ARTICLE 98

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TEXT OF ARTICLE 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

INTRODUCTORY NOTE

1. Except as indicated below, the organization of the present study follows that of the previous studies of Article 98 in the Repertory and its Supplements Nos. 1 and 2. In section C of the Analytical Summary of Practice, “Financial functions of the Secretary-General”, fourteen subheadings have been introduced. In section D of the Analytical Summary, subsection 3, “Functions exercised under General Assembly and Security Council resolutions with respect to the situation in Jordan and Lebanon”, has been deleted because the action taken by the Secretary-General thereunder came to an end in the period covered by Supplement No. 2. Nine new subheadings, 4-12 inclusive, have been added to section D. In subsection 13, “Powers inherent in the office of the Secretary-General” (subsection 4 with a slightly different subheading in Supplement No. 2), one subheading has been deleted, and two new ones, a. (i), (g) and (h) have been added. The deletion has been that of “a. (i) (f) Formulation of agreed principles concerning the settlement of the Suez question”.

I. GENERAL SURVEY

2. In the period under review the most significant development was the expansion of the functions entrusted to the Secretary-General in the political field, particularly with regard to peace-keeping operations and to an even greater extent than in the period covered by Supplement No. 2. Under Security Council resolution 143 (1960) the Secretary-General set up the United Nations operation in the Congo (ONUC) of which the United Nations Force in the Congo was the military arm. The main instructions of the Security Council to the Force were to protect the Congo from outside interference, particularly by eliminating foreign mercenaries from Katanga province. From March 1964 until the end of the period under review the United Nations Peace-keeping Force in Cyprus (UNFICYP), established by the Secretary-General under authority conferred upon him by the Security Council, performed peace-keeping functions. The United Nations Emergency Force (UNEF) in the Middle East, established in 1956, continued to carry out the functions previously assigned to it. Under resolution 2006 (XX) the General Assembly invited the Secretary-General, together with the President of the Assembly, to make arrangements for and to undertake consultations on the whole question of peace-keeping operations.

3. In addition the Secretary-General was entrusted by the General Assembly and the Security Council with varied functions covering a wide range of activities in the political field. He was requested, for example, to set up observation missions,\(^1\) to send representatives,\(^2\) to take over the temporary administration of West New Guinea (West Irian) pursuant to an agreement between Indonesia and the Netherlands,\(^3\) to lend his good offices,\(^4\) to supervise elections in the Cook Islands through a representative,\(^5\) to ensure the implementation of Security Council resolution 180 (1963) relating to territories under Portuguese administration, to establish a United Nations Trust Fund for

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\(^1\) S C resolutions 179 (1963) and 211 (1965).
\(^2\) S C resolution 203 (1965) and G A resolution 1746 (XVI).
\(^3\) G A resolution 1752 (XVII).
\(^4\) G A resolution 1760 (XVII).
\(^5\) G A resolution 2005 (XIX).
South Africa, and to take any initiative he deemed helpful in relation to the Hungarian question.

4. The expansion of the functions exercised by the Secretary-General under the powers inherent in his office was another distinguishing feature of the enlargement of the Secretary-General’s role in the political sphere. In particular, new functions were discharged by the Secretary-General in designating personal or special representatives and in organizing observer missions.

5. The administrative and executive functions of the Secretary-General as well as his technical functions were also expanded and became more diversified, particularly in the economic and social fields. The functions performed by the Secretary-General in connexion with technical assistance were modified with the establishment of the United Nations Development Programme.

6. In regard to the Secretary-General’s functions in the field of public information there was an increasing emphasis on the need for disseminating information on the United Nations and its activities, including especially the declarations adopted by the General Assembly, and studies, reports and programmes of assistance undertaken in various fields.

7. The subdivisions used in the Analytical Summary of Practice are to some extent arbitrary, since in the execution of any one request or the implementation of any one resolution or decision there is no strict division between the Secretary-General’s political, administrative, executive, technical and financial functions.

II. ANALYTICAL SUMMARY OF PRACTICE

A. General administrative and executive functions of the Secretary-General

1. Functions of the Secretary-General in connexion with meetings of United Nations organs

a. Drawing up of the agenda

8. In a number of instances during the period under review the Secretary-General was expressly requested to include an item in the provisional agenda of the General Assembly. That was the case with the Korean question, the economic and social consequences of disarmament, the installation of mechanical means of voting and industrial development. In several cases the Secretary-General was requested to make recommendations concerning the provisional agenda for conferences convened by the Economic and Social Council.

b. Convening of sessions and meetings

9. During the period under review the Secretary-General was called upon, in pursuance of resolutions of the General Assembly and other organs of the United Nations, to convene a number of international conferences. He was requested, for example, to convene international conferences of plenipotentiaries on diplomatic intercourse and immunities and on consular relations, and a United Nations Conference on Trade and Development.

10. In addition he was requested, in co-operation with the Director-General of the Food and Agriculture Organization of the United Nations, to convene a pledging conference for the World Food Programme. He was also requested to convene a World Population Conference in 1965, an international technical conference on the International Map of the World on the Millionth Scale, international and regional symposia on industrial development, a conference on international travel and tourism and meetings of the Committee of Experts on the Transport of Dangerous Goods.

11. On a regional basis the Secretary-General was requested to convene two cartographic conferences for Asia and the Far East and one for Africa.

12. In respect of the twenty-sixth session of the Trusteeship Council the Secretary-General was requested to make the necessary arrangements for holding that session in Rome at the invitation of the Government of Italy. Another time the Secretary-General was requested to bring to the attention of the competent organs the need for moderation in arranging the programme of meetings in New York for 1964 in view of the major reconstruction work to be carried out at Headquarters.

13. In connexion with the convening of a special session of the General Assembly in 1963, the Secretary-General was requested to fix the date, in consultation with the President of the General Assembly.

9 G A resolution 1455 (XIV).
10 E S C resolution 891 (XXXIV).
11 G A resolution 1957 (XVIII).
12 E S C resolution 969 (XXVI).
13 See, for example, E S C resolutions 761 A (XXIX), 813 (XXXI) and 834 (XXXII).
14 G A resolution 1450 (XIV).
15 G A resolution 1685 (XVI).
16 G A resolution 1785 (XVII).
17 G A resolution 2095 (XX).
18 E S C resolution 933 B (XXXV).
19 E S C resolution 815 (XXXII).
20 E S C resolution 1081 B (XXXIX).
21 E S C resolution 813 (XXXI).
22 E S C resolution 994 (XXXVI).
23 E S C resolution 928 (XXXV) and 1070 (XXXIX).
24 E S C resolution 816 (XXXI).
25 T C resolution 1956 (XXIV).
26 G A resolution 1851 (XVII).
27 G A resolution 1866 (XVII).
14. The Secretary-General was also requested, in consultation with the executive heads of the extra-budgetary programmes, to fix appropriate dates each year for the meetings of the ad hoc Committee of the whole Assembly for contributions to the two refugee programmes and of the Pledging Conference for the Special Fund and the Expanded Programme of Technical Assistance.

c. Examination of credentials

d. Provision of staff and services

15. Numerous resolutions were adopted during the period under review by which the Secretary-General was requested to provide the necessary staff and services for United Nations organs and international conferences convened under the auspices of the United Nations. In most cases the Secretary-General was requested to provide the necessary facilities, means and services for the effective accomplishment of the task of the organ or committee. In a number of resolutions the provision of documents or of information was specifically requested.

16. In one resolution a particular request was made for the provision of experts and military observers. In another the Secretary-General was specifically requested to appoint an Executive Secretary from within the Secretariat for the International Conference on Human Rights to be convened in 1968. Two resolutions were adopted under which the Secretary-General was requested to strengthen the staff resources allocated to particular projects.

2. TRANSMISSION OF COMMUNICATIONS

17. During the period under review many resolutions were adopted under which the Secretary-General was requested to transmit communications. The kind of communication to be transmitted varied and included: resolutions, recommendations, draft declarations, conventions, draft legislation, records, reports, documents, observations by States, information and findings. The communications were usually transmitted to States but in one case a communication was to be transmitted to a particular Member State. Some communications were to be transmitted to international organizations and to other United Nations bodies.

3. INTEGRATION OF ACTIVITIES

a. Calendar of meetings

18. Under resolution 1202 (XII) the Secretary-General had been requested to submit to the General Assembly each year a basic programme of conferences for the following year to be established in conformity with the pattern of conferences indicated in the resolution and after consultations as appropriate with the organs concerned. That request was again made by the Assembly at its seventeenth, eighteenth and twentieth sessions. The guidelines governing the pattern and conferences were modified in Assembly resolutions 1851 (XVII) and 2116 (XX).

b. Planning of work programmes and priorities

19. In 1962 the Economic and Social Council requested the Secretary-General, in preparing his observations on the work programme for the Council at its thirty-sixth session, to review the studies and reports in the programme with a view to making recommendations as to which might be eliminated, postponed or consolidated in the interests of concentration of effort and priority use of limited resources.

20. In its resolution 1093 (XXXIX), the Council requested the Secretary-General to prepare a work programme covering the various units of the Department of Economic and Social Affairs and to provide for each major project a full description of its purpose, scope and timing.

c. Integration of activities relating to operational programmes

21. During the period under review the Secretary-General was requested to proceed with the policy of decentralizing United Nations economic and social activities and strengthening the regional economic
The Secretary-General was also requested to strengthen the authority and increase the substantive and operational functions of the various regional economic commissions, particularly the Economic Commission for Africa, and to provide them with the necessary personnel. He was also asked to draw as fully as possible on the services of the regional economic commissions, especially in the planning and execution of programmes for advancing regional development in the economic and social fields.

d. Co-ordination of services to United Nations organs

22. A number of questions arose during the period under review concerning the preparation and availability of documents. In its resolution 1090 E (XXXI), the Economic and Social Council noted that it was necessary to remedy a situation which was impairing the effectiveness of the Council and requested the Secretary-General to ensure that all information contained in documents presented to the Council was of a useful nature, to prepare a summary of lengthy reports and to ensure that United Nations publications on economic and social problems were more readily available to those concerned. The Council further requested the Secretary-General to submit to it at each session for its approval a list of the documents which would come before the Council at the next session as well as a list of the documents which could not be made available in good time. The Council requested the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions, to examine the problems of providing documentation for the Council’s consideration and to submit his comments and recommendations to the Advisory Committee and to report to the Council. The Council considered the requested report at its forty-first session. In its resolution 1154 (XLII) it endorsed certain of the Secretary-General’s proposals and requested him (a) to prepare summaries of the reports of the functional and regional economic commissions and of the standing and ad hoc committees, (b) to indicate which reports were of a technical nature requiring the attention of experts rather than of the Council and (c) to submit further proposals to the Council in 1967.

4. Co-ordination with specialized agencies and other intergovernmental organizations

23. The Secretary-General continued to discharge responsibilities for co-ordinating the work of the United Nations and the other organizations in the United Nations family in his capacity as Chairman of the Administrative Committee on Co-ordination.

** a. Functions of the Secretary-General set forth in the agreements with the specialized agencies

b. Functions of the Secretary-General with regard to programme co-ordination

24. The General Assembly and the Economic and Social Council continued to request the Secretary-General to collaborate with the appropriate specialized agencies in implementing decisions and undertaking concerted action in the development, co-ordination and concentration of economic, social and human rights programmes. Specific activities covered a wide range of matters including international measures to assist in offsetting fluctuations in commodity prices, the development of scientific and technical co-operation and exchange of experience, agrarian and land reform, the development of economically less-developed countries and the transfer of technology to developing countries, urbanization, housing, building and planning, full employment, the world social situation, the promotion of the flow of private capital, water desalination, water resources development, industrial development, travel, transport and communications, and seismological research.

c. Functions of the Secretary-General with regard to co-ordination in administrative and financial matters

25. The practice of consultation and co-operation between the Secretary-General and the executive heads of the specialized agencies to ensure uniform financial and administrative policies was maintained. Two resolutions of the General Assembly concerned administrative and budgetary co-ordination of the United Nations with the specialized agencies and the International Atomic Energy Agency. Two resolutions of the Economic and Social Council concerned the work of the Administrative Committee on Co-ordination (ACC) and the role of the Secretary-General as Chairman of the ACC. In another resolution the Secretary-General was requested to consult with the members of the ACC concerning the administrative arrangements for an expanded and intensified programme of concerted action in the field of housing, building and planning. He was also requested to seek agreement among the specialized agencies concern-

54 G A resolution 1423 (XIV).
55 G A resolution 1429 (XIV) and E S C resolution 834 (XXXII).
56 G A resolutions 1426 (XIV), 1526 (XV), 1828 (XVII) and 1932 (XVIII), and E S C resolution 887 (XXXIV).
57 G A resolutions 1515 (XV) and 2091 (XX).
58 G A resolution 1676 (XVI).
59 G A resolution 1917 (XVIII).
60 E S C resolution 835 (XXXII).
61 E S C resolution 830 (XXXII).
62 E S C resolution 836 (XXXII).
63 E S C resolutions 1033 A (XXXVII) and 1069 (XXXIX).
64 E S C resolutions 876 (XXXIII) and 1033 D (XXXVII).
65 E S C resolutions 1030 (XXXVII) and 1081 (XXXIX).
66 E S C resolution 1082 (XXXIV).
67 E S C resolution 1032 (XXXVII).
68 G A resolutions 1941 A (XVIII) and 2120 (XX). See also this Supplement under Article 58.
69 E S C resolutions 799 (XXX) and 992 (XXXVI).
70 E S C resolution 976 G (XXXVI).
71 E S C resolution 907 (XXXIV).
ing the adherence to certain basic conditions with respect to the furnishing of operational, executive and administrative personnel: terms of employment, the training of counterpart personnel and the definition of professional specialists and technical types of posts.

5. Functions of the Secretary-General with regard to the preparation of work and implementation of decisions

26. It is part of the normal responsibility of the Secretary-General to ensure the preparation of the various organs’ work and the implementation of their resolutions and decisions.74 One aspect of that responsibility is the integration of activities mentioned above; another is the collection of information and the preparation of studies; and a third is the administration of operational programmes, which are considered technical functions and are mentioned in subsection B below. The implementation of any one resolution or decision often involves many aspects of the Secretary-General’s administrative, executive, technical and financial functions.

27. In addition during the period under review he was requested to undertake such various tasks as arranging for the award of prizes for the most outstanding scientific research into the causes and control of cancerous diseases;75 proceeding with the construction of the United Nations Library and placing a memorial stone at the entrance to the Library;76 finding a suitable site for the United Nations International School;77 undertaking the publication of a Juridical Yearbook;78 and establishing subsidiary organs such as the United Nations Institute for Training and Research.79 He was also sometimes requested “to give all assistance”80 or to take such action “as he may deem expedient”81 or authorized to take the “appropriate”82 or “necessary”83 measures for the purpose of implementing resolutions.

6. Functions of the Secretary-General in connexion with international treaties, conventions and agreements

28. On 17 December 1963 the General Assembly adopted resolutions 1991 A and B (XVIII) on the question of equitable representation on the Security Council and the Economic and Social Council. In those resolutions the Assembly decided to adopt, in accordance with Article 108 of the Charter, certain amendments to Articles 23, 27 and 61 of the Charter and to submit them for ratification by the States Members of the United Nations. Although neither the above-mentioned resolutions nor the Charter itself designated the authority with which the instruments of ratification of the amendments should be deposited, the Secretary-General considered that it might be appropriate for him to undertake those depositary functions since precedents had been established under which he had performed certain functions of a depositary nature 84 not otherwise provided for in the Charter. The Government of the United States of America, which the Secretary-General consulted in its capacity as depositary of the Charter, shared the Secretary-General’s point of view.85

29. In its resolution 1452 B (XIV) the Assembly amended operative paragraph 3 (b) of resolution 598 (VI) of 12 January 1952 on reservations to multilateral treaties 86 by requesting the Secretary-General to apply that paragraph to his depositary practice, “until such time as the General Assembly might give further instructions, in respect of all conventions concluded under the auspices of the United Nations which do not contain provisions to the contrary”.87

30. In response to a request contained in operative paragraph 2 of General Assembly resolution 1452 B (XIV) of 7 December 1959 the Secretary-General prepared a summary 87 of his own depositary practice regarding reservations to multilateral conventions. The summary was for use by the International Law Commission in preparing its reports on the law of treaties and by the General Assembly in considering those reports. On 7 August 1959 a document 88 was issued by the Secretariat setting out the main features of the practice followed by the Secretary-General as depositary of multilateral agreements.

31. In its resolution 967 (XXXVI) the Economic and Social Council, after noting that the amendments to the Convention on Road Traffic and to the Protocol on Road Signs and Signals that had been proposed by the Government of Austria had not found the support required in accordance with Article 31 of the Convention and Article 60 of the Protocol, invited the Secretary-General, in accordance with Article 31, paragraph 1 of the Convention and Article 60, paragraph 1, of the Protocol, upon being so requested by one of the

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74 See this Supplement under Articles 13, 17 (1), 30, 34, 55, 62 (1), (2), (3) and (4), 66 (2), 73 and 102.
75 G A resolution 1398 (XIV).
76 G A resolution 1354 (XIV).
77 G A resolution 1591 (XV).
78 G A resolution 1814 (XVII).
79 G A resolution 1934 (XVIII) and E S C resolution 985 (XXXVI). See also this Supplement under Article 22.
80 G A resolution 2069 (XX).
81 G A resolution 2023 (XX).
82 G A resolutions 1928 (XVIII) and 2073 (XX).
83 G A resolution 1798 (XVII).
84 In particular the Secretary-General acts as depositary of the Instruments by which new Members accept the obligations contained in Article 4 of the Charter and also of the declarations by which non-Member States accept, under Article 93 of the Charter, the conditions to become party to the Statute of the International Court of Justice. See Repertory Supplement No. 2, under Article 102, paras. 1-8.
85 See note verba de to the Ministers for Foreign Affairs of all Member States, United Nations Juridical Yearbook, 1964, p. 249.
86 See Repertory vol. V, under Article 98, para. 65.
88 ST/LEG/7 (mimeographed).
89 Article 31, paragraph 1, of the Convention on Road Traffic reads as follows: “Any amendment to this Convention may be proposed by any Contracting State. The text of such proposed amendment shall be communicated to the Secretary-General of the United Nations who shall transmit it to each Contracting State with a request that such State reply within four months stating whether it: (a) Desires that a conference be convened to consider the proposed amendment; or (b) Favors the acceptance of the proposed amendment without a conference; or (c) Favors the rejection of the proposed amendment without a conference.”
tracting States, to communicate the amendments once again to all Contracting States, pointing out that the amendments were identical with those previously communicated and that replies previously received would be understood to remain valid in the absence of notification to the contrary. In the same resolution the Council requested the Secretary-General, in co-operation as appropriate with the Executive Secretaries of the regional economic commissions, to urge all Contracting States which had not previously done so to reply to the further communications of the Secretary-General as promptly as possible. In its resolution 1082 B (XXXIX), the Council, after deciding, in operative paragraph 1, to convene an international conference to prepare a convention on road traffic to replace the 1949 Convention and another convention, or an optional protocol annexed to the first convention, on road signs and signals and road marking, invited the Secretary-General, in operative paragraph 3 (b), to circulate, for subsequent submission to the conference, any amendments suggested by the regional economic commissions.

32. In response to a request by the International Law Commission in 1964 a non-exhaustive memorandum was prepared by the Secretariat describing the language practices of several typical United Nations conferences and meetings convened for the express purpose of drawing up multilateral treaties.

** 7. FUNCTIONS OF THE SECRETARY-GENERAL IN RESPECT OF THE SUBMISSION OF AN ANNUAL REPORT**

B. Technical functions of the Secretary-General

1. FUNCTIONS OF THE SECRETARY-GENERAL WITH REGARD TO THE COLLECTION OF INFORMATION AND THE UNDER-TAKING OF STUDIES

33. It was noted in the study of Article 98 in Repertory Supplement No. 2 that, although the Economic and Social Council at its twentieth session had invited the Secretary-General to delegate certain activities in the field of information and studies to universities, national, private or public institutions or non-governmental organizations, the bulk of the work in that field

continued to be undertaken by the Secretariat. That was also the case during the period under review. The Secretary-General’s duties in that field were both extensive and varied.

34. He was requested, for example, to undertake or continue studies or collect information on such diverse subjects as the effects of the European Economic Community on the development of certain Non-Self-Governing Territories, the participation of the Non-Self-Governing Territories in the work of the United Nations and of the specialized agencies, general questions concerning the transmission and examination of information under Article 73 of the Charter relating to Non-Self-Governing Territories, reservations to multilateral conventions, the geographical distribution of the staff of the Secretariat of the United Nations, the institutional changes needed in order to intensify, concentrate and expedite United Nations efforts for industrial development, world economic development, planning for economic development, inflation and economic development, and population growth and economic and social development, the legal problems relating to the utilization and use of international rivers, low-cost housing, international credit insurance, the demand for and supply of primary commodities, the economic and social consequences of disarmament, the role of patents in the transfer of technology to under-developed countries, the United Nations Development Decade, a scale of assessments for the apportionment of United Nations expenses, various problems connected with the draft International Covenants on Human Rights, manifestations of racial prejudice and national and religious intolerance, United Nations assistance for the advancement of women in the developing countries and participation of women in national, social and economic development, permanent sovereignty over natural resources, measures designed to promote among youth the ideals of peace, mutual respect and understanding between peoples, capital punishment, ways and means of promoting world campaigns against...
hunger, disease and ignorance and for universal literacy,117 and methods of fact-finding.118 The Secretary-General was frequently requested to ascertain the views of Governments.119

2. OPERATIONAL FUNCTIONS OF THE SECRETARY-GENERAL

35. The administration of various operational programmes at the request of the General Assembly and the Economic and Social Council continued to be an important technical function of the Secretary-General.120

36. For example, he provided assistance in connexion with offers by Member States of study and training facilities for inhabitants of Trust and Non-Self-Governing Territories,121 the Mandated Territory of South West Africa122 and territories under Portuguese administration;123 technical assistance in such areas as narcotics control,124 economic planning,125 the conservation and restoration of natural resources126 and housing census programmes;127 technical assistance also to promote the teaching, study, dissemination and wider appreciation of international law;128 assistance to territories emerging from a trust status and to newly independent States,129 such countries as Libya130 and such territories as Basutoland, Bechuanaland and Swaziland,131 technical facilities for the denuclearization of Latin America;132 operational, executive and administrative personnel in the field of public administration;133 support for the United Nations Children’s Fund;134 and support in such cases of natural disaster as the earthquakes in north-western Iran and at Skopje, Yugoslavia,135 and the hurricane striking Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago.136 He assisted in the provision of food surpluses to food-deficient peoples through the United Nations, and in particular through the World Food Programme.137

37. The functions performed by the Secretary-General in connexion with technical assistance and the Special Fund were modified as a result of the consoli-

dation under General Assembly resolution 2029 (XX) of the Special Fund and the Expanded Programme of Technical Assistance as the United Nations Development Programme. By that resolution the General Assembly decided to establish, in place of the Technical Assistance Board and the Consultative Board of the Special Fund, the Inter-Agency Consultative Board of the United Nations Development Programme, an advisory committee composed of the Secretary-General of the United Nations and the executive heads of the specialized agencies and other participating organizations.

38. The practice of requesting the Secretary-General to undertake studies, convene panels of experts, compile information and make reports to the General Assembly or the Economic and Social Council concerning operational programmes was continued during the period under review. For example, the Secretary-General was requested, under Economic and Social Council resolution 1062 (XXXIX), section III, to submit to the Commission on Human Rights, the Commission on the Status of Women and the Council, through the Technical Assistance Committee, an evaluation report on the fellowship programme in the field of human rights. Under Economic and Social Council resolution 1067 A (XXXIX) it was recommended that he examine the possibility of holding an additional annual seminar on the civic and political education of women.

3. FUNCTIONS OF THE SECRETARY-GENERAL IN CONNEXION WITH ASSISTANCE IN PROCEDURAL PROBLEMS

39. The Secretary-General continued to assist organs of the United Nations and conferences held under United Nations aegis in drafting their rules of procedure and in dealing with other procedural problems.138 The amendments to the rules of procedure of the General Assembly contained in Assembly resolution 2046 (XX) were adopted on the basis of a recommendation139 by the Secretary-General. At its twenty-ninth session the Trusteeship Council decided140 to amend its rules of procedure in accordance with a recommendation141 by the Secretary-General.

4. FUNCTIONS OF THE SECRETARY-GENERAL IN CONNEXION WITH THE DRAFTING OF DOCUMENTS AND LEGAL ASSISTANCE

40. During the period under review the Secretary-General performed important functions in connexion with the drafting of legal instruments. Under its resolution 2101 (XX) the Assembly decided to adopt an amendment to Article 109 of the Charter, which was based on a proposal made by the Secretary-General.142 Pursuant to Economic and Social Council resolution 1034 (XXXVII) the Secretary-General prepared drafts

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117 G A resolutions 1943 (XVIII) and 1937 (XVIII).
118 G A resolution 1967 (XVIII).
119 See, for example, G A resolutions 1653 (XVI), 1940 (XVIII), 2019 (XX) and 2100 (XX).
120 G A resolutions 1411 (XIV), 1471 (XIV), 1540 (XV), 1849 (XVII) and 1974 (XVIII).
121 G A resolution 1705 (XVI).
122 G A resolutions 1808 (XVII) and 2100 (XX).
123 G A resolution 1395 (XIV) and E S C resolution 962 B (XXXVI).
124 G A resolution 1718 (XVI) and E S C resolutions 916 (XXXIV) and 1079 (XXXIX).
125 G A resolution 1831 (XVII).
126 E S C resolution 1058 B (XXXIX).
127 G A resolution 1968 (XVIII).
128 G A resolutions 1415 (XIV) and 1527 (XV).
129 G A resolution 1528 (XV).
130 G A resolution 1954 (XVIII).
131 G A resolution 1911 (XVIII).
132 G A resolution 1530 (XV).
133 G A resolution 1678 (XVI).
134 G A resolutions 1753 (XVII) and 1882 (XVIII).
135 G A resolution 1888 (XVIII).
136 G A resolutions 1496 (XV) and 1714 (XVI) and E S C resolution 832 (XXXII).
137 See, for example, G A resolutions 1450 (XIV), 1874 (S-IV) and 1685 (XVI), and E S C resolution 870 (XXXIII).
138 G A (XX), Annexes, a.i. 103, A/5973.
139 T C (XXI), 1197th mtg., para. 33.
140 T/L 1047 (mimeographed), incorporated in Rules of Procedure of the Trusteeship Council (United Nations publication, Sales No. 62.1.23).
141 G A (XX), Annexes, a.i. 104, A/5974.
of a convention on road traffic and of a convention on road signs and signals.\textsuperscript{142} The Council also requested\textsuperscript{143} the Secretary-General to prepare a draft\textsuperscript{144} of final and formal clauses for the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which the General Assembly opened for signature in its resolution 1763 A (XVII). The Secretary-General also made proposals\textsuperscript{145} to the General Assembly with regard to the drafting of amendments to the Pension Scheme Regulations for members of the International Court of Justice.\textsuperscript{146}

41. Important functions were also assigned to the Secretary-General in connexion with legal assistance. Thus, to give only the most significant examples, he was requested by the General Assembly to obtain information on depositary practice with respect to reservations and to prepare a summary of such practices, including his own, for use by the International Law Commission and the General Assembly,\textsuperscript{147} and to initiate the preparatory work for a programme of assistance and exchange in the field of international law.\textsuperscript{148} He was requested by the Economic and Social Council\textsuperscript{149} to prepare a legal commentary on the Single Convention on Narcotic Drugs, 1961.

C. Financial functions of the Secretary-General

I. AUTHORITY TO ENTER INTO COMMITMENTS TO MEET UNFORSEEN AND EXTRAORDINARY EXPENSES

42. The practice of the United Nations in financial matters is dealt with in this supplementary under Articles 17 (1), 17 (2) and 17 (3). The present study, as previously, is confined to a brief summary of some specific financial functions entrusted to the Secretary-General during the period under review.

43. The General Assembly renewed each year the Secretary-General's authority to enter into commitments to meet unforeseen and extraordinary expenses.\textsuperscript{150} The exercise of that authority was subject to the Financial Regulations of the United Nations and, except as specified below,\textsuperscript{151} required the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions. The Secretary-General was to report annually to the Advisory Committee and the General Assembly on all commitments made under that authority and to submit supplementary estimates to the Assembly in respect of such commitments.

44. Up to the fifteenth session of the General Assembly the Secretary-General was authorized to commit funds up to a fixed total of $2 million for expenses which he deemed necessary for the maintenance of peace and security or for urgent economic rehabilitation, and to do so even without the prior concurrence of the Advisory Committee. Thereafter, the purpose for which commitments up to $2 million could be entered into without prior concurrence of the Advisory Committee was restricted to the "maintenance of peace and security". The authorization relating to "urgent economic rehabilitation" was eliminated as recourse to it had not been necessary for a number of years.\textsuperscript{152}

45. From the resumed fifteenth to the twentieth session it was provided in the Assembly resolutions on unforeseen and extraordinary expenses that if, as the result of a Security Council decision, commitments relating to the maintenance of peace and security should be made in an estimated total exceeding $10 million before the Assembly's next annual session, a special session of the Assembly should be convened by the Secretary-General to consider the matter.\textsuperscript{153}

46. The requirement of the prior concurrence of the Advisory Committee was dispensed with for certain unforeseen and extraordinary expenses that might be incurred by the International Court of Justice, provided that its President certified that such expenses were occasioned by the payment of pensions and travel and removal expenses of judges not re-elected, or travel and removal expenses of new Members of the Court, or were occasioned by one of several functions envisaged in the Statute of the Court, including the designation of ad hoc judges, the appointment of assessors and experts and the calling of witnesses, the maintenance in office of judges not re-elected, until their places were filled or until the cases which they had begun were finished, or the holding of sessions of the Court away from The Hague.\textsuperscript{154} From the fourteenth to the twentieth session the Secretary-General was authorized\textsuperscript{155} to incur without the prior approval of the Advisory Committee commitments not exceeding a total of $25,000 for meetings and ad hoc conferences not covered by the basic annual programme.

2. THE FINANCING OF OBSERVATION MISSIONS IN RELATION TO THE CONFLICT BETWEEN INDIA AND PAKISTAN

47. In order to strengthen the United Nations Military Observer Group in India and Pakistan (UNMOGIP) as requested in Security Council resolution 210 (1965) and to give effect, by the establishment of the United Nations India-Pakistan Observation Mission (UNIPOM) to that part of the request in

\textsuperscript{142} E S C (XXXIX), a.i. 23, E/3998 and E/3999. See also E S C resolutions 1082 B (XXXIX) and 1129 (XLII).
\textsuperscript{143} See G A (XVI), Suppl. No. 3, para. 632.
\textsuperscript{144} G A (XVI), Annexes, a.i. 85, A/4844, annex III.
\textsuperscript{145} G A (XV), Annexes, a.i. 64, A/4424, and G A (XVIII), Annexes, a.i. 58, A/C.5/973.
\textsuperscript{146} G A resolutions 1562 (XV) and 1925 (XVIII).
\textsuperscript{147} G A resolution 1452 B (XIV).
\textsuperscript{148} G A resolution 2009 (XX).
\textsuperscript{149} E S C resolution 914 D (XXXIV).
\textsuperscript{150} G A resolutions 1444 (XIV), 1585 (XV), 1615 (XV), 1735 (XVI), 1862 (XVII), 1985 (XVIII), 2004 (XIX) and 2126 (XX).
\textsuperscript{151} For the special financial arrangements for the nineteenth session, see paras. 54 and 55 below.
\textsuperscript{152} See para. 44-46 below.
Security Council resolution 211 (1965) calling for him to provide the necessary assistance to ensure supervision of the cease-fire, the Secretary-General initially entered into commitments under the authority granted to him in Assembly resolution 2004 (XIX) on unforeseen and extraordinary expenses related to the maintenance of peace and security.

48. In view of the amount of funds expended or committed for those operations for the balance of 1965, no further uncommitted funds were available to him for financing the separate supervision of withdrawals in accordance with Council resolutions 211 (1965) and 215 (1965). Nevertheless, because of the urgency indicated in resolution 215 (1965), the Secretary-General proceeded with arrangements for establishing the withdrawal mission on the assumption that the required additional financial authorization to cover its expenses would be forthcoming.

49. Subsequently, in his report \(^{157}\) to the Council on 15 December 1965, the Secretary-General proposed that the additional requirements for strengthening UNMOGIP for 1965 and 1966 be provided as revised estimates under the normal budgetary arrangements for UNMOGIP. It would then be possible to finance UNIPOM and the withdrawal mission under the authority granted to the Secretary-General in the annual Assembly resolution on unforeseen and extraordinary expenses related to the maintenance of peace and security.

50. In a report \(^{158}\) to the Assembly on 23 September 1966, the Secretary-General suggested that the 1965 costs of UNIPOM be met out of the unexpended balances from the budget for that year. The costs for 1966 and the costs of the withdrawal mission could then be met from credits available under section 16 of the budget relating to special missions.

51. The Secretary-General's suggestions were approved by the Assembly and incorporated in the budget appropriations for 1965 and 1966.\(^{159}\)

3. AUTHORITY TO BORROW FROM SPECIAL FUNDS AND ACCOUNTS OR FROM GOVERNMENTAL SOURCES

52. Continuing the practice begun at its thirteenth session by resolution 1341 (XIII) of 13 December 1958, the General Assembly from its fourteenth to its twentieth session renewed the Secretary-General's authority to borrow, on payment of normal current rates of interest, cash from special funds and accounts in his custody, for purposes normally related to the Working Capital Fund.\(^{160}\)

53. During the fourteenth and fifteenth sessions the Secretary-General was authorized "to seek short-term loans from Governments for purposes related to the Working Capital Fund".\(^{161}\) That authorization was replaced, from the sixteenth to the twentieth session,\(^{162}\) by the authority to use "the proceeds of loans authorized by the General Assembly". That modification was in line with the Assembly's decision, under resolution 1739 (XVI) of 20 December 1961, on the United Nations bond issue.\(^{163}\)

4. AUTHORITY UNDER SPECIAL FINANCIAL ARRANGEMENTS FOR THE NINETEENTH SESSION

54. In the special circumstances which obtained during the initial part of its nineteenth session, 1 December 1964 to 18 February 1965, the General Assembly approved interim financial arrangements and authorizations for 1965. At its 1314th plenary meeting on 30 December 1964 \(^{164}\) the General Assembly decided, without objection, that, pending decisions to be taken later in the session in 1965, the Secretary-General would be authorized to enter into commitments and to make payments at levels not to exceed, subject to statutory requirements, the corresponding commitments and payments for the year 1964. The Secretary-General was also authorized to continue existing arrangements and authorizations with respect to unforeseen and extraordinary expenses and the Working Capital Fund. It was the understanding of the Assembly that those authorizations would be without prejudice to the basic positions and objections of certain countries with respect to certain sections of the budget and to the budget as a whole.

55. On 18 February 1965 the General Assembly adopted, without objection, a resolution \(^{165}\) proposed by its President on interim financial arrangements and authorizations for 1965 which, in effect, confirmed the formula approved on 30 December 1964. In addition the Secretary-General was authorized, subject to statutory requirements, to enter into commitments and to make payments at levels not to exceed the corresponding commitments and payments for the year 1964, and within the over-all limits of that authorization to transfer funds between categories of expense and to enter into such minimum commitments as might be required for the purpose of financing certain new priority programmes and supporting services in 1965, notably in the field of trade and industrial development. The Assembly also decided that, pending further decisions, the arrangements and authorizations with respect to unforeseen and extraordinary expenses and the Working Capital Fund, as approved for the financial year 1964, should be considered as continuing in force.

5. EXAMINATION OF THE FINANCES OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES

56. At the twentieth session of the Assembly the Secretary-General was given a specific mandate in draft resolution 2049 (XX) of 13 December 1965: (a) to

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\(^{156}\) See S C, 20th yr., Suppl. for Oct.-Dec., p. 5, S/6699/Add.9, paras. 10 and 11, and annex; Add.10, paras. 2-7.

\(^{157}\) Ibid., Add. 11, paras. 8-10.

\(^{158}\) G A (XXI), Annexes, a.i. 73, A/6436, paras. 16.17 and 16.18.

\(^{159}\) For discussion of the Secretary-General's suggestions, see G A (XX), 5th Comm., 1113th mtg.; G A (XXI), 5th Comm. 1122nd mtg.

\(^{160}\) G A resolutions 1448 (XIV) and 1586 (XV) for the special arrangements for the nineteenth session, see paras. 54 and 55 below.

\(^{161}\) G A resolutions 1448 (XIV) and 1586 (XV).

\(^{162}\) G A resolutions 1736 (XVI), 1863 A (XVII), 1986 (XIX), 2004 (XIX) and 2127 (XX).

\(^{163}\) See this Supplement under Article 17 (2), paras. 56 and 57.

\(^{164}\) G A (XIX), Plen., 1314th mtg., paras. 6 and 12.

\(^{165}\) G A resolution 2004 (XIX).
draw up an analysis of the finances of the United Nations showing the actual expenditure by type of activity, including the amount of expenditure committed for the different peace-keeping operations since their inception, the resources used to meet them and, where applicable, the debts contracted by the United Nations; (b) to prepare, on the basis of the above-mentioned work, a complete statement of the financial situation of the Organization as at 30 September 1965; and (c) to deliver the document in question to the members of the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies and transmit it at the same time to other Member States.

6. EXPENSES OF PUBLIC INFORMATION ACTIVITIES OF THE UNITED NATIONS

57. Pursuant to General Assembly resolution 1335 (XIII) of 13 December 1958, the Secretary-General suggested to the Assembly at its fourteenth session that a general policy of budgetary stabilization be pursued in respect of United Nations public information expenses. In the light of those suggestions, the Secretary-General was requested, by Assembly resolution 1405 (XIV) of 1 December 1959, to plan the public information programmes in 1960 within the budgetary limit laid down in that resolution. The Secretary-General was requested to appoint a consultative panel on United Nations information policies and programmes and asked to consult with the panel from time to time in order to ensure maximum effectiveness at minimum cost in carrying out the objectives of the United Nations public information activities.

58. At its fifteenth session the General Assembly in resolution 1558 (XV) of 18 December 1960 requested the Secretary-General, in consultation, as appropriate, with the Consultative Panel on Public Information and the Advisory Committee on Administrative and Budgetary Questions, to give high priority to the opening of information centres or to arranging for adequate information facilities in the less-developed areas, particularly in the newly independent countries, by effecting economies in other directions.

59. The Secretary-General reported to the General Assembly at its sixteenth session in 1961 on the implementation of resolution 1558 (XV) with regard to the opening of information centres in less-developed areas and newly independent countries. Member States in the Assembly’s Fifth Committee expressed satisfaction at the opening of new information centres in those areas and at the fact that they were opened within the agreed policy of budgetary stabilization.

7. AUTHORITY TO PROCEED WITH THE CONSTRUCTION OF THE UNITED NATIONS LIBRARY

60. By resolution 1354 (XIV) of 3 November 1959 the General Assembly accepted a gift from the Ford Foundation for the construction, furnishing and equipping of a new building to house the United Nations Library on the Headquarters site. In the same resolution the Secretary-General was authorized to proceed with the construction, furnishing and equipping of the new building at a cost not to exceed the amount of the gift, to enter into the required contracts, and to return to the Ford Foundation such funds as might not be used. The Secretary-General was also requested to report to the Assembly at its fifteenth session regarding both the progress of construction and the level of library resources that should be made available to ensure that the new library would be used to the best possible advantage.

61. In his report to the Assembly at its fifteenth session the Secretary-General stated that the new building would be completed for occupancy in November 1961 and that, over the succeeding years, the staff of the library and the rate of acquisition of books and other materials would have to be increased to keep pace with the demands from the growing number of users among delegations and staff.

8. FINANCIAL AUTHORITY RELATED TO THE MODERNIZATION OF THE PALAIS DES NATIONS

62. In approving certain revisions in the programme for the modernization of the Palais des Nations at Geneva and the financing of the entire programme as revised, the General Assembly authorized the Secretary-General, in its resolution 1447 (XIV) of 5 December 1959, to advance from the Working Capital Fund the sums which might be required from time to time to finance actual requirements within the total cost approved.

63. Under its resolution 1737 (XVI) of 20 December 1961, the General Assembly approved further modifications in the programme for modernizing the Palais des Nations as well as proposals for financing and authorized the Secretary-General to advance sums from the Working Capital fund to finance the requirements of the programme, such advances to be repaid in accordance with the schedule annexed to his report.

9. FINANCIAL AUTHORITY RELATED TO THE CONSTRUCTION OF THE UNITED NATIONS BUILDING IN SANTIAGO

64. In its resolution 1407 (XIV) of 1 December 1959 the General Assembly revised the terms of its resolution 1273 (XIII) of 14 November 1958 relating to the cost estimates and schedule of amortization for the United Nations building at Santiago, Chile, but left in force the provisions of operative paragraphs 4 and 5 of resolution 1273 (XIII). By those paragraphs the Secretary-General was authorized to negotiate with the Governments of States Members of the Economic Commission for Latin America reimbursable interest-free advances to the United Nations to finance the construction, and to advance out of the Working Capital Fund the moneys required for building costs for which no cash was available. The Secretary-

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167 G A (XV), Annexes, a.i. 56, A/4545, paras. 13 and 16.
168 G A (XVI), Annexes, a.i. 54, A/C.5/877.
General was also authorized under resolution 1407 (XIV) to proceed with the preparation of plans for, and the construction of the building in accordance with the revised terms.

65. The Secretary-General informed 169 the General Assembly at its seventeenth session in 1962 that the construction costs were expected to exceed the financial authorizations approved by the Assembly in its resolution 1407 (XIV). At its 1201st plenary meeting on 20 December 1962 the General Assembly concurred with the recommendation 170 of the Fifth Committee that the final decision on the adequacy of available resources should be left to the Assembly at its eighteenth session, when the decision could be based on a more realistic assessment of the general economic situation in Santiago and on the result of the voluntary contributions programme already under way.

10. UNITED NATIONS INTERNATIONAL SCHOOL

66. From the fourteenth to the eighteenth session the General Assembly requested the Secretary-General to render assistance to the Board of Trustees of the United Nations International School in pursuing its efforts to raise from voluntary sources, governmental or non-governmental, the funds required for the construction and equipment of an appropriate school building and for the establishment of an endowment fund that would make the school self-supporting.171 The Secretary-General was authorized by General Assembly resolution 1982 (XVIII) to accept and administer, on a hold-in-trust basis, within the International School Fund 172 such voluntary contributions as he might be offered for the foregoing purposes.

67. The General Assembly also entrusted the Secretary-General with other specific functions relating to the finances of the school. He was asked to report each year to the General Assembly on the contributions to the International School Fund; in addition he was requested under resolution 1439 (XIV) of 5 December 1959 to make recommendations “on future contributions to the Fund and on the means of financing such contributions”.

68. In resolution 1727 (XVI) of 20 December 1961 the Secretary-General was requested to work out with the Board of Trustees the appropriate correlation of the education grant for children of United Nations staff entitled to such a grant and the fee structure and bursary and scholarship system of the school so as to reduce to a minimum the deficit in operational expenses. He was also authorized, in certain circumstances and with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, to make available towards liquidating the operational deficit anticipated for the 1961-1962 school year the unspent balance of the $20,000 grant made by the General Assembly in accordance with its resolution 1591 (XV) of 20 December 1960 for the original purpose of assisting with the expenses of plans for the permanent accommodation of the School.

11. AUTHORITY TO ESTABLISH RULES AND PROCEDURES RELATING TO THE SYSTEM OF TRAVEL AND SUBSISTENCE ALLOWANCES FOR MEMBERS OF UNITED NATIONS ORGANS AND SUBSIDIARY ORGANS

69. By resolution 1798 (XVII) of 11 December 1962 the General Assembly restated in more comprehensive and explicit terms the principles contained in its resolution 1075 (XI) of 7 December 1956 governing the payment out of United Nations funds of travel and subsistence allowances to members of organs and subsidiary organs of the United Nations. Retained was the provision in the latter resolution by which the Secretary-General was authorized to establish such administrative rules and procedures as might be necessary for implementing the principles involved.

12. AUTHORITY RELATING TO THE SPECIAL ACCOUNT FOR THE UNITED NATIONS EMERGENCY FORCE (UNEF)

70. From its fourteenth through its twentieth session, 1959 to 1965, the General Assembly continued the special account for the expenses of the United Nations Emergency Force (UNEF).173 Authority to incur commitments within the UNEF account was given to the Secretary-General in the terms of the corresponding resolutions.174

13. AUTHORITY RELATING TO THE AD HOC ACCOUNT FOR THE UNITED NATIONS OPERATION IN THE CONGO (ONUC)

71. The General Assembly at its fifteenth session established an ad hoc account for the expenses of the United Nations in the Congo.176 The ad hoc account was continued from session to session until 30 June 1964.177 The resolutions concerned authorized the Secretary-General to expend the amounts envisaged as the continuing cost of the operations.178

14. AUTHORITY TO ACCEPT VOLUNTARY CONTRIBUTIONS

72. In connexion with UNEF and ONUC the Secretary-General was also authorized in General Assembly resolutions 1885 (XVIII) of 18 October 1963 and 1983 (XVIII) of 17 December 1963 to receive

169 G A (XVII), Annexes, a.i. 62, A/C.5/923 and Add. 1. 170 Ibid., A/5386, paras. 3 and 6. 171 G A resolutions 1439 (XIV), 1591 (XV), 1727 (XVI), 1853 (XVII) and 1982 (XVIII). 172 Established by the Board of Trustees at the invitation of the General Assembly in its resolution 1439 (XIV) of 5 December 1959. 173 G A resolutions 1441 (XIV), 1575 (XV), 1733 (XVI), 1864 (XVII), 1983 (XVIII), 2004 (XIX), 2115 (XX). 174 Ibid. For details on the various financial aspects of UNEF during the period under review, see this Supplement under Article 17. 175 G A resolutions 1583 (XV), 1590 (XV), 1595 (XV). 176 G A resolutions 1619 (XV), 1732 (XVI), 1633 (XVI), 1732 (XVI), 1865 (XVII) and 1885 (XVIII). 177 Ibid. For details on ONUC’s financial aspects, see this Supplement under Article 17.
voluntary contributions to be credited to special accounts by the Secretary-General and transferred to the ONUC Ad Hoc Account or the UNEF Special Account in circumstances related to the receipt of the payments by economically less developed countries towards their assessments for those accounts.

73. In addition, the General Assembly authorized the Secretary-General to accept voluntary contributions made by Member States towards either the UNEF or ONUC account in the form of services and supplies.\textsuperscript{178}

D. Functions of the Secretary-General with respect to political and security matters

**1. FUNCTIONS EXERCISED UNDER GENERAL ASSEMBLY RESOLUTIONS WITH RESPECT TO THE SITUATION CREATED BY THE INVASION OF EGYPT

74. During the period under review the General Assembly resolutions relating to the United Nations Emergency Force in the Middle East (UNEF) remained in force without change, and no changes were made in the various agreements concerning UNEF and the Regulations for UNEF. In accordance with operative paragraph 4 of General Assembly resolution 1125 (XI) of 2 February 1957 the Secretary-General submitted annually to the General Assembly a progress report on the activities and organization of UNEF.\textsuperscript{179}

75. UNEF continued to be deployed along the western side of the Egypt-Israel armistice demarcation line and the international frontier covering a distance of 273 kilometres. The basic functions exercised by UNEF continued to serve effectively as a stabilizing influence in maintaining peace in the area.\textsuperscript{180} The Force kept under observation, mainly by air reconnaissance, the area along the Sinai Coast between the northern end of the Gulf of Aqaba and the Straits of Tiran. Detachments at Sharm el-Sheikh were charged with the continuing task of observing shipping through the straits of Tiran.

2. FUNCTIONS EXERCISED UNDER GENERAL ASSEMBLY RESOLUTIONS WITH RESPECT TO THE SITUATION IN HUNGARY

76. In its resolution 1857 (XVII) of 20 December 1962 the General Assembly, having considered the report of the United Nations Representative on Hungary\textsuperscript{181} and having reaffirmed the objectives of its previous resolutions on the question of Hungary, requested the Secretary-General “to take any initiative that he deems helpful in relation to the Hungarian question”\textsuperscript{182}.

The Assembly considered that, in the circumstances, the position of the United Nations Representative on Hungary needed no longer to be continued.

** 3. FUNCTIONS EXERCISED UNDER GENERAL ASSEMBLY AND SECURITY COUNCIL RESOLUTIONS WITH RESPECT TO THE SITUATION CREATED BY THE INVASION OF EGYPT

4. FUNCTIONS EXERCISED UNDER SECURITY COUNCIL AND GENERAL ASSEMBLY RESOLUTIONS WITH RESPECT TO THE SITUATION IN JORDAN AND LEBANON

a. The Secretary-General’s mandate under the relevant resolutions of the Security Council and the General Assembly

77. The Republic of the Congo attained independence on 30 June 1960. Shortly thereafter, confusion, fear and disorder gripped the country as a result of a series of events. Mutinies of the Force publique and subsequent outbursts of violence against Europeans were followed by the sending of Belgian troops into action in many places in the Congo, which in turn gave rise to bitterness and panic among the African population as well as to a fearful flight of many Europeans. Those turbulent events resulted in the breakdown of many public services and important economic enterprises.\textsuperscript{192}

78. On 12 July 1960,\textsuperscript{182} the President and the Prime Minister of the Republic of the Congo in a telegram addressed to the Secretary-General referred to the unsolicited Belgian action as an act of aggression against their country and requested military assistance to protect the national territory of the Congo against the external aggression. They also accused the Belgian Government of carefully preparing the secession of the province of Katanga. In their telegram of 13 July,\textsuperscript{184} the Congolese leaders, clarifying the former request, stated \textit{inter alia} that the purpose of the military assistance they had requested was not to restore the internal situation in the Congo, but rather to protect Congolese territory against acts of aggression committed by Belgian metropolitan troops; that the request related to a United Nations force consisting of military personnel from neutral countries; and that if such assistance was not received without delay, the Congo would be obliged to appeal to the Bandung Treaty Powers.

79. In another communication addressed to the Secretary-General and sent informally by him to the members of the Security Council, the Government of the Congo requested “urgent technical assistance in the field of administration, aiming especially at assistance in developing the security administration of the country”.\textsuperscript{186}

\textsuperscript{178} G A resolutions 1885 (XVIII), 1983 (XVII) and 2115 (XX).

\textsuperscript{179} See G A (XIV), Annexes, a.i. 28, A/4210 and Add. 1; G A (XV), Annexes, a.i. 27, A/4486 and Add. 1 and 2; G A (XVI), Annexes, a.i. 26, A/4857; G A (XVII), Annexes, a.i. 32, A/5172; G A (XVIII), Annexes, a.i. 19, A/5494; G A (XIX), Annexes, No. 6, A/5736; G A (XX), Annexes, a.i. 21, A/5919.

\textsuperscript{180} G A (XX), Annexes, a.i. 21, A/5919, para. 1.

\textsuperscript{181} G A (XVII), Annexes, a.i. 85, A/5236.

\textsuperscript{182} S C 15th yr., Suppl. for July-Sept., p. 176, S/4531, paras. 4 and 5.

\textsuperscript{183} Ibid., p. 11, S/4382.

\textsuperscript{184} Ibid., p. 12.

\textsuperscript{185} S C 15th yr., 873rd mtg., para. 21. The Secretary-General stated that request was within the limits of his competence and that he had sent the communication informally to the members of the Security Council only because of its bearing on the general problem.
80. Thereupon, the Secretary-General on 13 July 1960, acting under Article 99 of the Charter, requested an immediate meeting of the Security Council to consider:

"... a matter which, in my opinion, may threaten the maintenance of international peace and security. ..."

and to hear:

"... a report of the Secretary-General on a demand for United Nations action in relation to the Republic of the Congo".

81. In response to the Secretary-General’s request, the Security Council met urgently in the evening of the same day as he had suggested. From then on, the situation in the Republic of the Congo was discussed exclusively by the Security Council up to 14 September 1960 and then alternately by the General Assembly and the Security Council. In the remainder of the period under review a total of twenty-three resolutions concerning the Congo were adopted by those two organs. Of those resolutions, eight contained provisions directly relevant to the mandate of the Secretary-General, five were of a procedural nature, seven dealt only with the financial aspect of the situation, one was a resolution of the Security Council recommending to the General Assembly the admission of the Congo to membership in the United Nations, another was a resolution of the General Assembly admitting the Congo to membership in the United Nations, and another was adopted by the Security Council after the termination of the United Nations Force in the Congo.

(i) Security Council resolution 143 (1960)

82. At its 873rd meeting held on 13/14 July 1960 at the request of the Secretary-General, the Security Council considered for the first time the situation in the Congo. It adopted, by 8 votes to none, with 3 abstentions (China, France and United Kingdom), resolution 143 (1960), which read:

"The Security Council,

"Considering the report of the Secretary-General on a request for United Nations action in relation to the Republic of the Congo,

"Considering the request for military assistance addressed to the Secretary-General by the President and the Prime Minister of the Republic of the Congo,

"1. Calls upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo;

"2. Decides to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks;

3. Requests the Secretary-General to report to the Security Council as appropriate."

(ii) Security Council resolution 145 (1960)

83. When the Security Council met again on 20 July 1960 to consider the Secretary-General’s first report on the situation in the Congo, troops of the United Nations Force, which the Secretary-General had established pursuant to Council resolution 143 (1960), had already arrived in the Congo, and information had been received from the Special Representative of the Secretary-General in the Congo that the first contingents of the Belgian armed forces had left Leopoldville on 16 July.

84. On 22 July 1960, the Council adopted unanimously its resolution 145 (1960), which read:

"The Security Council,

"Having considered the first report of the Secretary-General on the implementation of Security Council resolution 143 (1960) of 14 July 1960,

"Appreciating the work of the Secretary-General and the support so readily and so speedily given to him by all Member States invited by him to give assistance,

"Noting that, as stated by the Secretary-General, the arrival of the troops of the United Nations Force in Leopoldville has already had a salutary effect,

"Recognizing that an urgent need still exists to continue and to increase such efforts,

"Considering that the complete restoration of law and order in the Republic of the Congo would effectively contribute to the maintenance of international peace and security,

"Recognizing that the Security Council recommended the admission of the Republic of the Congo to membership in the United Nations as a unit,

"1. Calls upon the Government of Belgium to implement speedily Security Council resolution 143 (1960) on the withdrawal of its troops and authorizes the Secretary-General to take all necessary action to this effect;

"2. Requests all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the territorial integrity and the political independence of the Republic of the Congo;

"3. Commends the Secretary-General for the prompt action he has taken to carry out resolution 143 (1960) and for his first report;"

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187 S C resolutions 143 (1960), 145 (1960), 146 (1960), 161 (1961) and 169 (1961); G A resolutions 1474 (ES-IV), 1599 (XV) and 1600 (XV).
188 G C resolution 157 (1960) and G A resolutions 1498 (XV), 1592 (XV), 1601 (XV) and 1628 (XVI).
189 G A resolutions 1590 (XV), 1595 (XV), 1633 (XVI), 1732 (XVI), 1865 (XVII), 1887 (S-IV) and 1885 (XVIII). See this Supplement under Article 17.
189b S C resolution 142 (1960).
190 G A resolution 1480 (XV).
191 S C resolution 199 (1964).
“4. Invites the specialized agencies of the United Nations to render to the Secretary-General such assistance as he may require;

“5. Requests the Secretary-General to report further to the Security Council as appropriate.”

(iii) Security Council resolution 146 (1960)

85. The Secretary-General’s second report to the Security Council on the situation in the Congo dealt mainly with the difficulties encountered by the United Nations Force in its effort to enter the Congolese province of Katanga because of the opposition of the authorities of that province.

86. On 9 August 1960, having considered that second report, the Security Council adopted resolution 146 (1960) by 9 votes to none, with 2 abstentions (France, Italy). In the preamble of that resolution the Council inter alia recalled its resolution 145 (1960) in respect of the withdrawal of Belgian troops from the Congo; noted with satisfaction the progress made by the United Nations in carrying out the Security Council resolutions in respect of the territory of the Republic of the Congo other than the province of Katanga as well as the fact that the United Nations had been prevented from implementing the resolutions of the Council in Katanga despite its attempt to do so; and recognised that “the withdrawal of Belgian troops from the Province of Katanga will be a positive contribution to and essential for the proper implementation of the Council’s resolutions”.

87. The operative paragraphs of resolution 146 (1960) read:

“The Security Council,

“...”

1. Confirms the authority given to the Secretary-General by Security Council resolutions 143 (1960) and 145 (1960) and requests him to continue to carry out the responsibility placed on him thereby;

2. Calls upon the Government of Belgium to withdraw immediately its troops from the province of Katanga under speedy modalities determined by the Secretary-General and to assist in every possible way the implementation of the Council’s resolutions;

3. Declares that the entry of the United Nations Force into the province of Katanga is necessary for the full implementation of the present resolution;

4. Reaffirms that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

5. Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Council;

6. Requests the Secretary-General to implement the present resolution and to report further to the Security Council as appropriate.”

(iv) General Assembly resolution 1474 (ES-IV)

88. In the latter part of August and the first part of September, negotiations undertaken by the Secretary-General resulted in the entry of the United Nations Force into Katanga and the gradual withdrawal of Belgian troops from the territory of the Congo. However, the situation in the Congo worsened as a result of a constitutional crisis which broke out early in September when the President of the Republic, Mr. Joseph Kasavubu, dismissed the Prime Minister, Mr. Patrice Lumumba, who in turn announced that President Kasavubu was no longer Chief of State. That conflict increased the difficulties of the United Nations Force in the performances of its functions.

89. By its resolution 157 (1960) of 17 September 1960 the Security Council, which had met on 21 and 22 August and again from 9 to 17 September 1960 without being able to agree on a substantive resolution, decided to call an emergency special session of the General Assembly, as provided in General Assembly resolution 377 A (V), “in order to make appropriate recommendations”.

90. During its fourth emergency special session, held pursuant to that Security Council resolution, the Assembly adopted on 20 September, by 70 votes to none, with 11 abstentions, resolution 1474 (ES-IV). In the preamble of that resolution, taking into account the unsatisfactory economic and political conditions in the Republic of the Congo, the General Assembly expressed the opinion that, with a view to preserving the unity, territorial integrity and political independence of the Congo, to protecting and advancing the welfare of its people, and to safeguarding international peace, it was essential for the United Nations to continue to assist the Central Government of the Congo. The operative part of that resolution read as follows:

“The General Assembly,

“...”

1. Fully supports the resolutions of 14 and 22 July and 9 August 1960 of the Security Council;

2. Requests the Secretary-General to continue to take vigorous action in accordance with the terms of the aforesaid resolutions and to assist the Central Government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity, territorial integrity and political independence in the interests of internal peace and security;

3. Appeals to all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo, with the assistance, as appropriate, of Asian and African representatives appointed by the Advisory Committee on the Congo in consultation with the Secretary-General, for the purpose of conciliation;


See Press Releases dated 13, 16 and 16 August 1960 respectively, CO/46, CO/49 and CO/51 (mimeographed). See also paras 165 and 169 below.


Ibid., paras. 14-31.

S C, 15th yr., 896th to 906th meetings. S C resolution 157 (1960) was adopted by 8 votes to 2 (Poland, USSR), with 1 abstention (France).

For information on the Advisory Committee, see paras. 149 et seq., below.
4. Appeals to all Member Governments for urgent voluntary contributions to a United Nations Fund for the Congo to be used under United Nations control and in consultation with the Central Government for the purpose of rendering the fullest possible assistance to achieve the objective mentioned in the preamble;

5. Requests:

(a) All States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Republic of the Congo of its authority and also to refrain from any action which might undermine the unity, territorial integrity and the political independence of the Republic of the Congo;

(b) All Member States, in accordance with Articles 25 and 49 of the Charter of the United Nations, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council;

6. Without prejudice to the sovereign rights of the Republic of the Congo, calls upon all States to refrain from the direct and indirect provision of arms or other materials of war and military personnel and other assistance for military purposes in the Congo during the temporary period of military assistance through the United Nations, except upon the request of the United Nations through the Secretary-General for carrying out the purpose of this resolution and of the resolutions of 14 and 22 July and 9 August 1960 of the Security Council.

(v) Security Council resolution 161 (1961)

91. One of the problems confronting the United Nations Operation in the Congo (ONUC) during the constitutional crisis was related to the fate of Mr. Patrice Lumumba. His arrest by the Congolese National Army (Armée nationale congolaise) (ANC) on 1 December and his detention in Leopoldville caused debate in the Security Council, at meetings held from 7 to 13 December 1960 over the alleged failure of ONUC to protect him and with regard to the constitutional crisis in general.

92. When the Security Council met on 1 February 1961, it had been learned that Mr. Lumumba and two members of Parliament had been transferred to Elisabethville, provincial capital of Katanga. After meeting on 1, 2 and 7 February the Security Council resumed its discussion of the situation in the Congo on 13 February after it had been reported that Mr. Lumumba and his companions had been killed in Katanga. The Council held further meetings from 15 to 17 February and again on 21 February, when it adopted resolution 161 (1961).

93. In the preamble of part A of resolution 161 (1961) the Council expressed deep regret at the killing of Mr. Lumumba and his two companions, expressed deep concern at the grave repercussions of those crimes and the danger of widespread civil war and bloodshed in the Congo and the threat to international peace and security, and noted the report of the Special Representative of the Secretary-General bringing to light the development of a serious civil war situation and preparations therefor. The first four operative paragraphs of Part A of the resolution read:

"The Security Council,

"..."

1. Urges that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort;

2. Urges that measures be taken for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries;

3. Calls upon all States to take immediate and energetic measures to prevent the departure of such personnel for the Congo from their territories, and for the denial of transit and other facilities to them;

4. Decides that an immediate and impartial investigation be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues and that the perpetrators of these crimes be punished;

"..."

201 In United Nations usage the initials ONUC, standing for the French title "Opération des Nations Unies au Congo", have come to be used also for the corresponding English title "United Nations Operation in the Congo". As early as 21 September 1960 (S C, 15th yr., Suppl. for July-Sept., p. 176, S/4531, para. 1) ONUC was used as the abbreviation of "the operations of the United Nations in the Congo". Subsequently, as the abbreviation of the French equivalent of the United Nations in the Congo, "Organisation des Nations Unies au Congo", it was used in reports of 2 November 1960 (ibid., Suppl. for Oct.-Dec., p. 6, S/4557, para. 2) and 5 December 1960 (ibid., p. 67, S/4571, para. 3). The United Nations Force in the Congo was an integral part of the United Nations Operation in the Congo (ST/SGB/ONUC/1, chap. 1, para. 5 (b) (mimeographed)), of which the United Nations Civilian Operations in the Congo formed the other integral part. The third preambular paragraph of Security Council resolution 145 (1960) of 22 July 1960 referred to "the United Nations Forces in Leopoldville, and operative paragraph 4 of Security Council resolution 146 (1960) of 9 August 1960 also referred to "the United Nations Forces in the Congo". The term "the United Nations operation in the Congo" was used in the fifth preambular paragraph of General Assembly resolution 1600 (XV) of 15 April 1961.

202 During those meetings (S C, 15th yr., 912th to 920th mtgs.) the Council did not adopt any resolution.

204 The Council had met on 12 to 14 January 1961 (SC, 16th yr., 924th to 927th mtgs.) to consider the question of the passage of a unit of the Congolese National Army through the Trust Territory of Ruanda-Urundi on its way to the Congolese Province of Kivu (S C, 16th yr., Suppl. for Jan.-March, p. 1, S/4606 and Add. 1).

207 Ibid., p. 54, S/4637, II.

209 S C, 16th yr., 928th to 932nd mtgs.

210 Ibid., 933rd mtg.

211 S C, 16th yr., Suppl. for Jan.-March, p. 95, S/4688/Add.1.

212 S C, 16th yr., 934th to 939th mtgs.

213 Ibid., mtg.

214 See footnote 219 below.
In the operative paragraph 5, the Council reaffirmed previous Security Council and General Assembly resolutions on the Congo.

94. In the preamble of part B of resolution 161 (1961) the Council inter alia expressed grave concern at the continuing deterioration of the situation in the Congo and at the prevalence of conditions that seriously imperilled peace and order and the unity and territorial integrity of the Congo, and threatened international peace and security; noted with deep regret and concern the systematic violations of human rights and fundamental freedoms as well as the general absence of the rule of law in the Congo; recognized the imperative necessity for restoring parliamentary institutions in the country; and expressed the conviction that the solution of the problem of the Congo lay in the hands of the Congolese people themselves without any interference from outside and that there could be no solution without conciliation. The operative paragraphs of part B of the resolution read:

"The Security Council,

1. Urges the convening of the Parliament and the taking of necessary protective measures in that connexion;

2. Urges that Congolese armed units and personnel should be reorganized and brought under discipline and control, and arrangements made on impartial and equitable bases to that end and with a view to the elimination of any possibility of interference by such units and personnel in the political life of the Congo;

3. Calls upon all States to extend their full cooperation and assistance, and to take such measures as may be necessary on their part, for the implementation of the present resolution."

(vi) General Assembly resolutions 1599 (XV) and 1600 (XV)

95. The period immediately after the adoption of Security Council resolution 161 (1961) was a critical one for the United Nations Operation in the Congo. The civil war situation continued to be of one of gravity. The adoption of resolution 161 (1961) evoked an adverse reaction on the part of the Leopoldville authorities and a number of harassing measures were taken against ONUC and its personnel. In April, the situation began to improve, first because of the secondly because, after patient negotiations, ONUC reached an agreement with President Kasavubu on 17 April 1961 for implementing Security Council resolution 161 (1961). The situation in Katanga, however, remained unsettled.

96. At its fifteenth regular session (1960), the General Assembly decided to include in its agenda an item entitled "Threat to the political independence and territorial integrity of the Congo" proposed by the USSR. Consideration of that item was continued by the Assembly at its resumed fifteenth session in 1961. On 15 April 1961, the General Assembly adopted two resolutions concerning the situation in the Republic of the Congo which had a bearing on the mandate of the Secretary-General.

97. General Assembly resolution 1599 (XV) dealt with the need for withdrawal and evacuation of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and of mercenaries. After deploiring the non-compliance by Belgium with the previous General Assembly and Security Council resolutions and stating its conviction that the continued presence of those persons in the Congo was the central factor in the grave situation in the Congo, the General Assembly called upon the Government of Belgium to accept its responsibilities as a Member of the United Nations and to comply fully and promptly with the will of the Security Council and the General Assembly; decided that all of the persons referred to should be completely withdrawn and evacuated; and called upon all States to exert their influence and extend their co-operation to effect the implementation of the resolution.

98. In the preamble of General Assembly resolution 1600 (XV) the Assembly inter alia expressed concern at the danger of civil war and foreign intervention in the Congo and at the threat to international peace and security; expressed awareness of the desire of the Congolese people for a solution of the crisis through national reconciliation and a return to constitutionality without delay; and noted with concern the many difficulties that had arisen in the way of the effective functioning of ONUC. Operative paragraphs 1 to 5 of that resolution read:

"The General Assembly,

1. Reaffirms its resolution 1474 (ES-IV) and the Security Council resolutions on the situation in the Congo, more particularly the Council resolution of 21 February 1961;

2. Calls upon the Congolese authorities concerned to desist from attempting a military solution to their problems and resolve them by peaceful means;

3. Considers it essential that necessary and effective measures be taken by the Secretary-General immediately to prevent the introduction of arms, military equipment and supplies into the Congo, except in conformity with the resolutions of the United Nations;

4. Urges the immediate release of all members of Parliament and members of provincial assemblies and all other political leaders now under detention;

5. Urges the convening of Parliament without delay, with safe conduct and security extended to the members of Parliament by the United Nations, by the Assembly at its resumed fifteenth session in 1961. On 15 April 1961, the General Assembly adopted two resolutions concerning the situation in the Republic of the Congo which had a bearing on the mandate of the Secretary-General. In another resolution concerning the situation in the Congo (G A resolution 1601 (XV)), the General Assembly established a Commission of Investigation to investigate the circumstances of the death of Mr. Lumumba.
so that Parliament may take the necessary decisions concerning the formation of a national government and on the future constitutional structure of the Republic of the Congo in accordance with the constitutional processes laid down in the Loi fondamentele;

"...."

In operative paragraphs 6 and 7 the Assembly decided to appoint a Commission of Conciliation to be designated by the President of the Assembly to assist the Congolese leaders to achieve reconciliation and urged the Congolese authorities to co-operate in the implementation of the resolutions of the Security Council and the General Assembly.

(vii) Security Council resolution 169 (1961)

99. In April 1961 the constitutional crisis came to an end with the approval by the Parliament of a new government.220 However, the secessionist movement persisted in Katanga, supported by foreign political advisers, military and paramilitary personnel and mercenaries. In September 1961 those foreign elements launched violent action against ONUC with the connivance of the Katangese authorities and through the instrumentality of the Katangese gendarmes.221 A provisional cease-fire agreement was signed on 20 September,222 but the Katangese authorities did not comply with its terms, and the situation continued to worsen.223

100. The Security Council held a further series of meetings from 13 to 24 November 1961, when it adopted resolution 169 (1961).

101. In the preamble of that resolution, after recalling its own and General Assembly resolutions on the situation in the Congo, the Council, reaffirmed the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out in those resolutions, namely:

"(a) To maintain the territorial integrity and the political independence of the Republic of the Congo,

"(b) To assist the Central Government of the Congo in the restoration and maintenance of law and order,

"(c) To prevent the occurrence of civil war in the Congo,

"(d) To secure the immediate withdrawal and evacuation from the Congo of all foreign military, paramilitary and advisory personnel not under the United Nations Command, and mercenaries,

"(e) To render technical assistance."

In the remainder of the preamble the Security Council welcomed the restoration of the national Parliament of the Congo and the formation of a Central Government, which it recognized as exclusively responsible for the conduct of the external affairs of the Congo, deployed armed action against the authority of that Government and the armed secessionist activities carried on by the provincial administration of Katanga with external aid, rejected the claim of Katanga to the status of "a sovereign independent nation", noted with regret the actions of violence against United Nations personnel and stressed the necessity for action to implement the policies and purposes of the United Nations in the Congo in the interest of the Congolese people, world peace and international co-operation and the stability and progress of Africa. In operative paragraphs 1 to 3, after deprecating the secessionist activities in Katanga as well as the armed action against United Nations Forces and personnel in pursuance thereof, the Council called for the immediate cessation of those activities.

Operative paragraphs 4 and 5, which called for action by the Secretary-General, read:

"The Security Council, "...."

"4. Authorizes the Secretary-General to take vigorous action, including the use of the requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, as laid down in paragraph 2 of Security Council resolution 161 A (1961) of 21 February 1961;

"5. Further requests the Secretary-General to take all necessary measures to prevent the entry or return of such elements under whatever guise, and also of arms, equipment or other material in support of such activities;

"...."

In the other operative paragraphs of Security Council resolution 169 (1961) the Council requested all States to refrain from supplying arms and material which could be used for warlike purposes, to prevent their nationals from doing so and to prevent such supplies from crossing their territories, except in accordance with the decisions, policies and purposes of the United Nations. The Council called upon Member States to refrain from promoting, condoning or supporting activities against the United Nations in the Congo; urged them to support the Central Government of the Republic of the Congo; and requested them to refrain from any action which might impede the policies and purposes of the United Nations in the Congo. The Council declared all secessionist activities therein to be contrary to the Loi fondamentele and Security Council decisions and demanded the immediate cessation of such activities in Katanga; also declared full support for the Central Government and the determination to assist that Government, in accordance with the decisions of the United Nations, "to maintain law and order and national integrity, to provide technical assistance and to implement those decisions."

b. Implementation of the mandate of the Secretary-General

102. In addition to the tasks entrusted to the Secretary-General by the Security Council and the General Assembly explicitly in their resolutions, the mandate of the Secretary-General derived, in some cases, from an implicit approval by those organs (mainly the Security Council) of certain suggestions

220 S C, 16th yr., Suppl. for July-Sept., p. 61, S/4913.


222 Ibid., p. 119, S/4940/Add. 7 and 8.

made by the Secretary-General in his reports. In other instances where the provisions of the resolutions were general in character, the Secretary-General had to interpret such provisions so as to implement them. Such suggestions and interpretations are treated below under the pertinent subject headings in conjunction with the relevant resolutions.

(i) The establishment and general modalities of operation of the United Nations Operation in the Congo (ONUC)

(a) Establishment of ONUC

103. Prior to the adoption of Security Council resolution 143 (1960), the Secretary-General made the following statement in the course of the meeting at which that resolution was adopted:

"... I strongly recommend to the Council to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Congo, to provide the Government with military assistance during the period which may have to pass, before, through the efforts of the Government with the technical assistance of the United Nations, the national security forces are able to fully meet their tasks..."224

The Secretary-General went on to say that were the Security Council to act on his recommendation, he would base his actions on certain principles drawn from previous experiences in the field 225 which would be applicable to what he referred to as "the United Nations Force".226

104. His recommendation was endorsed by the Security Council in operative paragraph 2 of its resolution 143 (1960).227

105. In his first report to the Security Council on the implementation of Council resolution 143 (1960), the Secretary-General gave an account of the steps he had taken to set up the United Nations Force, troops of which had already arrived in Leopoldville.228 In operative paragraph 3 of its resolution 145 (1960), the Security Council commended the Secretary-General for his prompt action in carrying out resolution 143 (1960) and for his first report.

106. To his second report on the implementation of Council resolution 143 (1960) the Secretary-General appended a memorandum on the organization of the United Nations Civilian Operation in the Congo. In that memorandum the Secretary-General referred to "the basic and necessary unity of the civilian and military operations" 229 and stated:

"When the Security Council adopted its resolutions on the United Nations Operation in the Congo, it conceived the civilian part of the operation and the military part as interrelated and mutually supporting elements of the assistance. The essential and long-term contribution would be in the civilian field but it required the establishment of order and security. For that reason, the United Nations Force was organized and sent to the Congo pending the reorganization of the national army and police at the same time as steps were taken for the building up of a large-scale civilian assistance activity. The Security Council reflected the latter element of its approach and the basic unity of the operation in its resolution of 22 July 1960 [S/4405] when it invited 'the specialized agencies of the United Nations to render to the Secretary-General such assistance as he may require'."230

107. The term "United Nations Operation in the Congo" ("ONUC" in abbreviation) was used to designate the subsidiary organ of the United Nations 231 of which the United Nations Force in the Congo and the Civilian Operation in the Congo were integral parts.232

108. In the field, a Special Representative of the Secretary-General was given over-all command and direction of all United Nations actions in the Republic of the Congo, civil and military.233 He was a political officer responsible solely to the Secretary-General. The Commander of the Force 234 and the Chief of Civilian Operations, who were appointed by the Secretary-General, were placed under the general authority and guidance of the Special Representative (Officer-in-Charge).235

(b) Functioning of ONUC

i. General

109. Prior to the adoption of resolution 143 (1960) the Secretary-General outlined the principles pertinent to the organization and functioning of the proposed military assistance programme as follows: the United Nations Force would not be authorized to take action beyond self-defence; it would not be permitted to take any action which would make it a party to internal conflicts; the selection of personnel for the Force..."
would be such as to avoid implications because of the
nationalities used.\textsuperscript{236}

110. The first report of the Secretary-General on the
implementation of Security Council resolution 143 (1960),\textsuperscript{237} submitted to the Council pursuant to the
third operative paragraph of that resolution, contained
an elaboration of the above-cited principles pertinent
to the organization and functioning of the United
Nations Force in the Congo\textsuperscript{238} and indicated
the steps taken by the Secretary-General for implementing
Security Council resolution 143 (1960) in the light of
those principles. In that report the Secretary-General
observed that, since resolution 143 (1960) had been
adopted in response to the initial statement he had
made to the Council at its 873rd meeting, that state-
ment should be considered as being a basic document
on the interpretation of his mandate. He pointed out,
however, that even with those explanations of his
intentions and interpretations of the situation, impor-
tant points were left open for an interpretation in
practice.\textsuperscript{239}

111. The Secretary-General further stated that
"from the basic understanding regarding the presence
of a United Nations Force in the country it follows
that the United Nations activity should have freedom
of movement within its area of operations", and he
pointed out that "a further elaboration of this rule
obviously requires an agreement with the Govern-
ment, i.e. specifying what is to be considered the area
of operations".\textsuperscript{240}

112. As for the authority over the Force, the
Secretary-General stated that, although the Force
might be considered as serving temporarily as an arm
of the Congolese Government for the maintenance
of order and protection of life, it was necessarily under
the exclusive command of the United Nations, the
command being vested in the Secretary-General under
the control of the Security Council.\textsuperscript{241} The Force was
thus not under the orders of the host Government.

113. In operative paragraph 3 of its resolution 145
of 22 July 1960, which was adopted unanimously,
the Security Council commended the Secretary-
General "for the prompt action he has taken to carry
out its resolution 143 (1960) and for his first report".

\textit{ii. Exclusive control by the United Nations}

114. In his first report, after stating that the Force
was not under the orders of the host Government, the
Secretary-General added that the United Nations
Operation must be separate and distinct from activi-
ties by any national authorities. The functions granted
to the United Nations Force could not therefore be
exercised either in competition or in co-operation with
representatives of the host Government in any joint
operation. That applied \textit{a fortiori} to representatives
and military units of Governments other than the host
Government.\textsuperscript{242} Consequently the Force could not
be used to enforce any specific political solution or to
influence the political balance decisive to such a
solution.\textsuperscript{243}

115. In a telegram dated 5 March 1961 to the
President of the Republic of the Congo,\textsuperscript{244} the Secretary-
General observed that the United Nations, under the
Security Council mandate, must keep complete
freedom of decision as regards the deployment of
national contingents in performance of the United
Nations operation and stated that he was "bound to
consider unacceptable any attempt by force or other-
wise to influence ONUC in this respect".\textsuperscript{245}

116. The Status Agreement of 27 November 1961
\textsuperscript{246} laid down clearly the principle of the sole competence
of the United Nations with respect to decisions concern-
ing the composition of the military units sent to the
Congo,\textsuperscript{247} although the opinion of the Congolese
Government was to be given every consideration by
the United Nations as one of the most important
factors to be borne in mind in connexion with recruit-
ment.

117. An incident that occurred in January 1961
had a bearing on the nature of the relationship between
ONUC and the Government of the Republic of the
Congo. In a letter to the Secretary-General dated
14 January 1961,\textsuperscript{248} the President of the Republic of
the Congo requested the recall of Mr. Rajeshvast Dayal,

\textsuperscript{236} S C, 15th yr., 873rd mtg., para. 28.
\textsuperscript{237} S C, 15th yr., Suppl. for July-Sept., p. 16, S/4389 and
Add. 1-6.
\textsuperscript{238} Ibid., paras. 7-15.
\textsuperscript{239} Ibid., paras. 3 and 4.
\textsuperscript{240} Ibid., para. 9. In his statement before the Council on 20/
21 July 1960, the Secretary-General stressed that the area of
operations in which the Force was entitled to entire freedom of
movement was the whole of the territory of the Republic as it exist-
ed when the Congo was recommended for membership by the
Security Council (S C, 15th yr., 877th mtg., para. 15). In his
second report, issued on 6 and 7 August, he recalled that his
interpretation that resolution 143 (1960) applied to the whole
of the territory of the Congo and the fact that the United Nations
Force was entitled to access to all parts of the territory had been
confirmed by Council resolution 145 (1960) (S C, 15th yr., Suppl.
for July-Sept., p. 45, S/4417, para. 2; S C, 15th yr., 887th mtg.,
para. 49). On 8 August 1960 the Secretary-General stated before
the Security Council that the Council might "wish to state
explicitly what so far has been only implied, that is to say,
that its resolutions apply fully and in all parts also to Katanga".
He added that he envisaged a result "through which the basic
unity of the whole Congo without delay is made manifest in the
fact that the United Nations Force was entitled to access to all parts of the territory that had been
confirmed by Council resolution 145 (1960) (S C, 15th yr., Suppl.
for July-Sept., p. 45, S/4417, para. 2; S C, 15th yr., 887th mtg.,
of which the Council declared that the entry of the United Nations
Force into the province of Katanga was necessary for the full
implementation thereof, the Secretary-General stated that that
resolution had eliminated all ambiguity in respect of the Force's
entry into that province (ibid., 887th mtg., para. 19). The principle
of freedom of movement set out in the Basic Agreement
between the United Nations and the Republic of the Congo
(see paras. 142 and 143 below) was invoked by the Secretary-
General in his exchange of correspondence with the Republic
of the Congo (see S C, 16th yr., Suppl. for Jan.-March, p. 217,

\textsuperscript{241} S C, 15th yr., Suppl. for July-Sept., p. 16, S/4389, para. 1.
\textsuperscript{242} At the meeting of the Security Council on 9/10 September
1960 the Secretary-General stated that national contingents that
might be withdrawn from the United Nations Force would have
to be regarded as foreign troops introduced into the Congo,
and the Security Council would have to consider their continued
presence in the Congo, as well as its consequences for the United
Nations Operation, in that light (S C, 15th yr., 896th mtg.,
para. 109).
\textsuperscript{243} Ibid., Suppl. for July-Sept., p. 16, S/4389, paras. 7 and 10.
\textsuperscript{244} S C, 16th yr., Suppl. for Jan.-March, p. 220, S/4758/Add. 4.
\textsuperscript{245} See para. 148 below.
\textsuperscript{246} S C, 15th yr., Suppl. for Oct.-Dec., p. 151, S/5004, para. 2.
\textsuperscript{247} S C, 16th yr., Suppl. for Jan.-March, p. 34, S/4629, 1.
the Special Representative of the Secretary-General, because of alleged irresponsibility and partiality in his behaviour. In a letter of 15 January 1961, the Secretary-General declined to recall Mr. Dayal in view of his status as a senior official of the United Nations Secretariat and not as an accredited diplomatic representative.

118. The nature of the relationship between the Congolese Government and ONUC was further described by the Secretary-General in a message dated 8 March 1961 to the President of the Republic of the Congo:

"... the relation between the United Nations and the Government of the Republic of the Congo is not merely a contractual relationship in which the Republic can impose its conditions as host State and thereby determine the circumstances under which the United Nations operates. It is rather a relationship governed by mandatory decisions of the Security Council. The consequence of this is that no Government, including the host Government, can by unilateral action determine how measures taken by the Security Council in this context should be carried out. Such a determination can be made only by the Security Council itself or on the basis of its explicit delegation of authority. It is of special importance that only the Security Council can decide on the discontinuance of the operation, and that, therefore, conditions which, by their effect on the operation, would deprive it of its necessary basis, would require direct consideration by the Security Council, which obviously could not be counted upon to approve of such conditions unless it were to find that the threat to peace and security had ceased."

119. With regard to the question of national Governments’ wishes regarding the employment of their troops, the Secretary-General stated on 21 August 1960:

"... I think it must be clear that military operations of this kind have to be under a unified command exercising its authority and its judgement as best it can. If we were to try to meet desires expressed by the very many participating Governments, then I think that operation would very soon come to a deadlock. For that reason, while on the one side we naturally listen carefully to, and seriously consider, the wishes expressed by Governments, it would be against the efficiency of the whole operation if it were considered necessary for us to take their wishes into account when they run counter to other considerations of a military and technical nature."

iii. Composition of the United Nations Force

(1) General principles

120. In regard to the principle that the selection of personnel for the United Nations Force should be such as to avoid complications because of the nationalities used (see para. 110 above), the Secretary-General stated:

"... In the prevailing situation this does not, in my view, exclude the use of units from African States, while, on the other hand, it does exclude recourse to troops from any of the permanent members of the Security Council. May I add that in fact it would be my intention to get, in the first place, assistance from African nations."

121. In his first report to the Security Council on the implementation of Security Council resolution 143 (1960), the Secretary-General stated:

"Regarding the composition of the Force, there is another general principle which, in the light of previous experience, I find it necessary to apply. In the report to which I referred in my statement to the Security Council, it is stated that 'while the United Nations must reserve for itself the authority to decide on the composition of such [military] elements, it is obvious that the host country, in giving its consent, cannot be indifferent to the composition of those elements'. The report continues: In order to limit the scope of possible differences of opinion, the United Nations in recent operations has followed two principles: not to include units from any of the permanent members of the Security Council; and not to include units from any country which, because of its geographical position or for other reasons, might be considered as possibly having a special interest in the situation which has called for the operation... It would seem desirable to accept the formula... to the effect that, while it is for the United Nations alone to decide on the composition of military elements sent to a country, the United Nations should, in deciding on composition, take fully into account the view of the host Government as one of the most serious factors which should guide the recruitment of the personnel. Usually, this is likely to mean that serious objections by the host country against participation by a specific contributing country in the United Nations operation will determine the action of the Organization. However, were the United Nations for good reasons to find that course inadvisable, it would remain free to pursue its own line, and any resulting conflict would have to be resolved on a political rather than on a legal basis."

I recommended, in the report quoted, that this principle should be considered applicable to all United Nations operations of the present kind. The problem is in this particular case covered by the request for consultations with the Congo Government...

"...

"As stated to the Security Council on 13 July 1960, the ultimate solution to the problem that has arisen..."

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248 Ibid., p. 35, S/4629, II.
249 Ibid., p. 261, S/4775.
250 S C, 15th yr., 888th mtg., paras. 109 and 110.
in the Congo has to be found by the Republic of the Congo itself, with the assistance of the United Nations. In the same spirit I believe that, to the extent that the Republic of the Congo needs international assistance, such assistance should, within the framework of the United Nations, in the first instance be given by its sister African nations, as an act of African solidarity. However, this natural reliance on regional solidarity for the solution of a problem of this kind should be qualified by an element of universality — and indeed essential — to any United Nations operation. Therefore, while the Force, in my view, should be built around a hard core of military units from African States, it should also, to the extent which might be found practical, include units from other areas which meet the general conditions for the composition of a United Nations Force to which I have referred above.

"Thus, in my view, the present operation is, in the first place, a manifestation of the willingness and ability of the African States to help within the framework of the United Nations, of which I have found the most convincing evidence in the course of this effort. Elements from other regions, included in the Force, may be considered as assistance given, in the spirit of the Charter, to the African community of nations by nations of those other regions. With this approach, the present operation should serve to strengthen the African community of nations and to strengthen also their ties, within the United Nations, with the world community. It would be wholly unjustified to interpret the United Nations action in the sense that nations from outside the region step into the Congo situation, using the United Nations as their instrumentality, because of the incapability of the Congo and of the African States themselves to make the basic contribution to the solution of the problem.

"My efforts to build up the Force have been guided by this interpretation of the United Nations operation. For that reason I have, in the first place, appealed to African States for troops, addressing myself in a second stage to other nations meeting the conditions which are generally applicable, and continuing my efforts to activate further African units to the extent necessary. While the request for troops so far presented by me, or offers of troops accepted by me, follow the pattern just stated, I have already in the first stage addressed a series of appeals for support in such fields as logistics, signals, material, aircraft and specialized personnel to those countries which are most likely to provide them at very short notice, irrespective of their geographical position.

"Apart from being influenced by the factors which I have explained above, I have, naturally, been guided by considerations of availability of troops, language and geographical distribution within the region.""

122. At the 888th meeting of the Security Council on 21 August 1960, the Secretary-General stated that, in organizing the United Nations Force in the Congo, he had been guided by the rule that forces from any of the permanent members of the Security Council should be excluded, and he observed that beyond that he had not been given any guidance by the Security Council as to composition. He added that he did not look at membership in either the North Atlantic Treaty Organization or the Warsaw Pact or any other such grouping as excluding a country from participating in the operation and stated that he wished to maintain a balanced geographical distribution. 254

(2) Arrangements made by the Secretary-General for the recruitment of national contingents

123. Arrangements for the contribution of national contingents to the Force by Member States were made by the Secretary-General and the States concerned by correspondence. 255


"... that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including... the use of force, if necessary, in the last resort", 256

the Secretary-General stated that the new duties of the Force would necessitate further contributions of troops. He did not, however, consider that an increase in the size of a contingent required any renegotiation of the agreements between the United Nations and the States concerned, since resolution 161 (1961) did not alter the legal basis upon which the Force was operating, as it reaffirmed earlier decisions and therefore clearly indicated that those additions to the troops would be on the same basis as previous contributions. 257

125. Increases in the strength of the Force were effected either through appeals to Member States which had not contributed contingents or through increases in the size of contingents already serving. 258

126. Contingents from Africa (Congo (Leopoldville), Ethiopia, Ghana, Guinea, Liberia, Morocco, Nigeria, Sierra Leone, Sudan, Tunisia), Asia (Ceylon, India, Indonesia, Iran, Malaya, Pakistan), Europe (Austria, Denmark, Greece, Ireland, Italy, Netherlands, Norway, Sweden), South America (Argentina, Brazil) and North America (Canada) were used at various stages, and the maximum strength of the Force reached about 20,000. Certain States such as the United Kingdom and the United States, which did not contribute troops, provided transport for contingents. 259

127. National contingents could be withdrawn by the contributing States upon advance notification to the Secretary-General. 260 Certain Governments which contributed contingents to the United Nations Force later withdrew them as a result of disagreements

254 S C, 15th yr., 888th mtg., paras. 95 and 96.
255 That correspondence has not been published.
256 Part A, oper. para. 1.
257 S C, 16th yr., 942nd mtg., para. 218.
258 On 24 February 1961 requests for troops were addressed to certain African States (S C, 16th yr., Suppl. for Jan.-March, p. 176, S/4752, para. 8).
259 S C, 15th yr., Suppl. for July-Sept., p. 16, S/4389, para. 35.
260 G A (XIII), Annexes, a.i. 65, A/3943, para. 50.
with respect to the operation of the Force in the circumstances then obtaining in the Congo.261

iv. Non-intervention in domestic affairs

128. The principle of non-intervention in domestic affairs was set out in the initial statement by the Secretary-General before the Security Council 262 regarding the situation in the Republic of the Congo, was reiterated in subsequent reports 263 as one of the basic principles applicable to United Nations military assistance to the Congo, and was "reaffirmed" by the Security Council in its resolution 146 (1960).

129. In his first report, having noted that in fulfilment of its mandate the United Nations Force might be performing functions normally reserved to the exclusive jurisdiction of the Government of the Congo the Secretary-General emphasized that the mandate of the Force was delimited by the principle of non-intervention in any internal conflict:

"Although the United Nations Force under the resolution [143 of 14 July 1960] is dispatched to the Congo at the request of the Government and will be present in the Congo with its consent and although it may be considered as serving as an arm of the Government for the maintenance of order and protection of life — tasks which naturally belong to the national authorities and which will pass to such authorities as soon as, in the view of the Government, they are sufficiently firmly established — the Force is necessarily under the exclusive command of the United Nations, vested in the Secretary-General under the control of the Security Council. This is in accordance with the principles generally applied by the Organization. The Force is thus not under the orders of the Government nor can it . . . be permitted to become a party to any internal conflict. A departure from this principle would seriously endanger the impartiality of the United Nations and of the operation." 264

The Secretary-General stated further that the United Nations units could not be used to enforce any specific political solution of pending problems or to influence the political balance decisive to such a solution.265 As noted earlier, the Secretary-General was commended by the Security Council for that report in its resolution 145 (1960).266

130. The Secretary-General stated in a memorandum on implementation of operative paragraph 4 of Security Council resolution 146 (1960) the United Nations was "directly concerned with the attitude taken by the provincial government of Katanga to the extent that it may be based on the presence of Belgian troops, or as being, for its effectiveness, influenced by that presence." 267 In the opinion of the Secretary-General, "If the Belgian troops were withdrawn, and if pending full withdrawal, a Belgian assurance were given to the Secretary-General that the Belgian troops would in no way intervene in or be used to influence the outcome of the conflict between the provincial government and the Central Government — that is to say, that they would remain completely inactive during the phasing out — the question between the provincial government and the Central Government would be one in which the United Nations would in no sense be a party and on which it could in no sense exert an influence." 268

131. In operative paragraph 4 of its resolution 146 (1960), the Security Council reaffirmed "that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise". 269

132. At a meeting of the Security Council held on 20/21 August 1960, the Secretary-General stated that the use, in operative paragraph 4 of Council resolution 146 (1960), of the word "reaffirming" showed that the Council was expressly stating what had previously been the understanding of the earlier resolution.270

133. At a meeting held on 15 September 1960, the USSR submitted a draft resolution in operative paragraph 1 of which the Security Council would inter alia have called upon the Secretary-General and the Command of the Force to cease forthwith any form of interference in the internal affairs of the Republic of the Congo so that its Government might exercise without let or hindrance its sovereign rights and authority over the whole territory of the Congo. That draft resolution was rejected by the Council.271

134. The Agreement of 27 November 1961 272 between the United Nations and the Republic of the Congo relating to the legal status of the United Nations in the Congo provided, in paragraph 1, that members of the United Nations Force in the Congo and all

261 S C, 15th yr., 915th mtg.: Yugoslavia, para. 146; 916th mtg.: United Arab Republic, para. 93; 920th mtg.: Indonesia, para. 9; S C, 16th yr., 930th mtg.: Morocco, para. 36; 931st mtg.: Indonesia, para. 106. See also S C, 15th yr., Suppl. for Oct.-Dec., p. 98, S/4594; S C, 16th yr., Suppl. for Jan.-March, p. 60, S/4640; ibid., p. 80, S/4668; ibid., p. 140, S/4731.
262 S C, 15th yr., 873rd mtg., para. 28.
263 S C, 15th yr., Suppl. for July-Sept., p. 16, S/4389, paras. 7 and 13; ibid., p. 45, S/4417, paras. 6 and 10. See also S C, 15th yr., 885th mtg., para. 130.
265 Ibid., para. 13.
266 For statements in the Security Council referring to the Secretary-General’s view, as contained in his first report, regarding non-intervention by the Force in internal conflicts, see S C, 15th yr., 877th mtg.: Secretary-General, para. 17; 878th mtg.: Argentina, para. 130; Ceylon, paras. 69 and 70; 879th mtg.: France, para. 68; USSR, para. 120; United Kingdom, para. 25.
267 S C, 15th yr., Suppl. for July-Sept., p. 64, S/4417/Add. 6 para. 6.
268 Ibid.
269 S C, 15th yr., 887th mtg., para. 47.
270 For the text of the draft resolution see ibid., 903rd mtg. para. 93 (S/4519). At the 906th meeting the draft resolution, was rejected by 7 votes to 2, with 2 abstentions (para. 148). In the course of the meetings held from 9 to 17 September 1960, an amendment (S/4524, No. 2) was submitted by the USSR to operate paragraph 1 of a draft resolution (S/4523) submitted by Ceylon and Tunisia, by which the Council would reaffirm its resolutions of 14 and 22 July and of 9 August and urge the Secretary-General to continue to give vigorous implementation to them the amendment sought inter alia to add to that paragraph the words "permitting no interference in the internal affairs of the Republic of the Congo". That amendment was rejected by the Council at its 906th meeting on 17 September 1960 (para. 154) by 9 votes to 2.
271 See para. 148 below.
officials serving under the United Nations in the Congo were to 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 was charged with ensuring the observance of those obligations.

v. The use of force

(1) The initial principle: limitation of the use of force to self-defence

135. The initial guiding principles of the United Nations Force included the rule that the force would not be authorized to take action beyond self-defence. In his first report to the Security Council, the Secretary-General reiterated:

"The basic element involved is clearly the prohibition against any initiative in the use of armed force."

136. In his second report the Secretary-General stated that in response to a message from Mr. M. Tshombé, president of the provincial government of Katanga, that his government was determined to resist by every means the Lumumba Government and the dispatch of the United Nations Force into Katanga, he had drawn Mr. Tshombé's attention to the principle applying to the United Nations Operation in the Congo as to any other paramilitary operation of the United Nations:

"(iii) United Nations military units are not entitled to act except in self-defence. This rule categorically prohibits the troops participating in the operation from taking the initiative of resorting to armed force, but permits them to reply by force to an armed attack, in particular to any attempts to resort to force which might be made with the object of compelling them to evacuate positions which they occupy on the orders of their commander." 

(2) Further development of the principle: the permissibility of the use of force for certain purposes

137. Subsequently the rule limiting the use of force was relaxed by the Security Council on two occasions. In operative paragraph 1 of part A of its resolution 161 (1961), the Council urged "that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort". Later, operative paragraph 4 of Security Council resolution 169 (1961) authorized "the Secretary-General to take vigorous action, including the use of the requisite measure of force if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, as laid down in paragraph 2 of Security Council resolution 161 A (1961) of 21 February 1961".

138. A draft resolutions submitted by Ceylon, Liberia and the United Arab Republic in the course of the meetings of the Security Council from 1 to 21 February 1961 dealt with the unlawful arrests, deportations and assassinations of political leaders of the Congo. In that draft resolution the Council, after condemning those acts in its first operative paragraph, "upon the United Nations authorities in the Congo to take all possible measures to prevent the occurrence of such outrages including, if necessary, the use of force as a last resort". Although that draft resolution was not adopted by the Council, the Secretary-General relied on it to support his interpretation of previous resolutions to the effect that they did not authorize the United Nations Command to use force to liberate prisoners detained by local authorities de facto or de jure. He based that view on the reference in the draft resolution to the use of force which, obviously, was regarded by the sponsors as a new departure giving new rights, presumably with Article 42 as a basis.

(c) Regulations for the United Nations Force in the Congo

140. The Regulations for the United Nations Force in the Congo, although published officially only on 15 July 1963, for the most part merely continued in effect the policies and practices which had been followed in respect of the Force since it first came into existence. They were deemed to have taken effect on the date of the arrival in the Congo of the first elements of the Force.

141. Those Regulations consisted of seven chapters whose salient features are indicated below:

(a) The United Nations Operation in the Congo was a subsidiary organ of the United Nations established by authority of Security Council resolution 143 (1960). The United Nations Force in the Congo was an integral

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274 See para. 109 above.
275 See para. 149 below.
276 ST/SGB/ONUC/I (mimeographed).
part of ONUC; it consisted of the Commander and all military personnel placed under his command by Member States (regulations 5 (b) and 6).

(b) Full command authority was vested in the Secretary-General under the authority of the Security Council and the General Assembly (regulation 11).

(c) Members of the Force, although remaining in their national service, were, "during the period of their assignment to the Force, international personnel under the authority of the United Nations and subject to the instructions of the Commander, through the chain of command". The functions of the Force were to be "exclusively international", and members of the Force were to "discharge these functions and regulate their conduct with the interest of the United Nations only in view". (regulation 6).

(d) Supplemental instructions consistent with the Regulations could be issued by the Secretary-General and by the Officer-in-Charge of ONUC as required (regulation 3).

(e) The Commander of the United Nations Force in the Congo was appointed by the Secretary-General (regulation 5 (c)).

(f) Changes in commanders of national contingents were to be made in consultation among the Secretary-General, the Commander and the participating States (regulation 12).

(g) In the exercise of his duties and responsibilities, the Commander was to receive from the Secretary-General appropriate guidance through the Officer-in-Charge (regulation 16).

(h) The Regulations referred frequently to the role of the Officer-in-Charge, who could issue supplemental instructions binding on the Commander and review Command orders. The Officer-in-Charge was given "overall command and direction for all United Nations activities in the Republic of the Congo (Leopoldville), civil and military". He acted as an intermediary between the Commander and the Secretary-General, and he arranged with the Secretary-General for the recruitment or secondment of staff from the United Nations Secretariat or from the specialized agencies. He recruited local personnel and had general administrative power to make contracts and discharge all public information activities (regulations 3, 4, 5 (a), 16 and 17).

(i) The Commander had large powers of investigation into matters relating to the good order and discipline of the Force, and into incidents, accidents or losses affecting the Force or its members, or property used by the Force (regulations 13 and 14).

(j) The channel for communication between the United Nations and the participating Governments concerning their units in the Force, or the Force itself, was the United Nations Headquarters in New York through their permanent missions to the Organization (regulation 39).

(k) The Force was to observe the principles and spirit of the general international conventions applicable to the conduct of military personnel (regulation 40).

(d) Agreements between the United Nations and the Republic of the Congo concerning ONUC

i. The Agreement of 27 July 1960 on the basic points for the presence and functioning of ONUC in the Congo

142. In an initial Agreement dated 27 July 1960 concluded between the United Nations and the Government of the Republic of the Congo, the latter stated, in connexion with the presence and functioning of the Force in the Congo, that it would be guided in good faith by the fact that it had requested military assistance from the United Nations and by its acceptance of Security Council resolutions 143 (1960) and 145 (1960). It also stated that it would ensure the freedom of movement of the Force in the interior of the country and would accord the requisite privileges and immunities to all personnel associated with the activities of the Force. On its part, the United Nations, after having taken note of the statement of the Congolese Government, declared that it would be guided, in good faith, by the task assigned to the Force in the cited resolutions and that it was prepared to maintain the Force in the Congo until such time as the Congolese Government deemed the latter's task to have been fully accomplished. The agreement applied to the civilian operations of ONUC inasmuch as its paragraph 4 provided "the foregoing provisions shall likewise be applicable as appropriate to the non-military aspects of the United Nations Operation in the Congo."

143. The Congolese Government and the Secretary-General stated their intention to proceed immediately to explore jointly specific aspects of the functioning of the United Nations Force in the Congo, notably with respect to its deployment, its lines of communication and supply, its lodging and provisioning.

ii. The Agreement on general principles of 26 April 1961

144. An Agreement on general principles was initialed in Leopoldville on 17 April 1961. On it, recognizing that as a Member of the United Nations it was under an obligation to respect the Charter of the Organization and to carry out Security Council resolution 161 (1961) of 21 February 1961, the Republic of the Congo accepted that resolution, taking into account:

"(1) That the United Nations reaffirms its respect for the sovereignty of the Republic of the Congo in the implementation of the resolution;

"(2) That the aim of the resolution of 21 February, part A, paragraph 2, and part B, paragraph 2, is to eliminate all deleterious foreign influence. To this effect the President of the Republic of the Congo will receive all possible assistance of the United Nations;"

281 See para. 108 above.
“(3) That the United Nations is to assist the President of the Republic so that all foreign personnel, whether civilian, military or paramilitary and all mercenaries and political advisers who have not been recruited or recalled under the authority of the President, be repatriated from the Congo within the shortest possible period of time. To implement the above and taking into account the recognition of the sovereign rights of the Republic and the constitutional powers which he holds, the President of the Republic will re-examine the appointments of foreign civilian, military and paramilitary personnel made under his authority and will take the necessary decisions compatible with the interests of the Republic of the Congo;

“(4) That the United Nations is to give to the President of the Republic all possible assistance in:

“(a) Recruiting the technicians needed by the Republic of the Congo, without however having a monopoly of such recruitments;

“(b) Training the administrative and technical cadres by granting fellowships and establishing specialized institutes.”

145. The Republic of the Congo further recognized the need to reorganise the national army, it being understood that this reorganization is to be carried out under the authority of the President of the Republic, with United Nations assistance and on the basis of the proposals made by the Chief of State in his letter of 5 March 1961 to the Secretary-General of the United Nations.285

146. The Agreement provided that its detailed application was to be subject, in each instance, “to a careful study on the part of the Government of the Republic of the Congo and the United Nations”.286

147. By a letter to the President of the Republic of the Congo dated 26 April 1961, the Secretary-General, after consulting the Advisory Committee on the Congo, signified his approval of the Agreement.

iii. The Agreement of 27 November 1961 on the legal status of the United Nations in the Congo 286

148. On 27 November 1961 a comprehensive “Agreement relating to the legal status, facilities, privileges and immunities of the United Nations in the Congo” was signed in New York by the Acting Secretary-General and the Minister of Foreign Affairs of the Republic of the Congo. That Agreement applied, except where otherwise indicated, to both components of ONUC, that is, the Force and the Civilian Operation. Thus, paragraph 48 stated that its provisions related generally to the United Nations or officials serving under the United Nations in the Congo. Some of the essential provisions of the Agreement are outlined hereunder:

(a) Composition of the Force. The exclusive competence of the United Nations with respect to decisions concerning the composition of the Force was reaffirmed, it being understood that the United Nations must give every consideration to the opinion of the Government, as one of the most important factors to be borne in mind in connexion with recruitment (paragraph 2).

(b) Freedom of movement. The Agreement reaffirmed that the Government must afford the members of the Force and the officials serving under the United Nations in the Congo full freedom of movement throughout Congolese territory. That freedom extended to the operation of vehicles, aircraft, vessels and equipment in the service of the United Nations (paragraph 30).

(c) Respect for local law and international status. Members of the Force and UN officials were to respect the laws and regulations of the Congo and refrain from any political activity or from any action incompatible with their international responsibilities. The Special Representative of the Secretary-General was to ensure the observance of those obligations (paragraph 1).

(d) Privileges and immunities.287 With respect to such matters as the granting of privileges, immunities and exemptions to the property and assets of the United Nations and of the States participating in the United Nations Force, and to the members of the Force and officials serving under the United Nations in the Congo, the Agreement contained provisions similar to but in some instances more extensive than those of the Convention on Privileges and Immunities of the United Nations. In regard to jurisdictional immunity, the Agreement further provided that members of the Force should be subject to the exclusive jurisdiction of their respective national State in respect of any criminal offences which might be committed by them in the Congo. In such instances, procedures were laid down concerning settlement of disputes between parties to the Agreement (paragraphs 6-38).

(e) Liaison. The system of liaison comprised liaison officers, on a reciprocal basis, at staff headquarters, and when useful, at the regional commands of the Congolese National Army (ANC) and ONUC. Liaison was to be maintained between ONUC and the Congolese authorities at each airport in order to prevent any conflict of functions (paragraphs 41 and 42).

(f) Respective mandates of the ANC and ONUC with respect to maintenance of law and order. The essential differences in the respective mandates of the two parties to the Agreement were stated to be as follows (paragraphs 43 and 44):

“43...

“(a) Full responsibility for the implementation of domestic legislation and regulations shall remain with the Congolese authorities. The United Nations shall be as an international Force and as such its responsibilities shall be exercised for the purposes

287 See also this Supplement under Articles 104 and 105.
of maintaining public order, peace and security; in so doing it shall not apply domestic regulations and procedures, but shall act in accordance with its interpretation of the mission assigned to it by the Security Council.

“(b) In the performance of their duties, the Congolese authorities responsible for enforcing the law shall have the right to resort to force in conformity with the law. The United Nations shall not have recourse to the use of force except as a last resort and subject to the restrictions imposed by its mandate and by the resolutions of the Security Council and the General Assembly.

44. In view of the impossibility of having two security systems acting in competition, both parties undertake to co-ordinate their actions in the maintenance of public order and shall 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 maintenance of public order, the authorities concerned shall proceed to immediate consultations with the nearest unit of the United Nations Force. Such conflicts shall be adjusted by agreement, in a spirit of understanding and co-operation. In particular, if a situation arises in which it appears that the use of force is necessary, the authorities concerned shall first immediately enter into consultation with the nearest unit of the United Nations Force.”

(g) Supplementary provisions. Any supplementary provisions necessary for the carrying out of the Agreement were to be made by agreement between the Special Representative of the Secretary-General or, as the case might be, by the Supreme Commander of the Force and the appropriate Congolese authorities designated by the Government (paragraph 45).

(ii) Establishment of an Advisory Committee

149. At a Security Council meeting held on 8 August 1960, a representative, referring to a proposal made by the Prime Minister of the Congo that a group of observers from States Members of the United Nations should be sent to the Congo, stated that such a measure might facilitate the Secretary-General’s task of implementing the Security Council’s decisions.

150. At a meeting of the Security Council held on 21 August 1960, the Secretary-General, referring to that statement, said that he had given further thought to the idea and added:

“I should now welcome a more formal and regular arrangement for the current and highly useful consultations which I have with the countries contributing units to the United Nations Force. If that would not meet with any objection from the Council, it would therefore be my intention to invite the representatives of those countries to serve as members of an advisory committee to the Secretary-General personally, following the pattern established by the Advisory Committee functioning for the United Nations Emergency Force in the Middle East.”

151. At the next meeting of the Council, also held on 21 August, the Secretary-General added:

“In various interventions, reference has been made to the question of some kind of group, and it was mentioned that I now seemed to favour a group of observers, or whatever they should be called, to be sent to the Congo. I want to make it clear that that is not what I proposed. I proposed a parallel to the Advisory Committee established in the case of the United Nations Emergency Force; that is to say, an advisory committee meeting with the Secretary-General, it may be here or, in some cases, it may be in the Congo. But to station it in the Congo when I have to be here either for the Security Council or for the General Assembly would deprive me of the advantages of current consultation.”

152. After the establishment of the Advisory Committee by the Secretary-General the General Assembly, in its resolution 1474 (ES-IV) of 20 September 1960, appealed to all Congolese to seek a speedy solution by peaceful means of all their internal conflicts “with the assistance, as appropriate, of Asian and African representatives appointed by the Advisory Committee on the Congo, in consultation with the Secretary-General, for the purpose of conciliation.”

153. In a report to the Security Council dated 4 February 1963, the Secretary-General stated that the conduct of the Congo operation demonstrated the great practical utility of an advisory committee arrangement in the conduct of such a highly complex and politically sensitive activity. He added that the Advisory Committee on the Congo had been invaluable to him, as it had been to his predecessor, “in providing an indispensable means of testing proposed lines of action, exchanging viewpoints and obtaining sound guidance.”

(iii) Action taken by the Secretary-General for the fulfilment of specific purposes of his mandate

154. The withdrawal of Belgian troops was one of the objectives initially pursued by the Security Council in respect of the situation in the Congo. The Secretary-General assisted in the fulfilment of that objective by negotiating with the Belgian authorities for the speedy withdrawal of their troops and arranging

288 For the text of the proposal, see S C, 15th yr., Suppl. for July-Sept. p. 90, S/4421. A similar proposal later submitted by the USSR (ibid., p. 116, S/4453) was not pressed to a vote (S C, 15th yr., 889th mtg. para. 142).
289 S C, 15th yr., 885th mtg. : USSR, para. 115.
290 Ibid., 887th mtg., para. 36. See also ibid., 888th mtg., para. 108. For information on the Advisory Committee established for UNEF, see Repertory Supplement No. 2, under Article 98, para. 80.
291 S C, 15th yr., 888th mtg., para. 108.
292 The establishment of the Advisory Committee is not recorded in any formal instrument.
293 During the fourth emergency special session of the General Assembly, the representative of the USSR contended, prior to the adoption of resolution 1474 (ES-IV), that the Advisory Committee did not officially exist inasmuch as there was no resolution of the Security Council or of any other United Nations body providing for its establishment. The representative stated further that it had been established entirely on the initiative of the Secretary-General, who had, however, “a perfect right” to take that initiative and had done so in order to facilitate his task of consulting the various African and Asian countries (GA (ES-IV), Plen, 863rd mtg., para. 133).
294 S C, 18th yr., Suppl. for Jan.-March, p. 92, S/5240, para. 41.
for those troops to be relieved by the United Nations Force.

155. Other functions exercised by the Secretary-General were directed towards the restoration and maintenance of law and order and the prevention of unauthorized outside military assistance. The maintenance of the territorial integrity of the Congo, which was also one of the objectives pursued by the United Nations, involved mainly action with respect to the attempted secession of Katanga.

156. The military and political functions exercised by the Secretary-General in regard to the Congo were carried out primarily through the instrumentality of UNMEN. In acting to restore law and order, UNMEN took measures to protect life and property in the Congo and assisted in resolving the constitutional crisis, which lasted from August 1960 to September 1961, by facilitating the resumption of the functioning of parliamentary institutions and taking other measures to promote national reconciliation. Action in regard to the attempted secession of Katanga had as its main purposes the evacuation from the Congo of the military and paramilitary elements, political advisers and mercenaries who were active in Katanga without the authority of the Congolese Government and the promotion of the reunification of Katanga with the remainder of the Republic of the Congo.

(a) Withdrawal of Belgian troops

157. On its resolution 143 (1960), operative paragraph 1, the Security Council called upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo but conferred no specific mandate on the Secretary-General in connexion with such withdrawal. It did, however, refer, in its first preambular paragraph, to the Secretary-General’s report at the 873rd meeting of the Council, in which the Secretary-General had explained that if the United Nations were to act as proposed by him, the Belgian Government would see its way to a withdrawal of its troops.

158. In his report of 19 July 1960, the Secretary-General stated that Belgian troops had begun to evacuate Leopoldville. After assurance had been given by the Special Representative of the Secretary-General to the Belgian Ambassador in Leopoldville that the United Nations Force would arrive during the week after 19 July in sufficient numbers to ensure order and to protect the entire population, it had been decided that the withdrawal of Belgian forces from the Leopoldville area would be completed by 23 July 1960.

159. At the 877th meeting of the Council on 20 July 1960, the Secretary-General stated that the Council had not, as it had in previous instances, authorized or requested:

"... the Secretary-General to take specific steps for the implementation of withdrawal — apart, of course, from the establishment of the Force..."

Despite that absence of specific power,

"... my representatives in the Congo have taken the initiatives they have found indicated for the coordination of the implementation of the Security Council decision on the Force with the implementation of its decision on withdrawal. Although I do not consider it necessary, a clarification of my mandate on this point may be found useful by the Council. Such a clarification, if made, might aim at establishing the substance of my mandate on this point and the aim of the Council as regards the implementation of the call for a withdrawal."

160. After having received the first report of the Secretary-General on the implementation of resolution 143 (1960), the Security Council in its resolution 145 (1960) of 22 July 1960 called upon the Government of Belgium to implement speedily Security Council resolution 143 of 14 July 1960 on the withdrawal of its troops and authorized the Secretary-General “to take all necessary action to this effect”.

161. In his second report of 6 August 1960 on the implementation of Security Council resolutions 143 and 145 (1960), the Secretary-General stated that, with respect to the withdrawal of Belgian troops from Katanga,

"... the Belgian Government does not oppose the execution of these resolutions in the sense in which I have interpreted them to you. Thus the United Nations is faced with no problem of Belgian opposition."

Referring to the fact that on 4 August 1960 his assistant, Mr. Bunche, had gone to Elisabethville with the necessary staff, the Secretary-General said:

"there he will begin the initial negotiations concerning the withdrawal of Belgian troops to their bases, as the first step towards the full implementation of the Security Council resolutions so far as concerns Katanga. Mr. Bunche will be followed on the next day, i.e., Saturday, 6 August, by the first United

296 Prior to the adoption of Security Council resolution 143 (1960) the USSR had submitted amendments (S C, 15th yr., Suppl. for July-Sept., p. 15, S/4386), whereby the Council would inter alia have called for the withdrawal of Belgian troops “immediately”. Those amendments were rejected (S C, 15th yr., 873rd mtg., paras. 223 and 224).

297 S C, 15th yr., 873rd mtg., para. 27. At a Security Council meeting on 21 August 1960 the Secretary-General referred to the maintenance of order and security by the United Nations troops as being combined with the withdrawal of Belgian troops, “the former being the means to the latter as a main political end” (S C, 15th yr., 873rd mtg., para. 69). At the 873rd meeting, after the adoption of resolution 143 (1960), two representatives said that they interpreted operative paragraph 1 of that resolution as being contingent upon the successful carrying out by the United Nations of the military assistance requested. Two other representatives held the contrary view, that is, that Belgian troops should withdraw immediately and unconditionally (S C, 15th yr., 873rd mtg., paras. 235, 242, 245 and 246).

298 Ibid., p. 25, S/4389/Add. 1, para. 3.

299 S C, 15th yr., 877th mtg., para. 18.


301 Ibid., p. 45, S/4417, para. 4.

302 The Secretary-General had stated earlier in the report (para. 2) that his interpretation of resolution 143 (1960) clearly applied to the whole of the territory of the Congo as it was when the Security Council recommended to the General Assembly that it be admitted to membership (S C, resolution 142 (1960) of 7 July 1960).
Nations military units; and the withdrawal of Belgian troops from the place of deployment of the United Nations troops is to commence immediately."

In the same report, the Secretary-General quoted the instructions he had issued on 4 August 1960 to Mr. Bunche for his mission. With respect to the withdrawal of Belgian troops, his instructions were as follows:

"Your task is to discuss with the appropriate Belgian authorities the modalities for the withdrawal of Belgian troops and their replacement by troops of the United Nations Force, which will be charged with maintenance of security also in this part of the territory of the Republic of the Congo.

"In the light of declarations made to me by the Government of Belgium, both orally and in writing, later also in an official statement, I know that no opposition will be offered by Belgian authorities or forces."

162. When the Security Council met on 8 August to consider his second report, the Secretary-General reiterated that there was no opposition from the Belgian Government and that Belgium's position was one of "submission" to the Security Council resolutions and to the entrance of the United Nations Force; but that such submission, which he understood to mean "absence of active resistance", presented the United Nations with a serious problem, "especially in a situation like the one now created by Mr. Tshombé".

In that connexion, he pointed out that:

"... in accordance with the intentions of the Council... everywhere in the Congo, the withdrawal of Belgian troops should be immediately followed, or even preceded, by the entry of United Nations troops, shoudering the responsibility for the maintenance of security and order. So it has been everywhere outside Katanga.

"In Katanga this principle has led to the development of a vicious circle. The entry of United Nations troops is obstructed and, correspondingly, the withdrawal of the Belgian troops is rendered impossible if the principle is to be maintained that, at the withdrawal, the responsibility for security must be taken over at once by United Nations troops. However, the opposition to the United Nations is raised in the shadow of the continued presence of the Belgian troops.

"This vicious circle must be broken; further delays in the entry of United Nations troops, due to armed opposition, can in my view not any longer be permitted to delay the withdrawal of the Belgian troops. If, at the withdrawal of Belgian troops, the United Nations troops are not in the area because of such opposition, it is for those who oppose the entry of the United Nations troops, or who support or encourage this obstruction, to carry the full responsibility for what may develop in the vacuum which they have forced upon us."

163. Security Council resolution 146 (1960) of 9 August 1960, provided, in its relevant paragraphs, as follows:

The Security Council,

"Recalling its resolution 145 (1960) of 22 July 1960, inter alia calling upon the Government of Belgium to implement speedily Security Council resolution 143 (1960) of 14 July 1960 on the withdrawal of its troops and authorizing the Secretary-General to take all necessary action to this effect,"

"... Noting however that the United Nations had been prevented from implementing the aforesaid resolutions in the province of Katanga although it was ready, and in fact attempted, to do so,

"Recognizing that the withdrawal of Belgian troops from the province of Katanga will be a positive contribution to and essential for the proper implementation of the Council's resolutions,

"1. Confirms the authority given to the Secretary-General by Security Council resolutions 143 (1960) and 145 (1960) and requests him to continue to carry out the responsibility placed on him thereby;"

"2. Calls upon the Government of Belgium to withdraw immediately its troops from the province of Katanga under speedy modalities determined by the Secretary-General and to assist in every possible way the implementation of the Council's resolutions;"

"..."

"6. Requests the Secretary-General to implement the present resolution and to report further to the Security Council as appropriate."

164. Asked by a representative how he would interpret the phrase "speedy modalities determined by the Secretary-General", the Secretary-General replied:

"I read the phrase 'speedy modalities' as a recognition of the need for me — and I repeat 'for me' — so to implement the request for immediate withdrawal addressed to the Government of Belgium as to provide for an orderly development within the limits of the possible, as determined also by factors over which others than we are the masters and, of course, with due regard to the overriding needs of the situation.

"Thus I read the phrase quoted by the representative of the United Kingdom as entitling me, inter alia, to have regard to the concern expressed by this very Council that there should be effective and continued maintenance of law and order. This will not slow down the withdrawal provided that, as the Security Council has a right to expect, the

203 S C, 15th yr., Suppl. for July-Sept., p. 45, S/4417, para. 8. The proposed deployment of ONUC troops in Elisabethville was postponed by the Secretary-General, acting on the basis of a report from Mr. Bunche that the Katanga provincial authorities were determined to oppose such deployment by force. Ibid., paras. 9 and 10.

204 S C, 15th yr., 884th mtg., para. 13.

205 Ibid., paras. 29-31.

206 A USSR draft resolution (S/4425) incorporated in the record of the 885th meeting of the Council (S C, 15th yr., 885th mtg., para. 119), which would have imposed upon the Secretary-General the obligation "to take decisive measures, without hesitating to use any means to that end, to remove Belgian troops from the territory", was not pressed to the vote.
Belgian Government and Mr. Tshombé—and those who may support him—give their full and immediate co-operation. There are also other related considerations which must influence me in determining the modalities. May it suffice to remind the Council of what I said this morning regarding the problem presented by the 15,000 Congolese who depend on the Kamina base. Together, such considerations as those mentioned will, on my side, necessitate the establishment of speedy time-tables which, with a background in the obligation of the Belgian Government established by the proposed resolution, are determined by the possibilities, the responsibilities, and the aims of the United Nations.”

165. After the adoption of Security Council resolution 146 (1960), the Secretary-General arrived at Elisabethville on 12 August with two companies of troops from the United Nations Force. By 13 August, arrangements had been made for the speedy deployment of the United Nations Force, while discussions had been held with the Belgian military representatives for the immediate withdrawal of the Belgian troops to their bases on arrival of the United Nations contingents. The main body of the force arrived on 15 August.

166. In his third report to the Security Council issued on 30 August 1960, the Secretary-General pointed out that, at the withdrawal of Belgian combat troops from the base of Kamina and in accordance with a statement he had made at a meeting of the Security Council on 21 August 1960, the United Nations has taken over full responsibility for the administration of the base, without prejudice to the rights and claims of the parties concerned. He stated that the temporary administration established by the United Nations was regarded as a provisional measure in the sense of Article 40 of the Charter, necessary under the mandate given to the Secretary-General for achieving the withdrawal of Belgian troops “under speedy modalities determined by the Secretary-General”. He added that the same arrangements applied to the Kitona base.

167. The withdrawal of Belgian troops from the Congo, which in accordance with a letter from the representative of Belgium to the Secretary-General was to have been carried out at the latest by 29 August 1960, had not in fact been completed by that date. The Belgian Government attributed the delay to a lack of adequate transport facilities and stated in a letter of 9 September 1960 to the Secretary-General that “... there are no operational troops left in the Congo.

“The men remaining at Kitona are technicians, together with a group of airfield guards. The latter are ready for their departure, which is to take place immediately upon the arrival of United Nations troops capable of taking over this duty ...

“...

“My Government wishes to reiterate that it has always been at pains to act on the Security Council resolutions and has applied them to the fullest extent physically possible.”

168. A draft resolution submitted by the USSR at a Security Council meeting on 7 December 1960 contained an operative paragraph by which the Council would have called “upon the Government of Belgium, in accordance with the decision of the United Nations Security Council and the special emergency session of the United Nations General Assembly, immediately to withdraw Belgian military, paramilitary and civil personnel from the Congo”. At a meeting held on 13 December 1960, that operative paragraph was voted upon and rejected by 6 votes against 4 in favour, with 1 abstention.

169. On 1 February 1961, the Secretary-General stated that the immediate aim of the United Nations operation in the Congo, which was to provide for the withdrawal of all Belgian combat troops, had been...
met by the end of August 1960. He added, however, that later on outside interference had recurred in new and subtler but not less dangerous forms. 318

170. At a Security Council meeting on 15 February 1961, the USSR submitted a draft resolution 320 in operative paragraph 3 of which the Council would inter alia have enjoined the Command of the troops in the Congo pursuant to the decision of the Security Council “to ensure the immediate disarming and removal from the Congo of all Belgian troops and all Belgian personnel”. On 20 February 1961 that draft resolution was rejected by 8 votes to 1, with 2 abstentions. 321

(b) Restoration and maintenance of law and order

171. With reference to Security Council resolution 143 (1960), the Secretary-General stated at a meeting of the Council 322 on 7 December 1960:

“This resolution did not specifically state that the United Nations Force was to maintain law and order, but it was clear from the context that this would be its essential function. The legal justification for the Council decision was the threat to peace and security which arose as a result of the intervention of the Belgian troops in the Congo; this intervention, in turn, occurred purportedly because of the widespread internal disorders in the country... it was considered necessary, in response to the request of the Government of the Republic of the Congo, to introduce United Nations troops to assist the restoration of internal order and security.”

172. In the fifth preambular paragraph of its resolution 145 (1960), the Security Council noted “that the complete restoration of law and order in the Republic of the Congo would effectively contribute to the maintenance of international peace and security”. That resolution, however, did not expressly give the Secretary-General specific functions in that regard.

173. In the course of the meetings held by the Security Council from 9 to 17 September 1960, a draft resolution 323 was submitted by the representatives of Ceylon and Tunisia, under operative paragraph 3 of which the Council would have reaffirmed “... that the United Nations Force should continue to act to restore and maintain law and order as necessary for the maintenance of international peace and security”.

The USSR proposed amendments 324 to that draft resolution among which was a proposal 325 to delete from operative paragraph 3 the words “continue to” and to replace the words “as necessary for the maintenance of international peace and security” with the words “with a view to assisting the Central Govern-

ment of the Congo to exercise its authority and ensure the territorial integrity and political independence of the Congo”.

174. At a meeting of the Security Council held on 17 September 1960, the amendment by the USSR to operative paragraph 3 of the joint draft resolution was rejected by 9 votes to 2. 326 The result of the vote on the joint draft resolution was 8 votes in favour to 2 against, with 1 abstention. The draft resolution was not adopted because one of the negative votes was that of a permanent member of the Council. 327

175. In operative paragraph 2 of its resolution 1474 (ES-IV) adopted on 20 September 1960 the General Assembly requested the Secretary-General “to assist the Central Government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo”.

176. At a meeting of the Security Council held on 8 December 1960, the representative of Argentina, also on behalf of Italy, the United Kingdom and the United States, submitted a draft resolution, later revised, 328 in operative paragraph 3 of which the Council would have requested the Secretary-General inter alia “to continue his efforts to assist the Republic of the Congo in the restoration of law and order throughout its territory”. At the meeting of the Council held on 13/14 December 1960 that draft resolution received 7 votes in favour and 3 against, with 1 abstention, and was not adopted because one of the negative votes was that of a permanent member of the Council. 329

177. In the preamble of its resolution 161 B (1961) of 21 February 1961 the Security Council expressed grave concern at the prevalence of conditions which seriously imperilled peace and order in the Congo and noted “with deep regret and concern the systematic violations of human rights and fundamental freedoms and the general absence of the rule of law in the Congo”.

178. In the third preambular paragraph of its resolution 169 (1961) of 24 November 1961 the Security Council reaffirmed the policies and purposes of the United Nations with respect to the Congo, including assistance to the Central Government of the Congo in the restoration and maintenance of law and order.

179. The provisions of resolutions relating to more specific aspects of the Secretary-General's mandate

318 S C, 16th yr., 928th mtg., para. 71.
320 Ibid., 934th mtg., para. 112, S/4706.
321 Ibid., 942nd mtg., para. 89.
322 S C, 15th yr., 913th mtg., para. 25. For an account of the situation in the Congo in respect of the maintenance of law and order during the initial stage of the United Nations operation, see ibid., Suppl. for Oct.-Dec., p. 6, S/4557, paras. 56-80.
324 S C, 15th yr., 906th mtg., paras. 116-124.
325 Ibid., para. 120.
326 Ibid., para. 154.
327 Ibid., para. 157. Under operative paragraph 1 of a two-Power draft resolution (GA (XV), Annexes, a.i. 85, A/L.332) submitted to the General Assembly during the first part of its fifteenth session the Assembly would have requested the Secretary-General inter alia “to continue to use the presence and the machinery of the United Nations to assist the Republic of the Congo in the restoration and maintenance of law and order throughout its territory”. Under operative paragraph 1 of an eight-Power draft resolution (GA (XV), Annexes, a.i. 85, A/L.331/Rev. 2) also submitted to the General Assembly during the first part of its fifteenth session the Assembly would have expressed the view that “the United Nations must henceforth implement its mandate fully to prevent breach of peace and security, to restore and maintain law and order and the inviolability of persons, including United Nations and diplomatic personnel and property, in accordance with the Charter”. Both draft resolutions failed of adoption (G A (XV), Plen., 958th mtg., paras. 129 and 130).
329 S C, 15th yr., 920th mtg., para. 156.
as it concerned law and order are quoted below under the appropriate headings.

i. Emergency measures

180. The situation in respect of law and order deteriorated when a constitutional crisis began in Leopoldville on 5 September 1960. That night ONUC was faced by an imminent breakdown of law and order while a civil war was already under way in parts of the country and there was a clear threat to the United Nations Force from the expected movements of mutually hostile elements of the army. In the interests of maintaining peace and security, ONUC closed all major airports to any traffic other than that of the United Nations. The next day, recognizing that the risk of major clashes between political and ethnic groups could present the Force with a peace and security problem, ONUC took a directly related measure and temporarily closed the Leopoldville radio station.

181. At a meeting of the Security Council held on 9/10 September 1960, the Secretary-General said:

"When the constitutional crisis broke out, the atmosphere was already tense, and all experience showed that, subjected to the fire of propaganda, the population was highly excitable. With whom could the United Nations representatives consult in this situation without taking sides? In the light of what I have said, the answer is obvious: they had to act on their own responsibility, within their general mandate, in order to meet the emergency which they were facing. Let me repeat it, there was nobody, really nobody, with whom they could consult without prejudging the constitutional issue."

182. After referring to the possibility of a radio war between the protagonists in the constitutional conflict, the Secretary-General went on to say that were the population of Leopoldville

"to be worked up by a radio war between the protagonists, the consequences would be unforeseeable. A popular uprising, with fights between parties, could easily present the United Nations Force with a problem far exceeding its powers. Such an eventuality had to be forestalled and, therefore, as an emergency measure under its mandate for the maintenance of law and order, the United Nations representatives closed the radio station. They also closed the airports for all but United Nations operations, so as to be certain that the United Nations would be able to operate in fulfilment of its mandate, whatever happened."

The Secretary-General then observed:

"The two far-reaching steps of an emergency nature which were taken by the United Nations representatives were, as I have already said, not preceded by a consultation with the authorities. Nor could they have been. But further, they were not preceded by any reference of the matter to me, because of the extreme urgency of the problem our people were facing on the spot."

He added that he assumed full responsibility for what had been done, as he was convinced

"of the wisdom of the actions and of their complete accordance with the spirit and the letter of the Security Council decisions, adjusted to a situation of unique complication, and, of course, utterly unforeseeable when the resolutions of the Council were adopted."

183. As a result of votes taken in the House of Representatives and in the Senate of the Congo, as well as of the resulting pressure for a reconciliation of differences and a compromise solution, the Secretary-General hoped that matters would become stabilized and that the two steps taken by the United Nations solely in order to face an immediate emergency and only as a temporary safeguard could be cancelled. Addressing the Security Council he stated that the situation nevertheless remained such that he felt it necessary to submit the question of the closing of the airports and of the national radio to the Council for its consideration and instruction. He added that if, before the Council reached a decision, the situation were to develop in such a way that the measures could be cancelled on the spot, he would be the first to welcome such a development.

184. In a report to the Security Council dated 13 September 1960, the Secretary-General stated that a report received from his Special Representative had indicated that Radio Leopoldville had been on the air on 12 September and was functioning normally and that political leaders were free to make their respective statements. A written assurance had been given to political leaders by the Vice-President of the Senate and the President of the Chamber of Representatives to the effect that Parliament would assume responsibility for the supervision of broadcasts and would take steps to ensure that the radio station was not used for purposes contrary to peace and public order. The report went on to state that as of 13 September all airfields were open for civilian, humanitarian and peaceful purposes.

ii. Protection of lives and property, including the protection of political leaders and the question of the observance of human rights

185. ONUC strove to protect human lives and property against violence and lawlessness by temporarily disarming elements of the Congolese National
Army (ANC) which had broken loose from their command and by protecting political leaders and public buildings as well as the civilian population. In addition, efforts were made, by means of representations to the authorities and the use of other diplomatic modalities, to ensure the observance of human rights and due process of law in the Congo.

Protection of lives of civilian population

186. In his fourth report to the Security Council dated 7 September 1960, the Secretary-General stated that, in view of the fact that internal conflicts had brought about a considerable loss of human life and continued to be dangerous, emphasis should be placed on the protection of the lives of the civilian population in the spirit of the Universal Declaration of Human Rights and the Convention on Genocide.

187. At a meeting of the Security Council on 7 December 1960, the Secretary-General stated:

"... since the Force has been requested to assume functions in regard to law and order, there is a legal basis and justification for the Secretary-General to concern himself with the observance of elementary and generally accepted human rights. It is on this basis that the Secretary-General and his Special Representative have made representations to the Congolese authorities to apply due process of law as that concept is generally understood."

Temporary disarming of uncontrolled army elements

188. In that fourth report of 7 September 1960 the Secretary-General also stated that the protection of the lives of the civilian population might necessitate a temporary disarming of military units which, in view of the circumstances, were an obstacle to the restoration of law and order. Such action, however, was limited to groups which had broken loose from their command.

189. At a meeting of the Security Council on 8 December 1960, the USSR submitted a draft resolution in operative paragraph 2 of which the Council would have requested "the Command of the troops dispatched to the Congo by decision of the Security Council immediately to disarm the terrorist bands of Mobutu". At the same meeting Argentina, also on behalf of Italy, the United Kingdom and the United States, submitted a draft resolution in operative paragraph 3 of which the Council would have requested the "Secretary-General to continue his efforts to assist the Republic of the Congo in the restoration and maintenance of law and order throughout its territory and in ensuring respect for the human dignity of all persons within the country". At a meeting on 13 December, the USSR submitted amendments to the four-Power draft resolution. One of those amendments sought to replace operative paragraph 3 by the following:

"Requests that the Command of the armed forces sent to the Congo in accordance with the Security Council’s decision shall take immediate steps to disarm and disperse Mobutu’s bands, thereby creating the essential conditions for the restoration of law and order in the country".

190. The USSR amendment and the USSR draft resolution were rejected at the same meeting in separate votes of 8 to 2, with 1 abstention.

191. At a Security Council meeting on 10 December 1960, the Secretary-General observed:

"It was also said that if any act is against law and order it is the building up of illegal armies. Now, the same observations apply. The Armée nationale congolaise, as it functions in Leopoldville under Colonel Mobutu, is sanctioned by, and under the authority of President Kasavubu, who in fact is regarded — and regards himself, and constitutionally is — the Commander in Chief. It is perhaps something which should be taken into account when it is said that it would be within the competence of the United Nations to decide that we should disarm these 'illegal armies'. It is again a question of an action which overrides the authority of the Chief of State in his own country. I do not argue; I just want to draw this to the attention of the Council."

192. At a Security Council meeting on 15 February 1961, the USSR submitted a draft resolution by operative paragraph 3 of which the Council would inter alia have enjoined the Command of the troops that were in the Congo pursuant to the decision of the Security Council to disarm all the military units and gendarmerie forces under the control of Tshombe and Mobutu. That draft resolution was rejected by a vote of 8 to 1, with 2 abstentions, at a meeting on 20 February.

193. When fighting broke out in January 1962 in Orientale province between the gendarmerie and General Lundula’s men, ONUC assisted in disarming the gendarmeres at the request of the Prime Minister and within the framework of its mandate to assist the Central Government in maintaining law and order and in preventing civil war.

337 In his statement of 9 September 1960 to the Security Council, the Secretary-General reported on a massacre of Balubas in the Bakwange region by Congolese army troops who had killed not only combatants but also defenceless civilians (S C, 15th yr., 896th mtg., para. 100).
338 S C, 15th yr., 913th mtg., para. 31.
340 S C, 15th yr., 914th mtg., para. 62. In that operative paragraph the Council would also have enjoined the Command of the Force "immediately to arrest Tshombe and Mobutu in order to deliver them for trial". Colonel Mobutu was the Chief of Staff of the ANC.
341 Ibid., para. 80, S/4578.
342 Ibid., 920th mtg., para. 53, S/4597.
343 Ibid., paras. 155, 158 and 159. The four-Power draft resolution, as later revised (S C, 15th yr., Suppl. for Oct.-Dec., p. 82, S/4578/Rev.1) was also rejected (see foot-note 329 above).
344 S C, 15th yr., 917th mtg., para. 6. The Secretary-General had just referred to the reasons why the United Nations could not have liberated Mr. Lumumba. See para. 196 below.
345 S C, 16th yr., 934th mtg., para. 112, S/4706.
346 Ibid., 942nd mtg., para. 89.
Protection of political leaders and public buildings

194. During the constitutional crisis in 1960, in response to appeals for protection from various Congolese leaders, ONUC granted such protection and also guarded certain public buildings. In particular, ONUC guards were stationed around the residences of Mr. Kasavubu and Mr. Lumumba at their request. On 10 October 1960, ONUC prevented an attempt made by the ANC to arrest Mr. Lumumba. ONUC took the position that consistent with its neutrality it could not order the ONUC guard stationed at Mr. Lumumba's residence to facilitate the execution of a warrant which prima facie did not appear to be valid and that it could not be a party to an act of political violence. Mr. Lumumba continued to have the benefit of that protection until, during the night of 27-28 November 1960, he voluntarily left his residence in an apparent attempt to go to Stanleyville.

195. Later it was stated by the Secretary-General that Mr. Lumumba had escaped from his residence in a way unknown to the United Nations, which, having no possibility of knowing where he was, could not give him protection. He had been arrested in the country without any possibility of the United Nations stopping such action, and the United Nations was not in control of the situation.

196. The Secretary-General also stated:

"The point has been made that it should be the duty of the United Nations, or of the Secretary-General and the Command, under present rules to liberate Mr. Lumumba. I have no reason at all to discuss this matter here. That would go beyond the framework of my present intervention. I want only to point out that, to our knowledge, Mr. Lumumba is arrested under a warrant of arrest which is probably signed — certainly approved — by the Chief of State, who is also the head of a delegation to the United Nations. That is to say, any action by force to liberate Mr. Lumumba would, in fact, mean overriding by force the authority of the Chief of State. I think we are all aware what that means in legal terms in relation to a country."

197. In a subsequent statement before the Security Council the Secretary-General observed:

"The United Nations had neither the power nor the right to liberate Mr. Lumumba from his captors by force — I say the United Nations, because to my knowledge not even the Council or the General Assembly would have such a right. Much less did it exist for the United Nations representatives in the Congo, exercised all the pressure I could for that purpose."

198. On 3 and 5 December 1960, the Secretary-General sent letters to President Kasavubu, expressing the concern of a great number of delegations with respect to the arrest and detention of Mr. Lumumba and two companions. He asked inter alia that the International Red Cross should be allowed to examine the detained persons and their places and conditions of detention and to obtain the necessary assurances for their safety. He also referred to the general principles of law and to the principles of the Charter concerning respect for human rights and fundamental freedoms for all, and recalled the rules that were generally applied in connexion with warrants for arrest, the detention of accused persons and the rights of defence.

199. At a Security Council meeting on 8 December 1960 the USSR submitted a draft resolution by operative paragraph 1 of which the Council would have called upon the Secretary-General inter alia "to secure the immediate release of Mr. Patrice Lumumba, Prime Minister of the Republic of the Congo, Mr. Okito, President of the Senate, Mr. Kasango, President of the Chamber of Deputies, and other Ministers and deputies". At a meeting on 13/14 December that draft resolution was rejected by 8 votes to 2, with 1 abstention. After the rejection of the USSR draft resolution, the representative of Poland introduced at the same meeting a draft resolution by operative paragraph 1 of which the Council would have requested the Secretary-General "to undertake the necessary measures in order to obtain the immediate release of Mr. Patrice Lumumba and of all persons who are now under arrest or detention despite their parliamentary immunity". At the same meeting that draft resolution was rejected by 6 votes to 3, with 2 abstentions.

200. On 19 January 1961 the Secretary-General sent a communication to President Kasavubu observing that the transfer of Mr. Lumumba to Katanga involved a further interference with his right to defend himself and urged that Mr. Lumumba be returned from Katanga. In a message to Mr. Tshombé of the same date the Secretary-General suggested that Mr. Tshombé consider what steps might be taken to give Mr. Lumumba and his companions the benefit of due process of law at a place of competent jurisdiction.

201. In a letter dated 20 January, the Secretary-General informed the President of the Congo that the Advisory Committee had endorsed the views he had expressed in his earlier letter, and he warned that the incarceration of various political leaders, especially Mr. Lumumba's continued imprisonment, was likely
to have a serious bearing on efforts towards national reconciliation.\footnote{Ibid., p. 54, S/4637, III. For the President’s reply, see ibid., p. 63, S/4643.}

202. In operative paragraph 4 of resolution 161 A (1961) of 21 February 1961 the Security Council decided that an immediate and impartial investigation should be held in the matter of the death of Mr. Lumumba and his companions.\footnote{S C, 16th yr., 920th mtg., paras. 241 and 242.} Since the Secretary-General was not given any mandate in that respect, the question is not dealt with in the study of Article 98 of the Charter. In that connexion, when one representative pointed out that the resolution contained no instructions to the Secretariat to concern itself with the investigation, the Secretary-General indicated that while it had never been his intention that the Secretariat should itself undertake such an investigation, if it was not the intention of the Security Council that the wheels should be set in motion by the Secretary-General with regard to the investigation, “then I must say that I find this clause in the resolution very incomplete…” He stated that he would refer the matter to the Advisory Committee and abide by its advice.\footnote{Ibid., paras. 244 and 245. S C, 16th yr., Suppl. for Jan.-March, p. 176, S/4752, para. 9, and p. 259, S/4771 and Add.1-3.} In resolution 1601 (XV) of 15 April 1961, the General Assembly recalled paragraph 4 of Security Council resolution 161 A (1961) and established, by its operative paragraph 1, a Commission of Investigation with regard to the death of Mr. Lumumba and his companions.\footnote{For the report of that Commission, see S C, 16th yr., Suppl. for Oct.-Dec., p. 67, S/4979.}

Observance of human rights and due process of law

203. At a Security Council meeting on 8 December 1960, the representative of Argentina, also on behalf of Italy, the United Kingdom and the United States, submitted a draft resolution in operative paragraph 3 of which the Council would have requested the Secretary-General \textit{inter alia} “to continue his efforts to assist the Republic of the Congo... in adopting all necessary measures tending to safeguard civil and human rights for all persons within the country”.

204. On 13 December that draft resolution received 7 votes in favour to 3 against, with 1 abstention, and was not adopted as one of the negative votes was that of a permanent member of the Council.\footnote{S C, 15th yr., Suppl. for Oct.-Dec., p. 82, S/4578/Rev. 1.}

205. In a letter\footnote{S C, 15th yr., Suppl. for Oct.-Dec., p. 82, S/4578/Rev. 1.} of 21 December 1960 to the President of the Republic of the Congo the Secretary-General referred to two draft resolutions which had been submitted to the General Assembly at its fifteenth session but had failed of adoption. One of those draft resolutions had been submitted by the United Kingdom and the United States,\footnote{G A (XV), Annexes, a.i. 85, A/L.332. When the General Assembly voted on that draft resolution it was not adopted, having failed to obtain the required two-thirds majority (G A (XV), Plen., 958th mtg., para. 130).} the other by Ceylon, Ghana, India, Indonesia, Iraq, Morocco, United Arab Republic and Yugoslavia.\footnote{G A (XV), annexes, a.i. 85, A/L.331/Rev. 1. The General Assembly rejected that resolution by 42 votes to 28, with 27 abstentions (G A (XV), Plen., 958th mtg., para. 129).} Under operative paragraph 5 of the two-Power draft resolution the Assembly would have declared that any violations of human rights against persons held prisoners or under arrest anywhere in the Congo would be inconsistent with the purposes of the United Nations. Under operative paragraph 2 of the eight-Power draft resolution the Assembly would have urged the immediate release of all political prisoners under detention. The Secretary-General stated that, while recognizing that both draft resolutions approached the problem from a different point of view, there was an unmistakable undercurrent in both of them which, having regard to the Congo’s relations to other Members of the United Nations, would merit in his opinion the most urgent attention of the President of the Republic of the Congo, for so long as due process of law was not applied in the Congo the question would remain a major irritant in those relations.

206. After an incident in Kivu province at Bukavu on 25 December 1960, in which certain personalities were imprisoned, ONUC made efforts, through diplomatic means, to secure the release and, pending release, good treatment of the persons involved.\footnote{S C, 16th yr., Suppl. for Jan.-March, p. 142, S/4733/Rev. 1.}

207. In a message dated 23 January 1961 to Mr. Gizenga, referring to violations of the human rights of both Congolese and non-Congolese inhabitants, the Secretary-General asked that steps be taken to ensure that ANC units operating in Stanleyville fulfilled their proper function of maintaining internal security.\footnote{S C, 16th yr., 935th mtg., para. 28.}

208. At a meeting of the Security Council on 15 February 1961, summing up the measures that he believed should be pursued in the prevailing situation, the Secretary-General said\footnote{372} that instructions had been given to the Force to protect the civilian population against attacks from armed units. That, he observed, was on the outer margin of the mandate of the United Nations, but already in September 1960 he had declared\footnote{S C, 16th yr., Suppl. for Jan.-March, p. 7, S/4606, IV, and ibid., p. 36, S/4629, annex II.} without having met with any objections, that that must be considered as a natural part of the duties of the Organization.

209. A draft resolution submitted by Ceylon, Liberia and the United Arab Republic in the course of the meetings held by the Security Council in February 1961 dealt with “the unlawful arrests, deportations and assassinations of political leaders of the Congo.” By that draft resolution, after condemning such acts, the Council would have called upon all concerned in the
Congo immediately to put an end to such practices and “upon the United Nations authorities in the Congo to take all possible measures to prevent the occurrence of such outrages, including, if necessary, the use of force as a last resort”. Although that draft resolution was not adopted by the Council, the Secretary-General, noting that there had been no difference of opinion regarding its operative part, stated that in such circumstances he felt entitled to rely on its moral value in the efforts of the United Nations in the Congo. He went on to say:

“Thus I shall bring to the attention of those concerned the strong condemnation of unlawful arrests and other actions of a similar kind, and I shall also bring to their attention the wish of all members of the Council that an end be put immediately to such practices. And finally, as a matter of course, the standing instructions to the United Nations authorities in the Congo to take all possible measures to prevent occurrences of outrages will be reaffirmed and even, if possible, strengthened.”

210. In January 1962, when fighting broke out in Orientale province, ONUC afforded protection to Mr. Gizenga and transported him to Leopoldville.

211. ONUC established neutral zones to protect certain persons against violations of fundamental rights, in particular at Stanleyville (Orientale), Bukavu and Goma (Kivu) and also in Katanga and Kasai. Those arrangements concerned particularly the Baluba tribe. When that tribe felt threatened by the actions of the secessionist authorities of Katanga which had launched a campaign of assault and persecution against them in Elisabethville in August 1961, they sought safety by camping near ONUC troop quarters. ONUC arranged protection for that encampment into which 35,000 Baluba had crowded by 15 October 1961, creating a serious food and health problem as well as a continuing danger of tribal violence. ONUC took the necessary protective measures on a humanitarian basis and from 8 May to 30 July 1962 arranged for the evacuation of 71,266 Baluba tribesmen from Elisabethville to their tribal lands in Kasai province.

212. In a report issued on 2 March 1961, the Special Representative of the Secretary-General set forth as follows the principles observed in giving protection or asylum:

“(a) Asylum is granted only to persons who can show that they are in real danger of assassination, arbitrary arrest, ill-treatment or other persecution on account of their race, tribal origin, nationality, religion, political convictions or associations;

(b) United Nations protection is not granted to avoid lawful prosecution on charges of common law crimes, but the benefit of the doubt is given to applicants for asylum where the charges appear to be politically motivated, or where there appears to be jeopardy to life;

(c) Once granted United Nations asylum, the protected persons are prohibited from conducting any outside political activities, or from sending out communications other than of a strictly humanitarian nature, e.g. information to close relatives as to their personal safety;

(d) Protected persons are free to leave United Nations asylum at any time at their own discretion, but once they leave the protected area, United Nations cannot assume any further responsibility for their safety.”

213. With respect to non-Congolese residents, ONUC intervened where possible to obtain from local authorities assurances of protection and exit permits or to effect their evacuation. It also protested against measures restricting the freedom of movement of foreign nationals.

iii. Assistance in national reconciliation

214. In a letter of 21 December 1960 to the President of the Republic of the Congo, the Secretary-General referred to two draft resolutions which had been submitted to the General Assembly at its fifteenth session but had failed of adoption. The Secretary-General observed that under a two-Power draft resolution, which, except for one vote, might have been adopted, the General Assembly inter alia would have requested him to assist the Chief of State of the Congo in establishing conditions in which the Parliament could meet and function in security and freedom.

375 The Council failed to adopt that resolution, the vote being 6 in favour to none against, with 5 abstentions (S C, 16th yr., Suppl. for Jan.-March, p. 181).

376 Ibid., para. 219.

377 Ibid., para. 220. In a letter dated 21 February 1961 to the President of the Republic of the Congo, the Secretary-General drew that draft resolution to his attention, stating that its non-adoption was due to a difficulty in drafting which did not affect in any way the substance of the text submitted to the Council. He further observed that it was clear from the discussion that all the members of the Council supported the essential parts of the text which could be considered as expressing de facto the unanimous views of the Council, including those of its permanent members (S C, 16th yr., Suppl. for Jan.-March, p. 189, S/4752, annex VIII). The Secretary-General also requested his Special Representative to dispatch similar messages to certain other Congolese leaders (ibid., p. 176, S/4752, para. 10). The President of the Congo replied on 2 March 1961 (ibid., p. 212, S/4758 and Add. 1, II (a)).

378 S C, 17th yr., Suppl. for Jan.-March, p. 6, S/5033/Add.1, paras. 1-27; ibid., p. 16, S/5053/Add.2, paras. 1-4; ibid., pp. 18 and 23, S/5053/Add.3 and annex V; and ibid., p. 25, S/5053/Add.5.


380 In October 1960 the United Nations had established, in agreement with the Katanga authorities, a neutral zone in northern Katanga with a view to its pacification. That agreement had, however, been unilaterally abrogated by the Katanga authorities. (See S C, 16th yr., Suppl. for Jan.-March, p. 102, S/4691 para 4, which also gives an account of other efforts made by the United Nations in the interest of the pacification of that area.)
from outside interference. As the request for the convening of Parliament and for taking the necessary protective measures was even more forcefully pressed in an eight-Power draft resolution, the view that the convening of Parliament and the return to democratic practices were a matter of great urgency could fairly be regarded as the strong conviction of Member States, the Secretary-General stated.


A number of representatives said that, despite the absence of any mention of the Secretary-General in the text of resolution 161 (1961), the resolution should be interpreted to mean that it was the Secretary-General who was to implement it.

216. In operative paragraph 2 of its resolution 1600 (XV) of 15 April 1961, the General Assembly called upon the Congolese authorities concerned to desist from attempting a military solution to their problems and to resolve them by peaceful means. Operative paragraphs 4 and 5 read:

"The General Assembly,

4. Urges the immediate release of all members of Parliament and members of provincial assemblies and all other political leaders now under detention;

5. Urges the convening of Parliament without delay, with safe conduct and security extended to the members of Parliament by the United Nations, so that Parliament may take the necessary decisions concerning the formation of a national government and on the future constitutional structure of the Republic of the Congo in accordance with the constitutional processes laid down in the Loi fondamentale:"

217. In pursuance of operative paragraph 1 of Security Council resolution 161 B (1961) and of operative paragraph 5 of General Assembly resolution 1600 (XV), the Secretary-General instructed his representatives in the Congo to discuss with the representatives of the various Congolese authorities the modalities of an early reconvening of Parliament. A mission appointed by the Stanleyville authorities, brought to Leopoldville under ONUC protection, met at ONUC headquarters in Leopoldville with representatives of the Leopoldville authorities. Agreement on the modalities for the convening of Parliament was reached on 19 June 1961, after meetings in which, at the request of both delegations, ONUC officials acting on behalf of the Secretary-General gave occasional assistance. The Secretary-General informed the authorities concerned that he accepted all the responsibilities which under that agreement devolved upon the United Nations and would continue to render all the necessary assistance to facilitate the meeting of Parliament. On 24 June 1961, Mr. Tshombé likewise signed an agreement with the Leopoldville authorities, but he changed his position upon returning to Elisabethville.

218. On 5 July 1961, President Kasavubu issued an ordinance for the convening of Parliament. In accordance with the request of the Congolese authorities, ONUC took the necessary measures to transport the members of Parliament to Leopoldville and to ensure their safety and the undisturbed functioning of the meetings of the Parliament at Lovanium. United Nations officials were available at all times for consultation with all Congolese factions at whose request they exercised good offices and arranged for contact among various Congolese leaders.

219. The Parliament reconvened on 22 July 1961, and on 2 August 1961, both houses of Parliament approved a new Government headed by Mr. Cyrille Adoula. The two Chambers declared unanimously on the same day that the new Government of national unity was the legal successor of the Central Government. The House of Representatives unanimously expressed on 2 August its gratitude to the United Nations, which by taking measures to ensure order and security had made it possible for debates to take place and for decisions to be adopted in an atmosphere of absolute security, free from threats or coercion. After the adoption of those resolutions and the swearing in of the new Government, the Parliament decided to leave Lovanium, giving up United Nations protection, and to continue its meetings in Leopoldville.

220. In a letter of 10 August 1961 to the Secretary-General, the new Congolese Prime Minister stated that his Government was the only Government with which the United Nations should deal in pursuance of the resolutions of the Security Council and of the General Assembly. The Secretary-General expressed on 13 August his great satisfaction at the formation of a constitutional Government of national unity and gave the Congolese Prime Minister the assurances he had requested.

iv. Specific activities undertaken in Katanga after the reintegration of the province within the Congo

221. After Katanga had been reintegrated within the Republic of the Congo in January 1963, ONUC
assisted the Central Government and its army in the maintenance of law and order there. Arrangements were made to reintegrate the Katangese military forces into the ANC. During a first phase they were placed under the Command of ONUC. It was also arranged that the Central Government’s security forces in South Katanga should be placed temporarily under United Nations Command to avoid confusion and conflict. Long-range patrols were organized by ONUC in conjunction with the ANC to maintain order, search for ex-gendarmes and other lawless elements and to prevent tribal and political clashes. In view of continuing bandit activity, ONUC in co-operation with the ANC and the police maintained patrols and daily convoys of vehicles from Elisabethville to the Northern Rhodesia border.\footnote{\(v.\) Assistance by the United Nations in the reorganization of the Congolese National Army}

222. In a message dated 11 September 1960 the President of the Republic of the Congo requested the Secretary-General \textit{inter alia} to reorganize and train the Congolese National Army.\footnote{S C, 18th yr., Suppl. for Jan.-March, p. 92, S/5240, para. 22; S C, 18th yr., Suppl. for July-Sept., p. 166, S/4528, paras. 21-24; S C, 19th yr., Suppl. for April-June, p. 259, S/5784, paras. 9-17 and 48-66.} 223. At a meeting of the Security Council on 14/15 September 1960, the Secretary-General stated that at the request of Mr. Lumumba the Deputy Commander of the United Nations Force was acting as chief military adviser to the Congolese Army.\footnote{S C, 15th yr., Suppl. for July-Sept., p. 153, S/4500/Add.1.} However, with the increasing political involvement of the Army, the efforts to reorganize the Army failed, and by December 1960 the situation as to the cadres of the Army was not very different from what it was at the time of the crisis.\footnote{S C, 15th yr., 901st mtg., para. 80. See also S C, 15th yr., Suppl. for Oct.-Dec., p. 6, S/4557, para. 69.} 224. At a meeting of the Security Council held on 1 February 1961 the Secretary-General stated:

> “The members of the Council will remember that at an early stage of the operation the approach that I outlined to the problem of the ANC was as follows: The army, which was the instrument of the Government both for the protection of the integrity of the country and for the maintenance of law and order, had lost its cadre of officers and become disorganized. It had to be rebuilt from the bottom by adequate training and by the schooling of officers. Naturally, during this phase of reorganization, up to the stage when it would be able to function in a satisfactory way, the army should be unburdened from its tasks both as regards the protection of the integrity of the country and as regards the maintenance of law and order. In the reorganization operation the United Nations should be instrumental in giving the necessary technical assistance and, for that purpose, obviously would have to be in a position to check that the assistance given be not put to uses contrary to the very aims of the Organisation.”\footnote{S C, 16th yr., 928th mtg., para. 80.}

The Secretary-General went on to say:

> “The United Nations did what it could along the line thus indicated, but its efforts came to nothing when early in September the army broke into the political field and, at the same time, split up in factions going beyond the division already caused by the claim of Katanga to secession. What thus happened in the beginning of the fall stands as a main cause of the continued deterioration of the internal situation in the Congo.”\footnote{Ibid., para. 82.} 225. The Secretary-General emphasized the importance of returning the army to its proper role and of giving it as quickly and effectively as possible a chance to fulfil that role. He would therefore welcome a decision whereby the Council would request him urgently to take appropriate measures for assisting in the reorganization of the Congolese army and for preventing it or units thereof from intervening in internal political conflicts.\footnote{Ibid., paras. 83 and 85.} 226. In operative paragraph 2 of its resolution 161 B (1961) of 21 February 1961 the Security Council urged that Congolese armed units and personnel should be reorganized and brought under discipline and control, and that arrangements should be made on impartial and equitable bases to that end and so as to eliminate any possibility of interference by such units and personnel in the political life of the Congo.\footnote{In introducing on behalf of the sponsors the draft resolution (S/4722) which was to become Security Council resolution 161 (1961), the representative of the United Arab Republic had stated : “We also consider that steps must be taken to reorganize and discipline the Congolese armed forces. Such steps must be taken forthwith to prevent armed units and personnel in the Congo from any interference in the political life of the country...” (see foot-note 369 above).} 227. In a letter to the President of the Republic of the Congo dated 27 February 1961 the Secretary-General stated that the provisions of that paragraph were a logical corollary to the provisions of operative paragraph 1 of Security Council resolution 161 A (1961).\footnote{Ibid., paras. 32 and 33.} It was in his opinion “intolerable for the internal, as well as external, security of any State to have its security forces act as the chief agents in the political life of the country”; even more intolerable was a situation in which armed units acted on their own initiative, as only too frequently had been the case in the last six months or so. Expressing his personal conviction that no political conciliation was possible without the elimination of armed units from political life, the Secretary-General expressed his trust that the United Nations could count on the support of the President of the Congo and “thus lay the foundation for a Congo army which, like that of other democratic
countries, serves the country and not political or geographical sections thereof”.406

228. The President of the Republic of the Congo replied to the Secretary-General’s letter by a letter of 5 March 1961. Referring therein to the reorganization of the Congolese army, the President stated that his Government considered that the Congolese army must remain under the command of the President of the Republic; reorganization must embrace the entire country; a National Defence Council should be set up under the authority of the President and should include Congolese military leaders and representatives of the United Nations Force; the Congolese Government would retain the right to accept or refuse the technicians proposed by the National Council of Defence and recruited through United Nations channels.407

229. In the Agreement on general principles of 17 April 1961 between the United Nations and the Congolese Government the latter recognized inter alia “the need to reorganize the national army, it being understood that this reorganization is to be carried out under the authority of the President of the Republic, with United Nations assistance and on the basis of the proposals made by the Chief of State in his letter of 5 March 1961 to the Secretary-General of the United Nations.”408

On 21 November 1961 an amendment 409 was submitted by the United States to the draft resolution which was to become Security Council resolution 169 (1961) of 24 November 1961. The amendment called for the addition of a new operative paragraph whereby the Council would request the Secretary-General to assist the Government of the Congo “to reorganize and retrain Congolese armed units and personnel to assist the Government to develop its armed forces for the tasks which confront it”. On 24 November 1961 that amendment received 9 votes in favour to 1 against, with 1 abstention, but was not adopted because the negative vote was that of a permanent member.410 In August 1962 the Secretary-General submitted proposals in the form of a “Plan of National Reconciliation”411 to the Prime Minister of the Congo and to representatives of the Katangese provincial President. That Plan called inter alia for United Nations assistance to the Central Government in an urgent modernization programme for the Congolese Army.412

230. On 20 December 1962 in a letter to the Secretary-General, Prime Minister Adoula requested the assistance of the United Nations in that connexion, and the United Nations accepted the responsibility.413 However, it later became clear that the Congolese Government wished the Secretary-General to request six countries, namely Belgium, Canada, Israel, Italy, Norway and the United States, to provide personnel and matériel for reorganizing and training the various armed services. The Secretary-General felt some doubts, shared by the Advisory Committee, about the advisability for the United Nations to assume sponsorship of what was essentially bilateral military assistance by a particular group of States. He therefore concluded that it was not feasible to grant Mr. Adoula’s specific requests.414

(c) The prevention of the occurrence of civil war

231. In operative paragraph 1 of its resolution 161 A (1961), the implementation of which, as noted earlier, was understood by some representatives to be the responsibility of the Secretary-General,415 the Council urged “that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort”.416

232. In a report 417 dated 25 February 1961 the Special Representative of the Secretary-General described the measures taken by him to prevent the development of military operations and the outbreak of hostilities as a result of the civil war situation in the three main sectors of the Congo. Those measures consisted mainly of representations to and negotiations with the opposing factions. In the Katanga sector Mr. Tshombé was told that ONUC would as a last resort use force to prevent the spread of the conflict in that area. The provisions of Security Council resolution 161 (1961) were drawn to the attention of the President of the Republic of the Congo and of Mr. Kalonji, self-styled “president of the Etat minier” in Kasai.

233. In a report 418 issued on 27 February 1961 the Secretary-General stated that, concerning paragraph 1 of resolution 161 A (1961), after consultation with the Advisory Committee, he had instructed the United Nations Command in the Congo to take appropriate steps in the direction and in the spirit of the resolution, in respects indicated by the Command itself. Account was to be taken, on the one side, of the availability of troops and of likely developments and, on the other side, of the stands taken by the Governments of Ethiopia, Sudan and Tunisia 419 to the effect that they did not wish to become third parties in any conflict between opposing sides in the Congo.

234. For the purpose inter alia of securing the full co-operation of the Congolese authorities in the

406 S C, 16th yr., Suppl. for Jan.-March, p. 183, S/4752, annex IV.

407 Ibid., p. 199, S/4752/Add. 3.

408 S C, 16th yr., Suppl. for April-June, p. 46, S/4807 and Add. 1, annex I. For more details on that agreement, see paras. 144 et seq. above.


410 S C, 16th yr., 982nd mtg., para. 84.


412 Ibid., annex I, E.(5).

413 S C, 18th yr., Suppl. for Jan.-March, p. 104, S/5240, annex I.


415 See para. 215 above.

416 In a report dated 12 February 1961 the Secretary-General’s Special Representative had described the civil war situation in Katanga province and similar impending developments in other parts of the country (S C, 16th yr., Suppl. for Jan.-March, p. 102, S/4691 and Add. 1-2.)


419 The reference was to the positions taken by those States within the Advisory Committee.
implementation of operative paragraph 1 of resolution 161 A (1961), the Secretary-General on 27 February 1961 addressed a letter to the President of the Congo. He also requested his Special Representative to bring the substance of the letter to the immediate attention of other authorities in the Congo. With regard to the civil war situation, the Secretary-General stated in his letter:

"No solution can be expected in a situation of developing civil war, with armed groups engaged in partisan clashes and seeking a military solution to political goals. Preventing the further deterioration of the situation in this respect must clearly be the task of the United Nations Command, especially in view of the fact that armed groups have frequently tended to escape from the control of any authorities and to engage in private warfare. The question is one of preventive and pacifying measures not coercion, but those engaged in these measures on behalf of the United Nations cannot allow themselves to be forcibly deterred from carrying them out. Therefore, I feel confident in proceeding on the assumption that the United Nations can count on the co-operation of all Congolese authorities concerned, military and civilian, in arranging ceasefires, halting all military operations, and preventing clashes. This must surely be a common goal of all those who feel that conciliation is the necessary approach to the country's political problems."

235. In a report of 14 April 1961, dealing inter alia with the civil war situation in Katanga, the Special Representative of the Secretary-General, referring to the northward drive undertaken presumably for offensive purposes by Katangese forces, stated that the Force Commander had instructed the commander of the United Nations troops in North Katanga to oppose and resist any further aggressive moves by the Katanga gendarmerie. The force commander had also warned Mr. Tshombé that the United Nations would oppose and resist any use by him of military force, and that if clashes developed between Katangese forces and the United Nations forces, the United Nations would send sufficient reinforcements to Katanga to deal with the situation. The Special Representative added that the vastness of the area in question and the lack of troops had prevented the ONUC command in North Katanga from sending patrols except in the immediate vicinity of Kabalo, so that it was impossible to report more comprehensively on the civil war situation.

236. In a report issued on 17 May 1961 the Secretary-General informed the Security Council that as a result of the actions taken by the United Nations Force in certain localities of Northern Katanga the danger of emerging civil war had been substantially lessened. He also stated that with a view to reducing the possibility of civil war in South Kasai a redeployment of United Nations forces had recently been undertaken.

237. The threat of civil war was reduced as a result of the formation in August 1961 of a Government of National Unity acceptable to all parties concerned other than the secessionist authorities of Katanga province. ONUC strove to limit the clashes that occurred between elements of ANC and the Katanga gendarmerie after the formation of the Government of National Unity. However, the Secretary-General considered that, consistently with decisions of the Security Council calling for the maintenance of the territorial integrity of the Congo and for an immediate end to the secessionist activities in Katanga, it could not regard and deal with such activities as "civil war" actions under the terms of its mandate. For that reason, in a report issued on 4 February 1963, the Secretary-General stated that ONUC's mandate relating to civil war had been fulfilled to a major degree.

In a report issued on 17 September 1963 the Secretary-General stated that there was no longer any serious threat of civil war.

(d) The prevention of unauthorized outside military assistance

238. In a note verbale of 4 September 1960 to the Representative of Belgium to the United Nations, the Secretary-General recalled paragraph 2 of Council resolution 145 (1960) and requested information concerning the conditions under which Belgian officers were serving in the Katanga forces and other groups in armed conflict with the Central Government of the Congo. He requested information particularly in regard to the need for the assent of the Belgian military authorities for such service and in regard to the status of the persons concerned during such service. The Permanent Mission of Belgium stated in its reply of 9 September 1960 that, under the General Treaty of Friendship, Assistance and Co-operation between Belgium and the Congo, Belgian officers serving with the Force publique on 30 June 1960 were to continue at their posts if willing to do so. In addition the Katanga forces, which were a police force and not an army, had been supplied with a small number of Belgian experts to furnish technical assistance. That measure did not appear inconsistent with Security Council resolution 145 (1960) as the force was concerned only with the maintenance of order, the mission stated. Personnel enrolled in the Force publique were under the authority of the local authorities and could not be automatically reinstated in the Belgian Army.

239. In a note verbale dated 5 September 1960 to the delegation of the USSR, the Secretary-General recalled inter alia that according to information available to him or supplied to him by the permanent
representative of the USSR five Soviet aircraft assigned to the Government of Ghana for the transport of Ghanaian troops to the Congo had been utilized for the transport of various matériel, including military supplies, for rendering assistance to the Government of the Congo; a certain number of planes had been put directly at the disposal of the Government of the Congo by the Soviet Government; and one hundred Soviet trucks had been provided directly to the Congolese armed forces. The Secretary-General had informed the permanent representative of the USSR that in accordance with principles approved by the Security Council and maintained by the Secretary-General no transport of troops and matériel was to be undertaken by units from permanent members of the Council from one point within the territory of the Congo to another, directly for the United Nations Force or indirectly for the Force in the service of a Government participating in the Force with its own national contingent.

240. In a note verbale dated 10 September, the delegation of the USSR stated that the actions of its Government were in compliance with Council resolution 143 (1960), which provided for military assistance to the Republic of the Congo with the object of ensuring the withdrawal of Belgian troops. That resolution, it added, did not restrict, nor indeed could it restrict, the right of the Government of the sovereign Republic of the Congo to request assistance from the Governments of other countries or the right of other States to render assistance to the Republic of the Congo. The same was true of Council resolution 145 (1960), the delegation stated. Therefore, it expressed its surprise that the Secretary-General was seeking to control the relations between the Republic of the Congo and other States, specifically the Soviet Union, and to intervene in the relations between the Soviet Union and Ghana, although the Security Council had not given the Secretary-General any such mandate,

"... and the Charter does not give any United Nations administrative officer, whoever he may be, the right to intervene in the relations between sovereign States unless they request his intervention".

241. In his fourth report submitted to the Security Council on 7 September 1960, the Secretary-General noted that assistance given to both the Katangese authorities and the Congolese Central Government from outside was "tending to reintroduce elements of the very kind which the Security Council wished to eliminate when it requested the immediate withdrawal of Belgian troops". He considered

"... it essential, as part of the widened and intensified effort for which I appeal in this report, that the Security Council reaffirm its request to all States to refrain from any action which might tend to impede the restoration of law and order and in particular to aggravate differences, and that it clarify, in appropriate terms, the mandate of the United Nations Force."

242. In a note verbale of 8 September 1960 to the representative of Belgium the Secretary-General referred to confirmed reports that Belgian weapons had been unloaded at Elisabethville airport. He stated that if it was true that the Belgian Government had sent, or authorized the sending of, weapons from Belgium to the provincial authorities at Elisabethville, he would consider it necessary to make a formal serious protest against the delivery. He added that it would be contrary to the letter and spirit of operative paragraph 2 of Council resolution 145 (1960), which was binding on all Member States, as was made clear by the Council itself in its resolution 146 (1960). In his reply, the representative of Belgium stated that the delivery in question resulted from an administrative error and that the requisite measures had been taken immediately to make absolutely certain that no action of that kind could recur in the future.

243. When the Security Council met on 9/10 September 1960, the Secretary-General stated that he had "had emphatically to protest against the import of arms, contrary to the letter and spirit of the Security Council resolutions". He called on the Council to take a clear line with regard to all assistance to the Republic of the Congo and to request that such assistance should be channelled exclusively through the United Nations. That would solve the problem of military assistance to Katanga, as also that of the abuse of technical assistance in other parts of the Congo. It would make it possible to localise the conflict and to bring about a peaceful solution of the domestic problems of the Congo without any interference from outside influencing the outcome.

244. The representatives of a number of members of the Security Council and of the non-member States participating in the debates expressed the view that the provision of military assistance to the Congo through other than United Nations channels was contrary to the resolutions of the Council relating to the Congo.

245. Other representatives held a different view. They were of the opinion that resolutions of the Council could not impair the sovereign right of the Government of the Republic of the Congo to receive whatever assistance it deemed necessary to preserve its independence and territorial integrity.

246. A draft resolution submitted by the United States contained an operative paragraph 4 in which the Council would have reaffirmed "its request to all States to refrain from any action which might tend to impede the restoration of law and order and in particular to refrain from sending personnel, supplies or equipment to be used for military purposes into the Congo other than through the United Nations in accordance with its responsibilities under the pertinent resolutions of the Security Council".

247. A draft resolution submitted by the USSR contained an operative paragraph in which the Council would have called "upon all States Members of the United Nations to provide the Republic of the Congo with speedy financial and other economic assistance through voluntary contributions, it being understood that such assistance will be placed directly at the disposal of the Government of the Republic of the Congo." At a meeting held on 17 September 1960, that draft resolution was rejected by 7 votes to 2, with 2 abstentions. 

248. Ceylon and Tunisia submitted a draft resolution by which the Council inter alia would have decided that no assistance for military purposes was to be sent to the Congo except as part of the United Nations action. An amendment submitted by the USSR to that proposal sought to delete that provision. The two-Power draft resolution failed of adoption because of the negative vote of the USSR; the draft resolution submitted by the United States was not pressed to a vote.

249. At the fourth emergency special session of the General Assembly in September 1960, some representatives contended that the main reason for convening the session was the Soviet Union's alleged violation of one of the basic principles of United Nations action in the Congo, namely, that permanent members of the Security Council should not be called upon to contribute troops to the Force and that they should not furnish unilateral military assistance to the Congolese authorities. The Soviet representative had categorically asserted in the Council his country's right to furnish unilateral military assistance to the Central Government, those representatives said, and that had been the reason why the USSR had cast a negative vote in the Council on the two-Power draft resolution which had sought, in effect, to bar all military assistance to the Congo that was not channelled through the United Nations. The Assembly's principal task, in the opinion of those delegations, was therefore to clarify and reinforce the mandate of the United Nations.

250. The relevant paragraph of General Assembly resolution 1474 (ES-IV) read:

"The General Assembly:

"6. Without prejudice to the sovereign rights of the Republic of the Congo, calls upon all States to refrain from the direct and indirect provision of arms or other materials of war and military personnel and other assistance for military purposes in the Congo during the temporary period of military assistance through the United Nations, except upon the request of the United Nations through the Secretary-General for carrying out the purposes of this resolution and of the resolutions of 14 and 22 July and 9 August 1960 of the Security Council."

251. In a note verbale dated 29 October 1960 addressed to the Representative of Belgium, the Secretary-General referred to information received by him that members of the Congolese National Army and cadets of the so-called army of Katanga were receiving military training in Belgian military schools. He stated that such arrangements for military training were contrary to the letter and spirit of paragraph 6 of General Assembly resolution 1474 (ES-IV). Accordingly, he requested the Belgian Government to inform him of the measures it intended to take to ensure the implementation of that resolution.

252. By operative paragraph 2 of a draft resolution submitted by the United Kingdom and the United States at the fifteenth session of the General Assembly, the Assembly would have requested "the Secretary-General to continue his vigorous efforts to ensure that no foreign military or paramilitary personnel are introduced into the Congo or are in the Congo in violation of the pertinent resolutions of the Security Council and resolution 1474 (ES-IV) of the General Assembly". By operative paragraph 3 of the draft resolution the Assembly would have called upon all States to refrain from the direct and indirect provision of arms or other materials of war and military personnel and other assistance for military purposes in the Congo during the temporary period of military assistance through the United Nations, except upon the request of the United Nations through the Secretary-General for carrying out the purpose of this resolution, resolution 1474 (ES-IV) of the General Assembly and the resolutions of 14 July, 22 July and 9 August 1960 of the Security Council, and also to refrain from direct or indirect measures that might facilitate such action on the part of others. In operative paragraph 4 of a draft resolution submitted at the same session by Ceylon, Ghana, India, Indonesia, Iraq, Morocco, United Arab Republic and Yugoslavia, the General Assembly inter alia would have urged that measures be undertaken forthwith to prevent "armed units and personnel in the Congo" from "obtaining any material or other support from abroad".

253. On 29 December 1960, President Kasavubu applied to the Belgian authorities for permission to use the airport at Usumbura in the Trust Territory of Ruanda-Urundi under Belgian administration to transport ANC contingents to Kivu province. The President of Kivu province, the local commander of the ANC and three Congolese ministers had been arrested and taken to Stanleyville.

254. On 30 December the Secretary-General drew the attention of Belgium to the serious nature of the problem in view of the status of the Trust Territory and the provisions of operative paragraph 6 of General Assembly resolution 1474 (ES-IV). Nevertheless, on 31 December 1960, ANC troops numbering about one hundred arrived at Usumbura by air. They were then transported by trucks to a point near the frontier with the Congo.
255. The Secretary-General protested against the assistance that had been given by Belgium for the transport of a contingent of the Leopoldville ANC through facilities in a Trust Territory.\textsuperscript{451}

256. The Belgian Representative stated that his Government had not learned of President Kasavubu's request until the moment it had been informed of the landing of a contingent of the ANC at Usumbura.\textsuperscript{452} It had then instructed the Resident-General of Ruanda-Urundi to see that the contingent left immediately for the Congolese national frontier. Disarming the regular troops of the ANC by force would have entailed far more serious dangers. Belgium had no intention ever to grant permission for any further transit operations. Belgium felt it had not contravened operative paragraph 6 of General Assembly resolution 1474 (ES-IV) in giving instructions for the ANC contingents to be withdrawn to the Congolese frontier.\textsuperscript{453}

257. At a meeting of the Security Council held on 1 February 1961 the Secretary-General stated:

"Volunteers or sales of arms from private companies are time-honoured forms for military assistance maintaining a seeming neutrality for the Government most directly concerned. It is my firm conviction that such interference must be stopped, but I have not so far found a sufficient legal basis in the resolutions for effective counter-measures by the United Nations. Such counter-measures would not have been, or be, necessary if the Organization had been or were now able to count on the loyal co-operation and assistance from all its Member Governments. Such co-operation has not always been forthcoming."\textsuperscript{454}

258. In the course of a statement before the Security Council on 15 February 1961, the Secretary-General referred to his role in the prevention of unauthorized outside military assistance in the following terms:

"I could, however, go further. Money is as important as men. Arms are essential for any military operation. It can be put in question whether the United Nations has the right to inspect trains and aircraft coming to the Congo so as to see to it that no arms are imported. The legal advice I have sought and obtained indicates that we may have no such right to search. Is it under such circumstances surprising that so far we have not been able to counter arms imports, when Member countries outside the Congo have not shown hesitation to export arms to the Congo?

"But further, movements of funds and capital are definitely outside the control of the United Nations. To the extent that such movements are not for the purposes of economic development or for humanitarian purposes they are certainly not desirable in the present situation. What authority, if any, is the Council prepared to give its representatives in this field?"\textsuperscript{455}

259. The operative paragraphs of resolution 161 A (1961) relating to that matter which the Security Council subsequently adopted on 21 February 1961 are the following:

\begin{quote}
"The Security Council,
"..."
"3. Calls upon all States to take immediate and energetic measures to prevent the departure of such personnel \textsuperscript{456} for the Congo from their territories, and for the denial of transit and other facilities to them;
"...
\end{quote}

260. Prior to the vote, the representative of Liberia,\textsuperscript{457} one of the sponsors of the draft resolution which was to become resolution 161 (1961), had on 20 February interpreted the paragraph relating to measures to be taken by States to prevent the sending of military personnel as covering also matériel intended for military purposes. Four representatives\textsuperscript{458} supported that interpretation of operative paragraph 3.

261. As previously noted,\textsuperscript{459} a number of representatives expressed the view that resolution 161 (1961) was to be implemented by the Secretary-General.

262. On 27 February 1961 the Secretary-General submitted a report on certain steps taken in regard to its implementation.\textsuperscript{460} On 22 February 1961 he had sent a letter to the Government of Belgium\textsuperscript{461} regarding operative paragraphs 2 and 3 of resolution 161 A (1961) and on 23 February had sent a letter to all Member States\textsuperscript{462} referring \textit{inter alia} to operative paragraph 3. In that connexion, he had mentioned the interpretation given to that paragraph by the representative of Liberia that it was applicable to matériel, an interpretation which had not met with any objection by any member of the Council. In those letters the Secretary-General stated that the resolution in question, like the other resolutions on the Congo, must be regarded as a mandatory decision that all Member States were bound to accept and carry out in accordance with Article 25 of the Charter.

263. A United States amendment to the draft resolution which was to become Security Council resolution 169 (1961) of 24 November 1961 proposed the addition of a new operative paragraph 6.\textsuperscript{463} By

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\textsuperscript{451} \textit{Ibid.}, p. 6, S/4606 and Add.1, II.
\textsuperscript{452} \textit{Ibid.}, p. 6, S/4606 and Add.1, III; and SC, 16th yr. 924th mtg., para. 46.
\textsuperscript{453} The incident in question was discussed by the Security Council at meetings held on 12 and 14 January 1961 (S C, 16th yr., 924th and 925th mtgs.).
\textsuperscript{454} S C, 16th yr., 928th mtg., para. 72.
\textsuperscript{455} \textit{Ibid.}, 935th mtg., paras. 32 and 33.
\textsuperscript{456} The personnel in question were defined in operative paragraph 2. They were mainly foreign military and paramilitary personnel.
\textsuperscript{457} S C, 16th yr., 941st mtg.: Liberia, paras. 166-168.
\textsuperscript{458} \textit{Ibid.}, 942nd mtg.: Chile, para. 39; China, para. 53; Ecuador, para. 57; United States, paras. 93 and 94.
\textsuperscript{459} See para. 215 above.
\textsuperscript{461} \textit{Ibid.}, p. 178, S/4752, annex 1.
\textsuperscript{462} S C, 16th yr., Suppl. for Jan.-March, p. 182, S/4752, annex III.
\textsuperscript{463} S C, 16th yr., Suppl. for Oct.-Dec., p. 137, S/4989/Rev.2, No. 5.
it the Council would have authorized the Secretary-General, in consultation with the Government of the Republic of the Congo, to remove aircraft and other weapons of war which had entered Katanga or any other region of the Congo contrary to the laws of the Congo and United Nations resolutions or to prevent their use for military purposes against the United Nations, the Republic of the Congo or the civilian population. 264. At a meeting on 24 November 1961 the Security Council, by 6 votes to 2, with 3 abstentions, rejected an oral sub-amendment by the USSR to delete the words “or any other region of the Congo” in the United States amendment. At the same meeting the amendment received 6 votes in favour to 1 against, with 3 abstentions and was not adopted. One member did not participate in the voting.

265. In the fifth preambular paragraph and operative paragraph 1 of its resolution 169 (1961) the Security Council referred to external resources which were being provided as aid to armed action in opposition to the authority of the Government of the Republic of the Congo, specifically secessionist activities and armed action being carried on by the provincial administration of Katanga. In operative paragraph 5 of that resolution the Council requested the Secretary-General to take all necessary measures to prevent the entry or return under whatever guise, of all foreign military and paramilitary personnel and political advisers not under the United Nations Command and mercenaries, and also of arms, equipment or other material in support of such activities. By operative paragraph 6 it requested all States to refrain from providing supplies which could be used for warlike purposes, to prevent their nationals from doing the same and to deny transportation and transit facilities across their territories for such purposes except in accordance with the decisions, policies and purposes of the United Nations. In operative paragraph 7 it called upon all Member States to refrain from promoting, condoning or giving support, directly or indirectly, to activities against the United Nations often resulting in armed hostilities against the United Nations forces and personnel.

266. In a report issued on 9 January 1962, the Secretary-General stated that in order to reduce the illicit arms traffic into Katanga, he had addressed communications to the Permanent Representatives of the United Kingdom and of Portugal on 29 and 30 December, respectively, soliciting the co-operation of the United Kingdom and of Portugal on 29 and 30 December, respectively, soliciting the co-operation of the United Kingdom and of Portugal in ensuring that mercenaries and arms, war material, or any kind of equipment capable of military use, Governments will engage in diplomatic efforts to support such action. In a letter dated 16 November 1962 the Officer-in-Charge stated to Mr. Tshombe that the only way to convince the Secretary-General and the world at large that Katanga had decided to give up its secession was to fulfil a certain number of conditions, among which was the following:

“(3) To authorize the customs and immigration officers of the Central Government to discharge their functions in Katanga as in the rest of the Congo”. 269. No action was taken then by Mr. Tshombe’s authorities to carry out Katanga’s part of the Secretary-General’s plan of national reconciliation which had been accepted by the provincial President in his letter to the Secretary-General dated 2 September 1962. Discussions went on in Elisabethville between Katangese and Central Government representatives in the foreign exchange and customs commissions, but no steps were taken to carry out the measures listed in the letter of the Officer-in-Charge of 16 November 1962.

270. By the third week of January 1963, the foreign elements in the Katangese gendarmerie had been eliminated, and the attempted secession of Katanga for all practical purposes had come to an end. Accordingly, the issue of foreign military assistance to the Katangese authorities became moot.

466 No further action was taken in that respect.
468 Ibid., p. 118, annex XIII.
469 Ibid., p. 137, annex XX. The Official Records of the Security Council do not contain any reply by Mr. Tshombe to that letter.
470 Ibid., p. 45, annex IV.
(e) Action with respect to the attempted secession of Katanga

271. Although the withdrawal of Belgian combat troops from the whole of the territory of the Congo, including the province of Katanga, had been effected by the end of August 1960 and the United Nations had succeeded in deploying its troops in that province, the situation in Katanga still represented a threat to the territorial integrity of the Congo. Katanga had attempted to secede, and the authorities of that province still persisted in their secessionist activities. Those tendencies were encouraged by foreign intervention, for in Katanga Belgian influence was omnipresent: virtually all key civilian and security posts were either held directly by officials of Belgian nationality or were controlled by advisers to recently appointed and often inexperienced Congolese officials. The Secretary-General, acting mainly through ONUC, contributed to the reintegration of Katanga into the Congo by effecting the evacuation and withdrawal of foreign military and paramilitary personnel as well as political advisers active in Katanga and by promoting negotiations for the reintegration of the province. In addition the Secretary-General solicited the co-operation of Member States in ending the secession of Katanga. By February 1963 those efforts had led to such an improvement in the situation that, in the opinion of the Secretary-General, it could be reasonably concluded that the attempted secession of Katanga was at an end.

272. In the following paragraphs are reviewed the activities undertaken by the Secretary-General to effect the evacuation from Katanga of foreign military and paramilitary personnel and political advisers. Then follows a review of his efforts towards promoting the reintegration of Katanga as a political sub-division of the Republic of the Congo.

i. The evacuation of all unauthorized military and paramilitary elements, political advisers and mercenaries

273. The presence of officers of Belgian nationality attached to Katangese forces and other groups in armed conflict with the Congolese Central Government was the subject of a note verbale dated 14 September 1960, addressed by the Secretary-General to the Permanent Representative of Belgium. The Secretary-General recalled operative paragraph 2 of Security Council resolution 145 (1960) whereby the Council requested “all States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority...”. Referring to the Belgian assertion that Belgian officers present in Katanga were under neither the authority nor the disciplinary control of the Belgian Government, the Secretary-General stated: “In view of the circumstances, however, the situation can be interpreted in the sense that the Belgian Government has at least permitted persons connected with its military services under a ‘technical assistance’ programme to give help to forces fighting the Government of the Congo.”

274. In a note verbale dated 8 October 1960 addressed to the Permanent Representative of Belgium, the Secretary-General concluded that the unilateral assistance which the Belgian Government was continuing to furnish to the authorities in both Katanga and South Kasai was not in conformity with the requirements of General Assembly resolution 1474 (ES-IV), operative paragraph 5(a). On the basis of that conclusion the Secretary-General requested the Belgian Government to withdraw all the military, paramilitary or civilian personnel that it had placed at the disposal of authorities in the Congo. In a further note verbale of 19 October addressed to the Permanent Representative of Belgium, the Secretary-General conveyed information he had received in the meantime with regard to the Belgian personnel in the Congo.

275. At a meeting of the Security Council held on 13/14 December 1960, the Secretary-General referred to his notes verbales of 8 October 1960 addressed to the representative of Belgium and to Mr. Tshombé and stated that his démarches had received no formal support from either the General Assembly or the Security Council.

276. The Security Council did not deal specifically with the problem of unauthorized military personnel and mercenaries until 21 February 1961. By its resolution 161 A (1961) of that date the Council urged in paragraph 2 “...that measures be taken for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel in the Congo. In his reply, the representative of Belgium stated that under the General Treaty of Friendship, Assistance and Co-operation between Belgium and the Congo, Belgian officers serving with the Force publique on 30 June 1960 were to continue at their posts in the independent Republic of the Congo. While that had become impossible in the five provinces other than Katanga, in the latter territory the competent authorities had kept the officers at their posts. Such arrangements depended only on the agreement of the persons concerned, and there was no need for the Belgian Government to intervene. The Katanga Government at its request had also enlisted in its service a small number of Belgian experts, formerly with the Force publique, which were serving in the Katangese gendarmerie as technical assistants. In the opinion of the Belgian representative, such technical assistance could not be regarded as a measure contrary to operative paragraph 2 of Security Council resolution 145 (1960). (See S C, 15th yr., Suppl. for July-Sept., p. 140, S/4482/Add. 3, I and II.)

477 In his reply, the representative of Belgium stated inter alia that the request for the removal of Belgian technicians then in the Congo had no legal basis inasmuch as “no provision, either explicit, or implicit, of the Security Council’s resolutions or the General Assembly’s recommendations gives the Secretary-General the right to insist that all technical aid to the Congo should necessarily be channeled through the Organization” (S C, 15th yr., Suppl. for Oct.-Dec., p. 46, S/4557, B.). See also the letter dated 8 October 1960 from the Secretary-General to the President of the provincial government of Katanga and the latter’s reply of 27 October 1960 (ibid., pp. 48 and 50).

480 S C, 15th yr., 920th mtg., para. 68.
implementation of operative paragraph 2 of resolution in pursuance of paragraph 2 of Security Council 279. In a report of 17 May 1961 all Members of the United Nations concerning the denial of that resolution.

484 He therefore invited Belgium to take the steps called for in operative paragraphs 2 and 3 of resolution 161 A (1961) and added that in the event of a positive response he was prepared to designate a senior officer of the Secretariat to meet immediately with representatives of the Government in order to further the implementation of that resolution.

278. On 15 April 1961 the General Assembly decided, in operative paragraph 2 of its resolution 1599 (XV), "that all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, shall be completely withdrawn and evacuated".

279. In a report of 17 May 1961 the Secretary-General stated that he had taken the following measures in pursuance of paragraph 2 of Security Council resolution 161 A (1961):

(1) After an exchange of letters with the representatives of Belgium and the President of the Republic of the Congo and consultation with the Advisory Committee on the Congo, Ambassador Taiaeb Sahbani of Tunisia had been appointed to proceed to Brussels in order to make arrangements with the Government of Belgium concerning the immediate withdrawal and evacuation of all Belgian military and paramilitary personnel, as well as Belgian political advisers and mercenaries;

(2) In consultation with the Advisory Committee, two members of the Secretariat had been selected to be dispatched to the Congo for the purpose of eliciting the assistance of the President of the Republic and of other Congolese authorities.

280. Under the Agreement on general principles signed in Leopoldville on 17 April 1961 the President of the Republic of the Congo was to receive all possible assistance from the United Nations to fulfil the aim of paragraph 2 of resolution 161 A (1961) and paragraph 2 of resolution 161 B (1961), which was "to eliminate all deleterious foreign influence". The Agreement provided that the Republic of the Congo accepted resolution 161 (1961), taking into account inter alia:

"(3) That the United Nations is to assist the President of the Republic so that all foreign personnel, whether civilian, military or paramilitary and all mercenaries and political advisers who have not been recruited or recalled under the authority of the President, be repatriated from the Congo within the shortest possible period of time. To implement the above and taking into account the recognition of the sovereign rights of the Republic and the constitutional powers which he holds, the President of the Republic will re-examine the appointments of foreign civilian, military and paramilitary personnel made under his authority and will take the necessary decisions compatible with the interests of the Republic of the Congo".

In a letter to the President dated 26 April 1961 the Secretary-General stated that the regarded the Agreement as striking a balance between the Congo's obligations under the Security Council resolution, "which is by its very nature mandatory", and the intention of the United Nations to afford assistance to the Republic in meeting those obligations. The Agreement did not include anything "that could be construed as being at variance with the terms and meaning of the Security Council resolution concerned". The Secretary-General interpreted the provisions of the Agreement calling for United Nations assistance:

"... to mean that such assistance will be given in order to facilitate your wholehearted co-operation in the implementation of the resolution".

In that connexion the Secretary-General recalled that subsequent to the initialling of the Agreement, the General Assembly adopted resolution 1600 (XV) on 15 April 1961, in which, among other things, it urged:

"... the Congolese authorities to co-operate fully in the implementation of the resolutions of the Security Council and of the General Assembly and to accord all facilities essential to the performance by the United Nations of functions envisaged in those resolutions."

281. For several months, because of the absence of legal authority for the United Nations to proceed otherwise than by negotiation, there were no appreciable results from the efforts to bring about the withdrawal of the foreign elements, the largest concentration of which was in the Katangese armed forces. However, as a result of two later developments, the Secretary-General considered that the United Nations had been given legal rights within the Congo corresponding to the terms of resolution 161 (1961). Those develop-

485 Ibid., annex I.
486 Ibid., pp. 46 and 47, annexes I and II. See paras. 144 et seq. above.
487 Ibid., annex II.
ments were the enactment by the President of the Republic on 24 August 1961 of Ordinance No. 70, which provided for the expulsion of all non-Congolese officers and mercenaries serving in the Katangese forces and not under contract with the Central Government, and the Prime Minister's request 499 for United Nations assistance in enforcing that Ordinance.

282. On 28 August, after introducing certain security precautions, ONUC proceeded to take measures for evacuating foreign military personnel and mercenaries. On the same day Mr. Tshombé, President of the provincial government of Katanga, stated in a broadcast that his government had approved the evacuation of foreign military personnel and had terminated the services of all foreigners in the Katangese armed forces effective that day; and the Belgian Consul in Elisabethville, who had presided over meetings between United Nations representatives and the Elisabethville Consular Corps, stated that by arrangement with his colleagues he would undertake responsibility for ensuring the surrender, repatriation and travel of all personnel required to be evacuated, irrespective of nationality. The United Nations agreed to that procedure on condition that the evacuation would not thereby be delayed and that the United Nations retained the exclusive authority to decide who should be evacuated and when. On that understanding, the United Nations refrained from continuing to search for and apprehend foreign military personnel.490

283. Such arrangements were not scrupulously observed, however, for only certain of the personnel concerned were dealt with under that procedure. Foreign officers and mercenaries, profiting from the relaxation of evacuation measures, re-infiltrated into the gendarmerie, began exercising an adverse influence on the Katangese authorities and engaged in terrorist conspiracies and activities.491

284. By 9 September 1961, the date which had been set as the time-limit for all foreign military personnel to report to a United Nations unit for evacuation, only 273 foreign officers and mercenaries had been repatriated. Sixty-five were awaiting repatriation. At least 104 foreign personnel were known to have failed to report or to have given any account of themselves. The United Nations representative thereupon called once more on the Consuls, asking them to ensure the immediate departure of their nationals, failing which the United Nations would have to resume action by all means at its disposal for implementing resolution 161 (1961).492

285. On 12 September representatives of the United Nations met with Mr. Tshombé and members of his government in an attempt to lessen tension, redress refugee grievances and ensure that the evacuation of foreign military personnel would proceed promptly. On all points the answers of the Katangese government were negative.493

286. On 13 September the United Nations Force took security precautions deemed necessary to prevent inflammatory broadcasts or other threats to the maintenance of law and order, similar to the precautions applied on 28 August, and it resumed its task of apprehending and evacuating foreign military and paramilitary personnel.494 As it did so fire was opened on the Force from a building where a number of foreign officers were known to be staying. United Nations troops were also fired at as they were deploying towards key points or while guarding installations in the city. Non-Congolese officers and mercenaries were observed leading the attacks, directing fire, and handling weapons. Attacks against the United Nations troops continued from 13 to 18 September in Elisabethville, Jadotville and Kamina. United Nations troops returned fire.495

287. On 16 September the British Consul informed the United Nations representative at Elisabethville that Mr. Tshombé wished to meet him on 17 September in Bancroft, Rhodesia. On the same date the Secretary-General, in his reply,496 suggested that the Secretary-General meet Mr. Tshombé personally

"...so that together we can try to find peaceful methods of resolving the present conflict, thus opening the way to a solution of the Katanga problems within the framework of the Congo. The proposed meeting obviously requires that orders should be given beforehand for an immediate and effective cease-fire."

He suggested that the meeting take place at Ndola, Northern Rhodesia, and added that he would inform Mr. Tshombé the next morning of the time of his arrival,

"allowing for the fact that before I leave I must have your reply to this message, including your decision regarding the cease-fire. The cease-fire will occur automatically on United Nations side, in view of the fact that according to the instructions given and the rules followed by the Organization, it only opens fire in self-defence."

288. On 17 September, the British Consul transmitted to the United Nations representative in Elisabethville the reply of Mr. Tshombé, in which he stated inter alia:

(a) The President and the government agree on the principle of an immediate cease-fire.

(b) He requests that United Nations troops be confined to their camps.

(c) He requests that the United Nations stop troop movements and the sending of reinforcements by land and air.497

289. In answer to that second message from President Tshombé, the Secretary-General asked the United Nations representative in Elisabethville to inform him as follows:

"Kindly inform Mr. Tshombé that the Secretary-General finds it impossible to accept the conditions in inflammatory broadcasts or other threats to the maintenance of law and order, similar to the precautions applied on 28 August, and it resumed its task of apprehending and evacuating foreign military and paramilitary personnel.494 As it did so fire was opened on the Force from a building where a number of foreign officers were known to be staying. United Nations troops were also fired at as they were deploying towards key points or while guarding installations in the city. Non-Congolese officers and mercenaries were observed leading the attacks, directing fire and handling weapons. Attacks against the United Nations troops continued from 13 to 18 September in Elisabethville, Jadotville and Kamina. United Nations troops returned fire.495

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"Kindly inform Mr. Tshombé that the Secretary-General finds it impossible to accept the conditions
for a cease-fire and a meeting which have been conveyed to him.

"According to the terms of the letter from the Secretary-General, in the existing circumstances, there can be no question of anything but an unconditional cease-fire and an agreement of both parties to meet together, all other modalities obviously to be discussed in the course of the meeting. The Secretary-General cannot agree to meet Mr. Tshombé unless this preliminary agreement, which is fully in accord with normal practice, is accepted.

"The Secretary-General regrets that by introducing conditions, Mr. Tshombé has delayed the taking of measures to protect human life. He sincerely hopes that a favourable reply to his observations by Mr. Tshombé will make possible a meeting without further delay.

"As regards military movements and maintaining the positions of the various military groups, the cease-fire order should naturally be interpreted as having no effect on the status quo, which is to be maintained in all respects throughout the period during which an agreement is being sought."498

290. When on 17 September the United Nations representative contacted the British Consul to ask him to convey the message of the Secretary-General to Mr. Tshombé, he was informed that the latter had already chartered a plane and made plans to travel with his group to Ndola on the same day.

"In the absence of further word from President Tshombé, the Secretary-General decided to go to Ndola and consequently left Leopoldville at approximately 17.00 hours."499

It was on his flight to Ndola that Mr. Hammarskjöld, the Secretary-General, was killed in the crash of the aircraft in which he was flying.500

291. On 20 September a United Nations special emissary was dispatched to Ndola to negotiate with Mr. Tshombé a cease-fire agreement without prejudice to the continued implementation of Security Council resolution 161 (1961) and other Security Council resolutions on the Congo.501 A provisional cease-fire agreement was signed on the same day.502 It became final upon its approval by United Nations Headquarters, which approval was communicated to Mr. Tshombé on 24 September 1961. The express conditions set forth as the basis for the approval by United Nations Headquarters of the cease-fire agreement of 20 September are equally applicable to the protocol of 13 October and constitute the basis on which it is approved. These conditions are the following:

"(a) The conclusion of the agreement shall in no way affect the resolutions of the Security Council, including that of 21 February 1961, and of the General Assembly,

"(b) The agreement is of a strictly military nature and applies solely to the United Nations Force in Katanga and to the armed forces of Katanga. It has no political intention or aim;

"(c) The agreement does not apply outside Katanga.

"2. This protocol of agreement is limited to relations between ONUC and Katanga armed forces in Katanga. Approval of it involves no derogation of the unity, territorial integrity or independence of the Congo, affirmed and reaffirmed by resolutions of the Security Council and the General Assembly, of the sovereignty of the Republic of the Congo (Leopoldville), or of the authority of its Central Government.

"3. Further, note is taken that it was acknowledged in the discussions between the two parties to the negotiations which led to the formulation and signing of the protocol, that full compliance with the requirements of Part A, paragraph 2, of the Security Council resolutions of 21 February 1961 is a condition essential to the effective application of the protocol.

"4. This approval is given, finally, on the understanding that the exchange of prisoners will precede the execution of all other provisions of the protocol."503

A joint commission with full powers to supervise the application of the cease-fire was established pursuant to paragraph 3 of the agreement.504

292. Subsequent to the cease-fire, a protocol of agreement for its implementation between the Katangese authorities and ONUC was signed at Elisabethville on 13 October 1961.505

293. The text of the approval by United Nations Headquarters of the protocol, which was sent to the Officer-in-Charge for transmission to Mr. Tshombé by a telegram on 19 October, read as follows:

"1. The protocol of agreement signed at Elisabethville on 13 October 1961 is approved by United Nations Headquarters as an accord which is subsidiary to the cease-fire agreement between the United Nations troops and those of the Katangese authorities signed at Ndola on 20 September 1961. The express conditions set forth as the basis for the approval by United Nations Headquarters of the cease-fire agreement of 20 September are equally applicable to the protocol of 13 October and constitute the basis on which it is approved. These conditions are the following:

"(a) The conclusion of the agreement shall in no way affect the resolutions of the Security Council, including that of 21 February 1961, and of the General Assembly,

"(b) The agreement is of a strictly military nature and applies solely to the United Nations Force in Katanga and to the armed forces of Katanga. It has no political intention or aim;

"(c) The agreement does not apply outside Katanga.

498 Ibid., para. 12.
499 Ibid., para. 13.
500 Ibid., p. 114, S/4940/Add.5.
501 Ibid., p. 119, S/4940/Add. 7.
502 For the text of the agreement, see ibid.
505 For the text of the protocol, see ibid., p. 9, S/4940/Add. 11, annex I.
506 Ibid., annex II, and p. 150, S/5003.
The protocol, being of a strictly local and military nature, involved no action on the part of the Congolese Government. Nevertheless, in view of the proper concern of that Government for matters relating to the unity, territorial integrity and independence of the Congo, the terms of the protocol and of the reservations contemplated by United Nations Headquarters were previously communicated to the Prime Minister, who had informed ONUC Headquarters that his Government would not oppose approval in the terms intended. 507

294. In a letter dated 23 November 1961, circulated together with the Acting Secretary-General’s reply of 24 November 508 the President of the Security Council asked by whom and on what authority approval by United Nations Headquarters had been given to the agreement of 13 October between the Katangese authorities and ONUC. In reply the Acting Secretary-General stated that approval had been given with the concurrence of the senior officials having responsible functions in the Congo operation under the late Secretary-General. Before taking the action in question, the Secretariat had consulted the Advisory Committee on the Congo. In the absence of a Secretary-General, it was essential for the responsible officials, acting within the general authority of the Council and Assembly resolutions, to give approval when required for agreements on military matters including cease-fire arrangements, in order to save lives and carry out the objectives laid down by the Council. The action might, therefore, properly be considered to have been a practical necessity in the unusual circumstances then prevailing. 509

295. The Katangese authorities failed to respect numerous clauses of the protocol, the gravest and most dangerous flouting of the cease-fire terms being the bombing attacks in Kasai by the “Katanga air force”. 510 The ONUC representative in Elisabethville on 31 October 1961 made a formal démarche, sternly enjoining the Katangese authorities to ground all military aircraft immediately, failing which ONUC would be obliged to take all necessary counteraction. It was emphasized that despite the gravest Katangese provocation, ONUC was not denouncing the protocol but was limiting itself to the counter-action strictly necessary for its self-defence and for ensuring the protection of its overall operation in the territories where its mandate applied. 511

296. With regard to the implementation of paragraph 2 of Security Council resolution 161 A (1961), ONUC representatives made clear to the Katangese authorities that pacific procedures for the dismissal and apprehension of foreign military personnel were available to them but that a continued failure on their part to use such procedures could result in direct action by ONUC under the resolution when and as appropriate. 512

297. On 13 November 1961 the President of the Republic of the Congo issued ordinance No. 83, 513 supplementing ordinance No. 70 concerning the expulsion of non-Congolese officers and mercenaries serving in the Katangese forces. Under the new ordinance all such persons who had not entered into a contract with the Central Government were to be liable to the penalties of imprisonment provided for in book II, section VIII of the Congolese Penal Code. The Congolese Minister of the Interior, jointly charged with the Minister of National Defence with carrying out the ordinance, transmitted its text to the Officer-in-Charge on the same date and, in accordance with the provisions of Ordinances Nos. 70 and 83, requested him

“to be good enough to place all mercenaries in Katanga and the other provinces of the Republic at the disposal of the Government of the Republic of the Congo with effect from today.”

298. On 15 November 1961 ONUC reported that troops of the Government of the Republic of the Congo had entered Katangese territory and were resisted by gendarmerie units under the control of the Katangese provincial government. The report indicated that mercenaries might have been involved in the operation on the Katangese side, and it could be assumed with virtual certainty that the Katanga based aircraft were manned by non-Congolese personnel. 514 Council resolutions 143 (1960), 145 (1960), 146 (1960) and 161 (1961) had not authorized the Secretary-General to use force to implement the part of his mandate regarding the withdrawal of unauthorized military personnel. Subsequent to the outbreak of fighting in Katanga during August-September 1961, 515 the Security Council met at the request of Ethiopia, Nigeria and Sudan, and by its resolution 169 (1961) of 24 November 1961 characterized the Katangese secessionist activities as “illegally carried out by the provincial administration of Katanga with the aid of external resources and manned by foreign mercenaries”. 516 The Council authorized:

“the Secretary-General to take vigorous action, including the use of the requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, as laid down in paragraph 2 of Security Council resolution 161 A (1961) of 21 February 1961”. 517

299. After the adoption of Security Council resolution 169 (1961), the Acting Secretary-General stated that the members of the Council and all interested parties were entitled to know what they might expect

507 Ibid., p. 4, S/4940/Add.11, para. 12.
508 Ibid., p. 150, S/5003.
509 Mr. Hammarskjöld, the Secretary-General, had died on 17 September 1961 and an acting Secretary-General was appointed only on 3 November 1961 (General Assembly resolution 1640 (XVI)).
511 Ibid., paras. 9 and 10.
512 Ibid., para. 12.
515 See paras. 286 et seq. above.
516 Oper. para. 1.
517 Oper. para. 4.
of him with respect to those provisions of the resolution which called for action by the Secretary-General. It was intolerable that efforts to prevent civil war and to achieve reconciliation in the Congo should be obstructed and thwarted by professional adventurers, he said. He intended, therefore, to discharge the responsibilities entrusted to him in paragraph 4 of the resolution with determination and vigour. The Acting Secretary-General stated further that all the United Nations responsibilities flowing from past resolutions on the Congo continued with new emphasis, since those resolutions had all been reaffirmed in resolution 169 (1961). Everything possible must be done to avert civil war, "even by the employment of force, should this prove necessary as a last resort".518

300. About the middle of November 1961 a violent propaganda campaign was launched against the United Nations by the Katangese authorities in violation of paragraph 8 of the Protocol of agreement of 13 October. It was aimed at inciting the population to violence against the United Nations which, by the adoption of Council resolution 169 (1961), Mr. Tshombé contended, had declared war on Katanga.519 Acts of violence were committed against United Nations personnel, including two senior members of the Secretariat; roadblocks were erected by the Katangese gendarmerie, severing the lines of communication between headquarters in Elisabethville and the airport.520 The United Nations Force became involved in serious fighting while clearing the roadblocks and also as a result of attacks on its positions by the mercenary-led Katangese gendarmerie.521

301. At the request of Mr. Tshombé, a meeting between him and Prime Minister Adoula was arranged at Kitona in Leopoldville province, with the participation of United Nations officials, on 20 and 21 December 1961. In a Declaration signed on 21 December 1961, Mr. Tshombé agreed inter alia to place the Katangese gendarmerie under the authority of the President of the Republic and pledged himself to ensure respect for the resolutions of the General Assembly and the Security Council and to facilitate their implementation.522

302. In accordance with an announcement previously made by the Acting Secretary-General, the command of the United Nations Force in Elisabethville ordered a hold-fire during the period of the parole while reserving the right to act in self-defence.523 The decision on the part of the Force to refrain from opening fire unless and until first fired upon was maintained after the conclusion of the Kitona talks.

303. While activities directly involving Katangese gendarmerie and United Nations troops ceased almost completely, acts of terrorization of the African communities were committed by the gendarmerie and certain non-Congolese elements.524 The Officer-in-Charge reported on 9 January 1962 that much of the continued uncertainty of the military situation in Katanga could still be attributed to the activities of non-Congolese elements. The hard core of that group had succeeded in evading apprehension by the United Nations Force during the military action from 5 to 20 December 1961. There was also information indicating that the recruitment of mercenaries for Katanga in certain countries had not ceased.525 In a subsequent report dealing inter alia with the developments in Katanga during the period of 9 to 19 January 1962, the Officer-in-Charge stated that while incidents and tension had continued to diminish progressively, no positive measure had as yet been taken by the Katangese authorities to facilitate the implementation of the relevant clauses of Security Council resolutions 161 (1961) and 169 (1961). ONUC officials, for their part, had reiterated to the Katangese authorities the imperative necessity of complying with the resolutions without further delay.526

304. On 29 January 1962 the Officer-in-Charge reported that from 27 December 1961 contacts had been resumed with Katangese authorities for the purpose of achieving full compliance with Council resolutions 161 (1961) and 169 (1961).527 At a meeting held on 24 January 1962 with three senior officials of ONUC it was made clear to Mr. Tshombé that if urgent steps were not taken to eliminate the mercenaries, ONUC would not hesitate to take all necessary measures to do so.528 In a letter of 26 January 1962, Mr. Tsombé stated that the provincial government was determined to expel the mercenaries still in Katanga within a month; that he would give the United Nations a list of all mercenaries who had been in Katanga; and that a joint commission could be set up to seek out any mercenaries who tried to escape the measures to be taken. In a letter dated 29 January 1962 to Mr. Tshombé from the Officer-in-Charge,529 it was stated that the Statements made by Mr. Tsombé had been noted with satisfaction by the United Nations, but that the time-limit of one month for the complete elimination of mercenaries was not accepted, and it was insisted that that should be carried out immediately.

305. In the course of a meeting held on 3 February 1962 with ONUC representatives, Mr. Tshombé delivered to them two letters. In one he confirmed the statements made in his letter of 26 January that the Katangese government was resolutely determined to expel the mercenaries who might still be in Katanga. In the other letter, Mr. Tsombé proposed to establish two joint commissions according to the terms proposed by the ONUC representatives. Those commissions would have free access to all places which they might wish to visit, would have full authority to take all kinds of evidence concerning the mercenaries and would be authorised to take all necessary measures.
for the rapid and effective accomplishment of their task.

306. The commissions were established on 8 February 1962, and the Officer-in-Charge reported on their activities on 19 February 1962. Because in their view the information supplied had not been satisfactory, the ONUC members of the commissions had constantly pressed the Katanga representatives to provide more details concerning mercenaries.

307. After a period of relative calm, marked chiefly by inconclusive negotiations between Prime Minister Adoula and Mr. Tshombé, incidents occurred on and after 11 July 1962, the second anniversary of the declaration of Katangese independence. Two thousand gendarmes were introduced into Elisabethville in violation of agreed arrangements; a mass demonstration was staged; disorders ensued which the Katangese authorities did nothing to control or stop; and United Nations personnel were harassed and attacked.

308. On 20 August 1962, the Acting Secretary-General stated in a report to the Security Council: "... the situation has changed to the extent that the mercenaries now present in Katanga are not overtly active as they once were, having merged with the civilian population of European origin and having taken civilian employment. Thus it is not possible readily to apprehend a substantial number of them as was done in August 1961. The provisions of the resolutions covering mercenaries, therefore, no longer afford ONUC a good basis for effective action, as they once did."

309. On 8 October 1962 the Officer-in-Charge reported a build-up of Katangese mercenary strength and frequent violent incidents between the United Nations Force and the Katangese gendarmerie during September 1962. Despite repeated declarations by Katangese spokesmen that they wanted to seek a solution to the mercenary problem "once and for all", the evidence was that in fact that pledge was not being kept. From the beginning, there were also indications that no serious results could be expected from the work of the ONUC-Katanga joint commissions on mercenaries. The lists of mercenaries supplied to ONUC representatives did not reflect a valid picture of the presence of mercenaries at the time and were of no use in checking their progressive departure from Katanga. Meanwhile, precise and reliable evidence had come into the possession of the United Nations, including documentary evidence relating to the presence and activities of mercenaries in Katanga. The Officer-in-Charge concluded that all the evidence in the possession of the United Nations showed that the strength of foreign mercenaries remained as significant as ever despite ONUC's efforts to deport them or to prevent their return.

310. After an unsatisfactory exchange of correspondence on the matter between Mr. Tshombé and the Officer-in-Charge, the latter had notified the former on 29 September 1962 that the joint commissions on mercenaries had been superseded by the setting up of a Military Commission provided for in the Plan for National Reconciliation and that he would turn over the evidence to that Commission.

311. After having been subjected to increased harassment culminating in a four-day period of unprovoked firing by Katangese gendarmerie, which United Nations troops did not answer, the United Nations force took action on 28 December 1962 to restore the security of its troops in the Elisabethville area and their freedom of movement by clearing the gendarmerie road-blocks from which fire had been directed at them. Those purposes were accomplished by 31 December 1962. In the period from 31 December to 4 January 1963 United Nations troops moved towards strongholds in Katanga and then into Jadotville, a major city in which mercenaries were concentrated.

312. On 16 January 1963, the Secretary-General received through the Permanent Mission of Belgium a message from Mr. Tshombé to the effect that the provincial president was prepared to meet the United Nations representative in Elisabethville in order to discuss the modalities of the entry of the force into Kolwezi. Having been given renewed assurances of free passage, Mr. Tshombé went to ONUC headquarters in Elisabethville on 17 January and met the acting ONUC representative in Elisabethville and the General Officer Commanding of the force, Katanga area. After some discussion a document setting forth the points decided upon was signed by the three men. In that document Mr. Tshombé pledged himself to facilitate ONUC's peaceful entry into Kolwezi, to take place on 21 January 1963.

313. After further military operations carried out in the period from 5 to 21 January 1963, the United Nations troops entered Kolwezi unopposed on 21 January. By that date, the United Nations Force controlled all important centres theretofore held by the Katangese and was quickly restoring law and order at all places. The Katangese gendarmerie had ceased to exist as an organized fighting force.

314. Although the number of mercenaries apprehended by the force during the last week of 1962 and the first two weeks of January 1963 was small, it was found that the mercenary element in the Katangese gendarmerie appeared to be disorganized and demoralized and incapable of stiffening the morale of the Katangese gendarmerie or of giving it effective leadership as it had done in the past.

315. The Portuguese Foreign Minister subsequently announced that numerous individuals who said that...
they had been in the service of the Katangese authorities had crossed the frontier of Angola. They had been disarmed and interned and had then proceeded to their country of origin.\textsuperscript{544}

316. Thus, as the Secretary-General stated in a report to the Security Council dated 4 February 1963, it could be concluded that for all practical purposes the mandate relating to mercenaries had been fulfilled.\textsuperscript{545}

\textit{ii. Measures to promote the reintegration of Katanga within the Republic of the Congo}

317. After a request was made by Mr. Tshombé to the President of the United States on 14 December 1961, a meeting between Prime Minister Adoula and Mr. Tshombé was arranged at Kitona on 19 December with the assistance of United States Ambassador E. Gullion and ONUC. In addition to the representatives of the Government of the Congo and of the provincial government of Katanga, the United States Ambassador and Mr. Bunche, United Nations Under-Secretary for Special Political Affairs, participated. On 21 December an agreement was reached expressed in a declaration by Mr. Tshombé, a letter from Mr. Tshombé to Mr. Bunche, and letters from Mr. Bunche to Mr. Tshombé and to the Prime Minister. In his declaration Mr. Tshombé accepted the application of the \textit{Loi fondamentale}; recognized the unity of the Congo; recognized President Kasavubu as Head of State; recognized the authority of the Central Government over all parts of the Congo; agreed to the participation of Katangese representatives in the Commission to be convened at Leopoldville to study a draft Constitution; pledged himself to take steps to enable Katangese deputies and senators to discharge their national mandate within the Government of the Republic; agreed to the placing of the Katangese gendarmerie under the authority of the President of the Republic; and pledged himself to ensure respect for the resolutions of the General Assembly and the Security Council. While stating his position without reservation in the declaration, Mr. Tshombé drew attention to the fact that he had not had time to consult the Katangese authorities to obtain authority to speak on their behalf.\textsuperscript{546}

318. The Katangese provincial Assembly referred the so-called Kitona Declaration to a parliamentary commission for study. Early in January 1962 Mr. Tshombé applied to ONUC for the services of a neutral juridical expert to examine the form and presentation of the conclusions drawn from the Assembly's discussions and their conformity to the prescribed procedure, so as to present a document clearly drawn up in accordance with legal rules. The request was submitted for consideration and approval to the Central Government which did not raise any objection on the understanding that the expert would at no time be required to pass judgment on the legality of the Central Government's actions. The Acting Secretary-General accordingly assigned the Legal Counsel of the United Nations to the task. After the latter had found, on studying the report of the Katangese parliamentary commission, that it was contrary to the \textit{Loi fondamentale}, the commission requested his assistance in drafting a new report which would be legal both in form and in content. The second report was adopted by the commission on 13 February 1962. On 15 February the Assembly itself accepted the "Draft Declaration of Kitona" as a potential basis of discussion for the settlement of the Congolese problem and authorized the government of Katanga to establish contact with the Central Government so as to ensure a solution in the spirit of the Declaration.\textsuperscript{547}

319. In connexion with his prospective visit to Leopoldville at the invitation of the Prime Minister of the Congo,\textsuperscript{548} Mr. Tshombé requested that ONUC guarantee his own and his party's security for the period of their visit, to which the Officer-in-Charge agreed. ONUC further assured Mr. Tshombé that if the question of the warrant issued for his arrest by the Central Government was raised, it would oppose the warrant's execution, since any such action would nullify the assurances given him by the United Nations with the Central Government's agreement.\textsuperscript{549}

320. A Katangese delegation and a Central Government delegation held their first meeting on 18 March 1962 and met during the period up to 16 April, on which date the meetings were discontinued. They agreed \textit{inter alia} that no statements would be issued by either delegation until after the meetings had been completed and, in any event, not without prior agreement of the other delegation. The meetings were resumed on 18 May and continued until 26 June. During the first phase, the Officer-in-Charge extended his general assistance to both delegations to facilitate their efforts, but without attending any of their meetings as they indicated a preference to negotiate among themselves without the presence of a third party. When the negotiations were resumed on 18 May, the Officer-in-Charge and other representatives of ONUC participated in all meetings at the request of both delegations.\textsuperscript{550}

321. On 27 and 29 March the Prime Minister and the Katangese delegation made public certain mutually recriminatory statements.\textsuperscript{551} Thereupon, the Officer-in-Charge addressed a letter to both parties appealing to them to refrain from carrying their differences into public debate and to observe scrupulously their agreement regarding the secrecy of the negotiations.\textsuperscript{552}

322. On 8 April 1962 Mr. Tshombé addressed a memorandum to the Officer-in-Charge\textsuperscript{553} in which he asked for a number of assurances and guarantees to be given by the United Nations to the Katangese government in case the latter were to conclude an agreement with the Central Government. The memorandum also requested that in such a case the United Nations 318. On 27 and 29 March the Prime Minister and the Katangese delegation made public certain mutually recriminatory statements.\textsuperscript{551} Thereupon, the Officer-in-Charge addressed a letter to both parties appealing to them to refrain from carrying their differences into public debate and to observe scrupulously their agreement regarding the secrecy of the negotiations.\textsuperscript{552}

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Nations progressively withdraw its forces from Katanga. In his reply of 12 April the Officer-in-Charge expressed the view that the assurances could most opportunely be given when Mr. Tshombe had made clear his differences with the Central Government. With regard to the reduction of the military strength of the United Nations in the Congo, the United Nations authorities could reasonably be expected to review their position with regard to the Congo when the talks then in progress had been successfully concluded and the decisions arrived at implemented.

323. Draft conclusions to be signed by the parties at the end of the meetings were submitted to Mr. Tshombe by the Congolese Prime Minister on 16 April. No agreement was reached, however, before Mr. Tshombe returned to Elisabethville on 18 April.

324. On 1 May 1962, after holding consultations with President Kasavubu and Prime Minister Adoula, the Officer-in-Charge presented to the Katangese authorities a revised version of the Central Government’s “draft conclusions” on which he had obtained the Prime Minister’s agreement, as well as a memorandum which inter alia contained certain United Nations guarantees calculated to facilitate an agreement and a smooth transition between the prevailing situation and normal conditions. The Katangese representatives meeting at Elisabethville advanced counter-proposals which were modified after the Officer-in-Charge had commented on them. A final text of draft conclusions of the Leopoldville negotiations acceptable to the provincial Katangese government was drawn up on 6 May.

325. On 25 May 1962 negotiations resumed in Leopoldville, with agreement to use as a basis for discussion a working document prepared by ONUC. The delegations decided to establish four commissions with agreed terms of reference: military; monetary; economic and fiscal; and transport and communications. The members of the commission were to be appointed not later than fifteen days after the return of the Katangese delegation to Elisabethville. No agreement was reached, however, on any other items, and on 26 June it was recognized that further discussions would be futile.

326. In July 1962 the Acting Secretary-General consulted the Advisory Committee on the question of the possible application by Member States of economic measures in order to exhort the Katangese authorities to raise the issue of conscription to the United Nations. In his reply of 12 April the Officer-in-Charge expressed the view that the assurances could most opportunely be given when Mr. Tshombe had made clear his differences with the Central Government. With regard to the reduction of the military strength of the United Nations in the Congo, the United Nations authorities could reasonably be expected to review their position with regard to the Congo when the talks in progress had been successfully concluded and the decisions arrived at implemented.

327. On 2 August the Acting Secretary-General addressed a letter to the Minister for Foreign Affairs of Belgium appealing to him and to his Government to take all possible steps to induce the Union Minière Company to turn over to the Belgian Government all revenues then being paid to the Katangese authorities, to be frozen pending an ultimate settlement and accounting.

328. After the indefinite suspension of the Adoula-Tshombe talks, the Acting Secretary-General on 20 August 1962 submitted to the Central Government a programme of measures which he proposed and which came to be known as “The Plan of National Reconciliation” or the “Plan”. With the Central Government’s consent, the Plan was communicated on 24 August to representatives of Mr. Tshombe. In his discussions with Prime Minister Adoula as well as with Mr. Tshombe’s representatives, the Officer-in-Charge made it clear that the Plan as submitted to them was to be accepted or rejected in its entirety and was not negotiable.

329. In a letter to the Officer-in-Charge of 23 August Mr. Adoula stated that he appreciated the Plan as a “gesture of goodwill”, but he reserved his “freedom of action in case, though its substance may be acceptable, its execution raises difficulties”. Notification of Mr. Tshombe’s acceptance of the Plan was received by the Officer-in-Charge on 3 September. While observing that the short period of ten days within which he had been asked to submit his answer conferred on the Plan the character of an “ultimatum”, Mr. Tshombe stated that “the Government of Katanga welcomes enthusiastically the decision to endow the Congo with a federal Constitution” and that it “wholeheartedly supports the Plan as a whole, which sets out the general principles governing the solutions which will have to be formulated”.

330. Under the constitutional arrangements suggested by the Plan the Central Government would by September present and support in Parliament, until it was placed in effect, a draft Constitution that would establish a federal Government for the Congo. To that end the Central Government had requested the United Nations to make available to it the service...
of international experts in federal constitutional law. Taking into consideration the views of all provincial governments and interested political groups in the Congo on the provisions to be included in the Constitution, the Central Government would give the experts the necessary instructions for the final preparation, by September of a draft instrument which would divide the powers between the Central Government and the States in accordance with certain principles laid down in the Plan. Besides the elaboration of a federal Constitution, the other main elements covered by the Plan were the division of revenue and foreign exchange earnings between the Central Government and the provincial governments, the unification of currency, the integration and unification of all military, paramilitary or gendarmerie units into a national armed force and gendarmerie structure, the withdrawal of all provincial representatives and diplomatic or consular missions abroad not serving under the authority of the Central Government, the proclamation of a general amnesty, and the reconstitution of the Central Government to provide representation for all political and provincial groups. The Plan enunciated a programme of measures to be taken in a specified time sequence at the end of which Katanga would have been reintegrated in a federal Republic of the Congo.

331. On 7 September 1962 the Officer-in-Charge sent identical letters to the Prime Minister and Mr. Tshombé stating *inter alia* that the Secretary-General would exert every effort to ensure that all the provisions of the Plan were carried out faithfully. On 10 September a second set of identical letters transmitted a detailed programme for the immediate implementation of the Plan.

332. In accordance with the first clause of the Plan, a draft federal Constitution was prepared by the constitutional experts provided by the United Nations. The experts had taken into consideration some “preliminary observations” submitted by the Katangese authorities as well as the proposals of other provinces and groups. The draft Constitution, together with an explanatory memorandum and detailed comments on its various clauses, was submitted to Prime Minister Adoula on 27 September and transmitted by him to the Bureaux of the two Chambers of Parliament on 13 October. It was subsequently submitted to a conference of provincial presidents held at Leopoldville from 16 to 23 October. Although invited, the Katangese authorities did not attend. The conference adopted a resolution inviting Mr. Tshombé “to co-operate constructively and sincerely with the Central Government and other provinces”.

333. As called for by the programme of implementation, three commissions composed of representatives of the Central Government and of Katangese authorities, assisted by United Nations experts, were set up to establish administrative modalities for the implementation of the Plan’s military provisions as well as those concerning revenue and foreign exchange. The commissions held a number of meetings. On 16 October the military commission adopted a cease-fire agreement calling *inter alia* for an immediate cessation of ANC and Katangese troop movements in North Katanga.

334. On 30 October the Acting Secretary-General directed the Officer-in-Charge to draw the attention of the Central Government and of the Katangese authorities to the commitments they had made in accepting the Plan. That was the subject of identical letters to Prime Minister Adoula and Mr. Tshombé dated 1 and 2 November respectively, to which was attached a note on “the requirements of the Plan” listing the actions that were to be carried out by the Central Government and by the Katangese government, as well as an assessment of actions already taken by them.

335. In a cable to the Acting Secretary-General dated 9 November, Prime Minister Adoula reaffirmed his support for the Plan but pointed out risks involved in not keeping strictly to the time limits outlined in it. Subsequently, the Prime Minister explained in detail, in an annex attached to a letter dated 13 November, the measures taken and the position adopted by his Government with regard to the implementation of the Plan. He maintained that everything possible had been done by his Government to apply the relevant provisions of the Plan, often in the face of great provocation on the part of the Katangese authorities.

336. After the Officer-in-Charge went to Elisabethville to impress upon Mr. Tshombé the need for a positive response by 15 November to the note sent on 2 November, Mr. Tshombé informed him in a letter dated 12 November that he was determined to apply the Plan. He denied that Katanga had persisted in adopting a separatist attitude and placed full responsibility for the difficulties encountered in the implementation of the Plan on the Central Government. On the same day, Mr. Tshombé issued a press communiqué in which he blamed the Central Government for failure to implement the plan and contended that the United Nations had been looking for pretexts to justify its use of force.

337. In a letter dated 16 November to Mr. Tshombé the Officer-in-Charge asked him to take among others the following measures: (a) send without delay Katanga’s senior officers to Leopoldville to take the oath of allegiance to the President of the Republic, it being understood that if necessary U.N.C would guarantee their safety and facilitate their transport; (b) announce immediate measures for applying the provisions of the Plan concerning revenue, finances and foreign exchange; (c) authorize the Central Government’s customs and immigration officials to carry out their functions in Katanga as elsewhere in the Congo.
The proclamation of general amnesty recommended by the Plan was included in a proclamation of 26 November by President Kasavubu.576

On 10 December 1962 the Officer-in-Charge sent a letter to Mr. Tshombé to inform him of the Secretary-General’s deep disappointment at his failure to implement the Plan. He wrote that Katanga had made no serious efforts to carry out the Plan, especially since Mr. Tshombé had by no means renounced his secessionist designs. Accordingly, Mr. Tshombé was informed that it was the Secretary-General’s intention to seek national reconciliation through the courses of action set forth in phases I to IV of the Plan and by such other steps as might prove necessary.577

Thus, the efforts made over a period of three months to persuade the Katangese authorities to carry out their part of the Plan of National Reconciliation were largely unsuccessful.578 In a report dated 11 January 1963 the Officer-in-Charge characterized Mr. Tshombé’s behaviour in the following terms:

“By and large, Mr. Tshombé had made certain gestures of a largely procedural nature. He would be prepared for protracted negotiations on terms and grounds predefined by him, he had written lengthy letters and made statements but he had taken no significant step to achieve the reintegration of Katanga. The Plan enunciated a programme of definite measures which were to be taken in a specified time sequence, at the end of which Katanga would have been reintegrated in a federal Republic of the Congo. Mr. Tshombé paid only weak lip-service to the Plan and his acts belied even that.”579

In December 1962 the Secretary-General authorized the military action which began on 28 December 1962 and culminated in the entry of the United Nations Force into Kolwezi on 21 January 1963,580 thus bringing the Katangese secession to an end for all practical purposes. At the request of Prime Minister Adoula, ONUC undertook to give Mr. Joseph Ileo, appointed by the President of the Congo Minister of State Resident at Elisabethville on 16 January 1963, all the assistance and co-operation he might require.581

ONUC co-operated with local authorities to restore public services and take steps towards the reintegration of Katanga. ONUC postal experts, customs advisers, telecommunication technicians and engineers for the repair of roads and bridges lent their services during the transition period.582

(f) The provision of technical assistance

i. General

In deciding that military assistance was to be provided to the Government of the Republic of the Congo, the Security Council laid down that it was to continue until, through the efforts of the Congolese Government “with the technical assistance of the United Nations”, the national security forces might be able, in the opinion of the Government, to meet fully their tasks.583

Addressing the Security Council on 20 July 1960, the Secretary-General referred to difficulties he was encountering in providing non-military assistance to the Congo and stated that he “would appreciate it if the Council, as a result of the debate or in its resolution”, would give the work “the desirable backing”.

IN A report dated 11 August 1960 to the Security Council, the Secretary-General stated:

“When the Security Council adopted its resolutions on the United Nations operation in the Congo, it conceived the civilian part of the operation and the military part as interrelated and mutually supporting elements of the assistance. The essential and long-term contribution would be in the civilian field, but it required the establishment of order and security. For that reason, the United Nations Force was organized and sent to the Congo pending the reorganization of the national army and police at the same time as steps were taken for the building up of a large-scale civilian assistance activity. The Security Council reflected the latter element of its approach and the basic unity of the operation in its resolution of 22 July 1960 [145 (1960)] when it invited ‘the specialized agencies of the United Nations to render to the Secretary-General such assistance as he may require’.”587

Referring in that memorandum to “the basic and necessary unity of the civilian and military operations and the ensuing necessity for centralized organization and leadership within the United Nations family”, the Secretary-General stated that such unity in no way detracted “from the authority and competence of the specialized agencies”, but did, however, “introduce a factor which the specialized agencies may be expected to take into account in their own planning”.

The Secretary-General further observed:

“. . . at the same time, the resolution quoted above adds a new obligation for the specialized agencies to render assistance to the United Nations as requested; this follows from the fact that the Security Council decision under Chapter VII of the Charter of the United Nations was established as an integral part of ONUC. See para. 107 above.589

As noted previously, the Civilian Operation in the Congo was established as an integral part of ONUC. See para. 107 above.589

Oper. para. 2 of S C resolution 143 (1960) of 14 July 1960.

Oper. para. 4.

Oper. para. 4.

Oper. para. 4.
is mandatory in relation to Governments, and therefore necessarily mandatory also in relation to governmental organizations."

347. The Secretary-General went on to say that while the civilian activities could be based on the traditional pattern and methods of technical assistance and the Programme for the Provision of Operational, Executive and Administrative Personnel (OPEX), they had to go further. It was that reason that the formula suggested in the memorandum and approved by the Government of the Republic of the Congo involved a distinction between, on the one hand, technical assistance proper, which in principle was on a technical and advisory level, and, on the other, activities for which the experts employed had to receive a new and so far untried status. Those experts were attached to the Chief of the United Nations Civilian Operation as his consultants, and each had his own specific administrative responsibility for all activities within the range of his expertise. Together they formed a Consultative Group, of which the Chief of the Civilian Operation was the Chairman, and each carried the title of Consultant to the Chief of the Civilian Operation. They were to be available at the call of the Government to give advice on various problems and to provide the Government with the studies it might request for the planning of its activities and decision. Each consultant appointed by the Secretary-General was the local representative of a specialized agency concerned with a specific sphere of activity who had been appointed by the specialized agency in consultation with the United Nations.

348. The Secretary-General defined the position of the consultants vis-à-vis the Government in the following terms: "Thus, the Consultants, without being accredited to the ministries and having formally functions only within the United Nations orbit, would de facto be able to serve, with senior responsibility, at the request of the Government, the various ministries and departments. But — and that has to be repeated — they will fulfil the latter function on an ad hoc basis and at the specific of the Government." 599

349. In his first progress report to the Secretary-General, issued on 21 September 1960, the Special Representative of the Secretary-General in the Congo, referring to the civilian operations, stated:

"For the first time in the history of international organization, the United Nations and the specialized agencies have collaborated in the Congo as a single team, under the mandate of the Security Council, to meet the economic emergency following the country's independence." 601

350. In the preamble of Security Council resolution 169 (1961) of 24 November 1961 enunciating the policies and purposes of the United Nations with respect to the Congo as set out in the relevant resolutions of the Security Council and General Assembly, the Council mentioned the rendering of "technical assistance" 592. In operative paragraph 9 of the same resolution, the Security Council declared:

"... full and firm support for the Central Government of the Congo and the determination to assist that Government, in accordance with the decisions of the United Nations, to maintain law and order and national integrity, to provide technical assistance and to implement those decisions".

351. The activities undertaken as part of the United Nations Civilian Operation in the Congo concerned such matters as finance and economics, agriculture, public administration, education, health, communications, labour, social affairs, refugee relief, public works, training and fellowships, the organization of the judicature, natural resources and industry, and radio broadcasting. 669

ii. The Secretary-General’s role in respect of the financing of technical assistance provided to the Congo

352. In his fourth report of 7 September 1960 to the Security Council 594 the Secretary-General proposed the establishment within the United Nations of an international account into which would be directed the contributions of all countries willing to extend assistance to the Congo. He observed:

"In view of the Security Council's recognition of the responsibility of the international community for the restoration of peace and order in the Congo, it would appear logical that this financial assistance be channelled through the United Nations." 596

He proposed the formulation of a minimum set of rules and regulations and stated:

"Pending the establishment of such a minimum set of rules, the forms in which control over the use of the fund should be exercised may be determined by the Secretary-General." 596

The Secretary-General said that the programme of assistance which he proposed:

"is not intended to initiate a permanent régime of external subsidy, but is rather a relatively short-term effort designed to set the Congo on the road to becoming a source of economic strength once

598 Ibid., paras. 3-7.
599 Ibid., para. 12.
600 Ibid., para. 8.
601 Ibid., p. 176, S/4531, para. 41.

592 In a report issued on 4 February 1963, the Secretary-General included the rendering of technical assistance among the policies and purposes of the United Nations with respect to the Republic of the Congo, as set out by the Security Council in its resolutions — especially resolution 169 (1961) — and stated that those were "the mandates governing the actions of the United Nations Operation in the Congo" (S C, 18th yr., Suppl. for Jan.-March, p. 92, S/5240, para. 14).
603 For an account of the activities carried out as part of the Civilian Operation see S C, 15th yr., Suppl. for July-Sept., p. 176, S/4531, paras. 41-70; S C, 15th yr., Suppl. for Oct.-Dec., p. 6, S/4557, paras. 109-116; S C, 19th yr., Suppl. for April-June, p. 239, S/5784, paras. 78-109; LEO/PROG/3 and TAB/CON (L) R.I, as well as Suppl. No. 1 of GA (XVI), G A (XVIII) and G A (XVIII).
605 Ibid., p. 135, S/4482, para. 7.
606 Ibid., para. 8.
more... I propose that the Security Council appeal to Member Governments for urgent voluntary contributions to a United Nations Fund for the Congo to be used under United Nations control for the purposes indicated in this report. Immediate financial support from Member States is needed in the sum of $100 million, in convertible currencies. \(^{597}\)

In a draft resolution \(^{598}\) submitted by Ceylon and Tunisia during the meetings held by the Security Council from 9 to 17 September 1960 a United Nations Fund for the Congo was proposed, to consist of voluntary contributions from Member States and to be used under United Nations control and in consultation with the Congolese Government. In a draft resolution submitted by the USSR \(^{599}\) Member States would have been called upon to provide the Congo with financial and other economic assistance through voluntary contributions, "it being understood that such assistance will be placed directly at the disposal of the Government of the Republic of the Congo".

The USSR draft resolution was rejected by 7 votes to 2, with 2 abstentions. \(^{600}\) The two-Power draft resolution received 8 votes in favour to 2 against, with 1 abstention, but was not adopted because of the negative vote of a permanent member. \(^{601}\)

In its resolution 1474 (ES-IV) the General Assembly \(^{602}\) appealed "to all Member Governments for urgent voluntary contributions to a United Nations Fund for the Congo to be used under United Nations control and in consultation with the Central Government for the purpose of rendering the fullest possible assistance to achieve the objective mentioned in the preamble".

353. Referring to the civilian operations the Acting Secretary-General stated in the annual report of the Secretary-General on the work of the Organization up to 15 June 1962:

"Until now the programme has been financed from funds contributed by a small number of Member Governments and it is hoped that a larger number of countries will share in the future burden of the civilian operations programme. It is also my hope that it will be possible to have some of the costs of the programme absorbed by the Regular and Expanded Programmes of Technical Assistance of the United Nations and the specialized agencies. To this end there have been negotiations with the heads of the specialized agencies concerned, all of whom have responded favourably to the proposal that part of the financial burden of the various programmes should be borne by their agencies. A decrease in the financial responsibilities of ONUC is therefore expected in 1963." \(^{603}\)

354. In his annual report for the year ended 15 June 1963 the Secretary-General stated that because an appeal made by him on 5 December 1962 to Member Governments for further voluntary contributions had produced "vastly insufficient" funds, it had become necessary to find financial resources outside the Fund to cover the cost of the programme. The projects which were mainly of an operational nature were susceptible to being financed by the receiving Government, leaving to the Fund only the financing of the programme's advisory and training projects in accordance with established United Nations practice in the rendering of technical assistance. In accordance with letters exchanged in May/June 1963 between the Prime Minister of the Congo and representatives of the Secretary-General, the Government had agreed to assume financial responsibility for a number of operational projects. \(^{604}\)

(g) Termination of ONUC

355. No specific terminal date was set by the Security Council for either the military or the civilian phases of the United Nations Operation in the Congo. The duration of the military assistance was left undefined both in the Council resolution authorizing the assistance \(^{605}\) and in the agreements \(^{606}\) between the United Nations and the Government of the Congo. \(^{607}\)

356. In his report of 4 February 1963 on the implementation of the mandate of the United Nations Operation in the Congo the Secretary-General stated that a decisive phase in the United Nations' Congo experience, that is the phase of active military involvement by United Nations troops, had been concluded. \(^{608}\) He indicated that the United Nations Force in the Congo would be phased out gradually as from

\(^{597}\) Ibid., para. 6.
\(^{598}\) Ibid., p. 172, S/4523.
\(^{599}\) S C, 15th yr., 903rd mtg., para. 93, S/4519.
\(^{600}\) Ibid., 906th mtg., para. 148.
\(^{601}\) Ibid., para. 157.
\(^{602}\) Oper. para. 4.
\(^{603}\) G A (XVII), Suppl. No. 1, p. 25.
\(^{604}\) G A (XVIII), Suppl. No. 1, p. 16.
\(^{605}\) Under Security Council resolution 143 (1960) military assistance was to be provided to the Government of the Republic of the Congo by the United Nations "until... the national security forces may be able, in the opinion of the Government, to meet fully their tasks" (Oper. para. 2).
\(^{606}\) Under the terms of the Basic Agreement of 27 July 1960 (see para. 142 above), "considering it to be in accordance with the wishes of the Government of the Republic of the Congo", the United Nations reaffirmed "that it is prepared to maintain the United Nations Force in the Congo until such time as it deems the latter's task to have been fully accomplished" (S C, 15th yr., Suppl. for July-Sept., p. 27, S/4389/Add.5, para. 2). The Agreement of 27 November 1961 between the United Nations and the Republic of the Congo (see para. 148 above), the purpose of which was to determine the details of the application of the Basic Agreement of 27 July 1960, did not deal with the withdrawal of the Force (S C, 16th yr., Suppl. for Oct.-Dec., p. 151, S/5004 (also distributed to the General Assembly as document A/4986)).
\(^{607}\) For references to the question of what authority was competent, under S C resolution 143 (1960), to terminate the military assistance operation in the Congo, see S C, 15th yr., 901st mtg.: Secretary-General, para. 83; USSR, para. 18; S C, 16th yr., Suppl. for Jan.-March, p. 261, S/4775.1. In operative paragraph 4 of a draft resolution submitted by the USSR at a Security Council meeting on 15 February 1961 the Security Council would have directed "that the 'United Nations operations' in the Congo shall be discontinued within one month and all foreign troops withdrawn from there so as to enable the Congolese people to decide its own internal affairs" (S C, 16th yr., 934th mtg., para. 112).
\(^{608}\) On 20 February 1961 that draft resolution was rejected by 8 votes to 1, with 2 abstentions (S C, 16th yr., 942nd mtg., para. 89).
\(^{609}\) S C, 18th yr., Suppl. for Jan.-March, p. 92, S/5240 and Add. 1 para. 35.
February 1963. A target date for completion of the withdrawal was subsequently indicated in the Secretary-General’s report of 17 September 1963 on the question of military disengagement in the Congo:

“... Although no specific terminal date for the Force has been set by any Security Council resolution, the General Assembly, at its fourth special session on 27 June 1963, adopted resolution 1876 (S-IV) which, in the absence of any subsequent action, establishes, in effect, a terminal date. For that resolution appropriates money and authorizes me to expend money for the Force in the Congo up to 31 December 1963 only, with no indication that any extension of the Force beyond that date was envisaged.

“In the light of the General Assembly’s resolution, I am proceeding with the phasing out schedule for the Force... which looks towards the complete withdrawal from the Congo of United Nations troops by 31 December 1963.”

357. In that report the Secretary-General stated that while progress had been made towards the restoration of law and order, the situation was still far from reassuring; but he did not regard it as reasonable to expect the United Nations to underwrite for any extension of the Force beyond that date.

He expressed his belief that “a further extension of the stay of the Force in the Congo would provide no solution to the remaining problems of the Congo”, which “reflect conflicts of an internal political nature.”

359. With the phasing out of the United Nations military assistance programme in the Congo, the common administrative services of the military and civilian assistance programmes were brought under the normal procedures of the Technical Assistance Board (TAB) and the Special Fund by 30 June 1964.

360. As of 1 January 1964, a transitional period was begun for the United Nations Civilian Operation, and the technical assistance programmes were brought under the normal procedures of the Technical Assistance Board (TAB) and the Special Fund by 30 June 1964.

(c) Principal issues raised in connexion with the interpretation of the Secretary-General’s mandate in practice

(i) The principle of non-intervention in internal affairs

(a) In connexion with the constitutional crisis

361. From the outset of the constitutional crisis ONUC was instructed that the principle of non-intervention required it to stand aside from and to avoid any actions that could make it a party to the conflicts or involve support to any one side. In the course of debates in the Security Council and the General Assembly as well as in written statements submitted by certain States, those instructions were challenged on the grounds that Mr. Lumumba remained, in the opinion of those States, the Head of Government and should have been treated as such by the United Nations.

362. Referring to the demands made during the period of constitutional crisis that the United Nations Force take action against competing political groups on the basis of provisions of Congolese constitutional law, the Secretary-General stated before the Security Council on 7 December 1960:

“It is possible to argue in a purely theoretical way that the maintenance of law and order may embrace...”

410 S C, 18th yr., Suppl. for July-Sept., p. 166, S/5428, paras. 3 and 4.
411 Ibid., paras. 18-20 and annexe I.
413 G A (XX), Suppl. No. 1, p. 1.
415 Ibid., para. 145.
416 Ibid., paras. 1-6, 70, 71, 101.
418 See S C, 15th yr., Suppl. for Oct.-Dec., p. 75, S/4573; S C 15th yr., 914th mtg.: USSR, paras. 30 and 33; 915th mtg.: Mali, paras. 67 and 68; Yugoslavia, para. 120; 937th mtg.: Poland, para. 13; G A (XV), Plen.; 869th mtg.: Ghana, paras. 19 and 21; USSR, paras. 143, 152 and 154; 871st mtg.: Czechoslovakia, paras. 40 and 50; 875th mtg.: Bulgaria, para. 167; 882nd mtg.: USSR, para. 29; 885th mtg.: USSR, paras. 43 and 44; 896th mtg.: Guinea, para. 58; 912th mtg.: USSR, paras. 134, 154 and 158; 913th mtg.: Poland, paras. 10, 12 and 21; 949th mtg.: USSR, paras. 30, 915th mtg.: Czechoslovakia, para. 18; Poland, para. 62; USSR, para. 9, 952nd mtg.: Byelorussian SSR, para. 99; 953rd mtg.: Romania, paras. 147 and 148; 965th mtg.: Czechoslovakia, para. 122; USSR, para. 10; 967th mtg.: Albania, para. 63; 968th mtg.: Ukrainian SSR, para. 154; 969th mtg.: Poland, para. 82; 970th mtg.: Byelorussian SSR, para. 181; Romania, paras. 88-93; 972nd mtg.: Bulgaria, para. 21; 978th mtg.: Ukrainian SSR, para. 16.
the enforcement of basic constitutional law, but it is
hardly possible to reconcile this point of view
with the actual decisions taken by the Security
Council. For there can be no doubt that if the
United Nations Force were employed to 'enforce
the Constitution', it would involve the United Nations
in coercive action against competing political factions
to a degree that was clearly excluded from the scope
of its mandate. Moreover, as several delegates have
observed, such forcible intervention in internal
constitutional and political conflict could not be
considered as compatible with the basic principles
of Article 2 of the Charter relating to sovereign
equality and non-intervention in domestic juris-
diction'.

At a Security Council meeting on 1 February 1961 the
Secretary-General said that it was not the task of the
United Nations to act for the Congolese people and to
take political or constitutional initiatives aimed at
establishing a stable government in constitutional and
democratic form which would give substance to the
independence of the country and maintain its integrity.
The Secretary-General stated further:

"... This is true not only in the sense that the United
Nations has no right to try to impose on the Congo
any special régime but also in the sense that the
Organization cannot support the effort of any faction
to impose such a régime. No, the duty of the United
Nations is only the one which has just been recalled.
It has to deal only with interference from outside
the country and with the maintenance of law and
order within the country. It cannot go beyond any
one of these points. And even in its efforts to insul-
late the country from outside interference and to
maintain law and order, the Organization must stay
strictly within the limits established by the Charter
just as the Secretary-General and the Force must,
in their turn, stay strictly within the limits of the
mandate established by the Security Council and
the General Assembly." 621

363. At a meeting of the Security Council on
15 February 1961 the Secretary-General observed that
General Assembly resolution 1474 (ES-IV) "must
be interpreted as upholding the line taken by me in
the instructions to the United Nations Command.
Thus, whatever is said about 'the failure of the United
Nations to uphold legality in the Congo', it is something
for which the responsibility is shared by all Members
of this Organization". 622

(b) In connexion with the attempted secession of
Katanga

364. The conflict between the provincial authorities
in Katanga and the Central Government of the Republic
of the Congo gave rise to debate in the Security Council
regarding the principle of non-intervention in internal
affairs. The discussions concerned the second report
of the Secretary-General on the implementation of
Council resolutions regarding the Congo, of communications between the Secretary-General
and the Prime Minister of the Republic of the Congo
with respect to operative paragraph 4 of Council
resolution 146 (1960) and the interpretation of that
provision with regard to the conflict. 624

365. In his report to the Security Council of 6 August
1960 the Secretary-General described his unsuccessful
ttempts to effect the peaceful entry of United Nations
troops into Katanga and the opposition of the Katange-
esque authorities to such entry, 625 and he asked the
Council for instructions and such decisions as it might
find appropriate for the implementation of its resolu-
tions 143 and 145 (1960). The Secretary-General
stated that the problem was an internal political one,
"a constitutional one with strong undercurrents of
individual and collective political aims". Those oppos-
ing the introduction of the United Nations Force into
Katanga questioned whether United Nations partic-
ipation in security control in Katanga would submit
the province to the immediate control and authority
of the Central Government against its wishes, which
would jeopardize the province's possibility to work for
constitutional solutions other than a strictly unitarian
one. In the view of the Secretary-General, the United
Nations could not participate in the resolution of such
an internal political problem. He suggested that the
Security Council might wish to clarify its views on the
matter and lay down such rules for the United Nations
operation as would serve to separate effectively questions
of a peaceful and democratic development in the
constitutional field from any questions relating to the
presence of the United Nations Force. 626

366. At a meeting of the Security Council on
8 August 1960 the representative of the Republic of
the Congo stated that it was an error to reduce the
Katanga question to an internal constitutional issue.
That question had never been raised in the Congolese
Parliament in which the representatives of the province
of Katanga participated, and the problem could not
be regarded as a domestic issue so long as foreign
troops remained in the Congo. 627

367. At Council meetings held on 8 and 9 August
two members contested the internal constitutional
nature ascribed to the differences between the Central
Government and the provincial authorities in view of
the presence of Belgian troops in Katanga. They
contended that failure to send the United Nations
troops into that province would indicate indirect
support of Belgian intervention and direct acquiescence
in the occupation of Katanga. Such support, they
said, would constitute intervention in the internal
affairs of the Congo whereas action by the Council
to put an end to the intervention in the domestic affairs

621 S C, 15th yr., 913th mtg., para. 29.
622 S C, 16th yr., 928th mg., paras. 66 and 67.
623 Ibid., para. 67.
624 S C, 16th yr., 935th mtg., para. 7.
626 Ibid., p. 64, S/4417/Add.6, paras. 8-11, and ibid., p. 71, S/4417/Add.7, II.
627 Ibid., p. 45, S/4417 and Addenda, para. 10: "It is thus clear that the entry of United Nations military units into Katanga
would have had to be achieved by use of force." In view of the
principle that United Nations military units were entitled to
act only in self-defence, the Secretary-General stated: "... it is now
also clear that, as stated above, the aims of the resolutions cannot
be achieved by the use of the United Nations Force, as its mandate
has been defined ... ."
628 Ibid.
of the Congo by the Belgian Government would be strictly in accordance with the Council resolutions and with the Charter and could in no way be construed as intervention by the United Nations in the domestic affairs of the Congo.\textsuperscript{628}

368. A majority of the members of the Council maintained that differences between the Central Government of the Congo and the provincial authorities regarding the constitutional organization of the State were internal constitutional conflicts to which the United Nations Force should not be a party and in which it could not be used to influence the outcome. They emphasized that adherence by the Force to the principle of non-intervention in internal affairs was in keeping with the specific provisions of the Charter, the spirit of Council resolutions 143 and 145 (1960) and the understanding on which troops were made available by the various participating Governments in the Congo operation.\textsuperscript{629}

369. Security Council resolution 146 (1960) reaffirmed “that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise.”\textsuperscript{630}

370. The period which immediately followed the adoption of Security Council resolution 146 (1960) of 9 August 1960 was marked by differences of opinion between the Congolese Prime Minister and the Secretary-General regarding the interpretation of operative paragraph 4 of that resolution.

371. On 12 August the Secretary-General sent simultaneously to the Congolese Prime Minister and to Mr. Tshombé a memorandum on his interpretation of that provision.\textsuperscript{631}

372. The Secretary-General based his interpretation on the attitudes upheld by the Council in the cases of Lebanon and Hungary in which external and internal elements had also been mixed. He stressed the fact that resolution 146 (1960) had put the main emphasis on the withdrawal of Belgian troops from Congolese territory as a whole, including Katanga. In the light of the Lebanese and Hungarian precedents, any conflict between the Congolese Central Government and the Katangese provincial government should be regarded as a matter to which the United Nations could not be a party and on the outcome of which it could exert no influence provided that no external element interfered or was in any way made use of to influence the outcome of the conflict. The Force could therefore not be used on behalf of the Central Government to subdue or force the provincial government to a specific line of action, and it was not entitled to forbid either Congolese party to take action by its own means, in accordance with the purposes and principles of the Charter, in relation to the other. Similarly, United Nations facilities could not be used under the authority of the Congolese Government even to afford protection to personnel representing that Government in Katanga against the wishes of the provincial government since the Force had no duty beyond its general obligation to maintain law and order. In paragraph 9 of the memorandum the Secretary-General stated that that was a “unilateral declaration of interpretation by the Secretary-General” and that while it was “not subject to argument or negotiation”, it could be contested before the Security Council and be changed by the Council through an explanation of its intentions in its resolution 146 (1960).

373. Prime Minister Lumumba challenged the Secretary-General’s interpretation in a letter dated 14 August 1960:\textsuperscript{632}

“... From your interpretation it would have to be concluded that the task of the United Nations was not to restore law and order in the Congo or bring about the pacification of the country, in accordance with my Government’s request, but to limit itself solely to ensuring the withdrawal of the Belgian troops.”

374. Mr. Lumumba stated Security Council resolution 143 (1960) made it clear that in its intervention in the Congo the United Nations was not to act as a neutral organization but rather that the Security Council was to place all its resources at the disposal of his Government. The United Nations Force could therefore be used to subdue the rebel government of Katanga. Paragraph 4 of Council resolution 146 (1960) could not be interpreted as nullifying the obligation of the Secretary-General to provide the Central Government “with such military assistance as may be necessary” throughout the entire territory of the Republic, including Katanga; on the contrary, it made it evident that that obligation covered Katanga. Mr. Lumumba contended that the Secretary-General had “dealt with the rebel government of Katanga in violation of the Security Council’s resolution of 14 July 1960”.

375. In a subsequent letter, dated 15 August 1960, the Prime Minister stated that the Government and people of the Congo had lost confidence in the Secretary-General and requested the Security Council immediately to send a group of observers from fourteen countries “to ensure the immediate and entire application of the Security Council resolutions of 14 and 22 July and 9 August 1960”.\textsuperscript{633} In a letter dated 15 August 1960 the Secretary General pointed out to the Prime Minister:

“... Should the Security Council consider it necessary to take a stand with regard to the action which I have taken or to my interpretation of its decisions, I am prepared to submit my comments in person at a Council meeting. ... As far as the actions requested by you are concerned, I shall naturally follow the instructions which the Council may find it necessary or useful to give me.”\textsuperscript{634}
376. On 20 August 635 in a telegram to the President of the Security Council and the Secretary-General, the Congolese Prime Minister complained of the rejection of his request that the United Nations place an aircraft and a military detachment at his disposal for representatives of the Congolese Government to proceed to Elisabethville. The Council of Ministers regarded that refusal as tacit recognition of the Katangese secession and a flagrant violation of the principle of military assistance for restoring internal order which was the very purpose for which the Government had requested United Nations help. Nevertheless, the Government confirmed its complete confidence in the United Nations and was convinced that the Secretary-General’s interpretation of the Council’s resolutions did not reflect either the ideas or the wishes of the Council. The Prime Minister inter alia urged that aircraft should be placed at the disposal of the Government of the Congo for the transport of Congolese troops to any place where their presence was deemed to be necessary.

377. Addressing the Security Council on 21 August 1960, the Secretary-General quoted paragraphs 7 and 12 of his report of 18 July 1960 636 and stressed that no representative had dissented from the principle of non-intervention there asserted by him and that his report had been commended by the Council in its resolution 145 (1960). “It must therefore be concluded”, he stated, “that the Council endorsed the principles which the Secretary-General set forth in that report”. The Secretary-General further noted that in operative paragraph 4 of resolution 146 (1960) of 9 August “the Council ‘reaffirms’ that the United Nations Force would not be used to influence the outcome of any internal conflict. The use of the word ‘reaffirms’ shows that the Council was expressly stating what had previously been the understanding of the earlier resolutions, and in this sense operative paragraph 4 of the resolution of 9 August must be considered as decisive in interpreting the military assistance ‘as may be necessary’ referred to in the resolution of 14 July (resolution 143 (1960))”. Drawing attention to the fact that operative paragraph 3 of Council resolution 146 (1960) was combined with operative paragraph 4 of the same resolution, the Secretary-General asked, “Why should that have been said in this context, if not in order to make it clear that the presence of the United Nations troops in Katanga, as requested, was not intended to be an instrument to be used to influence the conflict of the provincial authority with the Central Government?” 637

378. At the next meeting of the Security Council, also held on 21 August, the Secretary-General observed:

“We cannot, we will not, and we have no right to raise any resistance to any move made by the Central Government to assert its authority in Katanga. The other thing is that we cannot lend our active support, contrary to the principles announced here on a couple of occasions, to efforts of the Central Government. The two things should be kept apart. It should not be concluded from the fact that we cannot lend active support to the Central Government that we lend any kind of support to the other party, strengthen its hand or resist any moves from the Central Government.” 638

379. At that meeting and the meeting held on 21/22 August 1960 the majority of the representatives on the Security Council supported the Secretary-General’s interpretation of operative paragraph 4 of resolution 146 (1960). They maintained that it was in line with the Council’s resolutions and consistent with its deliberations and with the spirit of the provisions of the Charter that ruled out intervention by the United Nations in matters within the domestic jurisdiction of States. In resolution 146 (1960) the strict neutrality of the United Nations had been clearly defined: there could be no doubt that the Council had not intended the United Nations Force to be used in any way to influence the outcome of the dispute between the provincial authorities and the Central Government of the Republic. The resolution and the Secretary-General’s interpretation of the limits of United Nations action in the Congo, which was the correct interpretation, had to be upheld. 639

380. Two members of the Council and the representative of a State not a member of the Council disagreed with the Secretary-General’s interpretation. They argued that the situation in Katanga was characterized by Belgian intervention and thus could not be considered an internal conflict between the Central Government and the province of Katanga, to which, under operative paragraph 4 of resolution 146 (1960), the general principle of non-intervention would be applicable. Therefore, active assistance had to be given to the Central Government in conformity with the resolutions of the Council for the purpose of putting an end to the secession of Katanga. 640 One of those representatives, reiterating a position he had taken earlier, 641 contended that to refrain in the circumstances from giving the assistance requested by the Central Government to restore law and order in the whole territory of the Republic of the Congo would indicate indirect support of Belgian intervention and direct acquiescence in the Belgian-inspired opposition to that Government. In turn, such support would constitute intervention in the internal affairs of the Congo. One of the members of the Council who disagreed with the Secretary-General’s interpretation said that in his opinion the interpretation had no legal, binding significance, as the Council had given the Secretary-General no mandate to interpret its resolution 146 (1960). 642

In response, the Secretary-General stated:

“. . . Let me simply point out that the Security Council has asked me to implement the resolution. Implementation obviously means interpretation in the

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635 Ibid., p. 107, S/4448.
636 Ibid., p. 16, S/4389.
637 S C 15th yr., 887th mtg., paras. 45-50.
638 Ibid., 888th mtg., para. 99.
639 Ibid.: Argentina, paras. 149-152; Tunisia, paras. 130-132; 889th mtg.: Ceylon, paras. 45-50; China, para. 114; Ecuador, para. 59; France, para. 138; Italy, paras. 6-15; United Kingdom, paras. 70 and 71; United States, para. 96.
640 Ibid., 888th mtg.: Guinea (not a Council member), paras. 33-35; USSR, paras. 62-65; 889th mtg.: Poland, paras. 84-87.
641 Ibid., 886th mtg.: Poland, para. 103.
642 Ibid., 888th mtg.: USSR, para. 57.
first instance. I gave an interpretation and that interpretation was challenged. I have referred the matter back to the Security Council. I have the right to expect guidance. That guidance can be given in many forms. But it should be obvious that if the Security Council says nothing I have no other choice than to follow my conviction."683

381. The USSR introduced a draft resolution 644 calling for the establishment of a group of representatives of countries participating in the Force which would act in conjunction with the Secretary-General and ensure on-the-spot execution of the decisions of the Security Council through daily consultation with the Central Government. That draft resolution was not pressed to a vote.685

382. After the conclusion of the debate the President observed 646 that the Secretary-General, who had asked for the meeting of the Council to be convened in order to obtain clarification, 647 had found it in the debate and would thereby be assisted in the pursuit of his mission.

383. At a meeting of the Council on 9/10 September 1960, in response to a statement of disagreement with his interpretation of the principle of non-intervention in the internal affairs of the Congo, the Secretary-General referred to the discussion on the subject at the 889th meeting on 21/22 August and stated that his conclusion from that meeting had been that his interpretation had been approved by a majority of the Council.648 At a meeting on 16 September 1960 (one representative) reiterated his disagreement with the Secretary-General’s interpretation and noted that the 889th meeting had ended without any decision by the Council. He expressed “grave concern over the Secretary-General’s contention that his interpretation, which was used as a basis for action of far-reaching consequences, was approved by the majority of the Council when in fact there was no decision of the Council in that respect. Were this practice to be followed in the future, it could bring us to abrogation of the Council’s rights and therefore to complete departure from the Charter”. In reply the Secretary-General stated that the challenge to his interpretation by the Prime Minister of the Republic of the Congo and by the latter’s spokesman at the 887th meeting had not been taken up by any delegation. The only draft resolution before the Council had pertained to another matter, and even that had been withdrawn. He had his own interpretation, but it was for the Council itself to interpret what such a situation meant in parliamentary language and what its legal effect might be.649

(ii) The question of the use of force

384. In his second report to the Security Council on the situation in the Congo, dated 6 August 1960, the Secretary-General stated that it was clear, in view of the opposition encountered, that “the entry of United Nations military units into Katanga would have had to be achieved by the use of force”. He added:

“In my first report to the Security Council, commended by the Council in its resolution of 22 July, it was stated as one of the principles for the operation of the Force that military units would be entitled to act only in self-defence. This statement was amplified by the following interpretation: ‘... men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander’. Therefore, the Force is not entitled to such military initiative and action as, in view of what has now been made clear, would be necessary for an implementation of the Security Council decisions.”650

385. After pointing out that on the one hand the Security Council resolutions on the Congo were intended to apply to the whole of the territory of the Congo as recommended for admission to the United Nations, he observed that:

“On the other hand, it is now also clear that, as stated above, the aims of the resolutions cannot be achieved by the use of the United Nations Force, as its mandate has been defined. If the Council, as it is assumed, wishes to maintain its objectives, the Council must, therefore, either change the character of the Force, which appears to me to be impossible, both for constitutional reasons and in view of the commitments to the contributing Governments, or resort to other methods which would enable me to carry through the implementation of its resolution without going beyond my instructions as regards the Force.”650

386. At a meeting of the Council on 8 August 1960 the Secretary-General reiterated that the military opposition by Katangese forces against the entry of the United Nations troops into Katanga would require military initiative to which the Secretary-General was not entitled to resort short of a formal authorization by the Council, using in that case only contingents representing Governments accepting such a new stand by the Council.651 In a second statement before the Council on the same day, in reply to a representative, the Secretary-General 652 pointed out that in his first report, which had been commended by the Council with the concurring vote of the delegation

643 Ibid., para. 100.
645 Ibid., 889th mtg.: USSR, para. 142.
646 Ibid., para. 145.
647 In that respect the Secretary-General had said (ibid., 887th mtg., para. 51): “I repeat what I have already said: I do not ask for a confirmation by the Security Council of the obvious. Whatever the development within the Council, I would have achieved the aim of my request of the Security Council to convene at this stage, that aim being solely, in the light of the views presented by the Prime Minister of the Republic of the Congo, to arrive at a clarification of the attitude of the Council.”
648 Ibid., 896th mtg.: Secretary-General, paras. 153 and 154; Yugoslavia, paras. 136 and 138.
649 Ibid., 904th mtg.: Secretary-General, paras. 66 and 67; Poland, paras. 43-47.
651 S C, 15th yr., 884th mtg., para. 12.
652 Ibid., 885th mtg., para. 128.
of which that representative was a member. He had spelled out the legal position and competence of the Force and had stated the reasons why the Force should not take any military initiative. The Secretary-General observed:

"I do not remember having heard any objection to that interpretation of its status, functions and competence; and that being the case, I would certainly have acted beyond my competence as established by the Security Council if I had... given an order, or rather, confirmed an order which would have meant that our forces would have been forced to military initiative."

387. In the course of the debate, it was maintained, on the one hand, that the Security Council, for reasons of a juridical nature, must keep inviolate the principle that the United Nations military units were not entitled to act except in self-defence, even if the Governments that had contributed various military units had been prepared to authorize their use in a military action other than in self-defence. For that reason the character of the United Nations Force in the Congo should not be altered. Operations that might have led to hostilities on a large scale because of threats of organized military resistance in Katanga would have been incompatible with the nature of the United Nations Force and with the purposes for which it had been sent into the Congo. It was also stated that there could not be the slightest doubt about the propriety of the interpretation given by the Secretary-General concerning the character of the Force and of the United Nations Operation in the Congo. On the other hand, one representative stated that while it had been argued that any attempt to send the Force into the territory of Katanga would lead to armed resistance on the part of Mr. Tshombé, it must be emphasized that the troops sent to the Republic of the Congo had the right and duty to remove any obstacles which might arise to impede the fulfilment of the tasks entrusted to them by the Security Council. That meant that if in the course of their operations for entering the province of Katanga the United Nations troops should meet with armed resistance they were entitled to eliminate such resistance by any means available to them.

388. After the adoption of resolution 146 (1960) of 9 August 1960 the Secretary-General made the following statement at the next meeting of the Council:

"Although reference had been made in the Security Council to the claim of independence by the provincial authorities of Katanga, there is nothing in the record leading up to the resolution [143 (1960) of 14 July 1960] which indicates that the Council, when discussing such military assistance 'as may be necessary' intended that such assistance be used to subdue the revolt in the province of Katanga. It would indeed have been necessary, as a minimum, that the Council should state explicitly such an intention, if the Secretary-General were expected to act in a way contrary to his express statement that United Nations forces in the Republic of the Congo could 'not take any action which would make them a party to internal conflicts in the country' [S C, 15th yr., 873rd mtg., para. 28]. This statement, it is emphasized, was not challenged by any member of the Council in the debate which preceded the adoption of the resolution of 14 July 1960. Certainly, the Council cannot be deemed to have instructed the Secretary-General, without stating so explicitly, to act beyond the scope of his own request or contrary to the specific limitation regarding non-intervention in internal conflicts which he stated to the Council. Moreover, in the light of the domestic jurisdiction limitation of the Charter, it must be assumed that the Council would not authorize the Secretary-General to intervene with armed troops in an internal conflict, when the Council had not specifically adopted enforcement measures under Articles 41 and 42 of Chapter VII of the Charter."

389. At the same meeting the Secretary-General further observed that nothing in the debate or in the arguments given in favour of resolution 146 (1960) "went beyond the two purposes for the United Nations military operation as stated and recognized, that is to say, the maintenance of order and security by the United Nations troops combined with the withdrawal of Belgian troops... Had it, at this stage, become the intention of the Council that the troops should be used for the further purpose of subduing the rebellion, it would, as already noted, have been obvious that this would have had to be explicitly said". The Secretary-General also stated that the current of thought that had characterized the debate had been "that the United Nations Force could not and should not force its way into Katanga, but should arrive there on a basis of acceptance by the Katanga authorities of the Security Council decision as worded".

390. At a meeting of the Security Council on 15 February 1961, with reference to Mr. Lumumba's request that the United Nations Force should on his behalf subdue the secessionist group in Katanga, the Secretary-General stated: "In keeping with the stand taken unanimously by the Council, I was obliged to turn down this request as contrary to the status and functions of the Force. My stand on this issue came before the Security Council and it was upheld by the Council".

(iii) Questions raised by the relationship of the Secretary-General with the provincial authorities of Katanga

391. In a letter to the Secretary-General of 14 August 1960, Prime Minister Lumumba contented inter alia that the Secretary-General had "dealt with the rebel government of Katanga in violation" of Security Council resolution 143 (1960). On 20 August 1960 the Government of the USSR communicated a written
statement to the Secretary-General in which it charged *inter alia* that the Secretary-General had failed to consult the lawful Government of the Congo although he had entered into negotiations with Tshombe. On the same day the Prime Minister of the Republic of the Congo, in a telegram to the President of the Security Council and to the Secretary-General, requested the Security Council *inter alia* to recommend to the Secretary-General that he should contact and conduct negotiations exclusively with the only legal Government of the Republic of the Congo.

392. In a statement on 21 August 1960 to the Security Council the Secretary-General referred to the allegation that he had granted the same position to Mr. Tshombe and the local authorities in Katanga as to the Central Government and said:

“That is not so. The United Nations and the Secretary-General negotiate solely with sovereign Governments and not with private persons or local authorities. There is a very distinct difference, constitutional in law and in fact, as regards our relations to the two groupings mentioned.”

(iv) The question of whether the Secretary-General was competent under the Charter to determine which States were to participate in the implementation of his mandate

393. In the course of proceedings before the International Court of Justice relating to the request for an advisory opinion by the Court on the question whether certain expenses authorized by the General Assembly constituted expenses of the United Nations, certain Member States argued that resolution 143 (1960) of the Security Council was implemented in violation of the Charter. They contended that under the Charter it was the Security Council that was to determine which States were to participate in carrying out decisions involving the maintenance of international peace and security, whereas in the case of the Congo the Secretary-General himself determined which States were to participate with their armed forces or otherwise.

394. In its advisory opinion, which concluded that the expenses in question did constitute expenses of the United Nations, the Court rejected that argument. It stated that in the light of the “record of reiterated consideration, confirmation, approval and ratification by the Security Council and by the General Assembly of the actions of the Secretary-General in implementing the resolution of 14 July 1960 [S C resolution 143 (1960)], it is impossible to reach the conclusion that the operations in question usurped or impinged upon the prerogative conferred by the Charter on the Security Council”. The Court stated that the Charter did not “forbid the Security Council to act through instruments of its own choice; under Article 29 it may establish such subsidiary organs as it deems necessary for the performance of its functions”; under Article 98 it may entrust “other functions” to the Secretary-General.”

(v) Issues in connexion with technical assistance

395. On 20 August 1960 the Soviet Government issued a statement on the subject of the plan proposed by the Secretary-General for a United Nations Civilian Operation in the Congo. The Soviet Government found that plan “entirely unacceptable” for the following reasons among others:

(a) The setting up of a Consultative Group under the Chief of the United Nations civilian activities in the Congo, which would have broad powers and not be responsible to the Government of the Congo, would limit the sovereignty of the Republic of the Congo and would entail “in effect, the placing of the Congo in the position of a Trust Territory, which is contrary to the Charter of the United Nations”. With respect to the “new and so far untried status” of the consultants, members of the Consultative Group, the Soviet Government stated:

“In essence, this means that these experts will possess the powers of ministers and will determine the future policy of the Congo and the direction of its development."

(b) The plan for the civilian operation was contrary to the basic principles of the Charter, which did not give the Organization the right to intervene in matters essentially within the domestic jurisdiction of a State. That meant that the experts sent to the Republic of the Congo through the United Nations had to be sent with the prior agreement of the Government of the Congo and had to be guided in their activities by the instructions of that Government.

Similar views were expressed at a meeting of the Security Council on 21 August 1960 by the representative of the USSR, who concluded his statement by saying, “That is why the Soviet Government resolutely rejects this plan”.

396. Another representative on the Council expressed the view that “the proposed plan for the creation of the Consultative Group, independent on the Government of the Congo and subjected only to the Chief of the United Nations Civilian Operation in the Congo, would restrict the sovereignty of the country in all fields and on all levels of national life”. Another representative doubted “the advisability — even in the present circumstances — of an international organization taking over the basic prerogatives and respon-

664 Certain expenses of the United Nations (Article 17 (2) of the Charter), ICJ, Reports 1962, pp. 176 and 177.
665 For the Civilian Operation, see paras. 343 et seq. above.
666 S C, 15th yr., Suppl. for July-Sept., p. 102, S/4446.
667 S C, 15th yr., 88th mtg., paras. 69-77.
668 Ibid., 88th mtg., paras. 107, S/4450, para. 13.
sibilities of national authorities". None of the other members of the Council criticized the plan submitted by the Secretary-General, and one of them expressly supported it.

For his part the Secretary-General drew attention to the fact that the "new and untried status" of the consultants was "in relation to the national administration a weaker one than that of technical assistance in the conventional sense". He explained how the arrangement was working in practice and observed that "the way in which our consultants are used by the Central Government . . . clearly indicates that the arrangement is one which has been welcomed in practice by the Central Government".

5. Functions exercised with respect to the situation in Cyprus

a. Functions initially undertaken by the Secretary-General

After an outbreak, on 21 December 1963, of violent disturbances between Greek and Turkish Cypriots in Cyprus, the representative of Cyprus to the United Nations on 26 December requested an urgent meeting of the Security Council to consider a complaint by his Government against Turkey for alleged acts of aggression and intervention in the internal affairs of Cyprus. The Security Council included the question in its agenda on 27 December 1963. Having heard statements by the parties concerned, the Council adjourned the meeting.

Immediately after the beginning of those troubles in Cyprus in December 1963, the Secretary-General held conversations with the representative of Cyprus, at the latter's request, "to explore the best way in which the United Nations could assist in restoring quiet in that country". In the course of those consultations, the representative of Cyprus asked the Secretary-General to appoint a personal representative to look into the situation. In subsequent consultations, the representatives of Greece, Turkey and the United Kingdom associated themselves with that request to appoint a personal representative to act as a United Nations observer in Cyprus. The Secretary-General then informed those representatives that it would be necessary for him to receive the agreement of their Governments on the terms of reference of the personal representative, as well as a clear indication from them of the tasks involved. On 9 January 1964 the permanent representative of Cyprus conveyed to the Secretary-General the following suggested terms of reference concerning the functions of the personal representative of the Secretary-General.

"(1) To observe the peace-keeping operation and report to Your Excellency thereon;

"(2) For this purpose, he would have access to the Government of Cyprus through the Ministry of Foreign Affairs of the Republic, to the President and Vice-President of the Republic or their representatives, to the British High Commissioner and the Greek and Turkish Ambassadors accredited to the Government of the Republic, and the British Commander of the peace-keeping force;

"(3) He would have freedom of movement and communications;

"(4) His personal security and that of his staff would be assured;

"(5) He should not receive any individual complaints of any breach of the cease-fire agreement."

By communications of 10, 11 and 13 January 1964 the Secretary-General received the agreement of the Governments of Greece, the United Kingdom and Turkey, respectively, that his personal representative should have access to the Greek and Turkish Ambassadors and to the British High Commissioner accredited to Cyprus, and that the three Governments would assist the representative in carrying out his functions.

On 13 January, the Secretary-General informed the representatives of Cyprus, Greece, Turkey and the United Kingdom that he had in mind: "to designate, as a first step, Lieutenant-General P. S. Gyani my Special Representative in Cyprus and to send him to Cyprus to undertake a preliminary mission for the purpose of studying on the spot and reporting to me on how the United Nations Observer could function and be most effective in fulfilling the request made by the Government of Cyprus and agreed to by the Governments of Greece, Turkey and the United Kingdom.

"... this would be an initial step towards meeting the request for an observer for a three-month period."

The representative of Cyprus questioned whether such a preliminary mission would meet his Government's request for the urgent sending to Cyprus of a personal representative by the Secretary-General and, therefore whether such a mission should be undertaken. In view of that position of the Government of Cyprus, the Secretary-General did not send General Gyani on the preliminary mission.
402. In a subsequent communication to the Secretary-General, the representative of Cyprus, while confirming the misgivings of his Government concerning the “preliminary mission”, renewed his “request for the earliest dispatch of a personal representative for Cyprus, without the delay which, in his opinion, the preliminary mission would create”. Moreover, the Foreign Ministers of Greece, Turkey and the United Kingdom urged the Secretary-General to reconsider his previous intentions and “to nominate a representative preliminary mission would create”. Moreover, the Foreign Ministers of Greece, Turkey and the United Kingdom urged the Secretary-General to reconsider his previous intentions and “to nominate a representative preliminary mission, renewed his “request for the sending of Your Excellency’s personal representative to Cyprus as a United Nations Observer for the period of three months, all costs pertaining to it being met, in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for that purpose;

b. Functions under Security Council resolutions

406. On 4 March 1964 the Security Council unanimously adopted resolutions 186 (1964) on the Cyprus question. In the preamble the Council, inter alia, noted that the situation was likely to threaten international peace and security and might further deteriorate in the absence of additional measures. In operative paragraphs 1 to 3 the Council called upon all Member States to refrain from any action or threat of action likely to worsen the situation or to endanger international peace, asked the Government of Cyprus to take all additional measures necessary to stop violence and bloodshed in Cyprus and called upon the communities in the island and their leaders to act with the utmost restraint. The following operative paragraphs are the basis of the Secretary-General’s mandate in respect of Cyprus:

4. Recommends the creation, with the consent of the Government of Cyprus, of a United Nations Peace-keeping Force in Cyprus. The composition and size of the Force shall be established by the Secretary-General, in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland. The Commander of the Force shall be appointed by the Secretary-General and report to him. The Secretary-General, who shall keep the Governments providing the Force fully informed, shall report periodically to the Security Council on its operation;

5. Recommends that the function of the Force should be, in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions;

6. Recommends that the stationing of the Force shall be for a period of three months, all costs pertaining to it being met, in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for that purpose;

7. Recommends further that the Secretary-General designate, in agreement with the Government of Cyprus and the Governments of Greece, Turkey and the United Kingdom, a mediator, who shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security. The mediator shall report periodically to the Secretary-General on his efforts;

8. Requests the Secretary-General to provide, from funds of the United Nations, as appropriate, for the remuneration and expenses of the mediator and his staff.”
407. On 13 March 1964 the Security Council unanimously adopted resolution 187 (1964), in the preamble of which, inter alia, it noted "the progress reported by the Secretary-General in regard to the establishment of a United Nations Peace-keeping Force in Cyprus" 685 as well as the assurance from the Secretary-General that the Force "is about to be established and that advance elements of that Force are already en route to Cyprus" 688 After reaffirming in operative paragraph 1, its call upon all Member States to refrain from any action or threat of action likely to worsen the situation or endanger international peace, the Council requested the Secretary-General, in operative paragraph 2, "to press on with his efforts to implement Security Council resolution 186 (1964)" and requested Member States "to co-operate with the Secretary-General to that end".

408. In resolution 193 (1964), adopted on 9 August 1964 by 9 votes to none, with 2 abstentions, the Security Council, after expressing concern "at the serious deterioration of the situation in Cyprus", 688 reaffirmed in operative paragraph 1, an appeal just addressed by its President to the Governments of Cyprus and Turkey for a cessation of hostilities. In operative paragraph 2 it called for "an immediate cease-fire by all concerned", while in paragraph 3 it called upon "all concerned to co-operate fully with the Commander of the United Nations Peace-keeping Force in Cyprus in the restoration of peace and security". In operative paragraph 4 the Council called upon "all States to refrain from any action that might exacerbate the situation or contribute to the broadening of hostilities".

409. On 11 August 1964 the Security Council approved a statement by the President as representing the consensus of its members. In that statement the Council, after noting with satisfaction that the ceasefire was being observed throughout Cyprus, requested the parties to comply with resolution 193 (1964) in its entirety and requested the Commander of the Force to supervise the cease-fire and to reinforce the units of the force in the zones which were the sphere of recent military operations so as to ensure the safety of the inhabitants. The Council requested all concerned to co-operate with and to assist the Commander in achieving that purpose.

410. During the period under review the Security Council extended the stationing of the Force in Cyprus either on a quarterly or a semi-annual basis. 690

(i) Designation of a mediator and the question of his functions

411. In operative paragraph 7 of its resolution 186 (1964) of 4 March 1964, the Security Council provided for the designation of a mediator by the Secretary-General in agreement with the Governments of Greece, Turkey and the United Kingdom. In operative paragraph 8 of that resolution the Secretary-General was requested "to provide, from funds of the United Nations, as appropriate, for the remuneration and expenses of the mediator and his staff".

412. Promptly after the adoption of that resolution, the Secretary-General consulted with the Governments concerned and initially suggested for the position of mediator Mr. José Rolz-Bennett, his Deputy Chef de Cabinet. However, the Secretary-General was informed by the Turkish Government that, while they thought very highly of the qualities of Mr. Rolz-Bennett, they would appreciate it if the Secretary-General would suggest another statesman of wide international experience and stature who might also be familiar with the problems of the area concerned. 691

413. Having received the agreement of the Governments of Cyprus, Greece, Turkey and the United Kingdom, the Secretary-General, on 25 March 1964, designated Mr. Sakari Tuomioja, of Finland, as United Nations Mediator in Cyprus. 692 After the death of Mr. Tuomioja on 9 September 1964, 693 the Secretary-General announced on 16 September 1964 that, having received the agreement of the Governments concerned, he had designated Mr. Galo Plaza, his Special Representative in Cyprus, 694 to succeed Mr. Tuomioja as Mediator. 695

414. By a note dated 26 March 1965, 696 the Secretary-General transmitted to the members of the Security Council for their information a report submitted to him by Mr. Galo Plaza, in accordance with his terms of reference as Mediator. 697 The report covered activities from 28 September 1964, when the Mediator took up his duties in Cyprus, until 26 March 1965.

415. After the submission of the Mediator's report, the representative of Turkey, in a letter to the Secretary-General dated 31 March 1965 stated that his Government found that the Mediator had "proceeded to express his convictions as to the substance of the problem by way of observations, views or suggestions". 698

The Government of Turkey was of the opinion that the Mediator had thereby gone beyond his terms of reference as specified in the resolution of 4 March 1964 and that he had done so despite clear warnings from Turkey and assurances by Mr. Galo Plaza. The Government therefore stated that "it must be deemed that Mr. Plaza's functions as a Mediator have come to an end upon the publication of his present report".

416. The Secretary-General took note of the view of the Government of Turkey and stated in a letter

685 S C, 19th yr., Suppl. for Jan.-March, p. 125, S/5593, paras. 1-10, Add. 2 and Add. 3.
688 Ibid., 1103rd mtg.: Secretary-General, paras. 4-6.
690 For an account of this situation see S C, 19th yr., Suppl. for July-Sept., p. 144, S/5859, and p. 145/S/5861, as well as ibid., 1142nd mtg., statement by the President, paras. 5 and 6.
691 Security Council resolutions 192 (1964) (oper. para. 1); 194 (1964) (oper. para. 2); 198 (1964) (oper. para. 4); 201 (1965) (oper. para. 5); 206 (1965) (oper. para. 5); 219 (1965) (oper. para. 2); 220 (1966) (opr. para. 3) and 222 (1966) (oper. para. 3).
of 1 April 1965, addressed to the representative of Turkey, that he found nothing in the Mediator's report which could be considered as going beyond or being in any respect incompatible with the functions of the Mediator and could therefore not accept the view that the Mediator's functions had come to an end upon the publication of his report. In a report dated 10 December 1965 on the operation in Cyprus, the Secretary-General drew the attention of the Council to the fact that in the prevailing circumstances the Mediator had been unable to function and that, consequently, the search for a peaceful solution and an agreed settlement of the Cyprus problem had been at a standstill. Nevertheless, at the Secretary-General's request, the Mediator had continued to be available to the parties for further efforts of mediation in accordance with the provisions of Council resolution 186 (1964).

417. On 22 December 1965 the Mediator submitted his resignation to the Secretary-General "in the interest of the continuation of efforts to find a solution to the Cyprus problem". The resignation was accepted with regret by the Secretary-General on 30 December 1965.

418. No new Mediator was designated in the period under review. In his report of 10 March 1966, the Secretary-General stated that his subsequent efforts towards achieving a resumption of the mediation function had up to that date been unavailing, primarily because of the widely differing and firmly held views on the matter by the three Governments most directly concerned. In the light of those developments, and after informed conversations with the parties concerned, on 2 March 1966 he sent his Special Representative instructions broadening his terms of reference.

(ii) Creation of the United Nations Peace-keeping Force in Cyprus (UNFICYP)

419. In a statement made before the Security Council on 25 February 1964, after referring to the functions he had performed theretofore with regard to the situation in Cyprus (see section (a) above), the Secretary-General said:

"needless to say, without the concurrence of the Security Council, the question of the Secretary-General sending a peace-keeping force to Cyprus will not arise".

420. In a statement made before the Security Council on 4 March 1964, the Secretary-General referring to a draft resolution submitted by Bolivia, Brazil, Ivory Coast, Morocco and Norway, which was to become Security Council resolution 186 (1964), said:

"... the creation of a United Nations peace-keeping force for Cyprus could only come about by positive action of this Council. This action, as the draft resolution specifies, obviously must be predicated upon the consent of the Government of Cyprus, on whose territory the force would be deployed. The draft resolution, in its operative paragraph 4, asks the Secretary-General to establish the composition and size of the force in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom. In this regard, it would be my intention, in accordance with well-established practice concerning previous United Nations peace-keeping forces, to keep the Security Council, which would authorize its establishment, promptly and fully informed about the organization and operation of the force, including its composition, size and command ...".

421. With reference to operative paragraph 4 of the five-power draft resolution, one representative stated:

"... Although the agreement of the Government of Cyprus is required for the establishment of a United Nations force in Cyprus and although the composition and the size of that force are to be decided in consultation with the Government of Cyprus and the Governments of the so-called guaranteeing Powers — namely, the United Kingdom, Greece and Turkey — there is no escaping the fact that this procedure in practice bypasses the Security Council.

"Moreover, the provision in the draft resolution to the effect that the commander of the force will report to the Secretary-General, who will report periodically to the Security Council, is, of course, not adequate."

That representative therefore requested that a separate vote be taken on operative paragraph 4, which was adopted by 8 votes to none, with 3 abstentions.

422. The draft resolution as a whole was adopted unanimously by the Council without change as resolution 186 (1964). It provided for the creation of a United Nations Peace-keeping Force in Cyprus (UNFICYP) with the consent of the Government of Cyprus and for the appointment of the Commander of the Force by the Secretary-General.

423. In explaining the vote of his delegation on resolution 186 (1964), one representative, after expressing "reservations about the principle of United Nations intervention taking a military form" commented:

"... particularly heavy responsibilities are laid on the Secretary-General. The Security Council is thus divesting itself of responsibilities which belong to it but which would clearly be difficult to discharge. This can only confirm our reservations of principle. While, of course, not questioning in the slightest the Secretary-General's wisdom and prudence in these matters, the French delegation considers that this is really going very far in the direction of delegating powers to one man. We wish in any event..."
to stress that this decision must not be regarded as a precedent.”

424. Another representative, when explaining the vote of his delegation, expressed “serious doubts regarding the clause which transfers to the Secretary-General a responsibility that, under the strict letter of the Charter, belongs exclusively to the Security Council itself. That is why we abstained in the vote on operative paragraph 4”.717

425. In a letter dated 4 March 1964 to the Secretary-General, the Minister for Foreign Affairs of Cyprus stated:

“I have the honour to refer to the resolution adopted today by the Security Council at its 1102nd meeting. In paragraph 4 thereof, the Council inter alia recommended ‘the creation, with the consent of the Government of Cyprus, of a United Nations peace-keeping force in Cyprus’. I have the pleasure to inform you, on behalf of the Government of Cyprus, that the Government hereby consents to the creation of the Force in accordance with the terms of the aforementioned resolution.”

426. In a report to the Security Council dated 6 March 1964,714 the Secretary-General stated that, pursuant to the provisions of resolution 186 (1964), and having received the consent of the Government of Cyprus on the creation of the Force, he had appointed Lieutenant-General P. S. Gyani as Commander of UNFICYP. General Gyani was to take up his appointment and assume command immediately after the establishment of the Force.715

427. In a report to the Security Council dated 12 March 1964,716 the Secretary-General stated that since his report of 6 March he had requested the Governments of Austria, Brazil, Canada, Finland, Peru, Sweden and the United Kingdom to provide contingents for UNFICYP. He had informed those Governments, as well as the Governments of Cyprus, Greece and Turkey, that he intended to establish the Force at an initial strength of 7,000. His discussions with the Governments had indicated clearly that the provision of Security Council resolution 186 (1964) concerning responsibility for meeting the costs of the Force, for at least some States, had presented an obstacle to making contingents available.717 Despite the delays resulting from those circumstances, he was confident that the Force would be established in the very near future.718

428. Addressing the Security Council on 13 March, the Secretary-General stated that UNFICYP would be established without further delay and that elements of it would soon be deployed in Cyprus, a small party of Canadian officers being en route to Cyprus that night.719

429. In operative paragraph 2 of its resolution 187 (1964), adopted on 13 March 1964, the Security Council requested “the Secretary-General to press on with his efforts to implement Security Council resolution 186 (1964)” and also requested “Member States to cooperate with the Secretary-General to that end”.

430. In a report dated 17 March 1964720 the Secretary-General reported that sizeable elements of the Canadian contingent had arrived in Cyprus and that additional troops would proceed to the island shortly. Arrangements for the take-over of the British troops already in Cyprus, who were to comprise the British contingent, would soon be concluded with the United Kingdom Government. On that basis the Secretary-General was able to state that UNFICYP was in being. The Force would become established operationally when sufficient troops were available to enable it to discharge its functions effectively. That would fix the date from which the three-month period of the duration of the Force defined in Security Council resolution 186 (1964) would begin. In a subsequent report721 the Secretary-General announced that the Commander of the Force would assume command on 27 March, at which time the Force would become operational.


432. By its resolution 194 (1964), adopted on 25 September 1964, the Security Council, “noting that the Government of Cyprus has indicated its desire that the stationing of the United Nations Force in Cyprus should be continued beyond 26 September 1964”, extended “the period in which the United Nations Peace-keeping Force shall be stationed in Cyprus for another three months, ending 26 December 1964, in conformity with the terms of resolution 186 (1964)”.723

433. During the period under review the stationing of UNFICYP was continuously extended by subsequent Security Council resolutions, either for additional periods of three months724 or for periods of six

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712 Ibid., Czechoslovakia, para. 39.
714 Ibid., p. 105, S/5579.
715 General Gyani served in the dual role of the Commander of the Force and the Secretary-General’s Personal Representative until May 1964, when the functions of the former were dissociated from those of the latter through the appointment of a Special Representative of the Secretary-General in Cyprus (see paras. 464-467 below).
717 Ibid., para. 7. Operative paragraph 6 of resolution 186 (1964) recommended that all costs pertaining to the Force be met, in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus The Secretary-General, however, was empowered to accept voluntary contributions for that purpose (see also section (b) (v) below).
718 Ibid., para. 10.
719 Ibid., 1103rd mtg., para. 4.
721 Ibid., Add.3.
722 Oper. para. 4.
723 Oper. para. 3.
All the resolutions thus extending the stationing of the Force noted, in their preambular part, that the Government of Cyprus had indicated its desire that the Force should be extended beyond the last previous terminal date.

(iii) Composition and size of UNFICYP

434. On 3 March 1964, the Secretary-General gave this reply to a question about the factors he would bear in mind if the Security Council would authorize him to establish the composition of the peace-keeping force:

"Pending the adoption of the draft resolution, of course, I have been in consultation with a few countries which are regarded as agreeable to contributing to the success of the United Nations operations. The sole criterion regarding the composition of the international force is, as I understand it, that the countries must either be from the Commonwealth or non-aligned. My duty will therefore be to confine my contacts to prospective suppliers of contingents from the Commonwealth or non-aligned countries."

He further said,

"... as far as United Kingdom participation is concerned, I think there is universal recognition of the fact that the United Kingdom has a peculiar relationship with Cyprus, particularly in the context of the emergence of that country as an independent State. Of course, the circumstances leading to the independence of Cyprus were characterized by certain features which were unique, and the United Kingdom is involved in these developments. Therefore, I do not see any reason why the United Kingdom should be — or could be — excluded from any role in our joint endeavours to find a solution to the Cyprus problem."

435. Operative paragraph 4 of Security Council resolution 186 (1964) provided inter alia that "the composition and size of the Force shall be established by the Secretary-General, in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom". During the period under review the Secretary-General in his successive reports on the United Nations Operation in Cyprus kept the Security Council informed of the strength of the Force, which had a planned level of 7,000, and of its composition.

(iv) The question of the placing under the command of UNFICYP of the Greek and Turkish national contingents stationed in Cyprus

436. In his aide-mémoire of 10 April 1964 relating to the function and operation of the United Nations Force, the Secretary-General stated that, from the standpoint of the effective operation of UNFICYP, it would be desirable for the Greek and Turkish troops stationed in Cyprus to be placed under the command of the Commander of UNFICYP, although the United Nations had no specific mandate to require that.

437. The troops in question had been stationed in Cyprus under the Treaty of Alliance. After the disturbances began, arrangements were made on 26 December 1963 whereby the forces of the United Kingdom, Greece and Turkey, stationed in Cyprus and placed under British command, would assist the Government of Cyprus in its efforts to secure and restore peace. Later the Turkish contingent moved out of its barracks to strategic positions astride the Kyrenia Road, which the Cyprus Government declared to be a violation of the Treaty of Alliance, a contention which Turkey rejected.

438. Shortly after UNFICYP assumed operational functions in Cyprus, the President of Cyprus on 29 March 1964 informed the Prime Minister of Turkey by letter that the Joint Force had ceased to exist and that the Turkish contingent should therefore return to its camp. A similar communication with regard to the Greek forces in Cyprus was sent to the Prime Minister of Greece. The Prime Minister of Turkey rejected that demand on 31 March 1964, stating that the command over the contingent was at that time under discussion with the Secretary-General. Thereupon the President of Cyprus considered the Treaty of Alliance violated and therefore "terminated", a step which was declared illegal, null and void by the permanent representative of Turkey on 18 April 1964.

439. In his report to the Security Council of 15 June 1964, the Secretary-General gave the following assessment of the situation:

"The Turkish Army national contingent remains astride the Kyrenia Road between Orta Keuy and Geunyely, and on one occasion objected to UNFICYP patrolling in their area, which nevertheless continues. The Greek Army national contingent remains in its barracks on the outskirts of Nicosia. There are some indications that during recent weeks, both of these units have been involved in aiding the local forces of their respective communities. In any case, their presence on the island is a problem, because of their obviously one-sided attitudes.

"The Greek Army contingent would readily place itself under United Nations command, remain in

725 S C resolutions 206 (1965) and 222 (1966).
726 United Nations Press Services, Note to Correspondents No. 2905, dated 3 March 1964 (mimeographed): "Remarks to the press by the Secretary-General at the luncheon given in his honour by the United Nations Correspondents' Association on Tuesday, 3 March 1964".
727 Ibid., p. 13.
729 The countries which contributed military personnel or civilian police to the Force were Australia, Austria, Canada, Denmark, Finland, Ireland, New Zealand, Sweden and United Kingdom.
732 Ibid., p. 54, S/5533.
733 Ibid., Suppl. for April-June, p. 2, S/5636.
734 Ibid., p. 6, S/5647.
735 Ibid.
736 Ibid., p. 67, S/5663. Ibid., p. 79, S/5670 for the reply of the representative of Cyprus.
737 Ibid., p. 211, S/5764, paras. 115 and 116.
its barracks and possibly withdraw from the island, if a similar arrangement could be made with the Turkish Army contingent. The Turkish troops, in my view, actually no longer serve any imperative security purpose that the far larger and stronger United Nations Force could not perform. The continued deployment of Turkish troops cannot greatly add to the security of the Turkish Cypriots and above the security that UNFICYP could afford them, while their presence cannot avoid acutely aggravating and agitating the Cypriot Government and the Greek Cypriot community. Consequently, I consider it reasonable to urge that the Turkish Army contingent should now either retire to its barracks voluntarily and remain there, or accept my long-standing offer to take it under United Nations command, although not as a contingent in UNFICYP. This, of course, would certainly mean the return of the Turkish troops to their barracks. However, the condition advanced up to now by Turkish officials for agreeing to place the Turkish contingent under United Nations command is unacceptable, since it would so limit UNFICYP authority over the contingent as to render United Nations command meaningless.”

The negotiations on the matter led to no positive results.

(v) The financing of UNFICYP

440. In operative paragraph 6 of its resolution 186 (1964) the Security Council stated that all costs pertaining to the Force were to be met, “in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for that purpose”.

In a statement made at the 1102nd meeting of the Council on 4 March 1964, the Secretary-General said: “...I would also draw attention to the provision in paragraph 6 for meeting the cost of the force which is not to be charged against United Nations revenues. In this context I would particularly like to call attention to the last sentence of operative paragraph 6 which states that: ‘The Secretary-General may also accept voluntary contributions for that purpose’, and strongly express the hope that substantial contributions of this nature will be forthcoming since it is already apparent that some appropriate States might more readily provide contingents were it not for the extra financial burden upon them called for by the cost provision of the draft resolution.”

441. The Secretary-General established a Special Account for UNFICYP to which were credited all voluntary contributions for the establishment, operation and maintenance of the Force. The United Nations responsibility for the provision of facilities, supplies and auxiliary services for the Force was limited to the amount of voluntary contributions received in cash or in kind.²⁴⁹ The Secretary-General had authority for all financial matters pertaining to the receipt, custody and disbursement of voluntary contributions in cash or in kind for the maintenance and operation of the Force.

442. Article 19 of the Status of Force Agreement ²⁴⁸ provided that the Government of Cyprus “shall provide without cost to the Force and in agreement with the Commander such areas for headquarters, camps, or other premises as may be necessary for the accommodation and the fulfilment of the functions of the Force...”. The expenses thus met by the Government of Cyprus were in addition to the costs carried by the special account and the costs absorbed by participating Governments.

443. The Secretary-General frequently criticized the method of financing UNFICYP on account of its inherent uncertainty, which he regarded as an essential weakness, and because it placed an unfair burden upon the contributing Governments.²⁴⁸

(vi) Recruitment and administration of UNFICYP

(a) Conclusion of agreement concerning the recruitment of national contingents

444. In 1966 the Secretary-General exchanged with the Governments of contributing countries letters constituting agreements between the United Nations and those Member States concerning the service with UNFICYP of their respective national contingents.²⁴³ With the exception of the agreement concluded with Austria, each agreement provided that it was deemed to have taken effect as from the date that the national contingent provided by the Government concerned had departed from its home country to assume duties with the Force. The agreement with Austria came into force on the date of receipt by the United Nations of the note of acceptance.

²⁴⁸ ST/SG/UNFICYP/1 (mimeographed), para. 16.
²⁴⁸ See United Nations Juridical Yearbook, 1966, for the agreements, respectively, with the United Kingdom (p. 41), Finland, New Zealand and Canada (p. 45), Denmark (p. 46), Sweden (p. 47), Australia (p. 48) and Austria (p. 50). See also United Nations, Treaty Series, vol. 555 (1966) Canada (I, No. 8107), Denmark (I, No. 8108), Finland (I, No. 8109), Sweden (I, No. 8110), New Zealand (I, No. 8110), p. 157; New Zealand (I, No. 8109), p. 157; New Zealand (I, No. 8111), p. 169; United Kingdom (I, No. 8112), p. 177; vol. 557 (1966), Australia (I, No. 8129), p. 85; Austria (I, No. 8131), p. 129.
(b) Conclusion of an agreement between the Secretary-General and the Government of Cyprus concerning the status of UNFICYP

445. On 31 March 1964 the Secretary-General reported that, by an exchange of letters of the same date between himself and the Foreign Minister of Cyprus, an agreement had been concluded between the United Nations and the Government of Cyprus concerning the status of the United Nations Peacekeeping Force in Cyprus.

446. In his letter, the Secretary-General proposed that the United Nations and Cyprus "should make the following ad hoc arrangements defining certain of the conditions necessary for the effective discharge of the functions of the United Nations Force while it remains in Cyprus".

The text of the proposed arrangements consisted of forty-five paragraphs relating to the international status of the Force and its members, entry and exit, criminal and civil jurisdiction, military police, premises, use of the United Nations flag and markings, registration and operating permits for vehicles, vessels and aircraft, arms, privileges and immunities, exemptions from taxation, customs and fiscal regulations, communications and postal services, freedom of movement, use of roads, waterways, port facilities and airfields, public utilities, currency, provisions, supplies and services, locally recruited personnel, settlement of disputes or claims, liaison, deceased members, supplemental arrangements contacts and the effective date and duration of the agreement.

447. The reply of the Minister for Foreign Affairs of Cyprus accepting on behalf of his Government the terms of the Secretary-General's letter, stated:

"The Government of the Republic of Cyprus agrees, furthermore, that subject to ratification by the Republic of Cyprus, your letter and this reply will be considered as constituting an agreement between Cyprus and the United Nations concerning the status of the United Nations Force in Cyprus. Pending such ratification the Government of the Republic of Cyprus undertakes to give provisional application to the arrangements contained in your letter and to use its best efforts to secure the earliest possible ratification of the agreement.

"In conclusion, I wish to affirm that the Government of the Republic of Cyprus, recalling the Security Council resolution of 4 March 1964 [186 (1964)], and, in particular, paragraphs 2 and 5 thereof, will be guided in good faith, when exercising its sovereign rights on any matter concerning the presence and functioning of the Force, by its acceptance of the recommendation of the Security Council that a peace-keeping Force be established in Cyprus."

448. Members of the Force were subject to the exclusive jurisdiction of their respective national States in respect of any criminal offences which might be committed by them in Cyprus; they were not subject to the civil jurisdiction of the courts of Cyprus or to other legal process in any matter relating to their official duties.

449. As a subsidiary organ of the United Nations, the Force enjoyed the status, privileges and immunities of the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations. Members of the United Nations Secretariat serving with the Force were entitled to the privileges and immunities of articles V and VII of the Convention.

450. The force and its members together with its service vehicles, vessels, aircraft and equipment were to enjoy freedom of movement throughout Cyprus. It was provided, however, that wherever possible the Commander would consult with the Government with respect to large movements of personnel, stores or vehicles on roads used for general traffic.

(c) Regulations for UNFICYP

451. The Regulations for the United Nations Force in Cyprus were issued by the Secretary-General on 25 April 1964 and went into effect on 10 May 1964. They were intended, for the most part, to continue in effect the policies and practices that had been followed in respect of the Force since it came into existence.

452. The regulations consist of seven chapters dealing inter alia with the international character of UNFICYP and its privileges and immunities; the authority and command in the Force, general administrative, executive and financial arrangements; rights and duties of members of the Force; relations between the participating Governments and the United Nations; and the applicability of international conventions. The salient features of the regulations are:

(a) UNFICYP is a subsidiary organ of the United Nations established pursuant to Security Council resolution 186 (1964) and consists of the Commander and all personnel placed under his command by Member States. Members of the Force, although remaining in their national service, are, "during the period of their assignment to the Force, international personnel under the authority of the United Nations and subject to the instructions of the Commander, through the chain of command" (regulation 6).

(b) The Secretary-General may amend or revise the regulations; he is to issue directives to the Commander as appropriate; and he may issue supplemental instructions with respect to matters not delegated to the Commander. The Commander exercises in the field...
full command authority of the Force and is operationally responsible for the performance of all functions assigned to the Force by the United Nations and for the deployment and assignment of troops placed at the disposal of the Force (regulations 3 and 11).

(c) The Commander has the power of investigation into matters relating to the good order and discipline of the Force and into incidents and losses affecting the Force or its members or property used by the Force (regulations 13 and 14).

(d) The Secretary-General has authority for all administrative and executive matters affecting the Force and for all financial matters pertaining to the receipt, custody and disbursement of voluntary contributions in cash or in kind for the maintenance and operation of the Force (regulation 16).

(e) The channel for communications between the United Nations and the participating Governments concerning their units in the Force, or the Force itself, is the United Nations Headquarters in New York through their permanent missions to the Organization (regulation 37).

(f) The Force is required to “observe and respect the principles and spirit of the general international Conventions applicable to the conduct of military personnel” (regulation 40).

(vii) The question of freedom of movement of UNFICYP

453. In a message sent on 22 July 1964 to the Government of Cyprus, the Secretary-General brought to the latter’s attention certain matters which, in his opinion, constituted a denial of freedom of movement to the Force. Those matters were: that troops of UNFICYP had been denied entry into the docks of Limassol; that United Nations patrols had been more and more frequently refused access to specific sensitive areas; and that there had been an increase in the number of instances of United Nations vehicles or convoys being held up at roadblocks and on occasion searched, in contravention of the status agreement reached on 31 March.

454. The Government of Cyprus replied on 27 July 1964 and annexed to its communication the text of a note it had delivered to the Commander of the Force on 23 July 1964 which contained the Government’s interpretation of the term “freedom of movement” as used in paragraph 32 of the Agreement on the Status of UNFICYP. In the opinion of the Government the very word ‘movement’ suggests that this provision was intended to cover persons, together with vehicles and the like, who are in motion through the roads and other ways of communication in the Republic for the purpose of performing their functions as aforesaid and not stationary forces stationed in certain localities.”

Further, the term “freedom of movement”, as used in international agreements between States, in no case had been interpreted as giving:

“the right to enter or station units of such force on premises belonging to the receiving State simply because the international agreements provide that the sending States shall have the right of freedom of movement in the territory of the receiving State.”

The Government of Cyprus therefore considered it unjustified to interpret the Agreement in a way which would include under the term “freedom of movement” the entry by UNFICYP into docks and ports or other Government premises, or the stationing of units therein without the consent of the Government.

455. Subsequently, the President of Cyprus in a communication to the Secretary-General dated 6 August 1964 referred to his previous communication and said he wished:

“... further thereto to state that, irrespective of the legal views expressed in that communication, it is my desire to assure Your Excellency that the United Nations Force in Cyprus will enjoy full freedom of movement throughout the Republic. The only exception will be certain localities connected with the Defence of the State, access to which may be arranged after consultation between the Government and the Commander of UNFICYP, General Thimayya.”

456. In a report submitted on 10 September 1964, the Secretary-General pointed out that although the President of Cyprus on 1 September had assured the Special Representative and the Force Commander of complete freedom of movement for UNFICYP throughout the territory of the Republic,

“during further discussions on 5 and 7 September, the President handed the Force Commander a map of the island with sensitive areas on it. This map showed sixteen areas of special importance to the Cyprus Government which may not be visited by anyone in UNFICYP; fifteen defence areas which may be visited only by the Force Commander having given due notice to the Cyprus military authorities; and fifty-seven areas which may be visited only by general traffic. The Government will supply the Force with maps and other information, including locations of dangers and impediments, which may be useful in facilitating its movements.”

Refers to operative paragraph 5 of Security Council resolution 186 of 4 March 1964.


Ibid., p. 125, S/5842.

Paragraphs 4 and 32 of the Agreement are relevant to the question dealt with here. Paragraph 4, under the heading “Definitions”, reads: “4. ‘Area of operations’ includes all areas throughout the territory of the Republic of Cyprus (which territory is hereinafter referred to as ‘Cyprus’) where the Force is deployed in the performance of its functions as defined in operative paragraph 5 of the Security Council resolution of 4 March 1964 186 (1964); military installations or other premises referred to in paragraph 19 of these arrangements; and lines of communication and supply utilized by the Force pursuant to paragraphs 32 and 33 of these arrangements.” Paragraph 32 reads: “The Force and its members together with its service vehicles, vessels, aircraft and equipment shall enjoy freedom of movement throughout Cyprus. Wherever possible the Commander will consult with the Government with respect to large movements of personnel, stores or vehicles on roads used for
senior UNFICYP officers having given due warning and then only on days and at hours that have been predetermined. The President also stated that he would not permit UNFICYP to take air photographs of any such areas.”

In the same report the Secretary-General pointed out that, as there would be serious need for some clarification as to the actions UNFICYP could take, he intended to proceed on the basis of certain assumptions and to instruct the Commander of the Force accordingly. One of those assumptions was that “in establishing the Force and defining its important functions, the Security Council realized that the Force could not discharge that function unless it had complete freedom of movement in Cyprus, which could only mean such unrestricted freedom of movement as may be considered essential by the Force Commander to the implementation of the mandates of the Force.”

457. When the question of extending the stationing of the Force beyond 25 September 1964 was examined by the Security Council at its 1151st and 1153rd to 1159th meetings, the representative of Cyprus declared on 16 September 1964 that his Government had done its utmost to solve the problem of the unrestricted freedom of movement of UNFICYP despite the fact that most serious and sensitive issues of security and defence were involved. A solution of the problem had been arrived at between UNFICYP and the Government, and he trusted that that had settled the issue.

458. In a report dated 12 December 1964, the Secretary-General stated that it had become evident that the attitude of the Government of Cyprus was that it was legitimately entitled to place any area out of bounds in the interest of national security, and that applied particularly to coastal defences, training areas and permanent camp sites.

(viii) The fulfilment of the function of UNFICYP

(a) The formulation of guiding principles of UNFICYP

459. The guiding principles governing the operation of the Force, as formulated by the Secretary-General, were summarized as follows:

“(a) The Force is under the exclusive control and command of the United Nations at all times. The Commander of the Force is appointed by and responsible exclusively to the Secretary-General. The contingents comprising the Force are integral parts of it and take their orders exclusively from the Commander of the Force.

“(b) The Force undertakes no functions which are not consistent with the provisions of the Security Council resolution [186] of 4 March 1964. The troops of the Force carry arms which, however, are to be employed only for self-defence, should this become necessary in the discharge of its function, in the interest of preserving international peace and security, of seeking to prevent a recurrence of fighting, and contributing to the maintenance and restoration of law and order and a return to normal conditions. The personnel of the Force must act with restraint and with complete impartiality towards the members of the Greek and Turkish Cypriot communities.

“(c) As regards the principle of self-defence, it is explained that the expression ‘self-defence’ includes the defence of United Nations posts, premises and vehicles under armed attack, as well as the support of other personnel of UNFICYP under armed attack. When acting in self-defence, the principle of minimum force shall always be applied and armed force will be used only when all peaceful means of persuasion have failed. The decision as to when force may be used in these circumstances rests with the Commander on the spot. Examples in which troops may be authorized to use force include attempts by force to compel them to withdraw from a position which they occupy under orders from their commanders, attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders.

“(d) In connexion with the performance of its function and responsibilities, UNFICYP shall maintain close contact with the appropriate officials in the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order and which has been asked by the Security Council in its resolution of 4 March to take all additional measures necessary to stop violence and bloodshed in Cyprus.”

(b) Initial formulation of objectives and interim aims of a comprehensive programme of action for UNFICYP

460. In a report dated 29 April 1964, the Secretary-General informed the Security Council that he had formulated, with the assistance of the Commander of UNFICYP, a comprehensive programme of action for the Force. The objectives and interim aims of the programme were set out in annex I to the report and were meant to implement the mandate of the Force as laid down in operative paragraph 5 of Security Council resolution 186 (1964).

461. The suggested objectives were listed as follows: (a) achievement of freedom of movement on all roads in Cyprus; (b) achievement of freedom of movement for all communities within the whole town of Nicosia and other cities under conditions of security; (c) progressive evacuation and removal of all fortified positions held by Greek and Turkish Cypriots, with priority given to Nicosia; (d) examination of the problem arising from the division that had taken place in the Cyprus police between the Turkish Cypriots and the Greek Cypriot members and negotiation of necessary

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259 Ibid., para. 232 (a).
260 See, in this respect, the agreement concerning UNFICYP's freedom of movement at or near the Limassol docks in S C, 19th yr., Suppl. for Nov.-Dec., p. 221, S/6102, para. 129.
261 S C, 19th yr., 1151st mtg.: Cyprus, para. 18.
263 S C, 19th yr., Suppl. for July-Sept., p. 280, S/5950, para. 7; see also ibid., Suppl. for April-June p. 12, S/5653, paras. 3-19 of aide-mémoire.
264 S C, 19th yr., Suppl. for April-June, p. 87, S/5671, annex I.
265 See para. 406 above.
measures for their progressive reintegration; (e) progressive disarming of all civilians other than the regular police "gendarmerie" and the Cyprus army, by the Cypriot Government and the Turkish community, with UNFICYP assisting if requested; (f) control of extremists on both sides; (g) formulation of appropriate general amnesty arrangements; (h) arrangement of security measures and other necessary conditions to facilitate return to normal conditions and particularly normal economic activity; (i) facilitation of the return of Turkish Cypriot civil servants and Government officials to their duties, including the public services; (j) normal functioning of the judiciary.

462. Certain interim aims suggested to be established in selected localities and on particular problems included, inter alia, removal of emplacements, fortifications and trenches in selected areas of Nicosia; return of refugees to their homes under United Nations security guarantee and rehabilitation of their dwellings; elimination of excesses by individual policemen in searching and seizing civilians; inquiry into serious instances of shooting; reintegration of the Turkish Cypriot policemen into the Cyprus police force; use of UNFICYP good offices with both sides to improve living conditions; facilitation of the return of Turkish Cypriot officials and civil servants to their positions in Government service; appraisal of the possibility of establishing in certain areas Cypriot Greek-Turkish-UNFICYP joint patrols as a means of restoring confidence and promoting a return to normality; revival of meetings of Greek and Turkish Cypriots, both official and non-official, and at all levels, under UNFICYP security if necessary.

463. In his report of 15 June 1964, the Secretary-General gave an account of the contacts at all levels with Government authorities, leaders and responsible persons from both Greek and Turkish Cypriot communities as well as with representatives of public life and of the business community. During those exploratory discussions, the points mentioned in his comprehensive programme of action contained in his report of 29 April were always kept in mind. In its resolution 192 (1964), the Security Council took note of that report of the Secretary-General.

(e) Appointment of a Special Representative of the Secretary-General

464. In his report to the Security Council of 29 April 1964, the Secretary-General pointed out that the Force should take reasonable initiatives designed to lead to a return to normal conditions in Cyprus and stated that so far only slight progress had been made in implementing that aspect of UNFICYP's mandate. The conclusion had been reached that certain initiatives had to be undertaken without delay by means of intensive discussion and negotiation with the parties concerned. Towards that end the mission in Cyprus needed urgently to be strengthened by the addition of a top-level political officer, who, on behalf of the Secretary-General, could conduct negotiations for implementing the comprehensive programme of action for UNFICYP that was annexed to the report.

465. In a report of 11 May 1964, referring to the need for a top-level political officer in Cyprus, the Secretary-General informed the Security Council that he had secured the services of Mr. Galo Plaza, of Ecuador, as his Special Representative in Cyprus. He added that the Special Representative would be directly responsible to the Secretary-General and that the functions of the Special Representative would in no way impinge upon the efforts of the United Nations Mediator nor upon the functions of the Commander of UNFICYP. On 25 September 1964, the Secretary-General appointed Mr. Carlos Bernardes as his Special Representative to replace Mr. Galo Plaza who had them become United Nations Mediator in Cyprus.

466. Prior to the broadening of his responsibilities in March 1966, the following were the main functions performed by the Special Representative: taking up certain proposals made by the President of Cyprus for the purpose of easing the tension between the communities, concluding arrangements for the proposed reopening of the Kyrenia road and the rotation of the Turkish national contingent, submitting proposals for a defortification programme, making available good offices to the Government of Cyprus and to the Turkish Cypriot community, entering into contacts with the President and Vice-President of Cyprus for the purpose of remedying the situation resulting from the armed clashes which occurred in the area of Famagusta in November 1965. In such instances the Special Representative acted together with the Commander of the Force.

467. In a note of 4 March 1966, the Secretary-General informed the Security Council, after having informed the parties directly concerned, he had sent the following message to his Special Representative in Cyprus:

"As you know, my efforts to bring about a resumption of the mediation function in Cyprus have not as yet met with success. I am, of course, continuing these efforts. At the same time, I do not believe that there should be any interruption in the exploration of all possibilities which might prove helpful in the Cyprus situation.

"Therefore, having in mind the fine rapport you have established and maintain with all of the parties directly concerned, I authorize you, in your capacity as my Special Representative in Cyprus, to employ your good offices and make such approaches to the parties in or outside the island of Cyprus, as may seem to you to be likely to be productive, in the sense of achieving in the first instance discussions at any level of problems and issues of either a purely local or a broader nature.

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768 Ibid., p. 124, S/5691.
769 Ibid., 1159th mtg., para. 42.
770 See para. 413 above.
774 Ibid., Suppl. for July-Sept., p. 125, S/6569, paras. 24-26
"I feel confident that this added responsibility will not unduly burden you under prevailing conditions in Cyprus.

"It goes without saying that your activities under these broader instructions are without prejudice to the mediation function as envisaged in the Security Council resolution.

"You will, of course, keep me informed as usual. I have informed the representatives of Cyprus, Greece and Turkey of my intention to broaden your responsibilities as indicated above, and I am sure that we may count on the co-operation of those Governments in your forthcoming efforts.

"It is my intention to inform the Security Council of this step, possibly by including the text of this message in my next report."

(d) Prevention of a recurrence of the fighting

468. UNFICYP sought to bring about relaxation of tension by negotiation as well as persuasion. In some instances it interposed itself between the combatants, demarcated cease-fire lines, stationed itself in sensitive areas or sent out patrols. Incidents were investigated in order to secure an objective basis for negotiations. Relatively minor incidents were thus often kept from developing into major clashes.777

469. An account of the functions performed by UNFICYP in three specific areas relating to the prevention of a recurrence of fighting is given below:

i. Supervision by UNFICYP of the cease-fire called for in Security Council resolution 193 (1964)

470. After the outbreak of serious fighting in early August 1964 in the area around Kokkina and Mansoura,778 the Security Council met on 8 and 9 August 1964 at the urgent request of both Cyprus779 and Turkey.780 The President of the Council stated that the Secretary-General had informed him that efforts by the Commander of the Force to bring about a cease-fire wherever fighting had occurred had not yet met with success, but UNFICYP was giving aid to refugees and the wounded.781

471. On 9 August, the Council adopted resolution 193 (1964) in which, "anticipating the submission of the Secretary-General's report on the situation", it:

"1. Reaffirms the appeal just addressed by the President of the Security Council to the Governments of Turkey and Cyprus, worded as follows:

"'The Security Council has authorized me to make an urgent appeal to the Government of Turkey to cease instantly the bombardment of and the use of military force of any kind against Cyprus, and to the Government of Cyprus to

order the armed forces under its control to cease firing immediately';

"2. Calls for an immediate cease-fire by all concerned;

"3. Calls upon all concerned to co-operate fully with the Commander of the United Nations Peace-keeping Force in Cyprus in the restoration of peace and security;

"4. Calls upon all States to refrain from any action that might exacerbate the situation or contribute to the broadening of hostilities."

472. In a statement issued on 10 August 1964,782 the Secretary-General confirmed that the Governments of Cyprus and Turkey had responded positively and without conditions to the appeal addressed to them by the President of the Security Council, and that "that cease-fire is now in effect". The Secretary-General said that he would make every effort towards constructive peace-keeping arrangements in all areas of the island, and that he had instructed the Force Commander to co-operate fully with the parties and take every initiative in making the cease-fire effective. He appealed to the Governments concerned and to the Turkish Cypriot community to extend full cooperation and support to the Commander and to the Force. In the light of the situation, the Secretary-General had decided, with the concurrence of the President of the Security Council, not to submit at that time the report on the fighting which had taken place between 5 and 9 August, and which had been anticipated by the Council in the preamble of Security Council resolution 193 (1964).

473. On the same day (10 August 1964), however, the representative of Cyprus requested an immediate meeting of the Council "in order to consider developments in Cyprus of extreme urgency and prevent any further aggravation of the situation".783

474. At the meeting of the Security Council on 11 August, the Secretary-General informed the Council that reports from the Commander of the Force indicated that firing had come to an end. Some incidents had occurred, but only before information on the cease-fire had reached all outposts. There had been some overflights by Turkish aircraft, which had not done any firing.784

475. At the end of the meeting, the President summed up the consensus of the members as follows:

"... the Council notes with satisfaction that the cease-fire is being observed throughout Cyprus; ... requests the Commander of the United Nations Peace-keeping Force in Cyprus to supervise the cease-fire and to reinforce its units in the zones which were the sphere of the recent military operations so as to ensure the safety of the inhabitants; and requests all concerned to co-operate with and to assist the Commander of the Force in achieving this purpose."785


779 Ibid., p. 145, S/5861.

780 Ibid., p. 144, S/5859.

781 Ibid., 1142nd mtg., paras. 5 and 6.

782 Ibid., Suppl. for July-Sept., p. 162, S/5879.

783 Ibid., p. 154, S/5872.

784 Ibid., 1143rd mtg., para. 237.

785 Ibid., para. 358.
476. On 15 August the Secretary-General submitted a note on the observance of the cease-fire, in which he listed the actions contrary to the cease-fire which had taken place between 12 and 14 August, as reported by the Force Commander.

477. In his report of 10 September 1964, the Secretary-General stated that, after the adoption of resolution 193 (1964), seventeen observation posts had been set up by UNFICYP between the two sides in the area of Kokkina. Those posts were intended not only to observe breaches of the cease-fire, but also to give warning of any aggressive moves by either side in sufficient time for UNFICYP to take action to prevent a recurrence of fighting. The Secretary-General further stated that since the cease-fire the situation on the island had been generally quiet. On the whole, there had been no serious breaches of the cease-fire, and only incidents of a minor nature had occurred. However, the situation remained unstable, and the tension very high.

478. In the conclusion of his report dated 12 December 1964, the Secretary-General stated, inter alia, that fighting had largely ceased and that in general the cease-fire was being observed in good faith. He further commented on the role of UNFICYP as follows:

"The improvement in the position of UNFICYP and the general recognition by all parties of its usefulness as a guardian of public safety, a go-between and a guarantor against the escalation of the conflict in Cyprus by the involvement of outside powers, constitute an encouraging development."

479. In his subsequent reports the Secretary-General kept the Security Council informed of the situation regarding the observance of the cease-fire.

ii. The removal of positions, emplacements, fortified installations and trenches, and the establishment of buffer zones

480. In his report of 10 September 1964, the Secretary-General stated that since its arrival in Cyprus the Force had made determined efforts to achieve the withdrawal or elimination of the many fortifications erected by both the Greek and Turkish Cypriot communities. Proposals were made to both the Government of Cyprus and the Turkish Cypriot leadership, but no agreement was reached. Nevertheless, local UNFICYP commanders continued their efforts towards the removal of fortifications. The negotiations involved were a continuous and wearying task, however, as any minor incident provoked one side or the other to build posts to protect itself against future attacks. In dealing with the problem, UNFICYP always resorted to discussion and negotiation. Only in a few cases when the fortified posts were considered a direct threat to its own position did the Force proceed to dismantle them.

481. The Secretary-General concluded that if the stationing of the Force was to be extended for another period, there would be serious need for at least some clarification as to the actions that the Force might take in the discharge of its mandate. Therefore, he intended to proceed on certain assumptions and to instruct the Commander of the Force accordingly. The assumptions and related instructions would include the following:

"(a) That the Force, in carrying out its mandate to prevent a recurrence of fighting, is reasonably entitled to remove positions and fortified installations where these endanger the peace, and to take all necessary measures in self-defence if attacked in the performance of this duty.

"(b) That in seeking to prevent a recurrence of fighting, it may be demanded by the Commander that the opposing armed forces be separated to reasonable distances in order to create buffer zones in which armed forces would be prohibited."

482. On 2 December 1964, the Force Commander submitted to the President of Cyprus for his consideration two plans for the removal of all fortifications and armed posts in the Kyrenia range and the abolition of the "Green Line" in Nicosia. On 7 December 1964 he submitted a third plan, calling for the demilitarization, with UNFICYP assistance, of the positions of both sides around the Kokkina bridgehead and the resettlement of Turkish Cypriot refugees then in Kokkina in their home villages. Those plans were also communicated to the Turkish Cypriot leadership. As of 11 March 1965, no official reply was received. It appeared that the Cyprus military authorities felt that the implementation of such plans at that stage might create a feeling of insecurity among the population. In his report of 11 March 1965, the Secretary-General said that, in his judgement, there was a clear need for a gradual and progressive dismantling of fortifications with a view to achieving, in the shortest possible time and under adequate protection and guarantees from UNFICYP, the removal of all fortified posts in the island. He also stated that what was necessary for the defence of Cyprus against external attack. The Special Representative and the Commander of the Force would shortly submit to both sides concrete proposals to that end.

483. In connexion with the elimination of lines of armed confrontation within the island, the Secretary-General stated in the same report.
“There is no peace on the island, but a tense and fragile truce. This situation, moreover, is likely to continue as long as there is a hostile confrontation within the island and as long as the territory of the Republic is cut by front lines and fortifications whose presence contributes to maintaining tension at high pitch.”

484. UNFICYP realized little progress in the removal of fortified posts with one notable exception. In November 1965, after serious incidents in the Famagusta area, the Special Representative and the Commander of the Force held discussions with both sides so as to adopt measures to reduce tension in the area, including the removal of all fortified positions, with UNFICYP ensuring implementation. On 6 December 1965, the Government agreed to implementation of those measures, and a similar acceptance was received from the Turkish Cypriot leadership.798

485. In the last report submitted during the period under review,799 the Secretary-General pointed out that the major defortification agreement arrived at in December 1965 at Famagusta had had a salutary effect, and there had been since then no serious incidents. The Secretary-General in that report gave an account of some of the problems encountered by UNFICYP in various parts of the island, notably at Larnaca-Scala, in consequence of the Government’s construction of coastal defences. UNFICYP, while recognizing that every State had the right to prepare defences against external attack, urged the National Guard, in order to prevent an intensification of armed confrontation, not to site coastal defences in the immediate vicinity of Turkish Cypriot villages, and in any case to take precautions to prevent the defence works from becoming a military threat to the inhabitants. The Turkish Cypriots, however, on occasion differed with the position of UNFICYP, especially since they considered that Government coastal defences were designed to deter action by Turkey in support of the Turkish Cypriot community, and to threaten the members of that community.800

486. In the same report,801 the Secretary-General said that in a discussion with his Special Representative the President of Cyprus had proposed a plan under which, with the exception of coastal defences, all fortifications, check points and military posts—Government and Turkish Cypriot alike—would be removed. The defortification of Turkish Cypriot enclaves and villages would be controlled by mixed Greek Cypriot and Turkish Cypriot police patrols, but Turkish Cypriot policemen would come under Government authority. The Special Representative had pursued that proposal with the Turkish Cypriot leaders who reiterated their long-standing contention that such measures would be feasible only in the context of the 1960 Constitution or of an agreed political settlement.

iii. Functions exercised in connexion with the rotation of the Turkish national contingent stationed in Cyprus

487. At the end of August 1964 the intention of the Turkish Government to proceed with the normal rotation of one third of the 650 troops comprising the Turkish national contingent in Cyprus and the refusal of the Government of Cyprus to allow it brought about the possibility of a new and dangerous crisis in Cyprus.802 The Secretary-General appealed to the Governments of both Turkey and Cyprus to employ restraint, and he urged Turkey to postpone the scheduled rotation for a few weeks, which the Turkish Government agreed to do. The Secretary-General further suggested that there be an agreed arrangement for the rotation of the Turkish troops whereby the relieving troops would not take up positions near the Kyrenia road, which would be placed under full and exclusive UNFICYP control and be open to unarmed persons of both sides. The Turkish Government would not agree to the withdrawal of the Turkish contingent from their position astride the Kyrenia road but had no objection to UNFICYP controlling the Nicosia-Kyrenia road and keeping it open to unarmed persons, provided UNFICYP undertook to prevent by force of arms any Greek Cypriot attempt to gain control of the road and provided the Force Commander would obtain the prior consent of the Turkish Government before ordering any change in the positions of the Turkish contingents. The Secretary-General considered that those conditions would virtually nullify his suggestion.803

488. On 25 September 1964, at the 1159th meeting of the Security Council,804 the Secretary-General stated that the parties concerned had agreed to his proposal that the Kyrenia-Nicosia road, which up to then had been under the control of Turkish and Turkish Cypriot armed personnel, be placed under the exclusive control of the Force. No armed personnel or armed posts other than those of the Force would be allowed on the road; any positions of the Turkish national contingent within 100 yards of the road, with certain exceptions, would be withdrawn; and the traffic on the road would be free for all civilians. Without prejudice to its position on the Treaty of Alliance and on the presence of the Turkish national contingent in Cyprus, the Government of Cyprus would not interfere with the rotation of the Turkish contingent. The detailed implementation of that arrangement would be entrusted to the Commander of the Force.

489. The Nicosia-Kyrenia Road remained under the control of UNFICYP, which assumed the responsibility for organizing scheduled daily two-way convoy

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799 Ibid., Suppl. for April-June, p. 154, S/7350, paras. 30 and 31.
800 Ibid., paras. 31-46.
801 Ibid., para. 93.
802 S C, 19th yr., Suppl. for July-Sept., p. 243, S/5920, and p. 280, S/5950, para. 28. The Government of Cyprus, which in view of its abrogation of the Treaty of Alliance regarded the Turkish military presence in Cyprus as illegal, announced that it would oppose the rotation. See also paras 436-439 above.
803 Ibid., para. 227.
804 S C, 19th yr., 1159th mtg., paras. 32 and 33. For further details of the agreement and an account of the discussions in Nicosia concerning the implementation of the agreement, see S C, 19th yr., Suppl. for Oct.-Dec., p. 221, S/6120, paras. 7-21, 138-140 and annex I.
490. However, when the time approached for another rotation of the Turkish national contingent, in February 1965, the Government of Cyprus again declined to give its consent. The good offices of UNFICYP were made available at the request of the parties within the context of paragraph 1 of Security Council resolution 186 (1964) and with a view to avoiding a dangerous situation arising between the Governments of Cyprus and Turkey. On 23 March 1965, the Special Representative conveyed a message to the President of Cyprus from the Secretary-General urging that the operation be permitted; the President responded favourably to that appeal, while maintaining his Government's legal position on the question. At the request of both Governments, UNFICYP extended its good offices and assistance in supervising the rotation operation. UNFICYP's good offices and assistance were similarly made available in supervising subsequent rotations of the Turkish contingent.

(c) Contribution of UNFICYP to the restoration and maintenance of law and order

491. One of the functions entrusted to UNFICYP by the Security Council in operative paragraph 5 of its resolution 186 (1964) was "to contribute to the maintenance and restoration of law and order".

492. In his aide-mémoire of 10 April 1964, the Secretary-General recalled that under operative paragraph 2 of Council resolution 186 (1964) of 4 March 1964, the Government of Cyprus, which had the responsibility for the maintenance and restoration of law and order, had been asked to take all additional measures necessary to stop violence and bloodshed in Cyprus. UNFICYP therefore would maintain close contact with the appropriate officials in the Government in that connexion.

493. Among the objectives he had defined in his "Comprehensive programme of action" the Secretary-General mentioned the control of extremists on both sides; the establishment of a reliable system of reporting of police abuses and a regular follow-through by UNFICYP, as well as a high degree of liaison and confidence with all Greek Cypriot and Turkish Cypriot members of the Cyprus police. The programme called for a planned réintégration of Turkish Cypriot policemen into the Cyprus police force and for the institution of inquiry procedures for all serious incidents.

494. As stated in the Secretary-General's report of 2 May 1964, experience had shown that the fulfilment of UNFICYP's task required an element of police liaison personnel, inter alia, to establish liaison with the Cypriot police; to accompany Cypriot police patrols checking vehicles for traffic violations and other offences; and to observe searches of vehicles by local police at roadblocks.

495. In his report dated 11 March 1965, the Secretary-General stated that "the work of the UNFICYP civilian police falls within that part of the mandate under which the Force, as necessary, contributes to the maintenance of law and order". He reported, in that connexion, that the UNFICYP civilian police had established liaison posts at the headquarters of the Nicosia district of the Cyprus police, and at the old Central Police Station used as their headquarters by the Turkish Cypriot personnel of the Cyprus police. Thus, the UNFICYP civilian police, in co-operation with the appropriate authorities, made inquiries about missing persons and carried out investigations of crimes, including cases of homicide which appeared to have aspects relating to inter-communal strife, bomb explosions and other complaints.

496. Additional tasks were later undertaken by the civilian police element of the Force, including control of vehicular and pedestrian traffic in certain places, observation at Nicosia airport of movements of Turkish Cypriots travelling to or from Turkey; marshalling and dispersing the Kyrenia road convoys; manning posts in some sensitive areas that showed a relatively high incidence of inter-communal offences; observation at a number of Cyprus police stationary checkpoints; joint patrols with Cyprus police; and village patrols supplementing those by UNFICYP troops.

(f) Activities of UNFICYP to facilitate a return to normal conditions

497. The internal strife and the unsettled conditions in Cyprus brought about a disruption and at times a paralysis in many of the activities performed by both the public and private sectors for the benefit of the community as a whole. Through persuasion, negotiations, the provision of protection, the seeking of agreements and other arrangements made with the Government and both communities, UNFICYP endeavoured to assist in normalizing the conditions prevailing.

498. When he first defined the guiding principles that were to govern the activity of UNFICYP, the Secretary-General stressed the main objectives to be pursued by the Force in exercising its function of contributing towards a return to normal conditions. The aide-mémoire of 27 October 1964 and that of

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607 Ibid., Suppl. for April-June, p. 247, 5/6426, paras. 35-38.
608 Ibid., Suppl. for April-June, p. 106, 5/6228, paras. 48 and 49.
610 Ibid., p. 105, 5/6779, paras. 4 and 5.
611 Ibid., p. 105, 5/6779, paras. 4 and 5.
613 S C, 20th yr., Suppl. for April-June, p. 106, 5/6228, paras. 112-118.
615 Ibid., Suppl. for April-June, p. 106, 5/6228, paras. 112-118.
616 S C, 19th yr., Suppl. for April-June p. 87, 5/5671, annex I. See also para. 461 above.
produce intended for domestic consumption or export, the protection of government property and the operation of government-owned plants and the survey of damaged property. UNICYP endeavoured to promote the normalization of public services which had been adversely affected by conditions in Cyprus. Efforts in that area were related to such matters as postal, telephone and telecommunication services, as well as other public utilities, re-employment of and payment of arrears to Turkish Cypriot civil servants, payment of social benefits, the functioning of the Department of Lands and Surveys, individual and collective claims of Turkish Cypriots on public revenue and the restoration of government property to use.

UNICYP assisted in alleviating the problem of refugees and distressed persons by helping to provide shelter for refugees, co-operating in humanitarian relief activities and encouraging and assisting the return of displaced persons to their home localities.

Communal strife in Cyprus brought about the partial disruption of the functioning of the courts and the administration of justice. The situation was particularly serious in Nicosia, where the administration...
of justice was brought almost to a complete standstill because Greek Cypriots would not enter the Turkish section of the city where the courts of justice were located. That situation prompted the Government to relocate the District Court of Nicosia in the Greek Cypriot sector of the city, but that arrangement did not resolve all the difficulties.

505. UNFICYP was instrumental, early in the course of the operation (April-May 1964), in making security arrangements which enabled Turkish Cypriot judges of the Republic to resume attendance at the courts in Government-controlled areas, including Nicosia. With the assistance of UNFICYP, practical arrangements were worked out to ensure the complete freedom of movement of all judges of the Republic throughout the island. The position of the judges was, however, subsequently made subject to certain reservations of principle, since the Turkish Cypriot leadership held the view that Government-enacted legislation concerning the administration of justice was unconstitutional. UNFICYP took the position that any attempt by it to influence the Government in the matter would go beyond its mandate. Turkish Cypriot litigants and police officers continued in practice to refuse to attend the courts of the Republic; moreover, access to all areas under Turkish Cypriot control continued to be denied to Greek Cypriots, including officers of the law.

506. On 3 June 1966, after an incident involving the humiliating treatment of a Turkish Cypriot judge, the Turkish Cypriot leadership announced that Turkish Cypriot judges would henceforth be free to discontinue attending their offices, and those judges in fact refrained thereafter from sitting in the courts. The Secretary-General appealed to the Government and to the Turkish Cypriot leadership to make it possible for the courts to resume functioning normally, but that appeal produced no results.

507. The difficulties that UNFICYP had to face in facilitating a return to normal conditions in Cyprus were stated by the Secretary-General as follows:

"... a return to normal conditions is made by one or both communities in Cyprus to depend almost wholly on progress towards a settlement of the main political issue and that progress in this direction is dependent upon their determination to achieve it. In the present situation, as part of the paralyzing mistrust between them, the tendency exists in the Government and in the Turkish Cypriot leadership to see each small step on the road towards normality as an erosion of their political position. This attitude makes UNFICYP's efforts to reconcile opposing points of view and to find practical solutions an exacting task requiring great patience and resourcefulness."

6. FUNCTIONS EXERCISED UNDER SECURITY COUNCIL RESOLUTIONS WITH RESPECT TO THE INDIA-PAKISTAN QUESTION

508. Early in August 1965 hostilities broke out between India and Pakistan along the cease-fire line agreed to by both countries in 1949 in Jammu and Kashmir and along the border between India and West Pakistan.

509. In a report to the Security Council on 3 September 1965, the Secretary-General concluded that the 1949 cease-fire agreement had collapsed, and he described the grave situation in Kashmir as a potential threat to the regional as well as the broader peace. Since 9 August he had made urgent and strong appeals for restraint to both India and Pakistan. He had also considered the publication of a statement about the cease-fire violations, and subsequently the dispatch of a personal representative, but in view of the reaction of both parties had refrained from so doing. On 26 August Lieutenant-General Robert H. Nimmo, the Chief of the United Nations Military Observer Group in India and Pakistan (UNMOGIP), whom he had called for consultations at United Nations Headquarters, reported a steady escalation of the fighting. On 1 September the Secretary-General therefore requested both parties to indicate their intention to respect the cease-fire agreement and, consequently, to afford co-operation with and freedom of movement to the United Nations observers in discharging their task of supervising that cease-fire.

510. An urgent meeting of the Security Council was called by its President on 4 September to consider the situation.

a. Functions of the Secretary-General under Security Council resolutions 209 (1965), 210 (1965) 211 (1965) and 215 (1965)

511. The principal tasks assigned to the Secretary-General by the Security Council were set forth in its resolutions 209 (1965), 210 (1965), 211 (1965) and 215 (1965). They were:

(a) to report on responses to the Council's calls for a cease-fire (all four resolutions);
(b) to strengthen UNMOGIP (resolutions 210 (1965) and 211 (1965));
(c) to give the necessary assistance to ensure the supervision of the cease-fire and the withdrawal of all armed personnel (resolutions 211 (1965) and 215 (1965)).

512. Ibid., para. 88.
513. See also this Supplement under Articles 25 and 29.
514. Ibid., para. 176.
In implementing those tasks the Secretary-General, in addition to strengthening UNMOGIP:

(i) established the United Nations India-Pakistan Observation Mission (UNIPOM);

(ii) appointed a special representative on withdrawals.

512. In its resolution 209 (1965), adopted unanimously on 4 September, the Security Council called for an immediate cease-fire and requested the Secretary-General to report within three days on its implementation.

513. On 6 September the Secretary-General reported urgently that no official response had been received from either Government to the call for a cease-fire and that reports from the head of UNMOGIP indicated that the conflict was broadening and intensifying.

514. On the same day the Council, in its unanimously adopted resolution 210 (1965), noted with deep concern the extension of the fighting, called on the parties to cease hostilities immediately, and requested the Secretary-General “to take all measures possible to strengthen” UNMOGIP and to keep the Council promptly and currently informed on the implementation of its resolutions 209 (1965) and 210 (1965), and on the situation in the area of conflict.

515. On the next day, 7 September in order to carry out his mandate under the Council’s resolutions, the Secretary-General left for the sub-continent. He was in Rawalpindi from 9 to 11 September and in New Delhi from 12 to 15 September and returned to New York on 16 September, on which date he submitted a preliminary report to the Security Council. He had met with the Heads of State and Government and with senior officials of both Pakistan and India. On 12 September he addressed appeals to President Ayub Khan of Pakistan and Prime Minister Shastri of India for an unconditional cease-fire to begin on 14 September, and in a subsequent message responsive to a request by India he postponed the proposed effective time to 15 September. Since the replies of the parties, received on 14 September, both contained conditions and qualifications upon which, the Secretary-General stated, he had “no right under the Security Council resolutions to give firm undertakings”, he addressed them on the same day, pending Security Council consideration of those conditions, a further proposal for an unconditional cease-fire to begin on 16 September.

516. In a second report to the Council on 16 September, the Secretary-General suggested, inter alia, that the Council might request the Heads of the two Governments to meet as soon as possible, and also that the Council might “consider the possibility of creating and making available a small committee to assist in such talks, should its services seem useful and desirable to the two parties”. In addition, the Secretary-General indicated that he had taken immediate steps to obtain extra transport and communications equipment to facilitate the task of UNMOGIP, and had made provisional arrangements to increase the number of military observers at short notice, should developments make that increase necessary.

517. On 20 September the Security Council, in its resolution 211 (1965), noted that no cease-fire had come into being, demanded that one take effect on 22 September and that subsequently all armed personnel be withdrawn to the positions held before the outbreak of hostilities on 5 August, and requested the Secretary-General “to provide the necessary assistance to ensure supervision of the cease-fire and the withdrawal of all armed personnel”.

518. On 21 September the Secretary-General reported to the Council his “intention to deploy, at least initially, a team of approximately 100 military observers with the necessary logistical and staff support” (i.e. some 60 supporting civilian personnel) to supervise the cease-fire and withdrawals demanded by resolution 211 (1965). He had informally approached Governments regarding the possibility of providing military observers on very short notice, and in particular the Governments already providing observers for UNMOGIP to make available additional persons for that group; in addition, tentative plans were made to transfer some observers from UNMOGIP and from the United Nations Truce Supervision Organization in Palestine (UNTSO) to carry out the new tasks should a cease-fire come into effect.

519. On 23 September the Secretary-General reported that because of the differences in origin and functions between the observers to be charged with supervising the cease-fire of the previous day and any subsequent withdrawals, and the existing UNMOGIP, he had

\[846\] Ibid., p. 269, S/6661.
\[844\] Ibid., p. 295, S/6683.

\[847\] Ibid., p. 308, S/6686.
\[848\] Ibid., para. 9(a).
\[849\] Ibid., para. 10.

\[850\] Subsequently both Governments agreed to such a cease-fire, which became effective at 22.00 G.M.T. on 22 September (ibid., p. 334, S/6699/Add.2).
\[851\] Ibid., p. 329, S/6699, paras. 11-16.
\[852\] Ibid., p. 335, S/6699/Add. 3 and p. 348, S/6710, para. 1.
decided to organize the new group as the United Nations India-Pakistan Observation Mission (UNIPOM).\(^{853}\) The two groups would be administratively and operationally closely co-ordinated. Pending the arrival of new observers to be provided by Governments, 13 observers from UNMOGIP and 15 from UNTSO were being detailed to the new group, and General Nimmo was placed in temporary charge of UNIPOM.

520. On 28 September Major-General Bruce F. Macdonald assumed his duties as Chief Officer of UNIPOM.\(^{854}\) General Nimmo continued to exercise overseeing functions with regard to both UNIPOM and UNMOGIP.\(^{856}\)

521. On 4 October the Secretary-General communicated to the Security Council the basic points in the instructions he had given to General Macdonald with regard to the functions and scope of UNIPOM and the activities of the observers.\(^{856}\) Those made it clear that the primary duty of the unit was to observe and report, through the Chief Officer, directly to the Secretary-General. While observers were expected to do all they reasonably could to persuade local commanders to restore and observe the cease-fire when firing occurred they had no authority to order or command. They were to wear national uniforms with United Nations headgear and insignia, carry no arms, and serve as individuals and never as national teams. The operations of UNIPOM were to be carried out as unobtrusively as possible, with minimum contacts with the people of the country but close co-operation with local military commands on both sides of the line. The Chief Officer issued a series of operational instructions in October, including \emph{inter alia} the procedure for handling complaints and investigating alleged cease-fire violations.

522. On 14 October the Secretary-General reported on the strength and organization of the two units.\(^{857}\) Ten Member States (Brazil, Burma, Canada, Ceylon, Ethiopia, Ireland, Nepal, the Netherlands, Nigeria and Venezuela) were providing 90 observers to UNIPOM, who were temporarily supplemented by 13 from UNMOGIP and 15 from UNTSO. UNMOGIP had meanwhile been increased from 43 to 102 observers (of whom 13 were temporarily serving with UNIPOM) from 11 Member States (Australia, Belgium, Canada, Chile, Denmark, Finland, Italy, New Zealand, Norway, Sweden and Uruguay). The Secretary-General indicated that the estimated costs of UNIPOM for three months were $1,427,000 and for strengthening UNMOGIP for one year $2,000,000.\(^{858}\)

523. Meanwhile on 25 September, the Secretary-General had reported\(^{859}\) that many complaints of violations of the cease-fire had been submitted by both sides to the military observers, who had undertaken to investigate them all. From October 1965 through January 1966 the Secretary-General reported\(^{860}\) at intervals on the implementation of the cease-fire and on investigations of charges of violations. A gradual improvement was noted in the observance of the cease-fire, although serious clashes continued to occur in certain areas.

524. On 15 December the Secretary-General reported\(^{861}\) that India and Pakistan had informed him of their desire that the United Nations continue its observer functions after 22 December. He had therefore made arrangements to continue UNIPOM for a second period of three months and to maintain the added strength of UNMOGIP possibly throughout 1966. He estimated the cost of the UNIPOM extension at $819,000, and revised the estimates for strengthening UNMOGIP to $830,000 for 1965 and $1,740,000 for 1966.\(^{862}\)

525. On 30 December the Secretary-General reported\(^{863}\) that the Chiefs of Staff of both parties had informed the heads of UNMOGIP and UNIPOM of their intention to order a cessation of firing by all formations, except in self-defence, effective 26 December. That led to a general relaxation of tension.

526. In his report of 23 February 1966\(^{864}\) the Secretary-General stated that UNIPOM would cease all functions as of 1 March and be disbanded not later than 22 March 1966. In consultation with the two Governments, there would be a gradual reduction of those observers recruited to augment the strength of UNMOGIP.

(ii) Appointment of a special representative on withdrawals

527. On 14 October 1965 the Secretary-General reported\(^{865}\) that since United Nations military observers with the function of ensuring supervision of the cease-fire and the withdrawal of all armed personnel were stationed throughout the area of conflict and that the cease-fire was becoming increasingly effective, he had appealed to both parties to take the necessary}

\(^{853}\) See also paras. 533-542 below for an analysis of the subsequent debates concerning this separation.


\(^{855}\) Ibid., p. 3, S/6699/Add.7, para. 3.

\(^{856}\) Ibid., para. 2.

\(^{857}\) Ibid., p. 5, S/6699/Add. 9.

\(^{858}\) The expenses of UNIPOM and the additional expenses incurred in strengthening UNMOGIP were initially covered under General Assembly resolutions 2004 (XIX) and 2126 (XX) relating to unforeseen and extraordinary expenses (S C, 20th yr., Suppl. for Oct.-Dec., p. 1, S/6699/Add. 6; p. 5, S/6699/Add. 9; p. 14, S/6699/Add. 11). Supplementary estimates in respect of those expenditures were submitted to the General Assembly on 15 December 1965 (G A (XX), Annexes, a.i. 76, A/C. 5/1050).

\(^{859}\) S C 20th yr., Suppl. for July-Sept., p. 348, S/6710.


\(^{862}\) See foot-note 858 to paragraph 522 above.


steps to bring about the withdrawals called for in the Security Council's resolutions. He has suggested, if each party did not find it feasible to formulate its own plan and schedule of withdrawal, that appropriate military representatives of both sides be brought together by and with an acceptable representative designated by the Secretary-General, either in the area or at United Nations Headquarters, for the purpose of formulating an agreed withdrawal plan.

528. On 22 October the Secretary-General reported that it had been agreed between the parties that the supervision of the cease-fire and the negotiation of the withdrawals should not be telescoped into a single operation. He himself was convinced that it would be impossible for one person to undertake responsibility for both of those efforts, which was why he had in mind to designate a thoroughly experienced senior officer in the United Nations family to be the representative on the matter of withdrawals. Accordingly he proposed Major-General Systeno Sarmento of Brazil, as Commander of UNEF in Gaza and Sinai.

529. On 5 November the Secretary-General, in its resolution 215 (1965), regretted the delay in the full achievement of a complete and effective cease-fire and a prompt withdrawal of armed personnel to positions held before 5 August, and demanded the prompt and unconditional execution of the proposal already agreed to in principle by both parties “that their representatives meet with a suitable representative of the Secretary-General, to be appointed without delay after consultation with both parties, for the purpose of formulating an agreed plan and schedule for the withdrawals by both parties”.

530. On 25 November the Secretary-General reported that General Sarmento would not be available for that task but that both parties had agreed to receive and co-operate with Brigadier-General Tulio Marambio of Chile. The latter arrived in the subcontinent on 6 December 1965. On 15 December the Secretary-General reported on arrangements to prolong his mission.

531. After separate consultations with each side, General Marambio arranged for a number of joint meetings of the military representatives of India and Pakistan, which took place under his auspices on 3, 6, 15, 25 and 29 January 1966, alternately at United Nations operational headquarters in Lahore (Pakistan) and Amritsar (India). The military representatives were transported to those sites by United Nations aircraft and vehicles.

532. At the joint meeting on 15 January the military representatives of the parties agreed on the principles of a plan and schedule for withdrawals. The plan for disengagement and withdrawal was agreed upon by the chief military leaders of both parties at New Delhi on 22 January and was communicated by India to General Marambio on 23 January. The resulting agreement was signed by the two representatives and by General Marambio on 29 January 1966. It provided for implementation in two stages: disengagement of troops and removal and nullification of defences; and withdrawal of troops from occupied areas. The parties also agreed that General Marambio might be requested to use his good offices to resolve, with binding effect, any disagreement between them they could not solve themselves, but that his functions in that regard would cease no later than 28 February 1966. By 31 January disengagement had been completed without incident, and by 25 February the withdrawal provisions had been fulfilled by both parties on schedule.

b. The question of the mandate of the Secretary-General in regard to the expansion of UNMOGIP and the establishment of UNIPOM

533. In an aides-mémoire dated 24 September 1965 and a letter dated 30 September 1965 India sought clarification concerning the Secretary-General's decision to entrust the supervision of the cease-fire and the withdrawals in areas outside of Kashmir to the newly established UNIPOM, while leaving similar responsibility in Kashmir to UNMOGIP. India expressed the view that the supervision of the cease-fire should be ensured through a single observer organization under one command "in the entire area of conflict" as demanded by Council resolution 210 (1965).

534. In reply the Secretary-General pointed out that in the purely administrative action of separating the cease-fire operations within and outside of Kashmir, there was no suggestion of treating the conflict between India and Pakistan and the supervision of the cease-fire and the withdrawals otherwise than as a whole. In the discharge of his functions under Security Council resolution 211 (1965), the Secretary-General had been convinced that he could most effectively be of assistance by the creation of a new ad hoc operation in addition to UNMOGIP. He recalled that the origin of the latter could be found in the resolution of the United Nations Commission for India and Pakistan of 13 August 1948 and the "Karachi Agreement" of 27 July 1949 establishing a cease-fire line in the State of Jammu and Kashmir. Although Security Council resolution 210 (1965) of 6 September requested him to strengthen UNMOGIP, the scope of UNMOGIP obviously continued to be the cease-fire line in the State of Jammu and Kashmir; the Secretary-General had no authority to extend it beyond that line. As the conflict between India and Pakistan had, however,
extended beyond that line to the borders of the two countries, it had been necessary, in the absence of any Security Council resolution expanding the scope and authority of UNMOGIP, to set up a new operation in order to carry out fully the Council's directive. The Secretary-General had, however, pointed out in his message of 23 September to both parties that the two operations would be "closely co-ordinated, administratively and operationally". Moreover, the Secretary-General had asked the Chief of UNIPOM to establish and maintain the closest possible direct links with General Nimmo, the Chief Military Observer of UNMOGIP. The latter also exercised an overseeing function with regard to both operations.

535. In a letter of 2 October 1965 to the representative of India, the Secretary-General expressed his personal view that a single operation would have sufficed if agreement to that effect had been forthcoming from both parties, but in the prevailing circumstances, that possibility was remote.

536. In a letter to the Secretary-General dated 5 October 1965, the representative of Pakistan stated that any attempted merger of the two observer operations would be illegal and arbitrary.

537. The India-Pakistan question was discussed in the Security Council on 25, 27 and 28 October 1965 and 5 November 1965. During the discussion on 25 October one representative stated:

"Without challenging the emergency measures which the Secretary-General may be led to take, we consider that it is for the Security Council, taking into account the information the Secretary-General gives it, to decide on the size and the command, as well as the principal characteristics, of the mission or force it has established. The Council . . . should make sure that the proposed methods correspond, at all stages, with the political data about the problem as assessed by the Council itself. We consider that in that kind of a framework, the Secretary-General's action would avoid the difficulties which would not fail to arise if his terms of reference were defined too vaguely, thus leaving the door open to deep differences of interpretation on the part of members of the Council."

538. Another representative asserted that the Security Council by its resolutions 210 (1965) and 211 (1965) had not instructed the Secretary-General to create a new observation mission. He went on to say that measures were being taken not to "strengthen the United Nations Military Observer Group in India and Pakistan" but to expand it considerably. That was a substantially new departure. In addition, a completely new body was being set up. If the Council had really intended to set up a new group, then it would have taken a clear decision to that effect. That representative later reiterated his position and maintained that the action taken by the Secretary-General was at variance with the basic provisions of the Charter and that it was the Council that must decide such questions as the functions of military observers, their number, their command, their terms of reference, the financing of their activities and the duration of their mission. Important questions concerning the United Nations military observers continued to be decided outside the Council, and the question of principle and constitutionality had not been given due consideration, he said.

539. Other members of the Council expressed the view that the Secretary-General's actions had not exceeded the mandate given to him under the Council's resolutions. On the contrary, having been given the authority to mobilize the strength of observers which he felt would meet the emergency, he had in fact been authorized to do precisely what he had done.

540. India informed the Secretary-General on 5 October 1965 that "as a victim of aggression, in accordance with the spirit and the letter of General Assembly resolution 1874 (S-IV), it cannot be expected to participate in the financing of the expenses" of UNIPOM. During the consideration of the supplementary estimates for UNMOGIP in the Fifth Committee India stated that it could share in its expenses only at the level regarded as normal on and before 5 August 1965.

541. Pakistan informed the Secretary-General on 1 November 1965 that it would make known its views at the appropriate time on "the principles which should govern the sharing of the costs of observer missions in Kashmir and on the India-Pakistan border". In the Fifth Committee the delegation of Pakistan supported the appropriations in question.

542. One representative stated in the Fifth Committee, during the consideration of the revised estimates for the strengthening of UNMOGIP that his delegation would abstain if those estimates were put to the vote because, instead of a strengthening of UNMOGIP, a considerable expansion had taken place contrary to the Charter. He said that it was for the Security Council to approve all aspects of the measures taken to strengthen UNMOGIP, including additional observers, equipment and other supplies, and also to decide on the inclusion of such expenses in the regular budget of the United Nations. During the consideration of the revised estimates for UNIPOM in the Fifth Committee at the twenty-first session, that delegation and

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875 Ibid., Suppl. for Oct.-Dec., p. 3, S/6699/Add.7, paras. 2(g) and 3.
876 On 4 January 1966 General Nimmo died at Rawalpindi. His functions were assumed by Colonel J. H. J. Gauthier as Acting Chief Military Observer. On 2 June 1966 Major-General Luis Tassara Gonzales was appointed Chief Observer.
877 Ibid., p. 161, S/6751.
878 S C, 20th yr., 1247th mtg.: France, para. 268.
879 Ibid., USSR, paras. 274 and 275.
several other delegations for similar reasons expressed their opposition to the adoption of the budgetary appropriation by the General Assembly. On the other hand, another delegation supported the proposals for financing that operation, and India and Pakistan reiterated their previous positions.

7. Functions exercised under a Security Council resolution with respect to the situation in Yemen

a. Preliminary steps taken by the Secretary-General on his own initiative

543. On 29 April 1963 the Secretary-General informed the Security Council of certain consultations he had conducted since the fall of 1962 with representatives of the Governments of the Arab Republic of Yemen, Saudi Arabia and the United Arab Republic concerning certain aspects of the situation in Yemen of external origin. He had received from each of the three Governments, in separate communications, formal confirmation of their acceptance of identical terms of disengagement in Yemen, under which a demilitarized zone was to be established extending 20 kilometres on each side of the demarcated Saudi Arabian-Yemen border. Impartial observers were to be stationed there to check on the disengagement and to certify, beyond the demilitarized zone, if necessary, the suspension of activities in support of the Yemeni Royalists from Saudi Arabian territory and the withdrawal of the United Arab Republic forces sent into Yemen at the request of the latter’s Government. The United Arab Republic and Saudi Arabia further undertook to co-operate with a representative of the Secretary-General or some other mutually acceptable intermediary in reaching agreement on the modalities and verification of disengagement. With the consent of the parties, the Secretary-General asked the Chief of Staff of the United Nations Truce Supervision Organization (UNTSO) in Jerusalem to go to the three countries to consult with the appropriate authorities on details relating to the nature, functioning and number of United Nations observers that would be required to implement the terms of disengagement.

544. In a report on 27 May 1963 the Secretary-General emphasized the urgent need for United Nations observers in the Saudi Arabia-Yemen area and affirmed that their presence was desired by all the parties. He estimated that 200 men might be required for not more than four months, and stated that in view of the urgency of the need for the observers for a peaceful resolution of the Yemen issues, he intended to proceed with the establishment of the operation as soon as the necessary arrangements for the men and their requirements could be made.

545. In reports on 3 and 7 June the Secretary-General submitted a statement showing the estimated costs of the observer mission and informed the Council that the United Arab Republic and Saudi Arabia had agreed to defray those costs. There would, therefore, be no financial implications for the United Nations in establishing the mission and maintaining it for an initial two-month period.

b. Security Council resolution 179 (1963)

546. In a letter dated 8 June 1963 to the President of the Security Council, the representative of the Soviet Union requested a meeting of the Council to consider the Secretary-General’s reports on developments relating to Yemen, since they contained “proposals concerning possible measures by the United Nations to maintain international peace and security, on which under the Charter, decision are taken by the Security Council”.

547. When the Council met on 11 June, the Secretary-General stated that from informal talks with members of the Council he had the firm impression that everyone was agreed that the observation function should be provided. The parties concerned were agreed on the need, had indeed asked for it, and were prepared to bear the cost for a two-month and possibly a four-month period.

548. On the same day, the Council adopted, by 10 votes to none with 1 abstention, resolution 179 (1963), whereby, concerning “certain aspects of the situation in Yemen of external origin”, it noted with satisfaction the Secretary-General’s initiative aimed at achieving a peaceful settlement and “ensuring against any developments in that situation which might threaten the peace of the area”. It also noted with satisfaction the acceptance by the parties of the terms of disengagement and the agreement of the Governments of Saudi Arabia and the United Arab Republic to defray for two months the expenses of the United Nations observation function called for in those terms. It requested the Secretary-General to establish the observation operation as he had defined it and to report to the Council on implementation of the resolution.

c. Establishment, operation, extension and termination of the United Nations Yemen Observation Mission (UNYOM)

549. Upon the adoption of Security Council resolution 179 (1963), the Secretary-General appointed Major General Carl Carlson von Horn, Chief of Staff of UNTSO, as Commander of the United Nations

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889 G A (XXI), 5th Com., 1122nd mtg.: Romania, para. 9; USSR, para. 11; Byelorussian SSR, para. 37.
890 Ibid., United States, para. 20.
891 Ibid., India, para. 44; Pakistan, paras. 18 and 54.
892 See also this Supplement under Article 29. It should be noted that the situation discussed herein relates primarily to a conflict within Yemen and at its northern border; incidents along the southern border were the subject of complaints by Yemen and the United Kingdom against each other — see this Supplement under Article 26(4), paras. 170-177, and Article 51, paras. 18-20.
893 S C, 18th yr., Suppl. for April-June, p. 33, S 5298.
894 See paras. 678-681, below.
895 S C, 18th yr., Suppl. for April-June, p. 46, S/5321.
896 Ibid., p. 48, S/5323, and p. 50, S/5325.
897 Ibid., p. 51, S/5326.
898 S C, 18th yr., 1038th mtg., para. 3.
899 General von Horn resigned as Commander of UNYOM as of 31 August 1963. After several changes in command, Mr. Pier P. Spinelli, upon being appointed Special Representative of the Secretary-General for Yemen (see para. 558 below), was also appointed Head of UNYOM.
Yemen Observation Mission (UNYOM). The latter arrived in Yemen, at the head of an advance party, on 13 June 1963. The headquarters of the Mission was established in Sana, with a liaison office in Jidda. The operation of UNYOM began on 4 July.

Further in his report of 4 September 1963, the Secretary-General stated that, on the military side, UNYOM had a reconnaissance unit of 114 Yugoslav officers and other ranks transferred from the United Nations Emergency Force (UNEF), and an air unit of about 50 officers and other ranks provided by the Royal Canadian Air Force and using both planes and helicopters. Elements of both units were stationed in various locations on both sides of the Saudi Arabian-Yemen border. In addition there was a civilian staff, based at Sana, consisting of 28 international staff members and 20 locally recruited employees.

The Secretary-General recalled that the function of UNYOM was “to check and certify on the observance by the two parties of the terms of the disengagement agreement”, which entailed both ground and air patrolling. However, under the terms of the agreement on disengagement, UNYOM had no peacekeeping role beyond observing, certifying and reporting, and indeed it did not have the personnel, equipment or funds to undertake any broader functions. It was not concerned with Yemen’s internal affairs, the actions of its Government or that Government’s relations with other Governments and bordering territories. UNYOM had no authority to issue orders or directions; the parties themselves were solely responsible for fulfilling the terms of disengagement on which they had agreed.

Later, as insufficient progress had been made towards effective implementation of the disengagement agreement within the originally established period, the Secretary-General approached the Governments of Saudi Arabia and the United Arab Republic and received assurances that they would defray the expenses of the Yemen operation for a further two-month period from 4 September 1963.

Just before the expiration of the extended period the Secretary-General reported to the Security Council on 28 October 1963 that, in the absence of concrete evidence that the agreement on disengagement would be implemented within a specified period, Saudi Arabia was unwilling to make a financial commitment to cover the costs of UNYOM for a further period. Preparations were therefore being undertaken for the withdrawal of the Mission. In that connexion the Secretary-General also expressed his dissatisfaction with the mandate of UNYOM, as being “so limiting and restrictive as to make it virtually impossible for UNYOM to play a really helpful and constructive role in Yemen”. He therefore intended, if the parties agreed, to replace UNYOM by a “civilian United Nations presence in the area”, the cost of which would be small. A few days later, however, the Secretary-General reported that arrangements for continued financing of the Mission had been made, and he had decided to extend UNYOM for a further period of two months, to which, in informal consultations with Council members, he found there was no objection.

On 2 January 1964 the Secretary-General reported, inter alia, on certain changes in the deployment and composition of UNYOM. In particular, the reconnaissance unit had in part been replaced by a group of 22 military observers from nine countries: Denmark, Ghana, India, Italy, Netherlands, Norway, Pakistan, Sweden and Yugoslavia.

In subsequent reports between January and July 1964, the Secretary-General informed the Council that since the task of UNYOM had not yet been completed, he had sought and received assurances from the Governments of Saudi Arabia and the United Arab Republic that they would continue to defray the costs of the Mission for further two-month periods. After again consulting the members of the Council informally, the Secretary-General had therefore repeatedly extended the Mission. However, in his report of 2 July 1964, he stated that if no substantial progress towards fulfilment, or the firm prospect of imminent fulfilment, of the disengagement agreement were registered in the succeeding two-month period, he would find it difficult to envisage a further extension of UNYOM “in its present form, and with its present terms of reference and purpose”.

In his report of 2 September 1964 the Secretary-General confirmed that statement. He noted that the observations of the period since 4 July had been somewhat more encouraging, for there had been a substantial reduction in the strength of the forces of the United Arab Republic, although that appeared to be a reflection of its improved military situation in Yemen rather than the beginning of a phased withdrawal in the sense of the disengagement agreement. On the other hand, it seemed that the Yemeni Royalists continued to receive military supplies from external sources. In the light of those circumstances and in accordance with the express wishes of the parties concerned, he had decided to terminate the activities of UNYOM on 4 September 1964. Although it was regrettable that only limited progress had been made towards the implementation of the disengagement agreement, the potential threat to international peace and security in the area had been greatly diminished, to a considerable extent because of the activities of the Mission. While admitting that the effects of the withdrawal of the Mission could not be predicted, he hoped there would be no intensification of the fighting.

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900 Ibid., pp. 51 and 52, S/5447/Add.1 and 2.  
901 Ibid., para. 5.  
902 Ibid., paras. 3 and 4.  
903 Ibid., paras. 6 and 7.  
904 Ibid., para. 19.  
905 S C, 18th yr., Suppl. for July-Sept., p. 152, S/5412, para. 2.  
906 Ibid., para. 8.  
907 Ibid., p. 225, S/5927.  
908 Ibid., paras. 10-12.  
909 Ibid., paras. 13 and 14.
The Secretary-General remained convinced that a meeting at the highest level between Saudi Arabia and the United Arab Republic would provide the best means for significant progress towards disengagement and peace and stability in Yemen.\footnote{\textit{Ibid.}, para. 15.}

557. On 11 September 1964 the Secretary-General reported to the Council that his decision to terminate the activities of the Mission on 4 September had been effected on that date.\footnote{\textit{Ibid.}, p. 366, S/5959.}

\textbf{d. Appointment by the Secretary-General of a Special Representative for Yemen}

558. On 4 November 1963 the Secretary-General appointed Mr. Pier P. Spinelli, Under Secretary-General and Director of the United Nations Office at Geneva, as his Special Representative for Yemen and Head of UNYOM. In reporting the appointment to the Council, he stated\footnote{\textit{Ibid.}, Suppl. for Jan.-March, p. 4, S/5501, paras. 3 and 4.} that he had considered that the Mission, with its limited mandate, should be complemented by a United Nations political presence which be able, by exploratory conversations with the parties, to play a more positive role in encouraging the implementation of the disengagement agreement. Mr. Spinelli arrived in Yemen on 9 November. He held extensive discussions with the three Governments concerned so as to ascertain whether there were areas of agreement which might, through bilateral discussions or otherwise, lead to further progress towards disengagement and a peaceful situation in Yemen. The Secretary-General stated that those efforts had begun in an encouraging manner.\footnote{\textit{Ibid.}, para. 23.}

559. On 2 September 1964, the Secretary-General reported\footnote{\textit{Ibid.}, Suppl. for July-Sept., p. 255, S/5927, para. 9.} that his Special Representative had visited the United Arab Republic, Saudi Arabia and Yemen again, early in August, and had held discussions with the authorities. However, the hoped-for direct high-level discussions between Saudi Arabia and the United Arab Republic had not taken place, and there was no certainty that they would.

8.\textbf{ Functions exercised under Security Council resolutions with respect to the situation in the Dominican Republic}\footnote{See this \textit{Supplement} under Articles 52-54.}

\textit{Introductory note}

560. In April 1965 fighting broke out in the Dominican Republic. By a letter\footnote{\textit{Ibid.}, 1212th mtg., para. 208.} dated 29 April the representative of the United States notified the Security Council that his Government had been informed by the military authorities in the Dominican Republic that American lives were in danger, that their safety could no longer be guaranteed and that the assistance of American military personnel was required. The President of the United States had therefore ordered troops ashore to protect American citizens and escort them to safety. In addition, the United States had requested the Council of the Organization of American States (OAS) to consider the situation.\footnote{\textit{Ibid.}, 1209th mtg., paras. 56 and 57.}

561. By a letter\footnote{\textit{Ibid.}, Suppl. for April-June, p. 127, S/6358.} of 1 May 1965, the representative of the Soviet Union requested “an urgent meeting of the Security Council to consider the question of the armed interference by the United States in the internal affairs of the Dominican Republic”.

\textbf{a. Terms of Security Council resolutions and decisions}

562. On 14 May the Security Council unanimously adopted resolution 203 (1965) in which it called for a strict cease-fire and invited the Secretary-General to send, as an urgent measure, a representative to the Dominican Republic for the purpose of reporting to the Council on the situation there.

563. On 19 May the President of the Council made a statement in which he requested the Secretary-General, in accordance with the unanimous desire of the members of the Council, to convey to the latter’s Representative in Santo Domingo the Council’s desire that his urgent efforts be devoted to securing an immediate suspension of hostilities so that the humanitarian work of the Red Cross in searching for the dead and wounded might be facilitated.\footnote{\textit{Ibid.}, 1233rd mtg., para. 2. The Council did not discuss the situation again after its meeting on 26 July, but was kept informed of developments by the Secretary-General and through reports submitted by the OAS pursuant to Article 54 of the Charter.}

564. On 22 May the Council adopted by 10 votes to none, with 1 abstention, resolution 205 (1965), whereby it requested that the suspension of hostilities in Santo Domingo be transformed into a permanent cease-fire and invited the Secretary-General to report to it on the implementation of that request.

565. On 26 July the President of the Council summed up\footnote{\textit{Ibid.}, Suppl. for April-June, p. 70, S/6316.} the agreed views of the Council members, who considered it necessary for the Council to continue to watch the situation in the Dominican Republic closely and for the Secretary-General to continue to report on that situation.

\textbf{b. Action taken by the Secretary-General}

\textit{(i) Appointment of a Representative}

566. On 14 May, after the adoption of Security Council resolution 203 (1965), the Secretary-General informed\footnote{\textit{Ibid.}, 1212th mtg., para. 208.} the Council that a small advance party of Secretariat staff members led by his military adviser, Major-General I. J. Rikhye, was leaving New York for the Dominican Republic that night.

567. The next day, the Secretary-General reported\footnote{\textit{Ibid.}, 1233rd mtg., para. 2. The Council did not discuss the situation again after its meeting on 26 July, but was kept informed of developments by the Secretary-General and through reports submitted by the OAS pursuant to Article 54 of the Charter.} that he had appointed Mr. José Antonio Mayobre of Venezuela, Executive Secretary of the United Nations Economic Commission for Latin America, as his
Representative. The latter was scheduled to arrive in the Dominican Republic on 18 May and was instructed to notify the parties concerned immediately and formally of the Security Council's call for a strict cease-fire and to convey to them the Secretary-General's most pressing and earnest appeal to heed that call. The two Dominican factions engaged in the fighting were the "Constitutional Government" under Colonel Francisco Caamaño Deño and the "Government of National Reconstruction" under General Antonio Imbert Barreras.

568. In his report dated 19 May 1965, the Secretary-General stated that his Representative had advised him that as of 18 May very serious fighting was still going on. In view of the extremely grave situation described by his Representative, the Secretary-General had requested the United States Government to use its good offices to urge the opposing forces to heed the call of the Security Council for a strict cease-fire.

(ii) Negotiation of cease-fires

569. On 20 May the Secretary-General reported that his Representative had on the morning of 19 May met with representatives of the Dominican Red Cross, the International Red Cross and the Pan American Sanitary Bureau and suggested that they meet with the leaders of the two factions and request a 12-hour suspension of hostilities to remove the dead and wounded from the battle areas. On 21 May the Secretary-General reported that negotiations by his Representative with the leaders of the two factions for a 24-hour suspension of hostilities to begin on 21 May had been successfully concluded. On 22 May the Secretary-General reported that the 24-hour cease-fire had been observed with the exception of some shots fired during the night.

570. On 22 May the Secretary-General also reported that Colonel Caamaño had accepted an extension of the 24-hour cease-fire but that General Imbert had not, although in a subsequent statement to the press the latter had stated that "the Government of National Reconstruction will abstain from resumption of fire, unless it is provoked".

571. Subsequently the Secretary-General reported that the situation was one of uneasy truce. However, the cease-fire in Santo Domingo remained effective in general except for isolated incidents and one serious incident on 4 June. In a report dated 16 June the Secretary-General indicated that the previous day there had been an exchange of fire between the forces of the "Constitutional Government" and troops of the Inter-American Peace Force. By nightfall, his Representative had arranged for a cessation of hostilities.

572. In a report of 19 June the Secretary-General stated that his Representative has informed him that fighting had been renewed on 16 June between units of the Inter-American Peace Force and Colonel Caamaño's troops along positions the former had newly established. At the Council's meeting on 21 June the Secretary-General announced that he had received a report from his Representative stating that the cease-fire was again effective.

573. In his reports between 19 June 1965 and 22 October 1966 when the United Nations mission was withdrawn, the Secretary-General indicated that the cease-fire was generally maintained except for a number of incidents, some of them serious.

(iii) Observation and reporting

574. In his reports to the Security Council dated 3, 7 and 11 June and 16, 21 and 22 July 1965 the Secretary-General called attention to the repeated complaints of violation of human rights in Santo Domingo as well as in the provinces, and to the worsening economic situation, and stated that his Representative considered essential an early political solution, accompanied by an emergency programme of external financial and technical assistance. Complaints of violations of human rights had been referred to the Human Rights Commission in accordance with Economic and Social Council resolution 728 F (XXVIII).

575. On 2 September 1965 the Secretary-General reported that the "Government of National Reconstruction" had resigned on 30 August and that on 31 August the leaders of the "Constitutional Government" had signed the "Institutional Act" and the "Act of Reconciliation" submitted to the two contending parties by an OAS Ad Hoc Committee. On the same day the Commanders of the Armed Forces and of the international contingents of Brazil, Costa Rica, Honduras, Nicaragua and the United States, which had been made available to the OAS for service in the Dominican Republic, signed the Act establishing the Force.
National Police pledged acceptance of the two Acts and support of Mr. Hector Garcia Godoy as Provisional President.

576. In his report \(^{948}\) for 27 December 1965 to 31 May 1966 the Secretary-General dealt mainly with developments relating to the maintenance of law and order and with the preparations for the national elections scheduled for 1 June 1966. The Secretary-General later reported \(^{949}\) that the elections had proceeded on schedule, in a calm and orderly manner. Subsequently, however, some political parties and labour unions charged that the elections had been fraudulent and had been marred by a number of incidents.

577. On 15 June 1966 the Provisional President, Hector Garcia Godoy, declared his desire to bring about the withdrawal of foreign troops before 1 July 1966. From 30 June to 21 September, the Secretary-General submitted reports \(^{944}\) containing detailed information concerning the withdrawal of the Inter-American Peace Force from the Dominican Republic.

(iv) *Termination of the United Nations mission*

578. In a letter \(^{945}\) dated 13 October 1966 to the Secretary-General, the Minister for External Relations of the Dominican Republic stated that, with the installation of the new Government on 1 July 1966, the situation in the Republic had returned to normal. His Government considered that the purposes of Security Council resolution 203 (1965) had been attained and that the withdrawal of the United Nations mission was advisable. The Secretary-General indicated his agreement \(^{946}\) and the withdrawal was completed on 22 October 1966. \(^{947}\)

c. The question of the scope of the mandate of the Secretary-General’s Representative

579. Some representatives, speaking in the Security Council between 3 and 11 June 1965, \(^{948}\) suggested that the staff of the Secretary-General’s Representative be enlarged to enable him to supervise the implementation of the cease-fire and investigate complaints of violations of human rights. They considered his mandate sufficiently wide to cover both tasks.

580. Other representatives \(^{949}\) expressed doubts as to the advisability of extending in time or scope the mandate of the Secretary-General’s Representative. Since the OAS representative and the Inter-American Peace Force were already investigating violations of the cease-fire and related acts of violence, the contending factions might play off one international institution against the other if two investigations were carried out simultaneously.

581. The Secretary-General observed \(^{950}\) that the mandate of his Representative involved observation and reporting. It did not include the actual investigation of complaints or charges about specific incidents other than those of overt firing in breach of the cease-fire. Investigations would be undertaken only if the Security Council specifically sanctioned them, and they would require a substantially enlarged staff and increased facilities. No assurance could be given that the Representative would receive from the parties concerned the co-operation necessary to secure effective implementation. On the other hand, the Representative was keeping a watchful eye on all such matters and was reporting on what he observed. \(^{951}\) The level of his staff was under constant review, and he would be provided with the necessary assistance as the circumstances demanded.

582. During discussion in the Council of the incident of 15 June the Secretary-General stated \(^{952}\) that he would provide his Representative with all possible assistance required, including improved facilities to ensure prompt and undisturbed communications with United Nations Headquarters. He had also requested his Representative to report to him on the existing deployment of the Inter-American Peace Force in the area where the fighting had taken place on 15 and 16 June.

9. FUNCTIONS EXERCISED UNDER SECURITY COUNCIL AND GENERAL ASSEMBLY RESOLUTIONS WITH RESPECT TO THE SITUATION IN SOUTH AFRICA

a. Consultations or communications with the South African Government and with the Governments of other Member States

(i) Security Council resolution 134 (1960)

583. After having considered a complaint \(^{953}\) by twenty-nine Member States concerning “the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa”, the Security Council on 1 April 1960 adopted resolution 134 (1960). \(^{954}\) in paragraph 5 which it requested:

“... the Secretary-General, in consultation with the Government of the Union of South Africa, to make such arrangements as would adequately help in upholding the purposes and principles of the Charter and to report to the Security Council whenever necessary and appropriate.”

\(^{941}\) Ibid., Suppl. for Oct.-Dec., p. 527, S/7032/Add. 3; S C, 21st yr., Suppl. for Jan.-March, p. 35, S/7032/Add. 4-25; and Ibid., Suppl. for April-June, p. 1, S/7032/Add. 26-34.

\(^{942}\) Ibid., p. 132, S/7338, and Add. 1-4.

\(^{943}\) Ibid., Suppl. for July-Sept., p. 1, S/7338/Add. 5-15.

\(^{944}\) Ibid., Suppl. for Oct.-Dec., p. 38, S/7551.

\(^{945}\) Ibid., p. 39, S/7552.

\(^{946}\) See G A (XXII), Suppl. No. 1, p. 39.

\(^{947}\) S C, 20th yr., 1221st mtg.: France, para. 62; Jordan, para. 31; Uruguay, para. 56.

\(^{948}\) Ibid., 1222nd mtg.: Bolivia, para. 129; United States, para. 38.

\(^{949}\) Ibid., 1223rd mtg., paras. 6-8.

\(^{950}\) Thus on 11 June 1965 the Secretary-General reported that his Representative having received information about alleged mass executions visited one of the sites mentioned and found evidence of the recent shooting of at least two persons; that information was to be communicated to the Chairman of the Inter-American Commission on Human Rights (see S C, 20th yr., Suppl. for April-June p. 295, S/6432).

\(^{951}\) Ibid., 1227th mtg., paras. 4, 5 and 7.


\(^{953}\) See also this Supplement under Article 34, paras. 14-18, and Article 35, paras. 13-16.
584. Prior to the adoption of the resolution, the representative of the USSR asked its sponsor: 955

"...what measures the Secretary-General would be expected to take and what is implied by the expression 'such arrangements as would adequately help'. My question is prompted by the consideration that the rights and obligations of the Security Council in such cases as this are clearly defined in Chapters VI and VII of the Charter as regards any measures to be taken. However, as regards any action to be taken by the Secretary-General in such circumstances, the Charter is of no help to us."

The sponsor, the representative of Ecuador, replied: 956

"...the measures which the Secretary-General may be able to take will depend on the situation in South Africa at the time, on the consultations with the Government of the Union of South Africa which in a sense are prescribed by paragraph 5 of the draft resolution, and on the views of the Secretary-General himself, in whose judgement and political acumen we all have full confidence. I might add that the measures he may take are not in my view uncircumscribed: he will, of course, have to act in accordance with the provisions of the Charter..."

He also pointed out that the text in question was practically identical with that of General Assembly resolution 1237 (ES-III) relating to the situations in Lebanon and Jordan. The representative of the USSR stated 957 that; although he would support the draft resolution, his delegation considered that "the course proposed in paragraph 5 would to some extent have the effect of shifting responsibility in this matter from the Security Council to the Secretary-General. This would hardly be desirable."

585. In an interim report issued on 19 April 1960, 958 the Secretary-General informed the Security Council that he had accepted a proposal of the South African Government that preliminary consultations be held in London. A visit to South Africa would take place, at the suggestion of its Government, in the latter part of July or early in August. The Secretary-General indicated that the consultations called for by the Council resolution:

"...will be undertaken on the basis of the authority of the Secretary-General under the Charter. It is agreed between the Government of the Union of South Africa and myself that consent of the Union Government to discuss the Security Council's resolution with the Secretary-General would not require prior recognition from the Union Government of the United Nations authority."

586. In a second interim report 959 the Secretary-General stated that, in the exploratory discussions which had taken place in London,

"It was also agreed that during the contemplated visit to the Union of South Africa, while consultation throughout would be with the Union Government, no restrictive rules were to be imposed on the Secretary-General."

Because of the crisis in the Republic of the Congo the originally scheduled visit to South Africa was cancelled. However, a new invitation to visit in January 1961 was extended to the Secretary-General on 28 September 1960. He stated his intention to explore with the South African Prime Minister the possibility of arrangements providing appropriate safeguards of human rights, with adequate contact with the United Nations.

587. In a third report issued on 23 January 1961 960 the Secretary-General informed the Council that he had visited South Africa between 6 and 12 January and had held six meetings with its Prime Minister. In Cape Town, Umtata (Transkei), Johannesburg and Pretoria, the Secretary-General had had unofficial contacts with members of various sections of the South African community. So far no mutually acceptable arrangement had been found, but in the view of the Secretary-General that lack of agreement was not conclusive, and he wished to consider the matter further. He did not regard the consultations as having come to an end, and he looked forward to their continuation at an appropriate time. The Prime Minister of the Union of South Africa had indicated that:

"...the Union Government, having found the talks with the Secretary-General useful and constructive, have decided to invite him at an appropriate time, or times, to visit the Union again in order that the present contact may be continued."

(ii) Security Council resolution 181 (1963)

588. At the request 961 of thirty-two African States, the Security Council considered from 31 July to 7 August 1963 "the explosive situation" in South Africa resulting from the policies of apartheid of the South African Government and its "systematic refusal" to comply with United Nations resolutions. On 7 August the Council adopted 962 resolution 181 (1963) in which inter alia it deprecated the policies of racial discrimination practised by South Africa, called on the Government to liberate all persons imprisoned or interned for having opposed the policy of apartheid, called on all States to cease forthwith the sale and shipment of arms, ammunition and military vehicles to South Africa, and requested the Secretary-General to keep the situation in South Africa under observation and to report to the Council by 30 October 1963.

589. On 11 October 1963 the Secretary-General reported 963 that, in a letter of 19 August to the South African Government, he had requested to be informed regarding the steps taken by the Government for carrying out Council resolution 181 (1963). In a letter received on 11 October the Government reiterated that it did not recognize the right of the United Nations to discuss or consider a matter which was solely within the jurisdiction of a Member State. It pointed out

955 S C, 15th yr., 855th mtg., paras. 72-75.
956 Ibid., 856th mtg., paras. 34 and 35.
957 Ibid., paras. 40, 42.
958 Ibid., Suppl. for April-June, p. 2, S/4305.
961 S C, 18th yr., Suppl. for July-Sept., p. 11, S/5348.
962 See also this Supplement under Article 34, paras. 46-48, and Article 39, paras. 41-46 and 79-81.
that the basis for the consultations held in 1960 had been:

"... the authority of the Secretary-General under the Charter of the United Nations and on prior agreement that the consent of the South African Government to discuss the Security Council's resolution of 1 April 1960 would not require prior recognition from the South African Government of the United Nations authority".

However, the new request was based on a Security Council resolution which in the Government's view violated the provisions of Article 2 (7) of the Charter. The Secretary-General's report also contained the substantive parts of replies from forty-four Member States 964 to a letter from him concerning the steps they were taking to implement paragraph 3 of resolution 181 (1963), calling on States to cease forthwith the sale and shipment of arms to South Africa.

(iii) Security Council resolution 190 (1964)

590. In resolution 190 (1964) adopted on 9 June 1964, the Security Council urged the South African Government to renounce the execution of persons sentenced to death for acts resulting from their opposition to the policy of apartheid, to end a trial then in progress, and to grant amnesty to persons already in prison or interned for having opposed that policy; invited all States to exert their influence to induce compliance with the resolution; and invited the Secretary General to follow closely the implementation of the resolution and to report thereon to the Council.

591. In a reply 965 dated 13 July 1964 to a letter from the Secretary-General transmitting the Council's resolution, the representative of South Africa stated that his Government regarded the resolution as constituting intervention by the United Nations in the judicial processes of a Member State and, therefore, as completely illegal and ultra vires of the Charter. On 25 August he recalled the reply of South Africa and transmitted the replies received from twenty-two other States 966 responding to his letter of 12 June inquiring about the implementation of the resolution.

(iv) General Assembly resolution 1881 (XVIII)

592. During its eighteenth session the General Assembly on 11 October 1963 adopted resolution 1881 (XVIII), whereby it requested the Government of South Africa to abandon the current trial of a large number of political prisoners under arbitrary laws prescribing the death sentence and to release unconditionally all persons imprisoned for having opposed apartheid. The Assembly requested all Member States to make all necessary efforts towards inducing that Government to put those requests into effect immediately, and it asked the Secretary-General to report during the current session to the Assembly and the Security Council on implementation of the resolution.

593. On 19 November 1963 the Secretary-General reported 968 that by a note of 15 October to the South African representative he had asked to be informed of the steps taken by the latter's Government for carrying out the relevant provisions of Assembly resolution 1881 (XVIII); on 14 November 1963 that representative had indicated that no reply could be expected to a resolution which the United Nations was clearly not entitled to adopt since it constituted flagrant interference in South Africa's judiciary. The Secretary-General also reported that he had on 23 October sent a note to the permanent representatives of all other Member States calling their attention to the request that they make all necessary efforts to induce the South African Government to carry out the requests addressed to it.

b. Establishment of or co-operation with groups of experts instructed to examine methods of resolving the situation in South Africa

(i) Security Council resolution 182 (1963)

594. On 23 October 1963 thirty-two African and Asian States requested 969 the Security Council to consider the Secretary-General's report of 11 October 1963. 970 On 4 December the Council adopted resolution 182 (1963), in paragraph 6 of which it requested:

... "the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end".

595. On 20 April 1964 the Secretary-General reported 971 that in January he had appointed five persons 972 to form the Group of Experts requested by the Council in its resolution 182 (1963). On 20 January he had requested the South African Government to provide facilities for the Group to visit South Africa in the discharge of its responsibilities; however, on 5 February that Government had replied that the Council's resolution constituted an "unparalleled attempt at deliberate interference" which made it impossible for the Republic to receive the Group or to co-operate with it. Despite the position taken by the Government of South Africa, the Group of Experts on 20 April submitted an unanimously approved report to the Secretary-General, who transmitted 973 it to the Security Council.

964 Later supplemented by twenty-five further replies published in S/5438/Add. 1-6 (ibid., p. 28).
966 Ibid., p. 217, S/5913.
967 Later supplemented by thirteen further replies published in S/5913/Add. 1 and 2. (ibid., p. 229).
968 G A (XVIII), Annexes, a.i. 30, p. 10, A/5614 and Add. 1-3.
970 See para. 589 above.
972 Mrs. Alva Myrdal (Chairman), Sir Edward Asafa-Adjaye, Mr. Josip Djerđa (who resigned in March), Sir Hugh Foot and Mr. Dey Ould Sidi Babs.
(ii) Security Council resolution 191 (1964)

596. On 30 April 1964 fifty-eight Member States requested \(^{974}\) the Security Council to resume consideration of the serious situation existing in South Africa, in the light of the report presented by the Secretary-General. In a report submitted on 25 May 1964 \(^{975}\) the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa \(^{976}\) recommended, \textit{inter alia}, that the Security Council declare that the situation in South Africa was a threat to the maintenance of international peace and security and decide to apply economic sanctions in accordance with Chapter VII of the Charter so long as South Africa continued to violate its obligations as a Member of the United Nations. On 18 June 1964 the Council adopted resolution 191 (1964) \(^{977}\) in which \textit{inter alia} it endorsed and subscribed to the main conclusion of the Special Committee on the Policies of apartheid of the Special Committee on the Policies of apartheid, in consultation with the Secretary-General and to the President of the International Committee of the Red Cross to determine what assistance might be rendered under its auspices. I would further understand that it is not envisaged that I should provide direct relief, since no funds have been made available for that purpose.

“With respect to the question of which families are to be assisted, I would read the word ‘persecuted’ to mean ‘imprisoned, interned, or subject to other restrictions’ as referred to in General Assembly resolution 1881 (XVIII) of 11 October 1963 and the Security Council resolution of 4 December 1963.”

597. On 19 June 1964 the Secretary-General transmitted the text of the Council’s resolution to the representative of South Africa. On 16 November the latter transmitted the reply \(^{978}\) of the South African Minister of Foreign Affairs, who stated that the resolution sought the abdication by a Member State of its sovereignty in favour of the United Nations and constituted a “far-reaching example of attempted intervention in matters falling within the domestic jurisdiction of a sovereign Member of the United Nations …”

c. Provision of relief, assistance, education and training to South Africans

(i) General Assembly resolution 1978 B (XVIII)

598. After having taken note of the report of the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa, \(^{979}\) in which the Committee drew attention to the serious hardship faced by the families of persons persecuted by the South African Government for their opposition to the policies of apartheid, the General Assembly on 16 December 1963 adopted resolution 1978 B (XVIII), the operative part of which stated:

“The General Assembly,

“...I would understand the reference to ‘appropriate international agencies’ as follows. If the families have left South Africa they might be considered refugees and I would plan to take up the matter with the High Commissioner for Refugees. With respect to the families within South Africa I would consult with the International Red Cross to determine what assistance might be rendered under its auspices. I would further understand that it is not envisaged that I should provide direct relief, since no funds have been made available for that purpose.

“With respect to the question of which families are to be assisted, I would read the word ‘persecuted’ to mean ‘imprisoned, interned, or subject to other restrictions’ as referred to in General Assembly resolution 1881 (XVIII) of 11 October 1963 and the Security Council resolution of 4 December 1963.”

600. In a report \(^{981}\) dated 22 January 1965 the Secretary-General stated that on 24 January 1964 he had communicated the text of the resolution to the United Nations High Commissioner for Refugees and to the President of the International Committee of the Red Cross with a request that they consider the matter and inform him as soon as possible regarding action which might be taken by them. On 7 February 1964 the former expressed his readiness to co-operate with Governments of host countries of South African refugees. The latter wrote on 4 June that the South African Red Cross was prepared, in principle, to assist the families of detainees in case of need, but that it could not agree to any interference from an international agency. In October 1964 the Special Committee on the Policies of apartheid, in consultation with the Secretary-General, appealed to Member States and organizations to contribute to existing relief organizations pending the conclusion of other appropriate arrangements. On 24 June, 30 September and 26 November 1965 the Secretary-General reported \(^{982}\) that several Member States had announced contributions or pledges.

(ii) Establishment of a United Nations Trust Fund for South Africa — General Assembly resolution 2054 B (XX)

601. On 15 December 1965 the General Assembly adopted resolution 2054 B (XX), by which it requested

“2. ... the Secretary-General to establish a United Nations Trust Fund for South Africa, made up of

\(^{974}\) ibid., p. 96, S/5674.

\(^{975}\) G A (XIX), Annexes, a.i. 12, p. 1, A/5692.

\(^{976}\) Established by General Assembly resolution 1761 (XVII) of 6 November 1962.

\(^{977}\) See also this \textit{Supplement} under Article 25, paras. 98-101; Article 39, paras. 52-55 and 82; and Article 41, paras. 26-32.


\(^{979}\) G A (XVIII), Annexes, a.i. 30/Addendum. A/5497 and Add.1.

\(^{980}\) Security Council resolution of 4 December 1963.

\(^{981}\) G A (XIX), Annexes, a.i. 12, p. 166, A/5850.

\(^{982}\) G A (XX), Annexes, a.i. 36, p. 1, A/5850/Add. 1-3.
voluntary contributions from States, organizations and individuals, to be used for grants to voluntary organizations, Governments of host countries of refugees from South Africa and other appropriate bodies, towards:

(a) Legal assistance to persons charged under discriminatory and repressive legislation in South Africa;
(b) Relief for dependants of persons persecuted by the Government of South Africa for acts arising from opposition to the policies of apartheid;
(c) Education of prisoners, their children and other dependants;
(d) Relief for refugees from South Africa;

"3. ... the President of the General Assembly to nominate five Member States, each of which should appoint a person to serve on a Committee of Trustees of the United Nations Trust Fund for South Africa, which will decide on the uses of the Fund;

"5. ... the Secretary-General to provide the necessary assistance to the Committee of Trustees in the discharge of its responsibilities..."

602. On 1 December 1966 the Secretary-General reported to the General Assembly that he had established the United Nations Trust Fund for South Africa. He had also drawn the attention of States to paragraph 6 of Assembly resolution 2054 (XX), which appealed to Governments, organizations and individuals to contribute generously to the Fund, and on 8 April 1966 he had transmitted to States an appeal by the Committee of Trustees for contributions to the Fund. Contributions amounting to $146,273 were received from 18 Governments, two organizations and several individuals, and an additional $10,500 was pledged by four Governments. In resolution 2202 (XXI) adopted on 16 December 1966 the General Assembly commended the Secretary-General and the Committee of Trustees for their efforts to promote the Fund.

(iii) Establishment of an educational and training programme for South Africans — Security Council resolution 191 (1964)

603. In operative paragraph 11 of resolution 191 (1964) of 18 June 1964, the Security Council invited: 

"... the Secretary-General, in consultation with appropriate United Nations specialized agencies, to establish an educational and training programme for the purpose of arranging for education and training abroad for South Africans."

604. On 9 November 1965 the Secretary-General reported to the Security Council that he had consulted with the Directors-General of specialized agencies and the High Commissioner for Refugees and had determined that the agencies principally concerned were willing to contribute to the programme. Arrangements had been made for a limited number of fellowships and grants, for the financing of which $237,000 was provided as voluntary contributions by five Member States. After the conclusion of a preliminary survey, the Secretary-General established the United Nations Education and Training Programme Abroad for South Africans.

10. FUNCTIONS EXERCISED UNDER A GENERAL ASSEMBLY RESOLUTION WITH RESPECT TO "THE AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE KINGDOM OF THE NETHERLANDS CONCERNING WEST NEW GUINEA (WEST IRIAN)"

a. Preliminary steps taken by the Secretary-General on his own initiative

605. After appeals by the Acting Secretary-General, in the first part of 1962 Indonesia and the Netherlands engaged in negotiations concerning their dispute over West New Guinea (West Irian). At the request of the Acting Secretary-General, Ambassador Ellsworth Bunker of the United States, acted as mediator. The final phase of the negotiations took place at United Nations Headquarters under the chairmanship of the Acting Secretary-General. An Agreement based on proposals put forward by Mr. Bunker was signed there on 15 August 1962.

606. In article 1 of the Agreement it was provided that the Contracting Parties, after ratifying the Agreement, would jointly sponsor a draft resolution to be submitted to the General Assembly, whereby the Assembly would take note of the Agreement, acknowledge the role conferred upon the Secretary-General therein and authorize him to carry out the tasks entrusted to him in the Agreement. Article XXVIII provided that the Agreement would enter into force on the date on which the Assembly adopted such a resolution.

607. The main objective of the Agreement was to provide for the transfer of the administration of West New Guinea (West Irian) from the Netherlands to a United Nations Temporary Executive Authority (UNTEA), to be established by and under the jurisdiction of the Secretary-General, which in turn would...
transfer the administration to Indonesia within a certain period of time. Indonesia would thereupon make arrangements, with the assistance and participation of a United Nations representative and his staff, to give the people of the Territory an opportunity to exercise their right to self-determination before the end of 1969. The Secretary-General was in addition to have responsibilities with regard to the cessation of hostilities in the Territory.

608. Those responsibilities as well as the financial arrangements relating to the period of United Nations administration of the Territory and the question of the issue of passports and consular protection during that period were set forth in "understandings" relating to the intergovernmental Agreement and concluded by an exchange of letters between the United Nations and Indonesia and the Netherlands on 15 August 1962. In addition, on the same day, the Acting Secretary-General handed to the representatives of Indonesia and of the Netherlands separate aide-mémoires concerning the modalities of the transfer of authority over West New Guinea. Those provided that the authority of the Government of the Netherlands over the Territory would be terminated when the Special Representative of the Secretary-General took charge. From the same date the withdrawal and repatriation of the armed forces of the Netherlands was to begin under the supervision of the Special Representative and be concluded as soon as possible. The transfer of authority to Indonesia was to be effected as soon as possible after 1 May 1963.

609. The "Memorandum of Understanding on cessation of hostilities" provided that:

(a) The Secretary-General would assign United Nations personnel (i) to observe the implementation of the Agreement and (ii) in particular to take steps to prevent any acts endangering the security of the forces of both parties thereto (article 1).

(b) In order to overcome special difficulties in communicating the cease-fire to Indonesian forces in the Territory, prearranged flights would be carried out by Indonesian aircraft, with United Nations personnel on board, to drop leaflets reproducing a text approved by the Secretary-General (article 3).

(c) To facilitate resupply of Indonesian troops in the Territory and in order that they might be under the authority and at the disposal of the Secretary-General at the appropriate time, Indonesia would make the necessary arrangements with regard to their location in selected areas, in agreement with the Secretary-General, who would act in consultation with the Netherlands Administrative Authorities (article 4).

(d) The resupply of non-military matériel to the Indonesian armed forces in the Territory would be effected by United Nations personnel in co-operation with Indonesian and Netherlands authorities, air supply being carried out under the direction of United Nations personnel in United Nations aircraft (article 5).

(e) The Netherlands would make arrangements through the intermediary of the Secretary-General to repatriate Indonesian prisoners as soon as possible after the signing of the Agreement (article 8).

610. The Acting Secretary-General entrusted his Military Adviser, Brigadier-General J.J. Rikhye, with the task of observing the implementation of the cease-fire, which came into force on 18 August 1962. Six Member States, Brazil, Ceylon, India, Ireland, Nigeria and Sweden, provided twenty-one military observers to supervise the cease-fire arrangements. On 21 September 1962 General Rikhye reported that all actions concerning the cessation of hostilities had been completed without incident. Indonesian forces had been concentrated in four main areas and provided with emergency supplies, and more than 500 Indonesian detainees had been repatriated.

611. Under rule 14 of the rules of procedure of the General Assembly, the Acting Secretary-General proposed that the Assembly include in the agenda for its seventeenth regular session a supplementary item entitled "Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian)". The Assembly accepted that proposal.

b. General Assembly resolution 1752 (XVII)

612. On 21 September 1962 the General Assembly, by 89 votes to none with 14 abstentions adopted as its resolution 1752 (XVII) a draft submitted by Indonesia and the Netherlands. In that resolution the Assembly noted with appreciation the successful efforts of the Acting Secretary-General to bring about the peaceful settlement, took note of the Agreement between the Governments of Indonesia and the Netherlands, acknowledged the role conferred upon the Secretary-General in the Agreement and authorized him to carry out the tasks thus entrusted to him.

(i) Establishment of the United Nations Temporary Executive Authority (UNTEA)

613. The intergovernmental Agreement of 15 August 1962 provided that:

(a) The Netherlands would transfer administration of the Territory to a United Nations Temporary Executive Authority (UNTEA) established by and under the jurisdiction of the Secretary-General (article II);

(b) In order to facilitate the transfer, the Netherlands would invite the Secretary-General to send a representative to consult briefly with the Netherlands Governor of the Territory prior to the latter's departure (article III);

991 For an exchange of letters with annexed Memorandum of Understanding on cessation of hostilities, see United Nations, Treaty Series, vol. 437 (1962), No. 6312, p. 294; the Memorandum of Understanding and related letters on certain financial matters during the period of administration of the Territory by UNTEA, ibid., p. 300; and the exchange of letters concerning the issue of passports and consular protection during that administration, ibid., p. 304. All those documents are also reproduced in G A (XVII), Annexes, a. i. 89, A/S170.)

992 For the text of the two aide-mémoires, see ibid., p. 310; also A/S170 referred to in foot-note 991 above.

993 Ibid., p. 296.
(c) A United Nations Administrator, acceptable to Indonesia and the Netherlands, would be appointed by the Secretary-General to administer the Territory for the period of the UNTSEA administration under the direction of the Secretary-General (articles IV and V);

(d) The United Nations flag would be flown during the period of United Nations administration (article VI);\(^{997}\)

(e) The Secretary-General would provide UNTSEA with such security forces as the United Nations Administrator deemed necessary; such forces would primarily supplement existing Papuan (West Irianese) police in maintaining law and order (article VII);

(f) The Secretary-General would submit full reports to Indonesia and the Netherlands and might submit, at his discretion, reports to the General Assembly or to all United Nations Members (article VIII);

(g) The United Nations Administrator would be authorized to employ on a temporary basis all except the most senior Netherlands officials who wished to serve UNTSEA, in accordance with such terms and conditions as the Secretary-General might specify (article IX);

(h) While existing laws and regulations would remain in effect to the extent that they were consistent with the letter and spirit of the Agreement, UNTSEA would have authority to promulgate new laws and regulations or amend them within the spirit and framework of the Agreement, after consultation with the local representative councils (article XI);

(i) The Secretary-General would have the final decision in the preparation of the UNTSEA budget and other financial matters relating to United Nations responsibilities under the Agreement, subject to the obligation of consulting Indonesia and the Netherlands in that respect (article XXIV);

(j) Indonesia and the Netherlands would equally share deficits in the budget of the Territory during the UNTSEA administration, advance to the Secretary-General suitable funds for the discharge of his responsibilities and reimburse the costs incurred by the United Nations under the Agreement (article XXIV).

614. On 21 September 1962, Mr. José Rolz-Bennett, whom the acting Secretary-General has appointed as his Representative in West New Guinea (West Irian), arrived in the Territory and in co-operation with Netherlands officials prepared a detailed plan for the transfer of authority to UNTSEA, which took place on 1 October 1962. On that date Mr. Rolz-Bennett became Temporary Administrator. Mr. Đjalal Abdul of Iran was appointed Administrator by the acting Secretary-General on 22 October, in accordance with article IV of the Agreement. After holding consultations at The Hague and Djakarta, he arrived in the Territory on 15 November.\(^{998}\)

\(^{997}\) With regard to the flying of the Indonesian and Netherlands flags, article VI, provided that the matter would be determined by agreement between the Secretary-General and the respective Governments. (The matter was settled in the aide-mémoires referred to in paragraph 608 above.)

\(^{998}\) G A (XVIII), Suppl. No. 1, p. 36.


615. The Memorandum of Understanding on cessation of hostilities provided \(^{999}\) that as soon as possible after the adoption of the authorizing resolution by the General Assembly and not later than 1 October 1962, a United Nations Security Force (UNSF), including an infantry battalion with ancillary arms and services, would be placed by the Secretary-General at the disposal of UNTSEA in the Territory, primarily to supplement the existing Papuan police in the task of maintaining law and order.

616. At the request of the Acting Secretary-General, the Government of Pakistan made available a contingent of its armed forces which enabled him to constitute the United Nations Security Force in West New Guinea (West Irian). The Governments of Canada and the United States provided supporting aircraft and crews. The Acting Secretary-General appointed Major-General Said Udding Khan of Pakistan as Commander of UNSF, which had arrived in full strength in the Territory by 5 October 1962.

617. On 18 April 1963 an agreement was concluded by an exchange of letters between the Secretary-General and Pakistan concerning UNSF.\(^{1000}\) With his letter of 6 December 1962 to the Government of Pakistan, the Secretary-General transmitted a general directive concerning UNSF to be distributed to its contingents, which were to serve under that directive.\(^{1001}\) In his letter the Secretary-General drew the attention of the Government to various provisions of the directive and stated that he would appreciate the Government's assurance that the commander of the contingent provided by Pakistan would be in a position to exercise the necessary disciplinary authority and that the Government would be prepared to exercise jurisdiction with respect to any crime or offence which might be committed by a member of that contingent. In his reply of 18 April 1963 the representative of the Government of Pakistan gave the assurance requested.

618. The general directive established the United Nations Security Force in West New Guinea (West Irian) and defined its task, composition, chain of command, the duties of the United Nations Commander and of the divisional or local military commanders, the procedure to be followed prior to an intervention by the Force, the rights and duties of the Force and the Administrator's authority to issue detailed instructions implementing the general directive. It provided (article 1) that UNSF was to come into existence and would assume its functions on 1 October 1962 upon the transfer of authority over West New Guinea (West Irian) by the Netherlands to UNTSEA. Other salient provisions of the directive were:

(a) The task of UNSF was primarily to supplement the existing police force in maintaining law and order (article 2);

\(^{999}\) See foot-note 991 above.

\(^{1000}\) The Secretary-General's letter was dated 6 December 1962. The Government of Pakistan's reply was dated 18 April 1963. For the texts, see United Nations, Treaty Series, vol. 503 (1964), No. 7339, p. 25.

\(^{1001}\) Ibid., p. 32.
(b) UNSF would consist of four contingents: Force headquarters, the Pakistan contingent, a detachment of the United States Air Force and a detachment of the Royal Canadian Air Force which, in specified circumstances, could be supplemented by the Administrator with the Papuan (West Irianese) Volunteer Corps and the Indonesian Armed Forces present in the Territory in accordance with the cease-fire arrangements, provided that those contingents would thereupon be considered an integral part of the Force (article 3); (c) The United Nations Commander designated by the Secretary General would at all times exercise overall command authority over the Force, subject to the immediate direction of the Administrator, who in turn acted under the general direction of the Secretary-General (article 4). (iii) Transfer of authority to Indonesia

619. On 1 May 1963, the United Nations Administrator transferred full administrative control to the representative of the Republic of Indonesia. The various garrisons of UNSF were replaced by Indonesian troops. 1008

(iv) Functions relating to the exercise of the people of the Territory of their right to self-determination

620. The Agreement of 15 August 1962 provided that after the transfer of full administrative responsibility to Indonesia, the latter would make arrangements to give the people of the Territory an opportunity to exercise freedom of choice. That act of self-determination was to be completed before the end of 1969 (articles XVIII and XX). The Agreement further provided that Indonesia was to invite the Secretary-General to appoint a Special United Nations Representative who, together with a staff of experts, was to carry out the Secretary-General’s responsibilities to advise on, assist and participate in arrangements for the act of self-determination. Those experts could take up their duties of advising on and assisting in preparations for carrying out the provisions for self-determination prior to the arrival of the Special Representative (articles XVI and XVII). The United Nations Representative was to report to the Secretary-General on the arrangements arrived at for freedom of choice, and the latter was to report to the General Assembly on the conduct of the act of self-determination and the results thereof (articles XIX and XXI).

621. In his annual report to the General Assembly in 1963 the Secretary-General announced that in consultation with the Government of Indonesia he had decided in principle to designate a few United Nations experts, serving at Headquarters and elsewhere, to perform the functions envisaged in article XVI of the Agreement. Those experts would visit the Territory as often as might be necessary and spend such time as might be required to enable them to report fully to him. 1003

In a further report to the General Assembly dated 21 October 1963, the Secretary-General reiterated that the United Nations stood ready to assist the Government of Indonesia in the implementation of the act of free choice by the inhabitants of the Territory. 1004

622. In his report to the Assembly at its nineteenth session in 1964, the Secretary-General stated that he had continued to consult with the interested Governments on further steps to be taken concerning the Agreement. He again stated that the United Nations stood ready to assist the Government of Indonesia in implementing the remaining part of the Agreement relating to the act of free choice. 1005

11. FUNCTIONS EXERCISED UNDER GENERAL ASSEMBLY RESOLUTIONS WITH RESPECT TO THE QUESTION OF SOUTH WEST AFRICA 1006

623. During the period under review, the main political function entrusted by the General Assembly to the Secretary-General with respect to the question of South West Africa was the establishment of a United Nations presence there. 1007

624. In operative paragraph 5 of its resolution 1805 (XVII) of 14 December 1962, the General Assembly requested the Secretary-General to appoint a United Nations Technical Assistance Resident Representative for South West Africa. In consultation with the Special Committee on decolonization (the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples), that representative was to “achieve the objectives outlined in General Assembly resolution 1566 (XV) of 18 December 1960 and paragraph 2 (g) of resolution 1702 (XVI)”. Such objectives were the improvement of the economic, social, educational and health conditions in South West Africa through programmes to be undertaken by the Food and Agriculture Organization of the United Nations, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization and the United Nations Children’s Fund, and the co-ordination by the Special Committee on South West Africa of those programmes in order to promote the moral and material welfare of the people. In operative paragraph 6 of resolution 1805 (XVII) the Secretary-General was requested “to take all necessary steps to establish an effective United Nations presence in South West Africa”.

625. In a letter to the Secretary-General dated 2 April 1963 1008 the South African Government indicated that it would not agree to the appointment of a United Nations Technical Assistance Resident Representative in South West Africa. It added that until the findings of the Government’s Odendaal Commission of Enquiry relating to a five-year development plan for South West Africa had been received and studied, 1009

1003 G A (XVIII), Suppl. No. 1, p. 39. For a comprehensive account of UNTEA’s administration of West New Guinea (West Irian), see ibid., pp. 36-40.
1004 G A (XVIII), Annexes, a.i. 20, A/5578.
1006 See also this Supplement under Article 80, paras. 7-37.
1007 The establishment by the Secretary-General of a training programme for South West Africans is mentioned in para. 36 above.
1008 A/AC.109/37 (mimeographed), referred to in G A (XVIII), Annexes, a.i. 55, A/5634, p. 13.
the Government could no consider whether any outside expert advice would be necessary.

626. In a resolution adopted on 10 May 1963 the Special Committee on decolonization requested the Secretary-General to continue his efforts to achieve the objectives assigned to him by Assembly resolution 1805 (XVII), in particular the establishment of an effective United Nations presence in the Territory.

627. On 13 November 1963 the General Assembly adopted resolution 1899 (XVIII), in operative paragraph 5 of which it requested the Secretary-General to continue his efforts to fulfill the tasks assigned to him in paragraphs 5 and 6 of Assembly resolution 1805 (XVII), to invite the Government of South Africa to inform him of its decision regarding the provisions of those paragraphs not later than 30 November 1963 and to report to the Assembly as soon as he received the Government's reply.

628. In his report submitted to the Assembly on 2 December 1963, the Secretary-General indicated that the Government of South Africa, in its reply to his request for information, had stated that, because of the case pending before the International Court of Justice concerning United Nations jurisdiction in South West Africa, the matter was sub judice, and the South African Government consequently, could not be expected to comment in detail on Assembly resolution 1899 (XVIII).

629. On 21 May 1964 the Special Committee on decolonization adopted a resolution in which it requested the Secretary-General to continue the establishment of the office of a United Nations Technical Assistance Resident Representative in South West Africa.

630. On 30 June 1964 the Secretary-General again requested the Government of South Africa to inform him about its decision regarding the appointment of such a Representative and the establishment of a United Nations presence in South West Africa.

631. In a letter dated 5 November 1964 the South African Government replied that no comment was called for in connexion with the establishment of a United Nations presence in South West Africa, since the whole issue of alleged United Nations jurisdiction there was still sub judice. In connexion with the appointment of a United Nations Technical Assistance Resident Representative, the Government had decided that it did not need “outside expert advice” and that it was fully capable of implementing all the proposals of the Odendaal Commission that were acceptable.

12. FUNCTIONS EXERCISED UNDER GENERAL ASSEMBLY OR SECURITY COUNCIL RESOLUTIONS WITH RESPECT TO VARIOUS OTHER QUESTIONS

a. The situation in Territories under Portuguese administration

(i) Security Council resolution 180 (1963) of 31 July 1963

632. By its resolution 180 (1963) the Security Council inter alia urgently called upon Portugal to recognize immediately the right of the peoples of the Territories under its administration to self-determination and independence and to negotiate with the authorized representatives of the political parties within and outside the Territories so as to transfer power to freely elected political institutions. The Council requested all States to take all measures to prevent the sale and supply of all types of armaments to Portugal and requested the Secretary-General to ensure the implementation of the provisions of the resolution, to furnish such assistance as he might deem necessary and to report to it by 31 October 1963.

633. In his report of that date submitted to the Security Council the Secretary-General informed the Council that direct contacts had been established first between his personal representative, who had visited Lisbon between 9 and 11 September, and representatives of the Portuguese Government. Subsequently, contacts and talks had evolved in New York between the representatives of African States and Portugal under the auspices and in the presence of the Secretary-General. During the talks, the issue of self-determination and its interpretation by Portugal had been discussed. The Secretary-General noted that other vital issues remained to be discussed and hoped that a spirit of understanding and moderation would continue to prevail.

(ii) Security Council resolution 183 (1963) of 11 December 1963

634. By its resolution 183 (1963), the Security Council inter alia expressed regret that the contacts initiated by the Secretary-General between the representatives of the African States and Portugal had not achieved the desired results; called upon all States to comply with Council resolution 180 (1963); expressed the belief that action by the Government of Portugal to grant amnesty to all persons imprisoned or exiled for advocating self-determination in the Territories would be evidence of its good faith; and requested the Secretary-General to continue his efforts and to report to the Council by 1 June 1964.

635. On 29 May 1964 the Secretary-General reported to the Security Council that up to that date he had not received any information from the Government of Portugal concerning any steps it had taken to implement the resolutions of the Council. The
Secretary-General was in consultation with the Government of Portugal and the representatives of the African States regarding the possibility of continuing the talks between them, but he could not yet report any positive developments.

(iii) Security Council resolution 218 (1965) of 23 November 1965

636. In its resolution 218 (1965) the Security Council inter alia reaffirmed its previous demands on Portugal; requested all States to inform the Secretary-General of whatever measures they had undertaken in compliance with paragraph 6 of the resolution to prevent the sale of arms to Portugal; and requested the Secretary-General to ensure the implementation of the resolution, to provide such assistance as he might deem necessary and to report to the Council not later than 30 June 1966.

637. On 30 June 1966 the Secretary-General reported that he had received fifty-one replies to his requests to Member States for information on such implementation. He had also had an exchange of correspondence with the Foreign Minister of Portugal. In a letter of 11 April 1966, the Secretary-General had noted that the Portuguese Government had stated in a letter of 21 March 1966 that it was awaiting proposals which he might wish to submit for its consideration. Accordingly, in his letter the Secretary-General had welcomed an opportunity to discuss with the Foreign Minister as soon as possible the measures to be taken to implement the relevant provision of Council resolution 218 (1965). However, no reply had been received from the Foreign Minister of Portugal by 30 June 1966.

b. The situation in Southern Rhodesia

638. The Secretary-General was entrusted with certain tasks by the General Assembly in its resolutions 1760 (XVII) and 1889 (XVIII) and in three resolutions adopted in 1964 by the Special Committee on decolonization (the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples).

(i) General Assembly resolution 1760 (XVII) of 31 October 1962

639. By resolution 1760 (XVII) the General Assembly inter alia requested the Government of the United Kingdom to suspend immediately the enforcement of the Southern Rhodesia Constitution of 6 December 1961 and to cancel the general elections scheduled to take place shortly under that Constitution and requested the convening of a constitutional conference and the immediate extension to the whole population of the full and unconditional exercise of the right to vote. The General Assembly further requested the Acting Secretary-General to lend his good offices to promote conciliation among the various sections of the population of Southern Rhodesia by initiating prompt discussion with the United Kingdom Government and other parties concerned and to report to the Assembly at its current session as well as to the Special Committee.

640. In a report submitted to and considered by the General Assembly at the eighteenth session, the Secretary-General reproduced an exchange of letters with the Permanent Representative of the United Kingdom concerning the implementation of that resolution.

(ii) General Assembly resolution 1889 (XVIII) of 6 November 1963

641. In resolution 1889 (XVIII) the General Assembly inter alia called upon the United Kingdom Government not to accede to the request of the minority government of Southern Rhodesia for independence until majority rule based on universal adult suffrage had been established; expressed its appreciation to the Secretary-General; and requested him to continue to lend his good offices to promote conciliation in the Territory and to report both to the Assembly and to the Special Committee on decolonization during the eighteenth session.

642. On 11 December 1963 the Secretary-General reported that on 8 November he had communicated the text of resolution 1889 (XVIII) to the representative of the United Kingdom who on 10 December 1963 had replied that the attitude of his Government in that matter was well known: in view of Southern Rhodesia's constitutional status, there were great difficulties in complying with such resolutions of the United Nations, but it was the United Kingdom's intention to work towards a solution of the problems facing the Territory. The Secretary-General also informed the General Assembly that he had undertaken conversations with representatives of African countries so that the Organization of African Unity (OAU) might assist in initiating discussions with the other parties concerned.

(iii) Resolutions of the Special Committee on decolonization of 23 and 24 March and 27 April 1964

643. In its resolution of 23 March, by which the Special Committee on decolonization inter alia reiterated the appeals already made by the Assembly and requested all States to refrain from supplying armaments of any kind to Southern Rhodesia, the Committee requested the Secretary-General to communicate the text of the resolution to all Member States and to continue his efforts under General Assembly resolution 1760 (XVII). 1020

644. In its resolution of 24 March, by which the Special Committee inter alia requested the United Kingdom to use all its power to save the lives of persons condemned to death under special Southern Rhodesia legislation and to ensure the release of all political prisoners, it requested the Secretary-General to bring the resolution to the attention of the Government of the United Kingdom and to report on its implementation.

645. In the resolution of 27 April 1964, by which the Special Committee inter alia requested the United

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1018 G A (XVIII), Annexes, a.i. 75, A/5426; see also G A (XVII), Annexes, a.i. 56, A/5396.
1019 G A (XVIII), Annexes, a.i. 75, A/5664.
1020 G A (XIX), Annexes, No. 8 (Part I), chap. III, para. 345.
1021 Ibid., para. 355.
Kingdom to take the necessary steps to ensure the immediate release of Mr. Nkomo and other political prisoners and to hold immediately a constitutional conference, it also requested the Secretary-General to communicate the text of the resolution to the Government of the United Kingdom and to report to the Special Committee.\(^\text{1022}\)

646. On 4 May 1964, the Secretary-General reported to the Special Committee that the representative of the United Kingdom had drawn attention to the United Kingdom statement made in the Special Committee to the effect that Southern Rhodesia's legislation was not the responsibility of his Government and that it had no power in relation to it, and further that the cases to which the resolution of 24 March presumably referred were sub judice.\(^\text{1023}\)

c. The question of Aden

(i) General Assembly resolutions 1949 (XVIII) and 1972 (XVIII) of 11 and 16 December 1963

647. In its resolution 1949 (XVIII) the General Assembly, bearing in mind the unanimous desire expressed to the Sub-Committee on Aden by petitioners from the Territory\(^\text{1024}\) for an early end of colonial domination, expressed deep regret that the United Kingdom as the administering Power had refused to allow the Sub-Committee to go to the Territory in pursuance of the task entrusted to it by the Special Committee on decolonization. The Assembly called upon the United Kingdom inter alia to hold general elections in the Territory on the basis of universal suffrage and requested the Secretary-General:

9. . . . in consultation with the Special Committee and the administering Power, to arrange for an effective United Nations presence before and during the elections . . .

10. . . .

12. . . . to transmit the present resolution to the administering Power and to report to the Special Committee on its implementation . . .”

648. Later, on 16 December 1963, in resolution 1972 (XVIII) the General Assembly expressed deep concern “at the critical and explosive situation” in Aden and the Aden Protectorate, urged the United Kingdom Government to take certain urgent measures and requested the Secretary-General to bring the resolution to that Government’s attention with a view to its implementation.

649. On 17 March 1964, the Secretary-General reported to the Special Committee that he had written to the Permanent Representative of the United Kingdom on 5 March 1964 drawing his attention to paragraph 12 of resolution 1949 (XVIII) and requesting information on measures taken by the United Kingdom Government to implement resolutions 1949 (XVIII) and 1972 (XVIII). On 15 April the Secretary-General submitted a second report to the Special Committee containing the text of a reply from the Deputy Permanent Repre-

sentative of the United Kingdom, dated 13 April 1964, in which the latter stated:

“The United Kingdom representatives in the Committee of Twenty-Four gave a full account of the current position in Aden and the Protectorate of South Arabia in their statements on 26 March and 8 April 1964, and my Government has nothing to add to these statements.”\(^\text{1025}\)

(ii) General Assembly resolution 2023 (XX) of 5 November 1965

650. In its resolution 2023 (XX) the General Assembly inter alia reaffirmed the stand it had taken in previous resolutions, endorsed the relevant resolutions of the Special Committee, noted with deep concern that military operations against the people of the Territory were still being carried out by the administering Power, urged the latter to cease all repressive actions and to release political detainees, appealed to all Member States to render all possible assistance to the people of the Territory in their efforts to obtain freedom and independence, drew the attention of the Security Council to the dangerous situation prevailing in the area as a result of British military action, and requested the Secretary-General:

“to take such action as he may deem expedient to ensure the implementation of the present resolution, and to report thereon to the Special Committee”.\(^\text{1026}\)

651. On 16 May 1966 the Secretary-General submitted a report\(^\text{1026}\) in which he stated that he had been in consultation with the Permanent Representative of the United Kingdom and had been informed on 13 May that the Government of the Federation of South Arabia had announced its acceptance of the United Nations resolutions relating to South Arabia and its intention to arrange a conference representative of all States in South Arabia, together with political groups and others, to consider means whereby the United Nations resolutions could be implemented. He had also been informed that the United Kingdom Government welcomed the Federation Government’s decision and that the Federation Government intended to request him to appoint a United Nations observer to the conference.

652. On 18 May 1966 the Sub-Committee on Aden submitted a report in which it made some preliminary comments on the announcement referred to in the Secretary-General’s report. The Sub-Committee emphasized that the United Nations held the United Kingdom Government, not the so-called Government of the Federation, responsible for implementing the resolutions in the Territory. It urged the United Kingdom to implement immediately the steps outlined in the aforementioned resolutions on the Territory and requested the Secretary-General to continue to take whatever action he might deem expedient to ensure the implementation of General Assembly

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\(^{1022}\) Ibid., para. 430.

\(^{1023}\) A/AC.109/70 (mimeographed).

\(^{1024}\) Established by the Special Committee on decolonization.

\(^{1025}\) G A (XIX), Annexes, No. 8 (Part I), chap. VI, para. 51. For a summary of United Kingdom statements to the effect that the situation in Aden and South Arabia was not a “colonial situation”, see ibid., paras. 66-74.

\(^{1026}\) G A (XX), Annexes, a.i. 23, A/6300/Rev.1, chap. VI, reports of the Secretary-General: annex I, p. 503 (16 May 1966); annex III, p. 506 (9 June 1966); annex V, p. 507 (5 August 1966).
resolution 2023 (XX), bearing in mind in particular the request to him to arrange for an effective United Nations presence before and during the proposed elections, as set out in resolution 1949 (XVIII).

d. **Supervision of the withdrawal and evacuation of Belgian forces from Ruanda-Urundi**

653. The Trust Territory of Ruanda-Urundi was scheduled to become two independent and sovereign States, the Republic of Rwanda and the Kingdom of Burundi, on 1 July 1962, as envisaged in paragraph 7 of General Assembly resolution 1743 (XVI). 1027 On 27 June 1962 the General Assembly adopted resolution 1746 (XVI) entitled "The future of Ruanda-Urundi" in which it called upon the Government of Belgium, the Administering Authority of the Trust Territory, to withdraw and evacuate by 1 August 1962 its forces still remaining there. It requested the Secretary-General immediately to send to the area a representative and a team of experts to supervise the withdrawal and evacuation and to fulfill other specific functions. 1028 The Secretary-General was also requested to report to the General Assembly at its seventeenth session on the implementation of resolution 1746 (XVI).

654. In his report dated 7 November 1962 1029 the Secretary-General stated that the evacuation of the Belgian military personnel had been completed on 29 August 1962 and that, with few exceptions, all Belgian military equipment had been disposed of in Rwanda and Burundi.

e. **Supervision of elections in the Cook Islands**

655. On the recommendation of its Special Committee on decolonization, the General Assembly on 18 February 1965 adopted resolution 2005 (XIX) in which it authorized the Secretary-General to appoint a United Nations representative, with necessary observers and staff, to supervise elections to be held in the New Zealand-administered Cook Islands. The representative was also to observe the proceedings concerning the Constitution in the newly elected Legislative Assembly and to report to the Special Committee and to the Assembly. The Secretary-General appointed Mr. Omar A.H. Adeel of the Sudan, who, accompanied by observers and staff, arrived in the Cook Islands on 6 April 1965.

656. In his report issued on 20 August 1965 1030 the United Nations Representative stated that the administrative and physical arrangements concerning the conduct of the elections, which had been held on 20 April, were in accordance with the regulations and that the impartiality of the electoral officials was impeccable. He believed that a fairly large section of the population was aware of the significance of the elections. During the time he was in the Territory he was satisfied that the people were able to exercise their rights in complete freedom before and during polling. The Administration's precautions for the security of the ballot papers were fool-proof, and he was satisfied that a correct count of the votes and an accurate report of the results had been made.

657. At its twentieth session the General Assembly had before it the Special Committee's reports on the Cook Islands for 1964 and 1965 and the United Nations Representative’s report. On 16 December 1965 the Assembly adopted resolution 2064 (XX), in which inter alia it noted the findings and conclusions of the United Nations Representative and expressed its appreciation to him and his staff. It also noted that under the Constitution which came into force on 4 August 1965, the people of the Cook Islands had reserved their right to move to a status of complete independence, and since that date they had control of their internal affairs and of their future.

f. **Complaints by Senegal**

658. In operative paragraph 3 of its unanimously adopted resolution 178 (1963) of 24 April 1963 concerning incidents that had occurred near the frontier between Senegal and Portuguese Guinea, and again in operative paragraph 4 of resolution 204 (1965) of 19 May 1965, also adopted unanimously, concerning incursions by Portuguese military forces into Senegalese territory, the Security Council requested the Secretary-General to follow the development of the situation. 1031

g. **Comprehensive review of the whole question of peace-keeping operations in all their aspects**

659. In its resolution 2006 (XIX) of 18 February 1965, the General Assembly invited the Secretary-General and the President of the General Assembly urgently to make arrangements for and to undertake appropriate consultations on the whole question of peace-keeping operations in all their aspects, including ways of overcoming the financial difficulties which the Organization faced at the time. The Assembly authorized the President to establish a Special Committee on Peace-keeping Operations, under his chairmanship and with the collaboration of the Secretary-General, and instructed the Special Committee as soon as possible to undertake a comprehensive review of the peace-keeping operations, including ways of overcoming the financial difficulties.

660. The composition of the Special Committee was completed on 26 February 1965, 1032 and the Committee began its work on 26 March.

661. On 31 May 1965, after extensive consultations with a large number of Member States, the Secretary-General was satisfied that a correct count of the votes and an accurate report of the results had been made.
General and the President of the General Assembly issued a report in which they placed before the members of the Special Committee an account of the views and suggestions made both during the informal consultations and in the formal meetings of the Special Committee on the different aspects of the matter covered by General Assembly resolution 2006 (XIX).

13. POWERS INHERENT IN THE OFFICE OF THE SECRETARY-GENERAL

a. Diplomatic functions

662. For the period under review the study of diplomatic functions exercised by the Secretary-General under the powers inherent in his office encountered difficulties similar to those referred to in Repertory Supplement No. 2. The Secretary-General, being in a position of trust vis-à-vis all Member Governments and having to respect the laws of diplomatic discretion, was unable to submit public reports on all aspects and details of the measures taken by him on the basis of the powers inherent in his office. However, he made occasional public references to his diplomatic activity in written and oral statements to the Press, in speeches delivered before various United Nations bodies or audiences outside the United Nations Organization and in his annual reports on the work of the Organization.

663. It was on the basis of such public pronouncements that the present section examined the diplomatic functions exercised by the Secretary-General under the powers inherent in his office, mainly with respect to political and security questions. Either because the statements or reports were general in character or because the information they contained about details was only partial, they could not serve as a basis for an exhaustive analysis or description of the functions exercised. However, they provided examples of the types of diplomatic functions which might be exercised by the Secretary-General, and they threw light on the legal basis for the exercise of those functions by indicating both the scope of the functions and the principles which guided the Secretary-General in exercising them.

664. Diplomatic functions were often of a mixed character. Thus, a special representative might simultaneously have provided good offices and carried out fact finding and even observation. The division of the material into separate topics was a matter of convenience; the classification of a mission in one category rather than in another was merely a reflection of the apparent dominance of one of its features over the others.

(i) Examples of diplomatic functions exercised under the inherent powers

665. With respect to the usefulness of his diplomatic functions, the Secretary-General stated in April 1963:

“In certain situations the United Nations and the Office of the Secretary-General can provide a useful middle-ground on which the parties may meet without any loss of face or prestige, and accommodate their differences in a civilized and dignified manner. I like to think that the United Nations played a useful role of this kind in the resolution of the Cuban crisis last October, a crisis which for a few days seemed to bring the world very near to the nuclear disaster which all men dread. There are situations of a less portentous nature in which also the course of mediation and moderation can be of assistance to the parties. I refer, for example, to the differences between Somalia and Ethiopia and between Thailand and Cambodia. . . . In such situations the technique of quiet diplomacy—a technique in which my predecessor excelled—can make the difference between a disastrous breakdown of understanding and communication and a constructive advance towards a resolution of differences.”

(a) Communications concerning démarches and appeals

666. When the Secretary-General learned—from telegrams from the parties involved—that armed clashes had occurred between the forces of Ethiopia and Somalia at Tog Wajaleh, he sent the following message simultaneously to the Emperor of Ethiopia and the Prime Minister of Somalia:

“...I wish to convey to Your Majesty (Your Excellency) my most earnest appeal for the restoration of peace in the troubled area. The immediate cessation of hostilities by both countries would be a noble demonstration of their adherence to the principle of resolving international disputes by peaceful means, a principle which is common to the United Nations and to the Organization of African Unity. There is at this juncture a clear need for the exercise of the utmost restraint in order that efforts may be made to seek a durable solution to the border problems which have been disturbing relations between the two neighbouring countries. I know of Your Majesty's (Your Excellency's) devotion to the ideals of peace and international understanding and have full confidence in your desire to resolve this delicate situation through the procedures for the pacific settlement of disputes. I am also sending a similar appeal to the Prime Minister of Somalia (the Emperor of Ethiopia).”

661. In February 1965 the Secretary-General issued a statement to the Press on the situation in Viet-Nam. In it he expressed deep concern over "recent events in South-East Asia", particularly "the seriously deteriorating situation in Viet-Nam", and feared "the dangerous possibilities of escalation, because such a situation, if it should once get out of control, would obviously pose the gravest threat to the peace of the world". After reiterating his views on that problem and some of his suggestions and statements on a feasible procedure for settlement, the Secretary-General further said that he was conscious of his responsibilities under Article 99...
of the Charter, and that “at the present time it is not possible for me to say what would be the best means of discussing this serious situation”. The statement concluded with an appeal “to all the parties concerned for the utmost restraint in both deeds and words..., in the interest of the peace and well-being of the people of Viet-Nam and of the world at large”.

668. Three months after the Secretary-General had issued that appeal he was asked at a press conference why he did not “appeal for a cease-fire in Viet-Nam”. The Secretary-General replied:

“Regarding the need for a proposal from somewhere for a cease-fire or a temporary cessation of military activities, I think the important point to take into account is the prospective reaction to such an appeal from the parties directly concerned..., in the absence of any definite indication from some of the parties directly concerned regarding the compliance with such an appeal, I feel that it is not time yet to launch such an appeal. In my view such an appeal for a cease-fire eliciting a negative response from some of the parties primarily concerned will not only defeat the purpose of the appeal, but is likely to compromise the future effectiveness of the one who makes such an appeal. I believe that timing is a most important factor in the consideration of such a step.”

669. During the Cuban missile crisis, the Acting Secretary General made appeals to the parties concerned, discussed the situation with the permanent representatives of a large number of Member States, and extended good offices to the parties.

(b) Discussions and consultations

670. At a press conference the Secretary-General replied to a question on Viet-Nam as follows:

“I have presented certain ideas on my own to some of the principal parties directly involved in the question of Viet-Nam. I have even presented concrete ideas and proposals. But up to this moment the results of these consultations and discussions have not been conclusive. And I do not think it would be in the public interest for me to reveal these ideas publicly at this moment.”

(c) Good offices

671. In a speech delivered on 15 June 1970 concerning the exercise of good offices by the Secretary-General, he mentioned several examples of such functions that had occurred during the period under review. They were in connexion with the situation in South-East Asia, the border differences between Thailand and Cambodia (in 1960), the dispute between the United Kingdom and Saudi Arabia over the Buraimi oasis (in 1960 and 1961), the attempt of the late Secretary-General to meet with Moise Tshombe at Ndola airport (in 1961), the Cuban missile crisis (in 1962) and the mission to ascertain the wishes of the people of Sabah (North Borneo) and Sarawak prior to the establishment of the Federation of Malaysia (in 1963). That such situations were but illustrations was made clear by the Secretary-General when he said:

“I do not think that anyone has ever attempted to record publicly and comprehensively all the various instances in which the good offices of the Secretary-General have played a role. In fact, some of these episodes have never been publicly mentioned at all...”

672. During the Cuban missile crisis in October 1962 the Acting Secretary-General sent several messages to the Heads of Government of Cuba, the USSR and the United States. The messages were formulated in such a way as to offer a useful middle ground on which the parties could meet for the purpose of accommodating their differences. On 24 October 1962 the Acting Secretary-General informed the Security Council that in identically worded messages to the President of the United States and the Chairman of the Council of Ministers of the USSR he had stated:

“I have been asked by the permanent representatives of a large number of Member Governments of the United Nations to address an urgent appeal to you in the present critical situation. These representatives feel that in the interest of international peace and security, all concerned should refrain from any action which may aggravate the situation and bring with it the risk of war.

“In their view it is important that time should be given to enable the parties concerned to get together with a view to resolving the present crisis peacefully and normalizing the situation in the Caribbean. This involves on the one hand the voluntary suspension of all arms shipments to Cuba, and also the voluntary suspension of the quarantine measures involving the searching of ships bound for Cuba. I believe that such voluntary suspension for a period of two to three weeks will greatly ease the situation and give time to the parties concerned to meet and discuss with a view to finding a peaceful solution of the problem. In this context, I shall gladly make myself available to all parties for whatever services I may be able to perform.

“I urgently appeal to your Excellency to give immediate consideration to this message.”

673. On 25 October 1962 the Acting Secretary-General again sent a message to Chairman Khru- shchev expressing the hope

“that Your Excellency may find it possible to instruct the Soviet ships already on their way to Cuba to stay away from the interception area for a limited time only, in order to permit discussions of the modalities of a possible agreement which could settle the

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1038 Press Release dated 15 April 1965, Note to Correspondents No. 3104, pp. 3 and 4 (mimeographed).
1039 For details, see paras. 672-676 below.
1040 Press Release dated 24 February 1965, Note to Correspondents No. 3075, p. 8 (mimeographed). For discussions and consultations with respect to the Cuban missile crisis and the situation in Yemen, see respectively paras. 672-676 and 678-681 below.
1042 S C, 17th yr., 1024th mtg., para. 119.
problem peacefully in line with the Charter of the United Nations.”

The Acting Secretary-General further expressed his confidence that

“If such instructions could be issued by Your Excellency, the United States authorities will take action to ensure that a direct confrontation between their ships and Soviet ships is avoided during the same period... If I could be informed of the action taken by Your Government on the basis of this appeal, I could inform President Kennedy that I have assurances from your side of your co-operation in avoiding all risk of an untoward incident.

“I am at the same time addressing the enclosed appeal to President Kennedy.”

The Acting Secretary-General’s proposals were accepted by Chairman Khrushchev in a message dated 26 October 1962.

674. In the message of 25 October to President Kennedy the Acting-Secretary-General informed the President of the proposals made to Chairman Khrushchev and stated:

“I would now like to appeal to Your Excellency that instructions may be issued to United States vessels in the Caribbean to do everything possible to avoid direct confrontation with Soviet ships in the next few days in order to minimize the risk of an untoward incident. If I could be informed of the action taken by your Government on the basis of this appeal, I could inform Chairman Khrushchev that I have assurances from your side of your co-operation in avoiding all risk of an untoward incident.

In a message dated 25 October 1962 President Kennedy assured the Acting Secretary-General that “if the Soviet Government accepts and abides by your request” the United States Government “will accept and abide by your request”.

675. On 26 October 1962 the Acting Secretary-General in a message to Prime Minister Fidel Castro of Cuba stated inter alia:

“Your Excellency can make a significant contribution to the peace of the world at this present critical juncture by directing that the construction and development of major military facilities and installations in Cuba, and especially installations designed to launch medium range and intermediate range ballistic missiles, be suspended during the period of negotiations which are now under way.”

The Prime Minister of Cuba in a letter of reply dated 27 October 1962 stated inter alia that the Cuban Government

“would be prepared to accept the compromises that you request as efforts in favour of peace, provided that at the same time, while negotiations are in progress, the United States Government desists from threats and aggressive actions against Cuba, including the naval blockade of our country.”

In the same letter the Prime Minister of Cuba expressed the willingness of his Government to consider attentively any new suggestions the Acting Secretary-General might advance, and that the Government would be glad to receive him in Cuba

“as Secretary-General of the United Nations, with a view to direct discussions on the present crisis, prompted by our common purpose of freeing mankind from the dangers of war.”

616. The invitation was accepted by the Acting Secretary-General the next day, and on 30 October 1962 he arrived in Havana. Upon returning to New York on 31 October 1962, the Acting Secretary-General made the following statement concerning the discussions with the leaders of Cuba:

“These discussions were conducted strictly in the context of my correspondence with Premier Fidel Castro, resulting from the proceedings of the Security Council meetings. There was agreement that the United Nations should continue to participate in the peaceful settlement of the problem.

“During my stay in Havana, I was reliably informed that the dismantling of the missiles and their installations was already in progress and that this process should be completed by Friday [2 November]. Thereafter, would come their shipment and return to the Soviet Union, arrangements for which are understood to be in hand.”

(d) Fact-finding activities

677. During the period under review, the Secretary-General dispatched fact-finding missions to Yemen and to the Territories of Sabah (North Borneo) and Sarawak.

i. With respect to the situation in Yemen

678. Prior to the consideration of the situation in Yemen by the Security Council in June 1963, the Secretary-General had been consulting regularly since the autumn of 1962 with the representatives of the Governments of the Arab Republic of Yemen, Saudi Arabia and the United Arab Republic concerning certain aspects of the situation in Yemen of external origin. The purpose was to make his offices available to the parties for such assistance as might ensure against any developments that might threaten the peace of the area.

679. It was in that context and after clearance with the respective Governments that the Secretary-General asked Mr. Ralph J. Bunche, Under-Secretary-General for Special Political Affairs, to go to Yemen and the United Arab Republic in late February and early March of 1963 “on a fact-finding mission primarily devoted to talking with the Presidents of Yemen and the United Arab Republic, in that order, with the

1051 S C, 18th yr., Suppl. for April-June, p. 33, S/5298, para. 1.
purpose of ascertaining their views on the situation and what steps might be taken to ease tension and restore conditions to normal". It was left open whether Mr. Bunche would eventually go also to Saudi Arabia, but developments made this unnecessary.

680. At a press conference held on 11 April 1963, the Secretary-General replied as follows to a question about Mr. Bunche's mission to Yemen:

"Regarding my dispatch of Dr. Ralph Bunche to the area as my personal representative, there has been some misreporting in a section of the press. His mission was not to mediate; his mission was just to find the facts. The nature of his visit to that area was just exploratory, fact-finding."

681. In his report to the Security Council dated 29 April 1963, the Secretary-General, informed the Council that he had "received from each of the three Governments concerned, in separate communications, formal confirmation of their acceptance of identical terms of disengagement in Yemen".

ii. With respect to the question of Malaysia

682. On 5 August 1963, the Foreign Ministers of the Federation of Malaya, Indonesia and the Philippines jointly informed the Secretary-General that the Heads of Government of the three States, meeting in a summit conference at Manila from 13 July to 5 August 1963, had agreed to request the Secretary-General to ascertain the wishes of the people of Sabah (North Borneo) and Sarawak before the formation of the Federation of Malaysia. For that purpose, the Secretary-General was requested to send "working teams" to the two territories. The three Heads of Government also deemed it desirable for the Governments concerned to send observers to witness the carrying out of the task to be undertaken by the working teams; the Federation of Malaya would use its best endeavours to obtain the co-operation of the Government of the United Kingdom and the Governments of Sabah (North Borneo) and Sarawak in furtherance of that purpose.

683. The terms of reference for the Secretary-General in fulfilling that request were stated in the Manila joint statement of 5 August 1963 as follows:

"4. . . . the Secretary-General or his representative should ascertain, prior to the establishment of the Federation of Malaysia, the wishes of the people of Sabah (North Borneo) and Sarawak within the context of General Assembly resolution 1541 (XV), principle IX of the annex, by a fresh approach, which in the opinion of the Secretary-General is necessary to ensure complete compliance with the principle of self-determination within the requirements embodied in principle IX, taking into consideration:

(A) the recent elections in Sabah (North Borneo) and Sarawak but nevertheless further examining, verifying and satisfying himself as to whether: (i) Malaysia was a major issue if not the main issue; (ii) electoral registers were properly compiled; (iii) elections were free and there was no coercion; and (iv) votes were properly polled and properly counted; and (B) the wishes of those who, being qualified to vote, would have exercised their right of self-determination in the recent elections had it not been for their retention for political activities, imprisonment for political offences or absence from Sabah (North Borneo) or Sarawak."

684. In his reply of 8 August, the Secretary-General accepted the responsibility and stated that he would set up two working teams, consisting altogether of eight members of the Secretariat acting under the overall supervision of a representative appointed by the Secretary-General. He further stated:

"I note that the three Heads of Government deem it desirable to send observers to witness the carrying out of the task by the working teams. I wish to make it clear that the working teams working under the supervision of my Representative will be responsible directly and exclusively to me."

He also made it clear that he could undertake the responsibility only with the consent of the Government of the United Kingdom, the Administering Authority of the two Territories, and that he was in contact with the Permanent Representative of the United Kingdom. Upon completion of the task of the working teams and on the basis of his representative's report he would communicate his final conclusions to the three Governments and to the Government of the United Kingdom. It was the Secretary-General's understanding that neither the report of his representative nor his own conclusions would be subject in any way to ratification or confirmation by any of the Governments concerned. Finally, the Secretary-General stated that his representatives would make every effort to complete the task as quickly as possible and that the Secretary-General would endeavour to report his conclusions by 14 September 1963.

685. On 12 August, the Secretary-General announced that, having received the consent of the United Kingdom Government, he had designated Mr. Laurence V. Michelmore, a member of the Secretariat, as his Representative and head of a United Nations Malaysian Mission. Eight other members of the Secretariat were assigned to serve on it. The Mission arrived at Kuching, Sarawak, on 16 August 1963 and left the area on 5 September. One team operated in Sarawak and the other in Sabah (North Borneo). In each Territory the widest possible publicity by means of radio, press and Government announcements was given regarding the Mission and its terms of reference. Elected representatives, leaders, representatives of groups and others gave their opinions to the Mission, either in writing or during a schedule of meetings which were arranged at different locations. The Mission
also studied the election laws and other documentary material, including memoranda submitted by political parties.

686. On 14 September the Secretary-General communicated his conclusions to the three Governments. The main conclusions were as follows:

"Bearing in mind the fundamental agreement of the three participating Governments in the Manila meetings, and the statement by the Republic of Indonesia and the Republic of the Philippines that they would welcome the formation of Malaysia provided that the support of the people of the territories was ascertained by me and that, in my opinion, complete compliance with the principle of self-determination within the requirements of General Assembly resolution 1541 (XV), principle IX of the annex, was ensured, my conclusions, based on the findings of the Mission, are that on both of these counts there is no doubt about the wishes of a sizable majority of the peoples of these territories to join in the Federation of Malaysia."

He added:

"In reaching my conclusions, I have taken account of the concern expressed with regard to the political factors resulting from the constitutional status of the territories and about influences from outside the area on the promotion of the proposed Federation. Giving these considerations their due weight, in relation to responsibilities and obligations established in Article 73 and General Assembly resolution 1541 (XV) in respect of the territories, I am satisfied that the conclusions set forth above take cognizance of, and are in accordance with, the requirements set forth in the request addressed to me on 5 August 1963 by the Foreign Ministers of the Republic of Indonesia, the Federation of Malaya and the Republic of the Philippines."

687. Before stating those conclusions, the Secretary-General recalled a number of considerations regarding the duration of the Mission, the form of the ascertainment undertaken by the Mission and the question of observers. The conclusions also contained replies to the more specific questions referred to the Secretary-General in paragraph 4 of the Manila joint statement of 5 August 1963.1069

(e) Negotiations concerning the implementation of an agreement providing for the demilitarization of the Mount Scopus area

688. In a letter dated 26 January 1965,1066 the representative of Jordan drew the attention of the Secretary-General to "the serious violations and military provocative acts by the Israeli authorities in the Mount Scopus area in Jerusalem". He cited the agreement of 7 July 1948 under which the area was placed under United Nations protection and further arrangements by virtue of which "it is the responsibility of the United Nations to establish and maintain the full implementation of that agreement" and on behalf of his Government, requested the Secretary-General "to see that immediate inspection of Israeli positions in the area is carried out through a special representative".

689. In a statement issued on 30 January 1965,1081 the Secretary-General said that a number of incidents of firing indicated a serious deterioration in the situation "on Mount Scopus and elsewhere in the area" and "caused concern both at United Nations Headquarters and in the area". Therefore, the Secretary-General,

"... having in mind ... the letter of 26 January 1965 from the Permanent Representative of the Hashemite Kingdom of Jordan (S/6163), and the views on the situation expressed to him orally by the Representatives of Israel and Jordan, has decided to send a special mission to the area, consisting of Mr. Pier Spinelli, as Representative of the Secretary-General, and Major-General Indar Rikhye, as Military Adviser.

"The Spinelli-Rikhye Mission will consult with the appropriate authorities in Jerusalem and Amman about the causes and nature of recent incidents and about means for avoiding a recurrence of them, and will study the situation on the spot on both sides of the line. It will report to the Secretary-General on its consultations, observations and conclusions."

690. On 25 February 1965, the Secretary-General made the following announcement on the report of the Spinelli-Rikhye Mission:1062

"... "The Secretary-General is pleased to learn that the Mission was well received by the Governments of Israel and Jordan, and that during its stay in these countries it was afforded full facilities in its efforts to be informed of the situation and given complete access to the areas of incidents."

"The Secretary-General met with the Permanent Representatives of the Hashemite Kingdom of Jordan and Israel on 25 February 1965, and has requested them to convey to their Governments his sincerest appreciation for facilitating the task of this Mission. He also asked them to convey to their Governments his hope that they will do their best to avoid future incidents and to maintain quiet along their borders.

"The Secretary-General has expressed his hope that he would be able to continue to discuss with both the Governments measures which would further ease tension in the area."

**(f) Formulation of agreed principles concerning the settlement of the Suez question

(g) The practice of appointing a personal or special representative

691. In the Introduction to his Annual Report on the Work of the Organization up to 15 June 1959 the Secretary-General stated:1063

1060 G A (XIX), Suppl. No. 1, p. 271. On 16 September the Federation of Malaysia was proclaimed. For subsequent developments, see para. 700 below.
1063 G A (XIV), Suppl. No. 1A, p. 3.
"It should also be noted that in some recent cases of international conflict or other difficulties involving Member States the Secretary-General has dispatched personal representatives with the task of assisting the Governments in their efforts. This may be regarded as a further development of actions of a 'good offices' nature, with which the Secretary-General is now frequently charged."

The following instances illustrate how the function of appointing a personal or special representative was exercised by the Secretary-General in the period under review.\textsuperscript{1064}

692. In his Annual Report on the Work of the Organization for the year ended 15 June 1960 the Secretary-General stated: \textsuperscript{1065}

"... during the year, and most recently in August 1959, communications had been addressed to the United Nations regarding difficulties on the north-eastern border of Laos, without the Organization, however, being formally seized of the matter. Informal studies and consultations had taken place regarding the possibilities open to the Organization to be of assistance, without impairing the Geneva agreements of 1954 on Indochina or interfering with the arrangements based on them."

After giving an account of the consideration of the question of Laos by the Security Council and by a Sub-Committee of the Council, the Secretary-General went on to say: \textsuperscript{1066}

"In the meantime the Secretary-General had continued his consultations with the Government of Laos, referred to above. The possibility of his visiting Laos had been under consideration for several weeks, and on 8 November 1959 he accepted an invitation from the Lao Government to visit the country in order to provide himself with independent and full knowledge of the problem. It was made clear that the visit had no connexion with the report of the Security Council Sub-Committee, but was undertaken in his capacity and within his responsibilities as Secretary-General, and it had no implication regarding the international situation in Laos, the external relations of that country, or the agreements on Indochina arrived at in 1954 at Geneva."

"On 15 November, while in Laos, the Secretary-General requested Mr. Sakari Tuomioja, Executive Secretary of the Economic Commission for Europe, to review the economic situation of Laos, in particular the role of economic and technical assistance rendered by the United Nations for furthering the country's economic growth and stability. Mr. Tuomioja was requested to report on his findings to the Secretary-General within four weeks, and, in addition to that task, he was also to follow up the discussions initiated by the Secretary-General, and provide him with such further information as would be of importance for a judgement regarding the assistance which the Secretary-General might most appropriately render under the Charter, taking into account also other international agreements which provided a framework for the development of Laos. Mr. Tuomioja's report was submitted in the first half of December; after reviewing the problems and shortcomings of the Lao economy, it set forth detailed recommendations for coordinated action by the United Nations and the specialized agencies to assist Laos."

"On 20 February 1960, Mr. Edouard Zellweger [of Switzerland] was appointed Special Consultant to the Secretary-General for co-ordination of United Nations activities in Laos."

693. On 3 March 1961 the Secretary-General announced the appointment of Mr. Muhammed Asfar of Pakistan as representative to Somalia whose Government had requested the appointment. It was stated that:

"the role of the representative will be to head a mission of four experts in the economic, financial, public administration and legal fields. This mission will advise and assist the Somali Government in planning and development matters."

694. In August 1960 the Secretary-General with the agreement of the Governments of Saudi Arabia and the United Kingdom nominated Ambassador Herbert B. de Ribbing of Sweden as his personal representative in order to consider "the position of those inhabitants of the Buraimi oasis who left during 1955". \textsuperscript{1068} Mr de Ribbing "made an assessment of the number of genuine refugees from the oasis as a preparatory step in any arrangements for the return of these refugees to their homes in the oasis". He also undertook a journey to the Arabian Peninsula in order to discuss related matters with the Sultan of Muscat and Oman and the ruler of Abu Dhabi and with the Saudi Arabian Government. In September 1962 he had a number of meetings in London with the Foreign Secretary of the United Kingdom, the Lord Privy Seal and Foreign Office officials to discuss various aspects of the Buraimi problem arising out of his mission. \textsuperscript{1069} On 21 January 1963 the Secretary-General stated that he had agreed to the request by the two Governments (Saudi Arabia and the United Kingdom) that "discussion of the Buraimi issue and other problems connected with it proceed without delay under his personal supervision with the assistance of his Personal Representative as before". \textsuperscript{1070}

695. On 11 December 1962, at the 1191st meeting of the General Assembly, the representative of the United Kingdom transmitted to the Secretary-General an invitation from the Sultan of Muscat and Oman to send a representative on a personal basis 'to visit the Sultanate during the coming year to obtain first-hand

\textsuperscript{1064} The appointment of a personal representative of the Secretary-General under the powers inherent in his office in respect of the situation in Cyprus is dealt with in paras. 464-467 above.

\textsuperscript{1065} G A (XV), Suppl. No. 1, p. 22.

\textsuperscript{1066} Ibid., p. 23.
information as to the situation there'. The Secretary-General accepted the invitation and appointed as his special representative Ambassador de Ribbing whose function was described as follows:

"The primary task of the mission would be a fact-finding one. The mission would visit the area some time during May and would report on such questions as the presence of foreign troops in Oman, any evidence of oppression, instances of sabotage and fighting, the existence of a 'rebel movement', the existence of any 'rebel forces' actually in control of a particular area, etc. The special Representative of the Secretary-General would discuss with the Sultan, with Government officials, and with British authorities the necessary details for the visit to Oman."

Mr. de Ribbing visited the Sultanate in May and June 1963 and submitted to the Secretary-General his report which contained the findings of his mission as well as certain concluding remarks. That report was made available by the Secretary-General to the General Assembly "in view of the decision of the General Assembly to place the question of Oman on the agenda of its eighteenth session".

696. On 9 October 1962, the Acting Secretary-General announced the appointment of Mr. Nils Göran Gussing of Sweden, who was on the staff of the United Nations High Commissioner for Refugees, as his Personal Representative "to inquire into the problems that have arisen between Cambodia and Thailand". In a letter dated 19 October 1962 the Acting Secretary-General informed the members of the Security Council that,

"...the Governments of Cambodia and Thailand have had an exchange of communications with me in which accusations of aggression, incursion and piracy were made by one party and denied by the other. As a result of further discussions, the two Governments have requested me to appoint a Personal Representative to inquire into the difficulties that have arisen between them. As I believed that this would represent a constructive measure entirely within the scope of the Charter, I have given an affirmative response to this request, and after receiving agreement from the two Governments, I have appointed Mr. Nils G. Gussing, a national of Sweden, as Personal Representative of the Secretary-General. He is scheduled to proceed to the area early next week."

697. In a letter dated 18 December 1962 addressed to the President of the Security Council, the Secretary-General stated that Mr. Gussing had had discussions with the Prime Ministers, the Ministers for Foreign Affairs and other high officials of both countries and had also conducted a number of investigations in the border areas on both sides of the international frontier. As a result of further discussions with the Permanent Representatives of Cambodia and Thailand agreement had been reached

"on the desirability of appointing a Special Representative of the Secretary-General in the area for the period of one year, beginning 1 January 1963. His terms of reference would, in general, require him to place himself at the disposal of the parties to assist them in solving all problems that have arisen or may arise between them. The most immediate among these would be the reactivation of the agreement concerning press and radio attacks, concluded between the parties in New York on 15 December 1960, and the lifting of restrictions on nationals of the two countries who are now forbidden to land on the airports of the other country while in transit. It is hoped that in due time consideration may be given to the question of the resumption of diplomatic relations."

It was further stated that the two Governments would as a measure of their goodwill share on an equal basis all costs involved in the mission of the Special Representative — who would be assisted by a small staff — so that no budgetary provision on the part of the United Nations would be required. Subsequently the parties agreed to the appointment of Mr. Gussing as the Special Representative, who thereupon took up his duties in the area. On 9 December 1963 the Secretary-General informed the members of the Security Council that at the request of Cambodia and Thailand he had extended the appointment of Mr. Gussing for one year under the same terms of reference. The Special Representative would therefore serve to the end of 1964.

698. In a letter dated 16 August 1966 the Secretary-General informed the Security Council that in consultation with the Governments of Cambodia and Thailand he had designated Ambassador Herbert de Ribbing as his Special Representative in the two countries and that

"Mr. de Ribbing will examine with the Governments of Cambodia and Thailand the situation prevailing between them, endeavour to find ways and means of reducing tension in the area and explore the possibilities of resolving whatever problems may exist between them.

"The duration of the assignment of my Special Representative will be initially for six months. He will be expected to move from one country to the other as necessary."

699. A further example of the practice of appointing a personal or special representative occurred in the investigation of a complaint concerning an incident in November 1963 on the border between Cabinda and the Republic of the Congo (Brazzaville). The following statement is found in an aide-mémoire dated 21 February 1964, identical copies of which were

1071 G A (XVIII), Annexes, a.i. 78, p. 2, A/5562, para. 1 of "Note by the Secretary-General".
1072 Ibid., para. 82 of the report of the Special Representative.
1073 Ibid., para. 3 of "Note by the Secretary-General".
1076 Ibid., S/5220.
1077 G A (XVIII), Suppl. No. 1, p. 40.
The Secretary-General reported on the matter and on his activities relating thereto as follows:

1. Differences between Indonesia, the Philippines and the Federation of Malaysia regarding Sabah (North Borneo) and Sarawak, sporadic armed clashes occurred late in 1963 and in January 1964 on the borders of those Territories. The Secretary-General reported on the matter and on his activities relating thereto as follows:1082

(h) Proposed designation of a Government to supervise a cease-fire arrangement

700. In connexion with the differences between Indonesia, the Philippines and the Federation of Malaysia regarding Sabah (North Borneo) and Sarawak, sporadic armed clashes occurred late in 1963 and in January 1964 on the borders of those Territories. The Secretary-General reported on the matter and on his activities relating thereto as follows:1082

"Differences between Indonesia, the Philippines and the Federation of Malaysia continued, sometimes resulting in armed clashes on the borders of Sabah and Sarawak. A cease-fire was arranged on 23 January 1964. The Foreign Ministers of the three States then met in Bangkok and on 6 February requested the Secretary-General 'to designate the Government of Thailand to supervise the cease-fire in Borneo/Kalimantan'. In his reply, the Secretary-General stated that, having taken note of the fact that the three Governments directly concerned were in agreement and that they had already approached the Government of Thailand, he had decided, in principle, to respond favourably to the request. However, it was his intention to get in touch with the Government of Thailand in order to clarify certain points, among them that there should be no financial liability for the United Nations arising from that action.

"On 10 February, the Permanent Representative of Thailand transmitted to the Secretary-General clarification from his Government with regard to the supervision of the cease-fire, as follows:"

"(1) The three Governments request that the Secretary-General appoint the Government of Thailand to supervise the cease-fire. (2) The Observer will report to the Government of Thailand which in turn will inform the Secretary-General and the Governments concerned of the contents of the report. (3) The Government of Thailand will continue to prolong its cease-fire function as long as it is asked by the Governments concerned. (4) The United Nations will not in any way be involved financially. The cost and expenses of the cease-fire operation conducted by the Government of Thailand will be shared by the Governments concerned."

"On 11 February, the Secretary-General informed the Permanent Representative of Thailand that the situation, as it emerged from the clarification provided to him, led him to believe that it would be more expeditious and practical if he, as Secretary-General, limited himself to taking note of the appointment made by the three Governments of the Government of Thailand to supervise the cease-fire. He would, of course, be prepared to receive such reports as the Government of Thailand might wish to transmit to him concerning the actual supervision of the cease-fire."

(ii) Principles governing the exercise of diplomatic functions under the inherent powers

(a) Prerequisite of the agreement of Governments

701. An example of compliance with the prerequisite of the agreement of Governments is found in the termination of the mission of the Secretary-General's Special Representative to Cambodia and Thailand1082 towards the end of 1964. The Mission was discontinued because the Government of Thailand had given notice that it was not in favour of continuing the services of the Mission on a permanent basis. That Government had suggested that consideration might be given to dispatching a high-ranking member of the Secretariat on ad hoc missions to the area to discuss the situation with the leaders of the two countries and then to make appropriate suggestions. Its views had been communicated to the Government of Cambodia which, while taking a different view of the value of such missions, had agreed to that suggestion in principle.1084

(b) Right of initiative of the Secretary-General

702. Replying to questions put to him at a press conference, the Secretary-General made the following observations:

"... I do not subscribe to the view that the Secretary-General should be just a chief administrative officer, or, in other words, that the Secretary-General should be a glorified clerk. I do not accept his concept of the Secretary-General. As I have said repeatedly on previous occasions, besides the functions of administration, the Secretary-General must take the necessary initiatives in the political and diplomatic fields. These political and diplomatic initiatives, in my view, are an essential part of the functions of the Secretary-General".1085

**(c) Role of the Secretary-General as representative of the United Nations with regard to Governments

1081 See also paras. 682-687, above.
1082 G A (XIX), Suppl. No. 1, p. 28; see also Press Releases dated 7 February 1964, SG/SM/6, and 12 February 1964, SG/SM/10 (mimeographed).
1083 See para 697 above.
1084 G A (XIX), Suppl. No. 1A, p. 8.
Article 98

**(d) Subject-matter of the diplomatic functions exercised under the inherent powers**

(e) Effect of Charter provisions and United Nations resolutions

703. On occasion, the Secretary-General referred to the limiting effect which the provisions of the Charter or the powers of United Nations political organs might have on the scope of the functions he could undertake. Thus, when in 1963 and 1964 a number of Member States offered "stand-by" military units to be made available on request to a United Nations peace-keeping force, the Secretary-General said:

"The Secretary-General, in welcoming and accepting these offers, has . . . pointed out that generally the peace-keeping operations of the United Nations in which military personnel are employed are undertaken on the basis of specific authorization by one of the competent United Nations organs . . ." 1086

At a later date, the Secretary-General again referred to the matter:

"I have welcomed the offers, but have been in no position to do much more than this, in the absence of any authorizing action by an appropriate organ of the United Nations, even though no expense to the Organisation would be involved until a contingent was called into actual United Nations service." 1087

**(f) Principles specifically concerned with good offices or fact-finding activities**

b. Other functions

**(i) Exploration of political situations**

(ii) The question of the right of the Secretary-General to make statements and to submit proposals to United Nations organs

(a) The question of the right of the Secretary-General to make statements

704. By a letter of 5 September 1959 1088 the Secretary-General requested the President of the Security Council urgently to convene the Council to consider an item entitled "Report by the Secretary-General on the letter received from the Minister for Foreign Affairs of the Royal Government of Laos, transmitted by a note from the Permanent Mission of Laos to the United Nations, 4 September 1959". 1089

705. At the opening of the 847th meeting of the Council, on 7 September, before the agenda had been adopted, the Secretary-General made the following statement: 1090

"In asking for the inscription on the agenda of the item . . . I have based my action on a practice which has developed over the years in the Security Council. According to this practice the Secretary-General, when he requests it, is granted the floor in the Council in order to make such statements on subjects within the range of the responsibility of the Council as he considers called for under the terms of his own responsibilities. Just as the Secretary-General can ask for, and is granted the floor in the Council, I feel that he is entitled to request an opportunity to address the Council publicly on a matter which he considers necessary personally to be put before the Council. In doing so within the framework to which I have just referred, the Secretary-General does not introduce formally on the agenda of the Council anything beyond his own wish to report to the Council. Naturally, the Council retains the same rights in relation to such an initiative of the Secretary-General as it has regarding any request of his to address to the Council.

"What I said should be enough to clarify the constitutional situation when, in this case, I have asked for an opportunity to report to the Council. It should, thus, be clear that the request is not based on the explicit rights granted to the Secretary-General under Article 99 of the Charter. If it had been so based, the Council, under rule 3 of the provisional rules of procedure, would not have been free to refuse the Secretary-General to address it — as it is now free to do — and it would have meant the inscription by the Secretary-General of a substantive issue on the agenda. In this latter respect it would necessarily also have involved a judgement as to facts for which, in the present situation, I have not a sufficient basis.

"I add these words of explanation to my request to the Council to be permitted to address it orally on the message received from the Government of Laos."

(b) The question of the right of the Secretary-General to submit proposals

706. At the twentieth session of the General Assembly, the Secretary-General requested the inclusion in the agenda of an item "Amendments to the rules of procedure of the General Assembly consequent upon the entry into force of the amendments to Articles 23, 27 and 61 of the Charter". 1091 In the accompanying explanatory memorandum, the Secretary-General submitted a draft resolution. To a question raised by a representative in the Sixth Committee, the Chairman replied that, as a rule, the Committees of the General Assembly acted on the proposals of delegations. It seemed, however, that there were precedents enabling the Committee to take a decision on the draft resolution contained in the Secretary-General's memorandum. 1092

Referring to precedents showing that the Secretary-General was entitled to submit draft resolutions of a technical nature, one representative stated that his delegation had decided to submit in its own name the draft resolution proposed by the Secretary-General although it did not feel that that was essential; his delegation's sole aim was to satisfy those representatives who considered that the amendments to rule 8 (b) of the rules of procedure raised fundamental political

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1086 Press Release dated 1 October 1963, SG/1588 (mimeographed).
1087 G A (XIX), Suppl. No. 1A, p. 9.
1088 G A (XX), Annexes, a.i. 103, A/5973.
1089 G A (XX), 6th Com., 873rd mtg., para. 8.
The Legal Counsel considered that the Secretary-General was fully authorized to submit the draft resolution in question but that the Secretariat would feel honoured if the representative would present the draft in the name of his delegation. The draft was subsequently submitted in the name of the delegation of Peru.

At the twenty-first session of the General Assembly when the Fourth Committee considered the position taken by International Bank for Reconstruction and Development with regard to Portuguese Territories in Africa, the Legal Counsel made a statement at the request of various delegations. In the course of his statement, the Legal Counsel suggested that, in a draft resolution recommending *inter alia* that the Security Council make it obligatory for all States to implement the measures laid down in General Assembly resolution 2107 (XX), the following should be inserted:

"directly and through their action in the appropriate international agencies of which they are members."

The representative of Portugal observed that the Legal Counsel had exceeded his powers since he had made a formal proposal concerning the text of a draft resolution. Several delegations stated that the Legal Counsel’s intervention was proper, and one of the sponsors of the draft resolution said that he was prepared to accept the insertion of the phrase suggested by the Legal Counsel. The latter pointed out that it was his function to provide honest advice when it was requested and, on some occasions, even when it was not requested.

(iii) Appointment of ad hoc arbitrators

A previous Supplement to this Repertory mentioned the authority sometimes granted to the Secretary-General by resolutions of United Nations organs or in accordance with the provisions of particular treaties to appoint arbitrators, mediators and members of Commissions. In the period under review such functions were conferred on the Secretary-General by numerous agreements concluded between States or by other international organizations with States or with private persons. Generally the parties to such agreements consulted him to ascertain whether he was prepared to carry out the authority proposed for him, which generally involved the appointment of a neutral arbitrator if the parties were unable to do so by mutual agreement or some other mechanism.

After a period of armed conflict between India and Pakistan in the Rann of Kutch during the first half of 1965, an agreement was concluded on 30 June 1965 by the two Governments calling for an immediate cease-fire in that area and the restoration of the *status quo ante*. The agreement stipulated that Ministers of the two Governments would meet to agree on the determination of the border, and that if no agreement was reached within two months the two Governments would have recourse to a tribunal of three persons none of whom would be a national of either India or Pakistan. If the two Governments failed to agree on the selection of the tribunal’s chairman within three months, they would request the Secretary-General of the United Nations to nominate the chairman. On 14 December 1965 the Secretary-General, at the request of the two Governments, nominated Judge Gunnar Lagergren of Sweden as chairman of the arbitral tribunal.

E. Representational functions of the Secretary-General

1. FUNCTIONS OF THE SECRETARY-GENERAL WITH REGARD TO NEGOTIATION AND CONCLUSION OF AGREEMENTS

Two agreements concluded by the Secretary-General in the period under review were signed after the approval of the corresponding drafts by the General Assembly in its resolution 1560 (XV). These were the agreements with the International Bank for Reconstruction and Development and the International Monetary Fund on the transfer of pension rights of participants in the United Nations Joint Pension Fund and of participants in the staff retirement plans of these two specialized agencies, which came into force on 5 January 1961 and 30 December 1960, respectively.

Pursuant to a resolution of the Economic Commission for Africa whereby it requested its secretariat to come to an arrangement or agreement defining precisely the framework for co-operation between the Commission and the Organization of African Unity, the Secretary-General concluded, on behalf of the United Nations, an agreement with the Organization of African Unity.

The Secretary-General continued to conclude numerous agreements, on a wide range of subjects, on behalf of the Organization, either on his own initia-
tive or for the purpose of giving effect to resolutions of United Nations organs that did not explicitly request him to enter into agreements. These agreements, which were entered into with States or international organizations, concerned, for example, such matters as the holding of conferences and seminars, the establishment of training centres, the status of United Nations peace-keeping forces, subsidiary bodies and observation groups, the provision by Governments of national contingents to serve as part of such forces, the provision of operative, executive or administrative personnel and the extension, in certain respects, of the jurisdiction of the United Nations Administrative Tribunal to certain specialized agencies and the IAEA.

**2. REPRESENTATIONAL FUNCTIONS OF THE SECRETARY-GENERAL IN LEGAL PROCEEDINGS**

**a. Court proceedings**

**b. Arbitration proceedings**

**c. Prosecution of claims**

3. FUNCTIONS OF THE SECRETARY-GENERAL WITH REGARD TO UNITED NATIONS HEADQUARTERS

a. Implementation of the Headquarters Agreement

713. A Supplemental Agreement signed at New York on 9 February 1966 by the Secretary-General and the Permanent Representative of the United States of America, provided for the inclusion of certain additional premises within the Headquarters District as defined in Section 1 (a) of the Headquarters Agreement.

b. Headquarters regulations

**4. OTHER REPRESENTATIONAL FUNCTIONS OF THE SECRETARY-GENERAL**

**a. Functions of the Secretary-General with regard to privileges and immunities**

**b. Representation by the Secretary-General at conferences and meetings of other agencies**

**c. Authorization by the Secretary-General to use the United Nations emblem, flag and insignia**

5. FUNCTIONS OF THE SECRETARY-GENERAL IN THE FIELD OF PUBLIC INFORMATION

714. Special emphasis was given to the question of disseminating information on the United Nations in Non-Self-Governing Territories in General Assembly resolutions 1465 (XIV), 1538 (XV), 1695 (XVI), 1848 (XVII) and 2105 (XX), and in Trust Territories in General Assembly resolutions 1410 (XIV), 1607 (XV) and 1644 (XVI).

715. The Secretary-General reported to the General Assembly at its fifteenth, sixteenth, seventeenth and eighteenth sessions on the implementation of the requests made in those resolutions. In addition he continued to submit reports to the Trusteeship Council on the dissemination of information on the United Nations and the International Trusteeship System in the Trust Territories in accordance with General Assembly resolution 754 (VIII) and Trusteeship Council resolution 36 (III).

716. The Secretary-General was requested to publicize such specific subjects as the availability of human rights fellowships, special educational and training programmes for South West Africa, the programme of technical assistance to promote the teaching, study, dissemination and wide appreciation of international

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1104 See, for example, the agreement with Austria regarding the arrangements for the Vienna Conference on Diplomatic Interests and Immunities of 27 February 1971 (United Nations Treaty Series, vol. 394 (1961), I, No. 5666, p. 27) and an agreement with Afghanistan with regard to a seminar held in that country (ibid., vol. 494 (1964), I, No. 7227, p. 77).

1105 See, for example, the agreement with the East African Common Services Organization concerning the establishment of a Statistical Training Centre in Dar es Salaam (ibid., vol. 550 (1965), II, No. 616, p. 375).

1106 See, for example, the agreement with the Republic of the Congo regarding the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo (para. 148 above) and the agreement between the United Nations and the Government of Cyprus concerning the status of UNFICYP (paras. 445-450 above). See also the agreement with Jordan concerning the stationing of a subsidiary organ of the United Nations under the charge of a Special Representative of the Secretary-General in that country (United Nations, Treaty Series, vol. 315 (1958), I, No. 4564, p. 125) and the agreement with Lebanon concerning the status of the United Nations Observation Group in that country (ibid., vol. 303 (1958), I, No. 4386, p. 271.)

1107 See, for example, the agreement with Austria on the service with the United Nations peace-keeping Force in Cyprus of the national contingent provided by Austria (ibid., vol. 557 (1966), I, No. 8129, p. 85).

1108 See, for example, the agreement with Algeria concerning the provision of such personnel (ibid., vol. 510 (1964), I, No. 7416, p. 217).

1109 For the agreement with ICAO, see ibid., vol. 399 (1961), Annex B, No. 469, p. 306; for the agreement with WHO, see ibid., vol. 394 (1961), Annex B, No. 470, p. 334; for the agreement with WMO, see ibid., vol. 429 (1962), Annex B, No. 504, p. 310; for the agreement with IAEA, see ibid., vol. 480 (1963), Annex B, No. 552, p. 484; for the agreement with IMCO, see ibid., vol. 489 (1964), Annex B, No. 605, p. 357; and for the agreement with ILO, see ibid., vol. 565, (1966), Annex B, No. 466, p. 328.

law. He was also requested to consider providing study grants within existing programmes and budgets to textbook authors, persons responsible for educational television and radio, and persons responsible for school curriculum development, for the purpose of spending time at the Headquarters of the United Nations or of the specialized agencies to become better informed concerning the achievements, activities, structure and principles of those organizations.

717. He was requested (a) to have the Declaration of the Rights of the Child "widely disseminated and, to that end, use every means at his disposal to publish and distribute texts in all languages possible"; (b) to ensure the immediate and large scale circulation of the Declaration on the Elimination of All Forms of Racial Discrimination by publishing and distributing the text in all languages possible; (c) to take, in consultation with the Special Committee on the Policies of apartheid of the Government of the Republic of South Africa "appropriate measures for the widest possible dissemination of information on the policies of apartheid of the Government of South Africa and on United Nations efforts to deal with the situation"; (d) to arrange for the "widest possible circulation for the use of Governments, specialized agencies and other institutions concerned with international co-operation" of the report submitted by the Economic and Social Council's Committee on Programme Appraisals in the economic, social and human rights fields.

1118 G A resolution 2099 (XX). See paragraph 36 and footnote 127 above.
1119 T C resolution 2139 (XXX). See paragraph 36 and footnote 120 above.
1120 E S C resolution 1012 (XXXVII). For an account of action taken on this request see G A XXI, Suppl. No. 1, p. 169.
1121 G A resolution 1387 (XIV).
1122 G A resolutions 1905 (XVIII) and 2106 (XX).
1123 G A resolution 2054 (XX).
1125 E S C resolutions 772C (XXX), 888C (XXXIV) and 958B (XXXVI). For studies, see United Nations publications, Sales Nos.: 60.XIV.2, 63.XIV.2 and 64.XIV.2.
1126 E S C resolution 961C (XXXVI). For report, see United Nations publication, Sales No. 62.1.23.
1127 E S C resolution 885 (XXXIV). For report, see United Nations publication, Sales No. 62.1.26.
1129 E S C resolution 814 (XXXI). For report, see United Nations publication, Sales No. 62.1.25, p. 7.
1130 E S C resolution 958D II (XXXVI).