already stated, the Chairman of the Neutral Nations Repatriation Commission sought the co-operation of the United Nations Command to continue the trial proceedings and has declined to release the prisoners. The endeavours to proceed with the trial with a view to bringing it to an end as speedily as possible, consistent with due processes, have, however, met with lack of co-operation from the United Nations Command and neither necessary witnesses nor defence counsel have been permitted access or been made available.

The Commission is due for dissolution on the 22nd of February and a decision as to the course of action to be taken in respect of this matter becomes increasingly urgent.

The Government of India are willing and ready, now as after the dissolution of the Commission and as in duty bound, to offer their co-operation, in any further proceedings, which accord to due processes and meet the ends of justice. They desire to express their grave concern in this matter, cognisant on the one hand of the demand by the United Nations Command for the release of undertrial prisoners charged with grave offences, and on the other of the requirements of the Geneva Convention, of justice and public

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policy. They feel that any dereliction of duty or lapse in this regard would be a grave reflection on all concerned and would impair the prestige of the United Nations and faith in International Law and Justice.

In view of the impending dissolution of the Commission, the repeated demands by the United Nations Command for the release of the prisoners concerned, their views as set out in their communication, the incapacity of the Custodial force, India, to continue custody after the 22nd of February, and the issues involved in leaving the situation unresolved, the Government of India have felt that the rightful course is to inform and notify the United Nations.

The General Assembly not being in session, the Government of India have considered that the only and appropriate course is to refer this matter to your Excellency, as Secretary-General, and the Chief Administrative Officer of the United Nations, as set out in Chapter XV, and specifically Article 97, of the Charter.

The Government of India desire me to state as their considered view that the release of the Prisoners-of-War, as demanded by the United Nations Command, would constitute a grave disregard of law and justice.

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The Government of India further desire me to assure you, Excellency, that in their approach to this grave problem and in directing me to make this communication to you, they are actuated by the sole desire to adopt courses of conduct which are in conformity with law and justice and the principles and purposes of the United Nations; to promote all of which they are willing and ready to offer every co-operation.

With assurances of my highest consideration.

V.K.Krishna Menon (sign)

His Excellency, Mr. Dag Hammarskjold
Secretary-General,
United Nations,
New York

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11 February 1954

IN REPLY
PLEASE QUOTE NO.

Sir,

I have the honour to acknowledge the receipt of your letter of 6 February 1954, concerning the cases of seventeen prisoners of war formerly under the detention of the United Nations Command, and now in the custody of the Custodial Force, India.

I fully appreciate the desire of the Government of India, as evidenced in your communication to me, for the application of the principles of law and justice in dealing with the cases in question. The United Nations has a legitimate interest in the maintenance of law and justice and in particular in the observance of the principles of international law as embodied in the Geneva Convention. In view of the question of justice involved in this case I, therefore, think it appropriate for me, in compliance with your request, to transmit to you the legal opinion expressed to me by the experts of the Organisation.

An examination of the Geneva Convention in relation to the Armistice Agreement leads to the conclusion that the Neutral Nations Repatriation Commission, in assuming custody of prisoners of war, also acquired the right of taking those judicial and disciplinary measures which are accorded to a Detaining Power under the Geneva Convention. The jurisdiction of the Neutral Nations Repatriation Commission, however, was characterized as "temporary" by paragraph 7 of its Terms of Reference, and paragraph 11 of those Terms prescribes definite dates for the termination of prisoner of war status and for the dissolution of the Commission. It is doubtful whether the provisions of Article 119 of the Geneva Convention concerning detention of prisoners for trial and punishment could continue to be applied beyond the deadlines laid down in paragraph 11 of the Terms of Reference.

Mr. Krishna Menon
Permanent Delegation of India to the United Nations
3 East 64th Street
New York 21, N.Y.



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FILE NO.:

On the other hand it would seem that jurisdiction exercised by a Detaining Power over offences committed by prisoners of war is, as a matter of principle, confined to offences committed while they are in the custody of that Power. For this reason the United Nations Command may find itself without jurisdiction over acts done when the accused prisoners were not in its custody, but in that of the Neutral Nations Repatriation Commission.

I do not feel that the information available to me is adequate or complete enough to enable me to render an opinion upon the subject raised in your letter beyond these general observations. Sound legal conclusions would necessarily rest upon full relevant information. Although I am now in possession of the exchange of letters between the Custodial Force, India and the United Nations Command, time has not permitted us to get a full knowledge of the facts and an analysis of the legal considerations as they might appear to the United Nations Command as the responsible agency of the United Nations in connection with the Korean case.

I would add, that I do not believe that under all the circumstances, it would be in the basic interest of the office of the Secretary-General to attempt to formulate any concrete recommendations as to the action that should be taken as such recommendation would require an evaluation of the situation outside the scope of competence of that office. However, if the situation envisaged in the letter of the Unified Command of 2 February 1954 were to arise, I would consider that it would be proper for the NNRC - in availing itself of the promise of the Command to transmit recommendations from the NNRC to the Governments concerned - to recommend that all necessary steps be taken for continued prosecution of the alleged crimes by due process of law.

I am sending a copy of this letter to the Unified Command for their information.

Accept, Sir, the renewed assurances of my highest consideration.

Dag Hammarskjöld
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12 February 1954

Dear Mr. Ross,

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With reference to the meeting here yesterday I am enclosing five copies of the final text of Mr. Hammarskjold's reply to Mr. Menon's letter concerning the cases of seventeen prisoners of war in the custody of the Indian Custodial Forces. The Secretary-General would appreciate it if you would be good enough to transmit a copy of his letter to the Unified Command.

Yours sincerely,

Per Lind
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