

# The last desk file - from Dag Hammarskjöld's desk in his office, found afte...

*HS L 179:176a*



Dag Hammarskjöld's saml.

The last "desk-file" - 61

7 Sept.

- Observations on the legal aspects of the present Katanga Situation, by O. Schachter
- Press clipping conc. Katanga

O. Schachter  
7 September 1961

OBSERVATIONS ON THE LEGAL ASPECTS OF THE PRESENT KATANGA SITUATION

---

In the absence of more detailed information regarding the threatened hostilities, and the specific measures that are proposed to be taken by the United Nations troops, one cannot reach definitive legal conclusions on the issues raised by the recent cables. However, the following summary observations may serve as a guide for the time being.

- 1) The United Nations mandate to maintain law and order authorizes it to occupy positions and deploy troops to protect civilians in cases of inter-tribal warfare or in cases where there is a danger of violence.
- 2) Similar authority exists under paragraph 1 of Security Council resolution of 21 February 1961 to take preventive action where there is incitement to, or actions in preparation of, civil war.
- 3) Moreover, the United Nations Force is clearly entitled to use the necessary force in self-defense in response to attempts to compel them to withdraw from positions or attempts to infiltrate and envelop such positions in a way as to jeopardize their safety. Such self-defense measures may also be taken to resist attempts to injure or abduct United Nations personnel.
- 4) Self-defensive measures by the U.N. Force would also be justified where there is evidence of a clear danger that U.N. troops may be subject to imminent attack. In such cases, defensive action may be taken to disarm or detain those preparing the attack.
- 5) Whether or not reports of preparation for, or incitement to, violence justify the use of preventive or defensive force by United Nations troops can only be answered in the light of the specific circumstances. Obviously, mere criticism of U.N. action - even if vigorously stated - or demonstrations of a peaceful nature would not justify use of force by the United Nations. However,

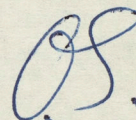
actual troop movements or well-confirmed reports of impending attack would warrant protective action by the United Nations troops. Such protective action would include the employment of such force as is necessary to meet the danger.

6) The mandate to maintain law and order and to prevent civil war may also justify, in certain circumstances, the closing of means of communication such as the radio station and airports, if circumstances clearly indicate that they are being used or may be presently used for civil war or unlawful purposes. The legal basis for taking such measures is of course strengthened when the competent authorities of the Central or provincial government have requested or approved such measures.

7) Measures for the forcible apprehension and detention of individuals are clearly justifiable in the event that they are apprehended while engaged in military action or otherwise in flagrante delicto. In circumstances which fall short of this, the problem is a difficult one to deal with in abstracto. The situation may be such as to warrant detention or the placing of a guard around the house if the individual involved is clearly engaged in incitement to immediate violence. On the other hand, to detain or apprehend a political leader without such justifying circumstances would appear to involve a violation of the ban against intervention in domestic political conflicts.

8) The difficulty referred to above is substantially overcome if both the provincial and Central Government authorities request United Nations assistance in effecting an arrest for the purposes of preventing disorder and civil war. It would appear doubtful, however, that an arrest order by the Central Government authorities alone against a provincial leader should, by itself, be a basis for enforcement action by the United Nations. This consideration would seem to apply even if the Central Government legally appointed a commissaire d'état to enforce laws under Article 184 of the Basic Law.

9) With respect to the commissaire d'état, it is difficult to say that the appointment of that official to act in a province decisively changes the legal situation that otherwise applies to the United Nations in regard to conflicts between the Central and provincial governments; that is to say, assistance in enforcing measures of the commissaire d'état would have to have the same legal justification as taking measures requested by the Central Government in opposition to the provincial government. In other words, the intervention of a commissaire d'état would not ipso facto remove the problem of interference in constitutional conflicts.

A handwritten signature or set of initials in blue ink, consisting of a large, stylized 'S' or 'B' shape with a small dot below it.

## U.N. POLICY IN KATANGA

### BRITISH ATTITUDE MUST BE CLEAR

TO THE EDITOR OF THE TIMES

Sir,—Many of your readers, I am sure, will have been impressed by the letter from Lord Clitheroe which was published in your issue of August 31. Lord Clitheroe is not a person whose views can be ignored. Moreover, he has just himself returned from a visit to Katanga.

He is speaking of something of which he knows from personal experience. And what does he say? In effect, that the results of the policy on which the United Nations are now embarking in Katanga are likely to be catastrophic; that the removal of the European technical advisers of the Katanga Government—and no doubt, all the European officers of the gendarmerie—is going to make the orderly administration of the country impossible; and finally that, if the policy is continued, “there will be no hope of avoiding bloodshed and guerilla warfare”.

Yet the policy apparently is to be continued. Even since he wrote, we have been told in the press that, on the evidence of only one witness of apparently not at all dependable character, who has told a story of an assassination plot by a Katanga Minister—a story not yet it seems corroborated from any other source—the representative of the United Nations in Katanga, a Mr. O'Brien, has declared that he must break off all normal relations with the Katanga Government.

One may fairly ask, on what authority is all this being done? It is apparently based on a resolution passed by the United Nations on February 21 last, which was designed to prevent the outbreak of civil war and which, in any case, only authorized the use of force in the last resort for that special purpose. Yet that was not at all the situation existing in Katanga at the time of the United Nations coup.

On the contrary, by all accounts, the country was generally quiet: indeed, it was the one part of the Congo that still enjoyed comparative prosperity. What then is the justification for the present action? It is, I think, legitimate that we should ask her Majesty's Government to declare quite frankly their views on this.

They supported the resolution of February 21, to which I have referred. Did they intend it to be used for a purpose such as this? Did they even envisage that it could be used for this purpose? If they did not—if, as I suspect, the present action by the United Nations has been as great a shock to them as to any others of us—surely they ought to say so. After all, important national and imperial interests are involved.

For one thing, we are, as a nation, paying a full share of the operations of the United Nations in the Congo, while other members of the organization who one may shrewdly suspect are behind this move, were, till lately at any rate, nearly all of them making no contribution at all. Moreover, the collapse of law and order in Katanga is likely to have immediate repercussions on the internal security of the neighbouring state of Northern Rhodesia, for which, it must be remembered, it is not the Government led by Sir Roy Welensky but her Majesty's Government in London who are directly responsible.

We must of course realize that the United Kingdom Government cannot alone control the actions of the United Nations. But they can make their views known with force and clarity. I would appeal to them to do this and so to give that lead toward sanity which is at present so badly needed.

Yours faithfully,

SALISBURY.

Hatfield House, Hatfield, Hertfordshire,  
Sept. 6.