

Small files: Korea: Small files: Korea - 20

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- Petitpierre, Max (Head of Swiss Federal
Political Dept.)

- 1 letter from D.M
- 1 encl.

le 29 août 1957

Mon cher Petitpierre,

Il s'est écoulé un certain temps déjà depuis que j'ai eu le plaisir de vous voir lors de votre visite à Genève. J'ai été infiniment heureux d'avoir avec vous un de ces entretiens francs et amicaux auxquels j'attache tant de prix. L'incident syrien, qui a assombri la soirée, m'a fait précipiter mon retour à New-York mais, comme vous l'aurez constaté, nous avons pu mettre un terme à ce chapitre rapidement et de façon raisonnablement satisfaisante.

... Je vous avais promis de réfléchir à la question de la Commission neutre de contrôle de l'armistice en Corée. Vous trouverez ci joint une étude sur les aspects de procédure de la question, préparée par notre Service juridique. Personnellement, j'en approuve la teneur.

Pour ce qui est de la question de politique générale, j'ai continué d'y réfléchir mais je n'ai guère à ajouter à ce sur quoi nous nous étions mis d'accord. Je n'ai pu "prendre la température" de façon plus précise et tout ce que je puis donc vous dire, c'est qu'un retrait, quoique sans doute bien moins grave à l'heure actuelle qu'il ne l'aurait été au cours de ces deux dernières années, risque néanmoins de déclencher quelques événements déplaisants. C'est pourquoi, même si j'avais qualité pour donner un avis dans une question de ce genre, il me serait très difficile de le faire. Professionnellement, je serais naturellement enclin à éviter en l'occurrence tout changement tant que ce changement ne sera pas devenu une nécessité.

Je me rends compte que mes conseils se ramènent à fort peu de chose, mais j'espère que le mémoire du Service juridique vous sera de quelque utilité. Vous ne verrez aucun inconvénient, j'en suis sûr, à ce que je communique aussi le texte de ce mémoire à la délégation de la Suède auprès de l'Organisation.

Recevez, mon cher Petitpierre, l'assurance de ma meilleure amitié.

Son Excellence
Monsieur Max Petitpierre,
Conseiller fédéral,
Chef du département politique fédéral,
Berne, Suisse.

Dag Hammarskjöld
Secrétaire-général

PROCEDURE FOR WITHDRAWAL FROM THE NEUTRAL NATIONS SUPERVISORY COMMISSION

1. A question has been raised concerning the possible procedure which might be followed by Switzerland in withdrawing from participation in the Neutral Nations Supervisory Commission established under Articles 36 - 50 of the Korean Armistice Agreement.

2. The text of Article 37 of the Armistice Agreement which defines the composition of the Neutral Nations Supervisory Commission is as follows:

"The Neutral Nations Supervisory Commission shall be composed of four (4) senior officers, two(2) of whom shall be appointed by neutral nations nominated by the Commander-in-Chief, United Nations Command, namely, SWEDEN and SWITZERLAND, and two (2) of whom shall be appointed by neutral nations nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, namely, POLAND and CZECHOSLOVAKIA. The term 'neutral nations' as herein used is defined as those nations whose combatant forces have not participated in the hostilities in Korea. Members appointed to the Commission may be from the armed forces of the appointing nations. Each member shall designate an alternate member to attend those meetings which for any reason the principal member is unable to attend. Such alternate members shall be of the same nationality as their principals. The Neutral Nations Supervisory Commission may take action whenever the number of members present from the neutral nations nominated by one side is equal to the number of members present from the neutral nations nominated by the other side."

3. The Armistice Agreement does not provide for withdrawal from participation in the Commission. It is understood, however, that Switzerland accepted on a temporary basis on the understanding that it would be for a limited and relatively short time. The period envisaged has long since elapsed and Switzerland considers itself free to withdraw and has not asked for our opinion on this point. The question on which advice is desired is: "To whom should the notice of withdrawal or resignation be addressed?"

4. Several possible alternatives may be examined. The first is that the resignation might be made to the United Nations Command. Article 37 provides that two of the senior officers composing the Commission "shall be appointed by neutral nations nominated by the Commander-in-Chief, United Nations Command, namely, SWEDEN and SWITZERLAND". However, while Switzerland is nominated by the United Nations Command its place on the Commission is given by the Armistice Agreement itself which is signed by the Commander-in-Chief, United Nations Command, on the one hand and the Commanders of the Korean People's Army and the Chinese People's Volunteers on the other. That the nomination was not a completely unilateral act on the part of the United Nations Command but required acceptance by the other side is demonstrated by the fact that the other side originally nominated the

Soviet Union as a neutral and this was rejected by the United Nations Command.* Subsequently, Poland and Czechoslovakia were nominated and accepted. Moreover, the nature of the functions of the Neutral Nations Supervisory Commission indicate that the Neutral Nations are not considered as agents of the party which nominated them, but have an independent position defined in the Armistice Agreement.

5. On balance, therefore, it would not appear appropriate that the resignation or notice of withdrawal should be submitted to the United Nations Command alone.

6. A second possibility is that the resignation might be made to the Military Armistice Commission. The Military Armistice Commission is composed of representatives of both sides (5 senior officers for each side). (See paragraph 20 of the Armistice Agreement.) Its general mission is to supervise the implementation of the Armistice Agreement (see paragraph 24 of the Armistice Agreement.)

7. Specific functions of the Military Armistice Commission relating to the Neutral Nations Supervisory Commission are defined in paragraphs 25(g) and 26. These provide as follows:

"25(g). Transmit immediately to the Commanders of the opposing sides all reports of investigations of violations of this Armistice Agreement and all other reports and records of proceedings received from the Neutral Nations Supervisory Commission."

"26. The Military Armistice Commission, or the senior member of either side thereof, is authorized to request the Neutral Nations Supervisory Commission to conduct special observations and inspections at places outside the Demilitarized Zone where violations of this Armistice Agreement have been reported to have occurred."

8. In turn the functions of the Neutral Nations Supervisory Commission are closely related, although not subordinate, to the Military Armistice Commission. Paragraph 41 of the Armistice Agreement provides:

"The mission of the Neutral Nations Supervisory Commission shall be to carry out the functions of supervision, observation, inspection, and investigation. . . . and to report the results of such supervision, observation, inspection, and investigation to the Military Armistice Commission." (Underlining added)

9. Article 42(a) provides that the Neutral Nations Supervisory Commission shall locate its headquarters in proximity to the headquarters of the Military

* See special report of the United Nations Command on the Armistice in Korea (S/3079, pages 9 - 10)

". . . But the Communists further delayed the negotiations by nominating the Soviet Union as a 'neutral'; this was of course unacceptable to the United Nations Command."

Armistice Commission. Article 45 states that copies of the record of the proceedings of all meetings of the NNSC shall be forwarded to the Military Armistice Commission as soon as possible after each meeting. Under Article 47 copies of reports of the Neutral Nations Inspection Teams and findings of the NNSC are to be forwarded to the Military Armistice Commission, and Members of the NNSC and of its teams may be asked to appear before the Military Armistice Commission for clarification of any report submitted. Finally, under Articles 49 and 50 the Neutral Nations Supervisory Commission may make recommendations to the Military Armistice Commission with respect to amendments or additions to the Armistice Agreement ^{1/} and the NNSC or any member thereof is authorized to communicate with any member of the Military Armistice Commission.

10. In view of the nature of the relationship between the Neutral Nations Supervisory Commission and the Military Armistice Commission and the fact that both sides to the Armistice Agreement are represented on the Military Armistice Commission, the latter would seem an appropriate organ to which notice of withdrawal might be submitted.

11. An even more appropriate procedure, however, might be a variation of the above. This would be the submission of the notice of withdrawal to the Military Armistice Commission for transmittal to Commanders of the opposing sides. This would be analogous to the procedure for recommendation of amendments to the Armistice Agreement (see paragraphs 49, 35 and 61). This latter procedure would follow the usual channel of communication through the Military Armistice Commission and at the same time would give direct notice to the parties to the Agreement by which the Neutral Nations were appointed.

12. Other alternatives might also be considered. Switzerland might wish to give the notice to the United Nations (either the Secretary-General or the General Assembly). However, for Armistice matters the Unified Command is the authorized organ of the United Nations, and there seems to be no need to bring in either the General Assembly or the Secretary-General. Another possibility would be for the Swiss Government to notify the United States Government in its capacity as the Unified Command. However, this has the same objection as the alternative discussed in paragraph 4 above that the notification is one party only. It might also be considered whether the Government of Switzerland would prefer to deal directly with other Governments concerned, rather than through the Armistice organs. However, this might raise difficult political questions particularly in connexion with the North Korean authorities, and would seem to be neither necessary nor appropriate since the problem is one arising directly under the Armistice Agreement. Finally, it might be possible to merely make a public announcement of the fact of withdrawal. This might be used as a last alternative if no other procedure seems suitable or possible. However, it seems preferable, if practicable, to follow a more diplomatic approach.

13. In conclusion it is, therefore, suggested that the most appropriate procedure would be for Switzerland to give notice of its intention to withdraw from participation in the Neutral Nations Supervisory Commission to the Military Armistice Commission for transmittal to the Commanders of the opposing sides.

^{1/} The MAC may in turn make recommendations to the Commanders of the opposing sides (paragraph 35). Amendments and additions must be mutually agreed by the Commanders of the opposing sides (paragraph 61).