

Congo. U.N. Advisory Committee on the Congo - correspondence, statements, p...

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Congo - 1961

27 March

Draft to be considered as basis of discussion of the Agreement on Status of the U.N. in the Congo.

- to the Members of the Advisory Committee

27 March 1961

TO: The Members of the Advisory Committee

In accordance with the request of members of the Advisory Committee there is submitted herewith for information of the Committee a draft which has been presented as basis of discussion of the Agreement on Status of the United Nations in the Congo.

As the Committee has been informed, a copy of this draft was submitted to the Foreign Minister of the Republic of the Congo by the Special Representative of the Secretary-General about 1 September 1960.

DRAFT TO BE CONSIDERED AS BASIS OF DISCUSSION OF MEMORANDUM
EMBODYING AGREEMENT ON STATUS OF UNITED NATIONS IN THE CONGO

THE UNITED NATIONS AND THE REPUBLIC OF THE CONGO:

Desiring to conclude an agreement for the purpose of carrying out the resolutions of the Security Council concerning the Republic of the Congo, and to determine the details of the application of their basic agreement of 27 July 1960;

Recalling the request of the Government to the United Nations for military assistance and its acceptance of the resolutions of the Security Council: and

Having regard to the provisions of the United Nations Charter for mutual assistance in carrying out the measures decided upon by the Security Council, and for the privileges and immunities necessary for the fulfillment of the purposes of the United Nations;

HAVE AGREED AS FOLLOWS:

Respect for local law and international status

1. Members of the United Nations Force in the Congo and all officials serving under the United Nations in the Congo shall respect the laws and regulations of the Republic of the Congo. They shall refrain from any activity of a political character in the Congo and from any action incompatible with their international responsibilities. The Special Representative of the Secretary-General shall ensure the observance of these obligations.

Entry, exit and identification

2. Members of the Force shall be exempt from passport and visa regulations and immigration inspection or restrictions. Their first entry into the territory of the Congo may be by military movement order and national military identity card. Thereafter the personal identity card issued them under the authority of the Special Representative of the Secretary-General in consultation with the Minister of the Interior shall be recognized by all authorities as valid and sufficient identification. Members of the Force may be required to present but not to surrender their identity cards.

3. Officials serving under the United Nations in the Congo and their families shall be exempt from immigration restrictions and alien registration. The United Nations laissez-passer shall be recognized as a valid travel document and no visa thereon shall be a prerequisite to entry of the holder to the territory of the Congo. In addition to the personal identity card issued them by the Special Representative of the Secretary-General in consultation with the Minister of the Interior, their United Nations laissez-passer shall be recognized by all authorities as a valid identity document.

Jurisdiction

4. Members of the Force shall be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offences which may be committed by them in the Congo. They shall be immune from arrest or detention by the Congolese authorities.

5. Members of the Force and officials serving under the United Nations in the Congo shall be immune from legal process in respect of all acts performed by them in their official capacity.

6. In respect of matters not falling within paragraphs 4 or 5 above, the Government in the exercise of its sovereignty undertakes to refrain from

any act of arrest, detention, seizure of personal property, or other form of legal process against members of the Force or officials serving under the United Nations in the Congo or their dependents until after completion of the following procedures:

a. In the event of the authorities of the Government having proof of an offence against the penal laws of the Republic of the Congo by any such official or dependent, all the evidence shall be communicated to the Special Representative of the Secretary-General, who shall conduct any supplementary enquiry necessary to obtain any evidence available within the United Nations. The Government and the United Nations will then arrive at a common agreement as to whether the international organization should institute disciplinary procedures within the terms of its appropriate regulations or whether the Government will institute legal action. Failing a common accord, this question will be submitted to arbitration at the request of either party.

b. In the event of any damage of a private law character being alleged to result to a citizen or resident of the Congo from an act performed by a Member of the Force or an official in the course of his official duties, the dispute shall be settled by the United Nations by negotiation or other agreed mode of settlement; if this fails, the matter shall be submitted to arbitration at the request of either party.

c. In the event that evidence is presented of a private civil liability on the part of any member of the Force or official serving under the United Nations in the Congo or his dependent, and arising

out of his presence in the Congo but not related to his official duties, the United Nations shall use its good offices to assist the parties in arriving at a settlement. If the dispute cannot be settled in this manner, or by other agreed mode of settlement, it shall be submitted to arbitration at the request of either party.

7. The foregoing arrangements concerning jurisdiction are made having regard to the special functions of the United Nations in the Congo, and are not for the personal benefit of members of the Force or officials. The Special Representative shall arrange in consultation with the Government, for any arbitration machinery necessary to hear and decide such disputes as may arise under paragraph 6 above. He may, should he find it warranted, establish a Claims Commission for the processing of all or any types of claims so arising.

7. The Supreme Commander of the United Nations Force in the Congo shall take all appropriate measures to ensure the discipline and good order of members of the Force. To this end United Nations military police may police the premises occupied by the United Nations, the areas in which the Force is deployed, and, in liaison with local authorities, wherever necessary to maintain such discipline and order. The military police shall have the power of arrest over members of the Force.

9. When essential to the performance of its functions the military police or other units of the Force may conduct investigations and may take into custody any other person, without subjecting him to the ordinary routine of arrest, in order to deliver him to the nearest appropriate Congolese authorities.

10. The United Nations and the Congolese authorities shall assist each other in the carrying out of all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses, and in the collection and production of evidence.

Privileges and immunities

11. The United Nations, its property and assets, and the property and assets in the Congo in connexion with the Force of States contributing to the Force, are immune from every form of legal process, and from search and requisition, and from any other form of governmental interference. The documents of the United Nations and of the contributing States are inviolable, wherever located.

12. The United Nations, its property and assets, and the property and assets of the contributing States, are exempt from taxes. All articles, supplies, equipment and publications imported by the United Nations or its agents or the contributing States in implementation of any part of the United Nations programme in the Congo are exempt from customs duties and from restrictions on import or export. The United Nations right of import includes amenities for sale exclusively to members and officials in service institutes.

13. Arrangement shall be made for the remission or return to the United Nations of the amount of any duties or taxes which are included in the price paid by the United Nations in any important purchases which it may make in the Congo.

14. Members of the Force and officials serving under the United Nations in the Congo shall be exempt from direct taxes. They shall have the right to import free of duty their personal effects in connexion with their taking up their post in the Congo: Their papers and documents shall be inviolable.

Currency

15. The funds, currencies and accounts of the United Nations are free from financial controls.

16. The Government will, on request by the United Nations, make available to the United Nations against reimbursement in United States dollars or other currency mutually acceptable, Congolese currency required for the use of the United Nations activities and programmes in the Congo, including the pay of the members of national contingents, at the most favourable official rate of exchange.

17. Officials serving under the United Nations in the Congo shall be accorded the same facilities in respect of currency or exchange restrictions as are accorded to officials of comparable rank forming part of diplomatic missions to the Government.

18. On their departure from the Congo members of the Force shall be entitled, notwithstanding any foreign exchange regulations, to take with them such funds as the appropriate United Nations finance officer or contingent paymaster certifies were received in pay and emoluments from the United Nations or respective national government for service in the Congo and are a reasonable residue thereof.

Premises

19. The Government shall provide, in agreement with the United Nations accommodation service, such buildings or areas for headquarters camps, or other premises as may be necessary for the accommodation and the fulfillment of the functions of the United Nations. Without prejudice to the fact that all such premises remain Congolese territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. This authority may extend to the adjacent public ways to the extent necessary to regulate access to the premises. The United Nations alone may consent to the entry of any governmental or police officials to perform duties on such premises, or of any other person. Legitimate public access shall be assured.

20. Where premises are obtained which theretofore were privately occupied and a source of income, the Government will assist the United Nations to lease them at a reasonable rental.

Flag

21. The Government recognizes the right of the United Nations to display the United Nations flag on its headquarters, camps, posts or other premises, vehicles and vessels and otherwise as determined by rules of the Special Representative of the Secretary-General. Other flags or pennants may be displayed only in exceptional cases, such as the national holiday of the contingent concerned, and in accordance with conditions prescribed by the Special Representative.

Local personnel

22. The United Nations may recruit locally such personnel as it requires. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Special Representative of the Secretary-General and shall generally, to the extent practicable, follow the practice prevailing in the locality. No Congolese authority shall seek to influence them directly or indirectly in the performance of their duties. All decisions as to their recruitment and the continuance or cessation of their employment with the United Nations shall lie within the sole authority of the Special Representative of the Secretary-General, after consideration, however, of any appropriate evidence submitted to him.

23. The United Nations will claim no privilege with respect to locally recruited personnel but will assert its right only to immunity from legal process in respect of acts performed by them in the course of their official duties.

Movement

24. The United Nations, the members of the Force and the officials serving under the United Nations in the Congo shall enjoy full freedom of movement throughout the Congo and to and from points of access to Congolese territory. This freedom extends to the operation of all vehicles, aircraft, vessels and equipment in the service of the United Nations.

25. The United Nations shall have the right to the use of roads, bridges, waterways, port facilities and airfields without payment of dues, tolls or charges either by way of registration or otherwise, except for charges directly related to itemized services rendered.

26. United Nations vehicles, aircraft and vessels shall carry a distinctive United Nations identification mark. They shall not be subject to registration or licensing under Congolese laws or regulations.

Communications

27. In all matters of official communications treatment the United Nations shall enjoy conditions not less favourable than those accorded by the Government to any other Government or diplomatic mission. No censorship shall be applied to the official correspondence or other official communications of the United Nations or of the contingents of the Force in communicating with their Governments.

28. The United Nations and the contingents shall have the right to use codes and to despatch and receive their correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

29. The Government recognizes the right of the United Nations to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Force or officials serving under the United Nations in the Congo. The Government will be informed of such arrangements. No interference shall take place with, and no censorship shall be applied to, this mail by the Government. By agreement with the Government postal arrangements may be extended to operations involving parcels and money orders.

30. The United Nations has the authority to install and operate in the Congo radio sending and receiving stations to connect at appropriate points and exchange traffic with the United Nations radio network.

The United Nations will duly communicate to the Government and to the International Frequency Registration Board the frequencies on which any such station may be operated.

31. The United Nations shall enjoy throughout the Congo the right of unrestricted communication by radio, telephone, telegraph or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the United Nations, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations.

Utilities

32. The United Nations shall have the right to the use of water, electricity and other public utilities at rates not less favourable than those to comparable consumers. It will have the same priority as essential Government services in the event of interruption or threatened interruption of service.

Uniform

33. Members of the Force shall normally wear the uniform prescribed by the Supreme Commander but may wear civilian dress under conditions determined by him. Members of the Force may possess and carry arms while on duty in accordance with their orders.

Deceased members

34. The Supreme Commander shall have the right to take charge of and dispose of the body of a member of the Force who dies in Congolese territory and may make appropriate disposition of his personal property.

Liaison

35. The Supreme Commander and the Congolese authorities shall take appropriate measures to ensure close and reciprocal liaison between the United Nations and the Congolese authorities at both national and local levels. In particular, a United Nations Liaison Officer will be established at Congolese National Army Headquarters.

36. At airports necessary to the effective functioning of the Force, the United Nations alone will control arrivals and departures of aircraft operating on its behalf, whether these are transporting military or civilian personnel or material. Civilian officials of the Government will control all other arrivals and departures. Liaison will be maintained at each airport in order to prevent any conflict of functions in this respect.

37. In fulfilling their duties of liaison both parties will take into full account the essential differences in their mandates:

a. Full responsibility for the implementation of domestic legislation and regulations rests with the Congolese authorities. As an international Force having its own responsibilities in the field of public order, peace and security, the United Nations does not apply domestic regulations and procedures but must act in accordance with its interpretation of the mission assigned it by the Security Council.

b. Congolese law-enforcement authorities have the right to have recourse to force in conformity with the law; the United Nations may not resort to the use of force except in self-defence, and then only after having exhausted every peaceful means.

In view of the impossibility of having two security systems acting in competition, both parties accept an obligation to coordinate their actions in the field of public order and adopt the principle of mutual consultation. Whenever the actions of any units of the Army, Gendarmerie or Police might create a conflict of competence in the domain of public order, the respective authorities will proceed to immediate consultations with the nearest units of the United Nations Force. Such a conflict will be adjusted by a common understanding. In particular, if a situation arises in which it appears that the use of force could be required, the respective authorities will first enter into immediate consultation with the nearest unit of the United Nations Force.

Supplemental arrangements

38. Supplemental details for the carrying out of this Agreement shall be made as required between the Special Representative of the Secretary-General, or as the case may be by the Supreme Commander, and the appropriate Congolese authorities designated by the Government.

39. The United Nations and the Government will from time to time, at the request of either party, review the provision of this agreement in the light of the progressive development of public functions in the Congo and enter into a common agreement concerning any necessary amendments. Any dispute between the United Nations and the Congolese Government concerning the interpretation or application of this agreement which is not settled by other agreed means shall be referred to arbitration.

40. Whenever this agreement imposes obligations on the Government or the Congolese authorities, the central Government of the Republic of the Congo shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate Congolese authorities, whether central, provincial or local.

Duration

41. Upon the signature of this agreement by the duly authorized representatives of both parties, it shall be deemed to have taken effect as from the date of the arrival of the first element of the Force in the Congo. Those of its provisions specifically relating to the Force or its members shall remain in effect until the departure from the territory of the Congo of the last element of the Force and its equipment. Those provisions relating generally to the United Nations or officials serving under the United Nations in the Congo shall remain in effect until this agreement has been superseded or until such earlier date as shall be determined by a common accord between the parties.