

21 December

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To : Mr.M.PASQUET, Deputy Chief Finance Officer
From : Mr.C.TAFT, Assistant Legal Adviser
Subject: Accidental Death of Locally Recruited Staff Members

By memorandum , dated 30 November, 1961, I requested Mr.Bronsema to forward for our review a copy of the ONUC insurance policy which I was informed by Mr.Patti and Mr.Yammin might possibly apply to locally recruited staff members killed at Kamina as a result of the bombing of the base. The policy has not yet been sent us, and I would appreciate it very much if you would arrange to have this done at your earliest opportunity.

CT/sl

12 December

1

Mr. P.J. Hazou, Chief of General Services

C. Taff, Assistant Legal Adviser

Accident Report - 7 June 1961

1. I have reviewed the papers on the subject accident, transmitted with your memorandum of 7 December 1961 to determine whether the Insurance Company is liable to the civilian driver for the damages caused him by the ONUC vehicle.
2. The file indicates that the accident occurred on 7 June 1961, that ONUC Headquarters, Leopoldville, first received notice of the accident on 8 June 1961, ~~and~~ that the Insurance Company, according to their letter of 2 December 1961, was first notified by ONUC Headquarters, Leopoldville of the accident on 27 November 1961.
3. It is my understanding, based upon a study of the policy and conversations with Mr. von Goethem, that ONUC has eight days from the date on which ONUC Headquarters, Leopoldville, first receives notice of an accident to give notice thereof to the Insurance Company. That is to say, the eight day period begins not from the date of the accident, but from the date of the receipt of notice by ONUC Headquarters, Leopoldville. As you know, the policy presently being negotiated for the period from 31 December 1961 to 31 December 1962 allows for a three month period instead of eight days, with a minimum of three more months in the case of force majeure.
4. The facts set forth in paragraph 2 above show that the required notice was not given within the allowable eight day period. The Insurance Company cannot therefore be said to have violated the policy by refusing to accept liability for the claim of the third party.
5. The papers transmitted with your memorandum of 7 December 1961 are returned herewith.

ORGANISATION DES NATIONS UNIES
AU CONGO



UNITED NATIONS ORGANIZATION
IN THE CONGO

BOITE POSTALE 7248
LEOPOLDVILLE
REPUBLIQUE DU CONGO
CABLE : ONUC LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

C/ADM/430/3

7 December 1961

To: Mr. N. Kanakaratne, Legal Adviser
From: Peter J. Hazou, Chief of General Services
Subject: Accident Report - 7 June 1961

Please find attached herewith, as requested by Mr. C. Taff, an accident case which was refused by the Insurance Company on the grounds of late notification.

A handwritten signature in blue ink, appearing to be "P. J. Hazou", is located in the lower right quadrant of the page.

30 November

1

Mr. A. Bronsema, Chief Finance Officer

C. Taff, Assistant Legal Adviser

Accidental death of locally recruited staff member

1. We are in receipt of a memorandum, dated 29 November, 1961, from Mr. Grunzweig, requesting the views of the Legal Advisers on the question of the compensation to be paid by ONUC to the estates of locally recruited staff members killed during the recent bombing of Kamina.

2. I understand from my conversation of yesterday with Messrs. Yammin, Patti and yourself that ONUC may possibly be insured against such deaths. In order that we may determine the legal liability of ONUC in this matter, it would be appreciated if you would arrange to send me the insurance policy in question.

CT/mr

ORGANISATION DES NATIONS UNIES
AU CONGO



UNITED NATIONS ORGANIZATION
IN THE CONGO

BOITE POSTALE 7248
LEOPOLDVILLE
REPUBLIQUE DU CONGO
CABLE : ONUC, LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

29 November 1961

A : Mr. N. Kanakaratne, Legal Adviser
De : B. Grunzweig, Deputy Chief Administrative Officer
Objet : Accidental Death of Locally-Recruited Staff

I see that Miss Osborne has sent you a copy of her memorandum of 27 November 1961 addressed to the Chief Administrative Officer regarding the question of compensation for locally-recruited staff who were killed during the bombing incident at Kamina Base. I would appreciate it if you could kindly let me have your views as to what extent the organization is liable for compensation of loss of life and/or injuries sustained by locally-recruited staff. Based on your legal opinion, I will explore the amount of damages, if any, which the organization may have to pay to dependents or the injured parties.

Mr. Taff.

*To be reviewed as
as submitted by me already
For attention, please.*

NOR

20.11.61

JP:jg

Léopoldville, le 28 novembre 1961

Notre réf: GVT/1/61

Monsieur le Premier Ministre,

En référence à votre lettre N° 2807/61 du 24 novembre j'ai l'honneur de vous informer que l'Accord Statutaire entre le Gouvernement central de la République du Congo et l'Organisation des Nations Unies a été signé hier matin à New York par votre Ministre des Affaires étrangères et le Secrétaire général par interim des Nations Unies.

Dans une note qu'il a adressée à l'Assemblée générale et au Conseil de Sécurité après la signature de cet Accord le Secrétaire général par interim a informé ces organismes que cet Accord serait entériné par le Conseil des Ministres. En conséquence je vous salue très gré, Monsieur le Premier Ministre, de me faire savoir quand le Conseil des Ministres aura entériné ledit Accord afin que je puisse à mon tour en informer le Siège à New York.

Je vous prie d'agréer, Monsieur le Premier Ministre, l'assurance de ma haute considération.

Sture Linnér
Chargé de la Mission
des Nations Unies au Congo

Son Excellence M. Cyrille Adoula,
Premier Ministre de la République du Congo
Léopoldville

NO/MC

27 November

1

To: S. Habib Ahmed, Chief Administrative Officer

From: Naomi Osborne, Chief of Civilian Personnel

Subject: Accidental Death of Locally Recruited Staff

1. Recently four ONUC Congolese staff members were killed during the bombing of Kamina Base. As far as I know this is the first time we have had locally recruited staff killed in line of duty.

2. In reviewing our Staff Rules, I find no provision has been made for the payment of indemnity in such cases. Article 27, item 5 states:

"If a staff member dies in service, he shall be considered to have been separated from service as from the day of his death. His designated beneficiary shall receive all monies due to him from ONUC as on the day of his death. Such payment shall release ONUC from all further liability in respect of such payments due to the deceased staff member."

3. I believe it would be well if we could have a legal opinion as to how to proceed in such cases. In the meantime I am asking Mr. Gauvreau of Kamina Base to provide me with all of the details concerning the death of the four Congolese workers mentioned above.

cc Mr. Kanakarathne ✓

Mr. Tapp

1. You may wish to handle this when C.A.O. formally requests legal advice.

2. Several cases of this nature are bound to come up and I think a special file should be opened.

hpk.

29.11.61

See
also o.p.s
file

Le Chargé de la Mission des Nations Unies au Congo présente ses compliments au Ministre des Affaires étrangères de la République du Congo (Brazzaville) et a l'honneur de se référer aux notes 1199/ETR en date du 9 septembre 1961 et 1354/ETR en date du 5 octobre 1961.

Il regrette le retard apporté à y répondre, retard causé par le décès du Conseiller juridique au mois de septembre, et a l'honneur de l'informer que les deux avions DC-4 immatriculés sous le No. 75416 et sous le No. HP299 n'appartiennent pas aux Nations Unies mais sont affrétés par l'Organisation des Nations Unies au Congo de la Compagnie "Interocean Airways" et de la Compagnie "Panama Airways", enregistrées au Luxembourg et à Panama respectivement.

Le Chargé de la Mission des Nations Unies au Congo désire vous assurer que la question mentionnée dans les notes ci-dessus a été portée à l'attention particulière des deux Compagnies d'aviation afin que les mesures nécessaires soient prises.

Le Chargé de la Mission des Nations Unies au Congo saisit cette occasion pour renouveler au Ministre des Affaires étrangères les assurances de sa haute considération.

Léopoldville, le 30 octobre 1961

Son Excellence
Monsieur le Ministre
des Affaires étrangères
de la République du
Congo (Brazzaville)
Brazzaville



30 October

1

Miss N. Osborne, Chief Civilian Personnel
N. Kanakarathne, Legal Adviser

SE SO MO

Having studied the documents attached to your note of 27 October, I consider it necessary, from our point of view, that we should immediately reply to Mr. Secuws' letter of 18 October in which he states: "No errors were noted in the 10 cases submitted for our inspection". According to Mr. Yammin's memo to you of 26 October, these 10 cases indicated that staff had been paid double for the one-day holiday observed by the local law. Before any further action is taken in this matter, we should place our position in relation to this over-payment clearly on record. I therefore advise you to contradict Mr. Secuws in a letter to him on this point.

The two other matters raised by you in your memo will be attended to on return of the papers to me after you have despatched the letter recommended above.

c.c. Mr. Bronsema, Chief Finance Officer
Mr. Grunzweig, Deputy CAO

7/26 4/11
HMK
26/10

26 October

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Mr. A. Bronsema, Chief Finance Officer

N. Kanakaratne, Legal Adviser

Payment of duty on fuel and lubricants

1. Reference your note of 20 October on the above subject, I am surprised that no action has been taken all this time in regard to invoices submitted by petrol companies including the payment of duty on fuel and lubricants.

2. Under Section 7 of the Convention on the Privileges and Immunities of the United Nations, the United Nations, its assets, income and other property are "exempt from customs duties and prohibitions and restrictions on imports and exports in respect of Articles imported or exported by the United Nations for its official use". Although the Government of the Republic of the Congo has not yet ratified the Convention, these privileges and immunities of the United Nations have been preserved under Articles 11 and 12 of the Status Agreement between the United Nations and the Republic of the Congo. Although the latter agreement has not yet been signed, the practice hitherto has been for the Government to exempt from payment of customs duty all goods imported by ONUC for its official use.

3. Reference to the Chief Procurement Officer as well as to the Chief Logistics Officer should reassure you that no duty is payable on commodities imported by ONUC. I shall be glad to hear from you whether actual payment of the invoices submitted by the petrol companies hitherto has included the amount of duty on fuel and lubricants. If so the matter will have to be taken up without delay in order that a reimbursement could be claimed from the appropriate authorities of the Government.

cc. Mr. S.H. Ahmed, Chief Administrative Officer
Mr. A. Lindner, Chief of Audit

25 October

File
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Air Commodore H.A. Morrison, Air Commander

N. Kanakarathne, Legal Adviser

Infractions of International Civil Aviation Regulations by UN
aircraft - Complaint by Government of Congo (Brazzaville)

1. Please refer to your note dated 13 October addressed on the above subject to Mr. G. Pagnanelli, Legal Affairs Officer, in reply to his note to you of 7 October, requesting your comments on the Note from the Ministry of Foreign Affairs of the Republic of the Congo (Brazzaville) alleging violations of international air regulations by two specified United Nations aircraft.

2. I regret I am unable to understand precisely what you mean by your observation that you "can add nothing to what has been said by Brazzaville authorities". If this implies that you accept the facts stated in the Note received from the Brazzaville Government, I presume that such acceptance is based on a verification by you or your subordinate officers of the alleged incidents and that action has been taken by you to prevent the recurrence of such incidents as well as to have disciplinary action taken against the pilots concerned. If on the other hand your observation means, as probably it does from the next sentence in your note, that no inquiries can be made at this stage to ascertain whether or not such violations have occurred, I am compelled to point out to you the following:

- (a) The documents attached to the Note forwarded by the Brazzaville Government clearly indicate the types and the markings of the two aircraft, the names of the pilots, as well as the date and time of the two violations complained of.
- (b) The documents also furnish in considerable detail the nature of the two violations. In one case, that of DC-4 75416 (pilot McCallister), failure to establish contact with Douala at a time when a DC-8 and a DC-6 were taking off from Douala for Marseilles and Lagos respectively and failure to maintain contact with Brazzaville despite request, might, according to the complaint, have resulted in a collision within a few minutes between the UN DC-4 and the DC-8 FBEJB taking off from Douala for Marseilles. In the other case, that of DC-4 HP 299 (pilot Robertson), the allegation is that throughout its flight from Tripoli to Leopoldville via Kano the pilot had failed to adhere to the original flight plan regarding flying level and had failed to inform either Kano or Brazzaville of the change in flying level which the pilot had on his own initiative decided upon. Apparently this aircraft

flew for five hours at a lower flying level (FL 95) than the level indicated on the flight plan originally filed (FL 115). The control tower at Brazzaville tried in vain to obtain a reply from the pilot to clarify the position.

3. I am sure you fully appreciate the risks attendant upon such hazardous conduct on the part of pilots in charge of aircraft. In both cases the consequences in terms of loss of life might well have been very grave. I shall be grateful if you have the two pilots questioned on the basis of the allegations made by the Foreign Ministry of the Brazzaville Government so that we may at least apologize to that Government, if it is found that the pilots had transgressed the international flying code. Pending such information we have replied to the Foreign Ministry of Brazzaville that the matter is being inquired into by us.

4. The pilot in charge of an aircraft, whether manipulating the controls or not, is responsible for the operation of the aircraft in accordance with the rules of the air. He may depart from such rules only in circumstances that would render such departure absolutely necessary in the interest of safety. You are fully aware yourself that it is incumbent on pilots in charge of aircraft to maintain constant contact with the proper air traffic control tower responsible for the region in which the aircraft is flying at any given moment. I am sure you are also aware of the rules governing information on flights and the prior submission of flight plans. Under those rules any change to a flight plan must be reported as soon as practicable to the appropriate air traffic services unit. Similarly an aircraft has to be operated only in compliance with air traffic control clearances received from the appropriate air traffic authorities.

5. I agree with your view that it is "hardly within your field of responsibilities to advise duly licensed commercial operators on such basic requirements as proper R/T procedures". However I am sure you will agree with me that it does fall within your field of responsibilities to enforce a proper adherence to International Civil Aviation Regulations and requirements by all commercial operators on charter by the United Nations. It is my opinion that as long as aircraft carry the markings of the United Nations the responsibility of enforcing a proper observance of the internationally accepted procedures and flying codes lies upon the appropriate authority of the United Nations. You will hardly disagree with me that at Headquarters here the Air Commander and the Air Operations Division of ONUC are the only appropriate authorities for such enforcement.

6. You drew my attention yesterday in the course of our telephone conversation to Article 3 of the contract between the UN and each of the charter companies according to which "each aircraft shall at all times be under the exclusive command of its captain. The Carrier shall have sole responsibility for the operation including navigation and control of the aircraft.....", implying that this provision excluded any responsibility on our part for improper observation by the crews of these aircraft of

international flying standards and rules of the air. A more careful reflexion cannot but convince you that the two matters are unrelated. It does not lie with the Carrier to invoke Article 3 as justification for careless, indifferent, or negligent navigation any more than for what appears to be deliberate flouting of international air regulations (unless of course it be sheer ignorance of such regulations). I wish in this connection to invite your attention to Amendment No. 1 of 10 March 1961 to these contracts according to which

"The Carrier and its flight crews and other employees shall exercise the utmost discretion in the conduct of their affairs during the period of this agreement. They shall refrain from any action, whether within or outside of the Republic of the Congo which may embarrass or be inimical to the interest of the United Nations..... Violation of this provision by the Carrier its flight crews or other employees shall be deemed a breach of this agreement and thus cause for its immediate cancellation by the United Nations without any period of notice or any cancellation indemnity".

In view of this Amendment we can hardly leave it to the Carrier and its crews to navigate as, where, and how they please. In my view it is for us to compel the Carrier to function properly and if it fails to do so to bring such failure to the notice of the proper authorities in New York so that the sanctions contained in Amendment No. 1 may be put into execution.

7. I also note from your memo of 13 October that you propose to address a letter to each of the charter companies requesting the operation managers to take necessary action in briefing their crews. Please oblige me with a copy of that letter.

8. I am taking action to summon representatives of all the charter companies as well as representatives of ICAO and of the Chief Administrative Officer to a meeting in my office next week to communicate to them the seriousness with which we view this continued non-observance and infraction of International Civil Aviation Regulations. I shall be happy to have you or your representative present at that meeting the date and time of which will be communicated to you.

9. *Copies of documents are annexed, which please return.*

cc. Dr. S. Linner, Officer-in-charge ✓
 General S. MacEoin, Force Commander
 Mr. W.W. Cox
 Mr. S.H. Ahmed, Chief Administrative Officer
 Mr. J.P. Fournier, Senior Representative, ICAO

file 97 nalk
me/w

24 October

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Miss Naomi Osborne, Chief of Civilian Personnel

H. Kanakaratne, Legal Adviser

Mr. Lino de Lourdes Vieira

1. I have gone through the file of papers relating to the above employee forwarded to me with your note of 7 October. A consideration of Mr. de Vieira's letter of 3 October addressed to Mr. Fulcheri leads me to the view that the circumstances outlined there justify our considering this matter closed as far as ONUC is concerned. It is clear that he has been the victim of a series of unfortunate circumstances beyond his control. I also note that judgment has been entered against him by the Court of First Instance of Leopoldville on 12 July 1961.

2. In coming to this conclusion I have also taken into consideration the letter dated 16 August 1961 addressed to you by Mr. R. Gavard regarding the work efficiency and disposition of Mr. de Vieira at Luluabourg.

3. I therefore recommend that this matter be closed. Your file of papers is returned herewith and your attention is invited to the post-script in Mr. de Vieira's letter of October 3rd requesting that the documents attached to that letter be returned to him.

cc. Mr. Fulcheri, Personnel Officer

File up

1000
20.10.61

20 October

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Mr. R. Bernard, Chief Procurement Officer
N. Kanakarathne, Legal Adviser

Matériels, boissons et vivres repris du "Petit Vatel"

Mr. Taff, Secretary of the Property Survey and Claims Board,
has referred to me your memo to him dated 12 September.

Before I advise as to whether the information called for by
Mr. d'Aguiar should be given, I shall be grateful to have the
following matters clarified:

- (1) Definite proof that Mr. d'Aguiar is the properly-constituted curateur for the firm Jean Lévy - "Au Petit Vatel";
- (2) Whether wines and spirits originally offered to the PX had thereafter been bought by FRIDAN, and if so how alcoholic beverages intended for United Nations PX could be the subject of transaction between local private firms (in view of the exemption of customs for such goods intended for United Nations use).

The letter addressed to you by Mr. d'Aguiar is returned herewith.
The delay in attending to this matter is regretted and, as you know,
was due to circumstances beyond my control.

cc. Mr. C. Taff

17 October

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Dr. Ralph Bunche, Under-Secretary for Special Political Affairs
N. Kanakaratne, Legal Adviser

"Umbrella" Agreement

Reference your cable 7170 addressed to Dr. Linner, enclosed
please find three copies of the "Umbrella" Agreement as requested.
No doubt you already have received our cable on this subject.

1640

RECU DE L'ONU un pli adressé à M. J. Annez de Taboada
Sabena, Aéroport de Léopoldville

Léopoldville, le

11/10/61

à

14 45

heures

[Signature]
L.V.S.E

cc
Katanga
Fykhung

11 octobre 1961

Monsieur le Directeur,

J'ai l'honneur d'accuser réception de votre lettre No. 1613/JN/sl. du 27 septembre 1961 concernant les dégâts subis par les installations et l'équipement de l'aérodrome d'Elisabethville.

Vous dites que le personnel de la SABENA s'est vu refuser l'accès à vos installations, gardées par des militaires de l'ONU. Nous regrettons cette nécessité mais insistons sur le fait que la présence dudit personnel n'était pas compatible avec la situation militaire existant à l'aéroport au moment où les troupes des Nations Unies au Katanga étaient l'objet d'attaques illégales par la force des armes, l'aéroport lui-même étant soumis à des bombardements aériens, mitrailleurs, tirs de mortiers, et au feu d'autres armes.

En raison de l'interruption prolongée des services normalement nécessaires au fonctionnement de l'aéroport, et notamment du maintien du statu quo sur toutes les positions militaires au Katanga du fait que l'accord de cessez-le-feu conclu le 20 septembre 1961 entre l'ONUC et les autorités katangaises, force est de rejeter votre assertion selon laquelle la responsabilité de toutes pertes et déprédations que vous serez amenés à constater incombe entièrement à notre Organisation, qu'elles soient le fait direct de nos agents et préposés ou le fait de tiers qui s'en prendraient aux biens sous notre garde.

L'ONUC fera ce qui dépend d'elle pour maintenir ou rétablir la situation à l'aéroport, mais cela tout d'abord en raison du caractère essentiel de l'aéroport à l'égard de l'utilisation efficace de la Force de l'ONU dans le cadre du mandat à elle confié par les résolutions du Conseil de sécurité. Ce qu'elle peut faire n'implique donc en aucune manière qu'elle se considère comme responsable envers des personnes ou entreprises privées de dégâts résultant manifestement d'un état d'hostilités créé de propos délibéré contre les forces de l'ONU par les autorités katangaises et par un certain nombre de mercenaires étrangers et autres personnes servant illégalement dans les troupes katangaises.

L'aérodrome se trouvant actuellement placé sous un statut strictement militaire, il ne sera ni possible ni indiqué d'engager une procédure conjointe de constatation des dommages.

Monsieur J. Annez de Taboada
Directeur
SABENA
Léopoldville

Etant donné la situation et la responsabilité évidente des autorités katangaises en ce qui concerne les attaques armées subies par les forces des Nations Unies et l'aérodrome, je me vois contraint de suggérer que vous vous adressiez à ces autorités pour leur présenter vos réclamations.

Je dois notamment exprimer mon extrême surprise de voir la SABENA demander aux Nations Unies compensation pour la perte d'un DC-4 appartenant à Air Katanga et détruit par la prétendue aviation katangaise.

Veillez agréer, Monsieur le Directeur, l'assurance de ma haute considération.

Sture Linner
Chargé de mission
des Nations Unies
au Congo

cc. Mr. C. Taff



Direction d'Afrique

SIÈGE SOCIAL : BRUXELLES

DIRECTION D'AFRIQUE : LÉOPOLDVILLE

TÉLÉGRAMMES : SABENA

R. C. 4494

AÉRODROME DE Léopoldville

le 27 septembre 1961

REFERENCES : 1613/JN/sl.
ANNEXE :

MONSIEUR LE REPRESENTANT
DE L'ORGANISATION DES NATIONS UNIES AU CONGO

Building Royal

LEOPOLDVILLE

Monsieur le Représentant,

Nous sommes contraints de protester énergiquement contre les pertes et dégâts subis par les biens et le matériel d'AIR CONGO et de la SABENA à l'aérodrome d'Elisabethville.

En effet, le commandant de bord du 90/CBT d'AIR CONGO, en mission pour votre Organisation, a fait une série de constatations à Elisabethville, le 24 septembre 1961, nonobstant le fait que l'accès à divers emplacements loués par la Sabena, lui ait été refusé par les militaires indiens.

Nous rappellerons d'abord que depuis plusieurs jours le personnel de la Sabena se voyait refuser l'accès à nos installations, gardées par les militaires de votre Organisation.

Dans ces conditions, la responsabilité de toutes pertes et dégradations que nous serons amenés à constater incombe entièrement à votre Organisation, qu'elles soient le fait direct de vos agents et préposés ou le fait de tiers qui s'en prendraient aux biens sous votre garde.

Notre commandant de bord a relevé les faits suivants :

- Le tableau de bord de l'hélicoptère S.58 a été défoncé à coups de crosse.
- Les moteurs 1 et 4 du DC.4 OO-ADN qui a pris feu sont systématiquement démontés et pillés.

../..

SABENA

- Deux constant speed units ont été enlevés
- Un dome d'hélice était en cours de prélèvement
- Quatre magnétos ont été enlevées.

A noter qu'un outillage abandonné en hâte à l'arrivée de notre agent se trouvait au pied de l'avion. Cet outillage appartenait à une compagnie aérienne sous contrat d'affrètement avec votre Organisation et servait manifestement au démontage des moteurs.

- Nos 2 élévateurs "Forklifts" ont été volés.
- Nos stocks d'essence sont en voie d'épuisement à la suite des prélèvements effectués par plusieurs utilisateurs illégitimes, chacun se servant librement.
- Le magasin de pièces de rechange est mis au pillage. Ici aussi, chacun se sert sans contrainte.

D'autre part, les appareils DC.3 courent un grave danger du fait que de nombreux fûts d'essence sont stockés en dessous de ces appareils, les exposant à une destruction rapide à la moindre imprudence ou en cas d'attaque de l'aérodrome.

Nous formulons sur ce point nos plus expresses réserves et vous prions de mettre un terme à cette situation en faisant retirer les fûts d'essence.

Notre commandant de bord a cru de son devoir de porter ces faits à la connaissance de Monsieur O'BRIEN, représentant de votre Organisation au Katanga. Ce fonctionnaire lui a répondu qu'il connaissait la situation, mais ne pouvait que la déplorer.

Il nous appartient de formuler les réserves les plus formelles et les plus générales quant à tout préjudice qui nous est et nous serait causé à l'aérodrome d'Elisabethville du fait de l'Organisation des Nations Unies et dont nous entendons obtenir réparation par les voies nécessaires, et nous attirons votre attention personnelle sur la responsabilité qu'encourt votre Organisation en prolongeant une situation déplorable qui permet les exactions les plus graves et porte préjudice du potentiel de la compagnie nationale congolaise AIR CONGO en même temps qu'aux droits de propriété de la SABENA. Nous vous prions de bien vouloir intervenir d'urgence pour que soient prises à l'aérodrome d'Elisabethville les mesures nécessaires à la sauvegarde des biens et du matériel dont votre Organisation a d'autorité décidé d'assumer la garde et la protection.

En toute hypothèse, nous suggérons, par copie de la présente à votre service du contentieux, une procédure de constatation immédiate qui se déroulerait dans l'intérêt des deux parties et sans reconnaissance préjudiciable de la part de votre Organisation.

Nous prions vos services de désigner immédiatement un délégué pour assister aux opérations de constat auxquelles il sera procédé dès que possible. Votre expert ou l'officier de l'ONU désigné à cet effet pourrait prendre utilement contact avec Monsieur NAVEAU (tél. 6031, ext. 348), de nos services.

Divers témoignages nous laissent supposer que la responsabilité de l'O.N.U. ne paraît pas engagée seulement quant aux points relevés ci-dessus, mais également quant au pillage des magasins de frêt et de catering, de la réserve du bar et des ateliers.

De nombreux envois couverts par une lettre de transport aérien auraient été pillés, la responsabilité des troupes de l'Organisation étant engagée. Dans ces conditions, nous ne pourrions que transmettre à votre service contentieux les réclamations qui nous parviendront des expéditeurs et destinataires des marchandises.

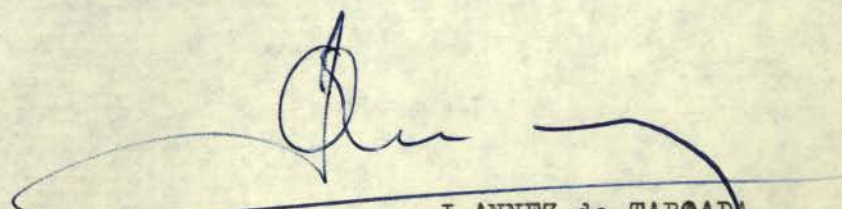
Ici aussi, il est de l'intérêt de l'O.N.U. de procéder conjointement avec nous et sans reconnaissance préjudiciable, à la constatation contradictoire des dégâts.

Nous formulons également nos plus expresses réserves pour les dégâts causés à notre matériel volant et plus particulièrement pour la perte de l'avion DC.4 OO-ADN détruit au sol à Elisabethville.

Nous restons dans l'attente de votre accord sur ce qui précède et nous vous prions de nous faire connaître de toute urgence le nom de l'expert ou de l'officier que vous désignerez.

A défaut de voir l'O.N.U. participer aux constatations, nous ne pourrions, à notre grand regret, que les considérer comme contradictoires à l'égard de l'O.N.U.

Veuillez agréer, Monsieur le Représentant, l'assurance de notre haute considération.



J. ANNEZ de TABOADA
Directeur

Le 11 octobre

1

Monsieur R. Bernard, Chief Procurement Officer
N. Kanakarathne, Legal Adviser
Embalming of deceased ONUC Personnel.

1.- Reference to your note to me dated 9 October, on the above subject, I have no comments to offer on the question of the terms of the contract as regards the remuneration demanded by Dr Bastin for the work in question. Whether the services of Dr Bastin should be engaged or whether a qualified person be added to the establishment of ONUC is a matter for decision by the Chief Administrative Officer in consultation with the Chief Finance Officer in view of the financial implications.

2.- Your note raises once again the difficulty relating to the demand for payment in foreign currency payable to an account in a bank overseas. As Legal adviser I have, of course, to invite your attention once more to the provisions of the Decret-Loi of the Congolese Government of 24 July 1961 relating to control of exchange and the restrictions imposed by it on payment in foreign currency.

You will recall that it was only a few days ago that I addressed a note to you on the same subject in connection with the renewal of ONUC's contract with Fridam.

3.- Apart from this point I cannot, of course, furnish any more comments of value at this stage. I shall be certainly prepared to ~~work~~ ^{look} over the terms of any contract that may be considered before such contract is finally signed.

c.c. to : Mr. A. Bronsema, Chief Finance Officer
Mr. S.H. Ahmed, Chief Administrative Officer
Mr. P.C. Martin, Chief Auditor

Leg

CONFIDENTIAL

29 September

1

General MacBain -- Mr. W.W. Cox

H. Kanakarathne, Legal Adviser

Katangese refugees under UN protection in Leo

1. I have to bring to your attention some information which I received yesterday at 5 P.M. from Major G.R. Monette, of Military Information, relating to the Katangese refugees who had been sent to Leo from E'ville ten days ago without any explanation as to why these 18 refugees (including women and children) had to be sent all the way to Leo. They had been accommodated in Camp Martini and, pending information from E'ville, were regarded as refugees seeking UN protection and not detainees taken into UN custody. Yesterday I requested Captain Singh of Military Information to despatch a French speaking officer to question the refugees and find out the reasons why they sought UN refuge and what precisely they expected the UN to do for them. Lt. Agfors of Military Information was detailed to carry out this interrogation and he accordingly left for Camp Martini yesterday afternoon. On arrival at the Camp he was told that all the Katangese refugees had been released two days ago and their present whereabouts were not known. Lt. Agfors reported this to Major Monette who contacted me immediately.

2. No instructions had been issued either by me or by any authorized person that these refugees should be released. Major Monette informs me that no instructions of such a nature had been issued by Military Information either. At my request he has undertaken to furnish me with an immediate report on this matter from Major Vallen, Officer in charge of Camp Martini, through Leo Command. I have urged on Major Monette the importance of my knowing today:

- a) Who ordered the release of the Katangese refugees;
- b) On whose authority such order was made;
- c) Whether such authorization, if any, was in writing;
- d) The exact number and particulars of the refugees in question.

3. I shall keep you informed in due course as to further developments in this matter.

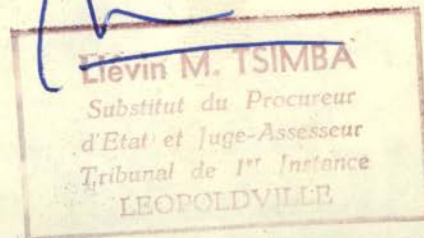
C.C. Major Monette

Mr. Poujoulat

From Mr. Pagnanelli (Room 622)

RECU DE L'ONU UN PLI ADRESSE A M Lievin M. Tsimba

Léopoldville, le 27-9-61.
à 8h50 heures



25 sept. 1961

admiral . . .

6712

25 September

1

Miss N. Osborne, Chief, Personnel Office

G. Pagnanelli, Legal Officer

Complaint against Mr. Yamin

.... Enclosed please find copy of a letter dated 29 August from the
Deputy Prosecutor of the Court of 1st instance, Leopoldville,
.... together with copy of our to-day's reply, contents of which are
self explanatory.

I will be grateful if I could be supplied with a full report on
this matter.

Le 25 septembre 1961

Monsieur le Substitut,

J'ai l'honneur d'accuser réception de votre lettre du 29 écoulé concernant une plainte déposée contre M. Yammin, du Bureau de Placement de l'ONUC, pour soi-disant non paiement de salaire à M. N'ZUNDU MABANDA.

Je ne permets d'attirer votre attention sur le fait que votre convocation qui, comme vous le dites vous-même, est une pièce officielle judiciaire, ne peut en aucun cas être délivrée à l'accusé de main à main par le plaignant, mais doit au contraire lui être notifiée par voie de procédure judiciaire.

Néanmoins, ce cas fait actuellement l'objet d'une enquête de l'ONUC, qui ne manquera pas de prendre les mesures qui s'imposent.

Veuillez agréer, Monsieur le Substitut, l'assurance de ma considération distinguée.

N. Kanakarathne
Conseiller juridique

M. LIEVIN N. TSIMBA
Substitut du Procureur d'Etat
et Juge-Assesseur
Tribunal de Première Instance
LEOPOLDVILLE

/BELGE//BELGISCHE/CONGO

Léopoldville, le 29 août 1961.-
Leopoldstad, de

Direction Générale — Algemene Directie

Direction — Directie

(1) N° 6667 /D.21/14.123/TSL.-

Réf. n° :

Annexe :
Bijlage :Objet :
Voorwerp :A Monsieur le Conseiller Juridique
de l'O.N.U.C.

Quartier Général de l'ONUC

à

LEOPOLDVILLE

LEOPOLDVILLE

Doléances N'ZUNDU MABANDA
contre VAMINE.

Monsieur le Conseiller Juridique,

J'ai l'honneur de porter à votre connaissance un fait qui constitue, à mon sens, un véritable outrage envers la magistrature congolaise, commis par l'un de vos collaborateurs.

Suite à une plainte me soumise le 22 juillet 1961 par le sieur N'ZUNDU MABANDA, boy à l'O.N.U., contre le sieur JAMINE, Directeur à l'O.N.U. - B.P. 7248, pour non paiement de salaire, nous avons estimé nécessaire de le confronter avec le plaignant pour mettre immédiatement fin à ses prétentions.

Le 22 août dernier, j'ai remis, sous enveloppe, à Nzundu Mabanda, une convocation avec prière de la remettre au sieur Jamine qu'il connaissait mieux. Ce Monsieur ayant reçu ladite convocation, pièce officielle, judiciaire, s'est permis de la déchirer méchamment en deux morceaux en disant au porteur qu'il attendait plutôt la police pour l'arrêter...

Considérant votre esprit de large compréhension et de sincère collaboration avec les autorités congolaises légalement établies, je n'ai pas voulu réagir directement sans passer par votre haute personnalité. Il est en effet regrettable de relever, parmi vos membres, certaines personnes mal intentionnées qui ne sont ici que pour détruire notre république et déshonorent ainsi les meilleures collaborateurs du Congo-ex belge.

Je vous prie, en conséquence, avant que je prenne d'autres mesures, de vouloir bien inviter le sieur Jamine à se présenter sans délai à mon Office pour audition. Je vous en remercie.

Veuillez agréer, Monsieur le Conseiller Juridique, l'assurance de ma considération très distinguée.

LE SUBSTITUT DU PROCUREUR D'ETAT,

Liévin M. TSIMBA,

Liévin M. TSIMBA

Substitut du Procureur

d'Etat et Juge-Asseleur

1^{re} Instance

LEOPOLDVILLE

(1) Rappeler dans la réponse la date et le numéro — In het antwoord nummer en dagtekening vermelden.

25 September

1

Mr. R.C. Lai, Chief Accommodation Officer

N. Kanakaratne, Legal Adviser

Work at Lovanium University - COLETTEN -

1. With reference to your memos on the above subject dated 12 September addressed to the late Mr. Fabry and of 22 September addressed to me, I have studied the papers including Mr. Fabry's note of 23 August.
2. It appears to me that the question now is no longer one of legal liability so much as one of adjusting the payments for the work done during the period when the workers originally employed for work at Lovanium were engaged in carrying out the drainage scheme at ONUC hospital by reason of the extraordinary session of Parliament in the Lovanium campus. I note from your two memos that no claim has so far been submitted by COLETTEN on account of indemnification for the work at the University which was interrupted (the sum of 589,782 CF) although they have submitted a bill for the work done at the hospital (a sum of 290,400 CF). Whether these sums should be paid or not and in what manner payments should be linked with the question of compensation as well as with the question of the budgetary allocation of the Congolese Government to the University for expenses connected with the parliamentary session are matters which do not require any legal opinion or any advice by this Office. I suggest that this aspect of the matter be taken up by you with the Chief Administrative Officer and the other ONUC officials responsible for financial matters.

Mr. S.H. Ahmed, Chief Administrative Officer

cc. Mr. P.J. Hazou, Chief of General Services

Mr. A. Bronsema, Chief of Finance

CONFIDENTIAL

15 September

1

Mr. J. Poujoulat, Special Assistant to the Officer-in-charge

N. Kanakarathne, Legal Adviser

André CREMER.--

Reference your note to me dated 11.9.61 forwarding copy of cable from Colonel Egge to Mr. Linner and General MacEoin regarding the above named person, Mr. Knecht who had questioned him the day after his arrival here informs me that Cremer does not appear to be a reliable person and that whatever he says in relation to the death of Mr. Lumumba should not be taken as being of much value. He would appear to be trying to exploit as much as possible the protection he has received so far under the umbrella of the United Nations in avoiding arrest for his previous criminal activities. Under ^{the} circumstances, I do not consider it necessary for him to be detained under our protection solely for reasons connected with the work of the Commission of Investigation.

You know of course the other reason which may justify his continued detention by the UN, viz the information which he claims to possess in relation to the activities of Mr. Munongo, Minister of the Interior in the Provincial Government of Katanga. Dr. Fabry must have told you that the authorities of the Central Government (Office of the Ministry of Justice and Office of the Ministry of the Interior) are interested in this aspect of Cremer's activities. Colonel Egge handed to me before he left the following original documents relating to Cremer and taken into custody by Colonel Egge at the time Cremer was placed under UN control:

- (1) Carte d'identité d'officier issued by the "Autonomous State of South Kasai", bearing No. 046;
- (2) An Attestation issued by the Commandant of the Gendarmerie of the "Autonomous State of South Kasai", dated 5 January 1961;
- (3) Laissez-passer issued by the Inspector General of Police Nationale of Katanga to Cremer charging him with a special mission "by the Minister of the Interior" detailed further in the document;
- (4) The Mandat d'arrêt provisoire issued on 30 August 1961 against Cremer for theft.

Since Dr. Fabry informed me that officials of the Ministry of Justice of the Central Government were expecting to question Cremer, I sent him the attached note regarding these original documents handed to me by Colonel Egge. He has suggested that the documents be kept "in our archives", but the Congolese Sûreté be sent copies. I am handing these documents over to you

so that the necessary arrangements as suggested by Dr. Fabry be made by your Office since you maintain regular liaison in these matters with the Congolese authorities. Also enclosed is Cremer's personal diary in the pocket of which will be found the keys to his suitcase which has been retained by the Katangese authorities, as well as a copy of the interrogation report relating to the interrogation of Cremer in Elisabethville.

I shall be grateful if you acknowledge ^{receipt} ~~reception~~ of the original documents listed above as well as of the diary and keys.

cc Dr. V. Fabry, Special Counsellor ✓

MEMORANDUM

From P.J.M. Carvin
Administrateur, OMS

To Dr V. Fabry, Conseiller
légale, ONUC
Attention : Mr Pagnanelli

Date 11.9.61

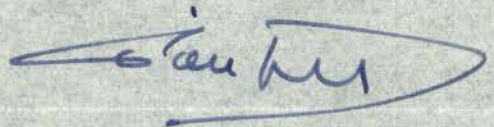
Our ref. PC/eg

Subject BAGAGES DES FONCTIONNAIRES OMS

Your ref.

Suite à ma récente visite à vos bureaux concernant l'importation en franchise dans la République du Congo, Léopoldville, des bagages contenant les effets personnels des fonctionnaires OMS, je vous serais reconnaissant de m'indiquer s'il existe un accord entre le Gouvernement congolais ou la Direction des Douanes et l'ONU. En effet nous avons des difficultés avec les douaniers au débarcadère lorsque nous réceptionnons les bagages des fonctionnaires ayant débarqués à Brazzaville et nous serions heureux d'avoir la photocopie de tout document pouvant nous aider à effectuer ces formalités.

Avec mes remerciements.



cc: Mr Heath, AFO/AFRO
Mr Meijer, Travel and Reception Unit, AFRO

Leopoldville,
30 August, 1961

Dear Mr. Steigman,

Reference your letter of 28 August, 1961 concerning the importation by the Government of the Congo of seven special purpose vehicles, Ansul FT-1000 Dry Chemical Fire Extinguisher units mounted on Ford Model F-250 (front and rear-wheel drive) for the use of fire protection at government airports.

In our opinion the delivery of these vehicles, to be consigned to S.C.R.L. Meteor, B.P. 701, Limite/Leopoldville, would not be considered as contrary to the provisions of the resolution of the Security Council and the General Assembly concerning introduction of arms, military equipment and supplies into the Congo.

Yours sincerely,


V. Fabry
Legal Adviser

Mr. A. L. Steigman,
Third Secretary,
United States Embassy,
LEOPOLDVILLE.

26 August

1

Mr. S.H. Ahmed, Chief Administrative Officer
V. Fabry, Legal Adviser
A.R. report note on Lovanium University

1. As regards para 2 of your suggested text, it would be inaccurate to say that the contractor was immediately after the conclusion of the parliamentary session advised to terminate his work on the ONUC hospital; quite to the contrary, the Accommodation section insisted that the work must continue and protested to the contractor in writing when he withdrew his workers from the job on 7 August. You may therefore wish to leave out the third sentence of the third paragraph.
2. You may wish to add in the second sentence of the third paragraph that Messrs. Nouvelle Société Coleten "were asked to continue carrying on the job to the extent that their work could be considered as ~~for~~ compensation for enforced idleness of their personnel and machinery at Lovanium. Their offer to complete the remaining work against an additional payment of CF 651,092,30 was not accepted".
3. In your penultimate paragraph, I think you might wish to state that the cost of the project "might" (rather than "must") be considered to fall within the range of action undertaken by ONUC to facilitate the meeting of Parliament at Lovanium.
4. By the way, are we paying any rent for the hospital? If yes, we certainly should make arrangements with the owner to absorb part of our cost as a necessary improvement of the premises.

26 August

1

Mr. S.H. Ahmed, Chief Administrative Officer
V. Fabry, Legal Adviser
A.R. report note on Lovanium University

1. As regards para 2 of your suggested text, it would be inaccurate to say that the contractor was immediately after the conclusion of the parliamentary session advised to terminate his work on the ONUC hospital; quite to the contrary, the Accommodation section insisted that the work must continue and protested to the contractor in writing when he withdrew his workers from the job on 7 August. You may therefore wish to leave out the third sentence of the third paragraph.
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4. By the way, are we paying any rent for the hospital? If yes, we certainly should make arrangements with the owner to absorb part of our cost as a necessary improvement of the premises.

Note for AR report
Lovanium University

Reference our AR 69-30.

We have advised you under the above item that in view of the claim for compensation and damages made by the firm of Nouvelle Societe Coleten for the suspension of their work at the Lovanium University on account of the meeting of the Parliament, we had decided to utilize the idle resources of the contractor to carry out the unfinished drainage work at the ONUC Hospital in Les. In so engaging the services of the contractor we made an urgent review of the preliminary estimate of the cost of work which was reported to you in our AR 65-36 in the neighbourhood of 500,000 Cr. The head of the ONUC Public Works Section in the Civilian Operations gave us his advice that taking account of the cost of material such as pipes, etc. the drainage work could not be completed at less than 1,200,000 Cr.

The services of Nouvelle Societe Coleten were diverted towards the drainage project at the ONUC Hospital to avoid payment of compensation during the period the contractor's workers ^{had to} remain idle. However, the contractor had ^{hardly} ~~almost~~ worked for about eleven days on the drainage project at the ONUC Hospital when the Parliamentary session at the Lovanium University came to a successful conclusion. The Contractor was therefore immediately advised to terminate his work at the ONUC Hospital which he did to a large extent though some work on a much reduced scale was continued to be done. The drainage work involved the digging of wide channels around the hospital building for the laying of pipes and during the eleven days the contractor employed his labour on this work. Much of the digging job had been done and the pipe delivered at site.

The problem we are now faced with is whether the work should be completed or left in its present unfinished state. Messrs. Nouvelle Societe Coleten who were asked to quote for the completion of the remaining work have submitted an offer which amounts to 65L,092.30 Cr. At the same time we have received another offer from Neuv ete Bloucaut for completing the work at a cost of 512,000 Cr. This is a voluntary offer and is not based upon the issuance of any inquiries for competitive bids. The head of the Public Works Section of the Civilian Operations considers that Bloucaut's offer is most reasonable. Since the issuance of inquiries for competitive tenders would cause a considerable delay in resuming the work which must be done before the onset of the

rainy season by the middle of next month we would like to proceed to award the contract to Bloucaut.

As previously stated by us the lack of drainage arrangements at the hospital building have been causing both inconvenience and unsanitary conditions in the hospital and that our continued use of the Hospital was making the completion of the drainage arrangement an absolute necessity. However, we had been trying to hold action on this project pending the development of events and under present conditions we might have decided not to go on with the work. The fact however that a part of the work has already been done and the necessary pipes have been procured and have been delivered at site, we consider that the completion of the work has now become a greater necessity than it was before .

In the circumstances the cost of this project must be considered to fall within the range of actions which had to be undertaken by ONUC in connection with the meeting of the Parliament at the Lovanium University and therefore attributable to that account subject to allocation of cost to the parties concerned at a later date rather than to the normal ONUC functions at the ONUC Hospital.

We should be most grateful to have your approval by cable to complete the work at the Hospital on the basis of Bloucaut's offer involving an additional expenditure in the amount of 500,000 Cx

23 August

1

Colonel Lai

V. Fabry

Work performed by "Coleten"

1. Reference is made to our conversation this morning. I understood from this conversation that you wished "Coleten" to cease work on the Reine Elizabeth Clinic project immediately, having requested them previously to carry out that work.
2. "Coleten" was put to work on the Reine Elizabeth Clinic project to avoid wasteful payments of compensation ~~from~~^{for} men and machinery made idle as a result of the closing down of Levanium University constructions during the session of Parliament. Consequently, in my opinion, "Coleten" acted properly in returning on 4 August to continue work in Levanium. If we wished "Coleten" to continue work on the Queen Elizabeth Clinic project, we should have entered into a contract with them to specify the terms under which the work would be continued.
3. On the basis of information which you gave me this morning, we might try to address to "Coleten" a letter along the lines of the enclosed draft, in an attempt to obtain their agreement to the performance of the work carried out for us within the terms of the compensation payment due to them for men and machinery left idle between 14 July and 4 August. I am personally not too convinced that "Coleten" would agree to such an arrangement. I am afraid that if "Coleten" does not accept our position, we would not have a very good case to press for. Perhaps "Coleten" might be more willing to accept the loss if it was given a possibility to bid for a continuation of the work contract - but this is an administrative not a legal consideration.
4. I would most strongly suggest that an appropriate arrangement in writing be made with contractors in similar cases in future. Myself, Mr. Kanakarathne and Mr. Pagnanelli will be glad to assist you in such cases if required.

cc. Mr. Ahmed

PROJET DE LETTRE A "COLETEN"

23 août 1961

Par une lettre en date du 28 juillet, vous avez porté à la connaissance de l'Université de Lovanium qu'une interruption du travail sur leur chantier entraînerait pour vous des dépenses importantes que vous-mêmes avez estimées comme suit :

.....

Pour éviter un chômage infructueux, nous nous sommes déclarés prêts à utiliser votre main-d'œuvre sur le chantier de la clinique Reine Elisabeth, étant entendu que cette action était purement pour éviter le chômage et qu'aucun paiement additionnel ne serait dû à votre compagnie à ce titre. Vous avez été notifiés le ... juillet de cette opportunité d'employer votre main-d'œuvre en chômage et vous avez en effet commencé les travaux le 25 juillet.

Le 4 août, la session du Parlement étant terminée, les travaux ont pu reprendre à l'Université de Lovanium. Vous avez alors décidé de retirer votre main-d'œuvre du chantier Clinique Reine Elisabeth pour pouvoir continuer le travail à Lovanium. Nous nous serions toutefois attendus à ce que vous nous notifiiez de votre intention d'interrompre le travail à la clinique Reine Elisabeth pour que nous puissions faire d'autres arrangements et empêcher la perte qui s'ensuivrait d'une interruption du travail sans mesures conservatoires.

D'autre part, l'interruption du travail à Lovanium ayant eu lieu le 14 juillet et les travaux au chantier Reine Elisabeth n'ayant commencé que le 25 juillet, il y avait une période additionnelle de onze jours de chômage pour laquelle nous avons pensé vous donner compensation en permettant à votre main-d'œuvre et à votre matériel d'être employés sur notre chantier. Pour ces raisons, nous vous avons proposé de continuer le travail sur le chantier Reine Elisabeth aux conditions existantes, c'est-à-dire que ce travail sera considéré comme compensation du chômage forcé entre le 14 et le 25 juillet. Vous-mêmes nous avez proposé par votre lettre No. E.403-11235 de reprendre ces travaux sous de nouvelles conditions que nous n'avons pas trouvées acceptables.

Comme nous vous l'avons confirmé le 14 août, les travaux que vous avez repris dès la mi-août ne pouvaient être acceptés qu'aux anciennes conditions et les Nations Unies ne pourront prendre la responsabilité pour aucun autre arrangement qui aurait pu être proposé par vous mais non accepté par les Nations Unies.

La période de onze jours étant écoulée le 19 août, nous avons été surpris de voir que le 20 août le chantier continuait à travailler. Nous vous avons donc adressé plusieurs appels téléphoniques et confirmé la fin des travaux par notre lettre du 21 août.

See "Civ. Ops. Cones." file

15 août

1

M. M. Khouri, Chargé de mission
V. Fahmy, Conseiller spécial

M. Ahmed a porté à sa connaissance un memorandum envoyé par M. Pierre Le Harivel pour l'informer qu'un Bureau de Liaison ONUC a été établi au Ministère des Affaires étrangères, et que dès lors toute notification concernant l'arrivée ou le départ des fonctionnaires de l'ONUC devra être adressée au Ministère des Affaires étrangères par l'intermédiaire du Bureau dirigé par M. Le Harivel. M. Le Harivel a aussi informé M. Ahmed qu'à l'avenir les fonctionnaires des Nations Unies ne pourront quitter le Caire qu'après avoir obtenu un visa de sortie par l'intermédiaire du Bureau de Liaison.

Je voudrais signaler que les visas de sortie n'ont jamais été envisagés pour les fonctionnaires de l'ONUC, ni dans le projet d'accord de statut ni dans les autres négociations que j'ai eues à ce sujet avec les représentants du Ministère des Affaires étrangères et des autres départements du Gouvernement égyptien. Le Gouvernement ne devait être tenu au courant que de l'arrivée ou du départ définitif des fonctionnaires ou de la cessation de leurs fonctions, étant entendu qu'une telle notification pourrait s'effectuer ex post et n'entraînera pas l'obligation d'obtenir de visa, sauf dans le cas où des visas d'entrée sont demandés par le Ministère des Affaires étrangères parce qu'ils n'avaient pas pu être obtenus avant le départ du fonctionnaire pour le Caire.

Je pense qu'il faudra en tout cas délimiter strictement les fonctions du Bureau de Liaison de l'ONUC dirigé par M. Le Harivel. D'après mes renseignements ce bureau ne s'occupait à l'origine que du placement des bureaux; récemment, M. Le Harivel a été aussi chargé des fonctions de liaison ayant trait à l'engagement des experts d'assistance technique. Je n'aurais aucune objection à ce que le Bureau ainsi établi soit également chargé des autres tâches de liaison.

entre l'OSUC et le Ministère des Affaires Étrangères - comme vous le savez très bien, j'insiste depuis longtemps pour qu'un tel Bureau soit établi - mais je trouve que dans ce cas il faudra s'assurer que le Bureau dirigé par M. Le Marival reçoive des instructions directement du Chargé de mission et que ce Bureau soit organisé d'une façon qui lui permette de remplir ses fonctions.

Si vous décidez que cela devra être le cas, je suggère que vous convoquiez une réunion des représentants des services intéressés avec M. Le Marival, au cours de laquelle on éclaircira les questions d'organisation qui permettront au Bureau de Liaison de l'OSUC au Ministère des Affaires Étrangères de remplir ses fonctions de la meilleure façon possible.

cc. Mr. Ahmed
Mr. Romborough

15 août

1

M. Tombelaine, ONUC, Elisabethville

G. Pagnanelli, Service juridique, ONUC, Léopoldville

Tentative de saisie-arrest sur les avoirs de l'ONUC (en usage Marx/Balson)

1. Les biens et avoirs de l'ONUC, y compris toute somme payable à des tiers jusqu'au moment de leur transfert, jouissent de l'immunité contre toute procédure légale, ainsi que toute forme d'action exécutoire, administrative ou judiciaire, conformément à l'article 105 de la Charte de Nations Unies, aux sections 2 et 3 de la Convention sur les Privilèges et Immunités de l'ONU, ainsi qu'aux principes généraux établis par les usages internationaux. Les Nations Unies ne peuvent donc accepter la validité d'un ordre de saisie-arrest.

2. Nous pouvons cependant aider le créancier (sous réserve qu'il soit en possession d'un jugement du tribunal ou d'une autre preuve valable de ses droits) en effectuant le paiement au tireur du chèque et en faisant connaître au créancier le nom de la banque qui effectue la transaction, de façon qu'il puisse prendre les mesures légales nécessaires contre les sommes payables à son débiteur lorsque le chèque de l'ONU aura été encaissé. Si cette procédure ne peut être exécutée, dans des conditions satisfaisantes, nous pouvons aider le créancier en versant à une caisse de dépôt judiciaire les sommes dues à son débiteur.

cc: Mr. S.H. Ahmed

encls. 2

cc Sequel

longo l'gov
c/POL/140/1/2

see c/POL/110/3
(Kitona)

Le Chargé de mission des Nations Unies au Congo présente ses compliments au Ministère des Affaires étrangères et a l'honneur d'accuser réception de sa note verbale en date du 25 juillet 1961, transmettant une lettre de Monsieur Raymond Luamba N'Goma.

Monsieur Luamba N'Goma réclame des sommes à titre de salaires qu'il déclare lui être dues pour les mois de novembre et décembre 1959. Il ne fait pas mention d'objets quelconques abandonnés à la Base de Kitona que les Nations Unies pourraient lui restituer.

Le Chargé de mission regrette donc de ne pouvoir prendre aucune mesure en faveur de l'intéressé, étant donné que sa demande a pour objet des revendications ne concernant pas les Nations Unies et qui sont antérieures à l'arrivée de l'ONUC au Congo.

Le Chargé de mission des Nations Unies au Congo saisit cette occasion pour renouveler au Ministère des Affaires étrangères les assurances de sa très haute considération.

Léopoldville, le 15 août 1961

Ministère des Affaires étrangères
Léopoldville

13 August 1961

Dr. Sture Linner,
V. Fabry

Status Agreement

I had a long talk this morning with Mr. Khieri, and we went through the Status Agreement paragraph by paragraph. The only concrete comments that he made were on the question of:

- a) PX goods (where apparently Bomboko has written a protest note about illegal traffic);
- b) Exchange facilities for UN Officials;
- c) Paragraphs 43a and 44.

On neither point did he, however, suggest any alternative text.

As regards customs and tax exemptions for PX goods, I know that New York would not be very happy about letting go of our position. I was asked to insist on that point when the objection was first raised by the Minister of Foreign Affairs two months ago. What we do need, however, is a stricter control system to avoid black market operations.

The exchange facilities under article 22 of the Agreement are only a matter of assurance for the future, in case there is a regime of different exchange rates. Again, I do not think that this is a point which Headquarters would like to see omitted, as it would have repercussions on arrangements in other countries.

Finally, as regards article 43a, we could perhaps propose to eliminate a reference to the exercise between UN forces of "la responsabilité qui lui est propre dans le domaine de l'ordre public, de la paix et de la sécurité". The paragraph could be redrafted as follows: "a) Les autorités congolaises ont l'entière responsabilité de l'application de la législation et de la réglementation internes. La Force des Nations Unies a un caractère international, et elle n'applique pas les méthodes ou les réglementations internes, mais doit agir conformément à son interprétation de la mission qui lui est confiée par le Conseil de Sécurité, compte tenu

des demandes faites par le Gouvernement pour obtenir l'assistance militaire."

There is no easy way out redrafting article 44. We could, however, perhaps add an additional article which would stress that the UN military assistance is being furnished to help the Congolese Government until such time as its own National Security Forces could not themselves fulfill the task of maintaining law and order, and that consequently, the United Nations and the Government would consult together with the view of withdrawing UN Forces from a given region whenever the Congolese Government considers that its own forces had been sufficiently reorganized and retrained to be able to assume unaided the responsibilities for internal security.

Mr. Khiari agreed that the Status Agreement and the "Umbrella Agreement" for technical assistance should not be reorganized but should be concluded as soon as possible and should immediately be followed by the conclusion of supplementary agreements for special technical assistance projects.

12 August

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S. Linner

V. Febry

Accord de Statut

Monsieur Khiari trouve que le texte de l'accord avec la République du Congo sur le statut de l'ONU est un peu dépassé par les événements, et que les dispositions qu'il contient ne reflètent plus les relations changées entre l'Organisation et le nouveau gouvernement légal.

Il a soulevé des objections, en particulier en ce qui concerne les dispositions des articles 43 et 44 de l'accord. D'autre part, M. Khiari trouve que les dispositions de l'accord ne ~~prévoient~~ ^{couvrent} pas suffisamment les opérations d'assistance technique.

A mon opinion, il serait un peu difficile de renouveler, à ce stade, les négociations sur le texte de l'accord de statut. Les dispositions de l'accord ont été rédigées compte tenu non seulement de la situation au Congo, mais aussi des relations que les Nations-Unies entretiennent dans les autres pays (RAU, Liban), où elles ont une force.

D'autre part, les objections de M. Khiari, que je trouve moi-même bien fondées d'un point de vue psychologique sinon juridique, pourront peut-être être soulevées par une conclusion quasi-simultanée des accords plus détaillés régissant les différents projets d'assistance technique et des opérations civiles des Nations-Unies au Congo. Ces accords pourront suivre le modèle des accords d'assistance technique supplémentaire, et leurs conclusions pourra être aussi une bonne occasion pour donner de la publicité aux différents projets mis en œuvre avec l'assistance des Nations-Unies.

cc. Monsieur Khiari

see
C/POL/190/5/Kamina
(Memo Ahmed)

7 August

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Mr. S.H. Ahmed, Chief Administrative Officer
V. Fabry, Legal Adviser *21*
Car accident - Kamina 3 June 1961

1. I understand all the UN vehicles are covered by third party liability insurance. If this assumption is true, the Insurance Company should be notified, given the transcript of the proceedings and requested to take care of any claims that may arise.
2. Technically, the local driver should not have been subject to arrest or to court trial, without first an agreement having been reached between the local authorities and the UN as to whether or not the imputed offense was committed in performing official duties, and if so, whether the UN would waive the driver's immunity from legal process. However, as in this case the driver was evidently using the car without having received proper authority, there would be no objection against his trial before a local court; he should, however, be summarily dismissed effective on the date of the accident.
3. There is no need for Mr. Caprario or any other UN employees to testify, or to enter at all into any discussion about the court's findings concerning use of vehicle on UN business or possible UN liability. If, however, any local authority should contact UN on that subject, the Base Administrator should either:
 - a) If the vehicle was insured, refer the matter to the Insurance agent;
 - b) If the vehicle was not insured, state that we could not see any way to accept the claims as the injured persons were unauthorized hitchhikers for whose transport the UN did not take any responsibility. If the local authorities persist pressing the claims, they should be referred to the Legal Office of this Headquarters.

7 August

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Miss N. Osborne, Chief Personnel Officer
F. Fabry, Legal Adviser
Francisco Henriques

1. For reasons of principles, we cannot admit any actions which would have the effect of seizing UN funds. Consequently, we cannot accept as valid any court decisions garnishing the salary of a staff member before it has been paid to him, or in any other way requesting the UN in freely disposing of its funds.
2. On the other hand, we cannot tolerate situations where staff members would use their UN immunities as an excuse for no fulfilment of their private obligations. It is a necessary corollary of our immunities to see to it that creditors who cannot obtain satisfaction by a recourse to court, will not be placed in an unduly default position in collecting moneys due to them from UN staff members.
3. In addition, it would be contrary to the UN interest if staff members abuse their privileges for their personal benefit. Attempts of staff members to escape their obligations reflect on their integrity and persistent failure to fulfil private obligations should, in my opinion, be a reasonable presumption that the staff member concerned is not suitable for further UN employment.
4. In the case under reference, it should be made clear to Mr. Francisco Henriques that he must fulfil his obligations or face actions for termination of his employment with the UN. Definite arrangements should be made to ensure that the staff members' obligations are being fulfilled, as for instance by obtaining from him an order to assign part of his salary to the creditor's account.
5. The measures taken to ensure that this staff member fulfils his obligations should then be notified to the creditor's representative.

ORGANISATION DES NATIONS UNIES
AU CONGO



UNITED NATIONS ORGANIZATION
IN THE CONGO

INTER - OFFICE MEMORANDUM

August 1st

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196.....

TO : Mr. V. Fabry, Legal Adviser
FROM : Miss Naomi Osborne, Chief Civilian Personnel
SUBJECT : Francisco Henriques

... I am forwarding you another letter from Mr. de la Kethulle de Ryhove. As you will recall, a similar letter was forwarded to you for action by my memorandum of 4 July, 1961.

Would you kindly advise concerning the proper reply to *be sent* Mr. de la Kethulle de Ryhove.

A handwritten signature in blue ink, appearing to read 'N Osborne', is written over the typed name of the sender.

FR/NL

19 Juillet 1961.-

111, rue de la République

B. P. 15

101 2225

AKR/kt

Monsieur le Chef du Personnel Civil
des Nations - Unies
Boite Postale n° 7.248

LEOPOLVILLE.-

Monsieur,

AFFAIRE : NOGUEIRA & CIE c/ HENRIQUES FRANCISCO JUNIOR

J'ai l'honneur de vous rappeler ma lettre du 17 juin
au sujet de saisie-arrêt à pratiquer entre les mains de l'Organi-
sation des Nations-Unies à charge de membres de son personnel qui
sont débiteurs de certains de mes clients.

J'ose espérer que les considérations que j'ai émises
dans cette lettre vous permettront de revenir sur le point de vu
que vous avez exposé dans votre lettre du 12 juin.

Veuillez agréer, Monsieur, l'expression de mes senti-
ments distingués.-



BOITE POSTALE 7248
LEOPOLDVILLE
REPUBLIQUE DU CONGO
CABLE : ONUC LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

4 July 1961

A : Mr. V. Fabry, Legal Adviser
De : Gualtiero Fulcheri, Deputy Chief of Civilian Personnel
Objet : Mr. Francisco HENRIQUES

1. I attach copy of a letter we have received from Mr. W. de la Kethulle de Ryhove concerning Mr. Henriques.
2. I also attach copy of a first letter we have received from the above-mentioned lawyer and copy of another we sent to him at the time.
3. I would be most grateful if you could advise us to an answer to a second letter from Mr. W. de la Kethulle de Ryhove.

A handwritten signature in blue ink, which appears to be "Fulcheri", is written over the right side of the page.

Encl.

GF/IS

DRAFT

Cher Maître,

Affaire : Nogueira et Cie/Henriques Francisco Junior.

Suite à votre lettre du 17 juin, nous sommes au regret de vous informer qu'il ne nous est pas possible de pratiquer une saisie-arrêt à charge de M. Henriques Francisco étant donné que jusqu'au moment où M. Henriques reçoit son salaire en main, il s'agit effectivement de fonds des Nations Unies qui, comme vous le savez, sont exempts de confiscation ou de toute autre forme de contrainte exécutive, administrative, judiciaire ou législative.

Nous vous rendons cependant attentifs au fait que nous avons à nouveau invité M. Henriques Francisco à se mettre en rapport avec vous à ce sujet.

✓ Veuillez croire, cher Maître, *à ces assurances de notre considération distinguée.*

*Heke action point
- as are with us
unless we know
give me facts. }*

M. W. de la Kethulle de Ryhove
Avocat à la Cour d'Appel
475, avenue des Sénégalais
B.P. 14
Léopoldville

C O P Y

Leopoldville le 17 juin 1961
475, avenue des Sénégalais
B.P. 14
Tél. 2775

W. de la KETHULLE de RYHOVE
Avocat à la Cour d'Appel

Monsieur le Chef du Personnel Civil
des Nations Unies
Boîte Postale No. 7248

LEOPOLDVILLE

Monsieur le Chef du Personnel Civil,

AFFAIRE: NOGUEIRA ET CIE c/ HENRIQUES FRANCISCO JUNIOR

J'ai l'honneur d'accuser réception de votre honorée du 12 courant me signalant que vous demandez à Monsieur Francisco HNERIQUES de se mettre en rapport avec moi au sujet de sa dette vis-à-vis de ma cliente la Société NOGUEIRA et CIE. A ce jour Monsieur HNERIQUES n'en a rien fait.

Je me permets de ne pas être d'accord avec le second paragraphe de votre lettre ou plutôt de l'interprétation que vous donnez à la convention sur les Privilèges et Immunités des Nations Unies. Ce privilège n'est nullement contesté et il découle d'une règle de droit International de l'immunité Diplomatique des Etats Souverains qui ne peuvent être justiciables des tribunaux d'un autre Etat.

Il en résulte que les Nations Unies ne pourraient sans leur accord être citées devant les tribunaux du Congo avec la conséquence que les fonds des Nations Unies ne sont pas saisissables.

Mais je me permets de vous faire observer que pratiquer une saisie-arrêt à charge d'un employé des Nations Unies sur les salaires qui lui sont payés ne constitue nullement une saisie de fonds des Nations Unies. C'est une saisie des fonds de l'employé.

La saisie-arrêt tend uniquement à demander aux Nations Unies de retenir sur la solde de l'employé 1/5ème de celle-ci pour payer le créancier qui a des droits incontestables.

Je me permets de vous signaler au sujet de l'immunité des Etats Souverains l'un vis-à-vis de l'autre que celle-ci n'a jamais été contestée, ce qui n'a jamais empêché de saisir les traitements dus par des Ambassades à leurs employés. Le litige se meut entre le créancier et l'employé et non entre le créancier et l'Ambas-

sade. La partie entre les mains de qui la saisie est pratiquée ne doit même pas comparaître devant le tribunal.

J'ose espérer, Monsieur le Chef du Personnel Civil, que ces considérations vous permettront de revenir sur votre façon de voir. Jr souhaiterais d'ailleurs vous en référer pour vous en entretenir de vive voix, car nous avons déjà à différentes reprises envisagé cette question entre les membres du Barreau, vu que nous avons tous des clients créanciers de membres du personnel des Nations Unies. Il n'est pas normal de voir des membres du personnel avoir des dettes, ne pas les payer, et voir votre Organisation refuser d'accepter de faire droit à une saisie-arrêt sur leur traitement.

Veillez agréer, Monsieur le Chef du Personnel Civil, l'expression de ma très haute considération.

W.de la KETHULLE de RYHOVE

le 12 juin 1961

Maître W. De La Kethulle de Ryhove
Avocat à la Cour d'appel
475, avenue des Sénégalais,
Leopoldville

Cher Maître,

AFFAIRE : NOGUEIRA c/ HENRIQUES FRANCISCO JUNIOR

J'ai l'honneur d'accuser réception de votre lettre du 15 mai et de vous faire connaître que nous en avons transmis une copie à M. Francisco Henriques, en le priant de se mettre en rapport avec vous directement.

Par ailleurs, je me permets d'attirer votre attention sur le fait que, selon la Convention sur les Privilèges et Immunités des Nations Unies, les fonds de l'Organisation des Nations Unies ne sont pas saisissables.

Veillez agréer, cher Maître, l'assurance de mes sentiments distingués.

Gualtiero Fulcheri
Chef Adjoint du Personnel Civil

cc. G. Pagnanelli

C O P Y

W.de la KETHULLE de RYHOVE
Avocat à la Cour d'Appel

Leopoldville 1er 15 mai 1961
475, avenue des Sénégalais
B.P. 14
Tél. 2775

ORGANISATION DES NATIONS-UNIES
SERVICE DU PERSONNEL

LEOPOLDVILLE

Messeiurs,

AFFAIRE : NOGUEIRA C/ HENRIQUES FRANCISCO JUNIOR

Je suis le conseil de la Société NOGUERIA qui a une grosse créance à récupérer à charge de Monsieur J.F. HENRIQUES.

Ma cliente me signale que l'intéressé serait au Service de l'ONU dans le Kasai, je vous serais, en conséquence, très obligé de bien vouloir me faire connaître l'adresse actuelle de l'intéressé et de me confirmer que vous pourrez me verser la quotité saisissable du traitement de votre employé dès que l'assignation de saisie-arrêt vous aurait été notifiée.

Veuillez agréer, Messeiurs, l'expression de mes sentiments distingués.

W. de la KETHULLE de RYHOVE

C/POL/130405
USA
Legal

3 August, 1961

Dear Mr. Steigman,

With reference to our telephone conversation, I should like to confirm that in our opinion the delivery of a jeep station-wagon to the Mission Evangelique parmi les Bayaka and of a jeep ambulance to the Svenska Baptist-samfundet would not be considered as contrary to the provisions of the resolution of the Security Council and the General Assembly concerning introduction of arms, military equipment and supplies into the Congo.

Yours sincerely,

B
V. Fabry,
Legal Adviser

Mr. A.L. Steigman,
Third Secretary,
United States Embassy,
LEOPOLDVILLE.

copy handed to Mr. Robert Petey,
MATERMACO-CONGO
17 ave. de l'industrie Leo.
Tel. 2338-2194

Evangelische Mission
unter den Bayaka
Republik Kongo

Saint-Ursanne, Suisse, le 5 juin 1961

Mission Evangélique
parmi les Bayaka
République Congo

Etablissement
M a t e r m a c o - Congo
17, avenue de l'Industria
B.P. 2.200
Léopoldville
République fédérale du Congo

Messieurs,

Nous référant à l'entretien que vous avez eu en avril
dernier avec Soeur Lina Pfister de notre station missionnaire à
Wamba-Luadi (Territoire Kasongo-Lunda, District du Kwango), nous
vous commandons:

1 voiture Station-Jeep Willys Overland
4 roues motrices
9 vitesses

Dollars 4.700.—

Livraison: 6 à 8 semaines ou avant si possible.

L'exécution de cette Jeep doit correspondre à celle ayant fait l'objet
de votre entretien précité avec Soeur Lina Pfister. La livraison devra
s'effectuer pas vos soins jusqu'au domicile: Wamba-Luadi où vous aurez
à instruire notre personnel sur l'utilisation de la JEEP. La garantie
d'usage devra être délivrée à soeur Lina Pfister.

Nous vous prions de nous faire parvenir par un prochain courrier votre
facture détaillée, dont un exemplaire est à adresser directement à soeur
Lina Pfister. Dès que nous serons en possession de votre facture, nous
payerons son montant à L'Union de Banque Suisse, Zurich, en faveur du
compte Willys Overseas S.A., Zurich.

Dans l'attente de votre confirmation de commande ainsi que de votre fac-
ture anticipée, nous vous présentons, Messieurs, nos salutations les meil-
leures.

An nom de la
Mission Evangélique parmi les Bayaka

Hermann Bachmann, président
Saint-Ursanne, Suisse

SVENSKA BAPTIST MISSIONEN

ADRESSE TÉLÉGRAPHIQUE
BAPTIST STOCKHOLM

TELEPHONE 23 52 45

Maternood - Congo
c/o Mr. W.H. Andersen.
710-714 Chaussée de Louvain.
BRUXELLES 3
Belgique

Stockholm Va. 10
10 Norrtullgatan

Dear Sirs,

Re: Purchase of an Ambulance 6-226-4-W.D. A.M.D.

Referring to your correspondence with Rev. Bengt Fryxell, 41, Lomana straat, Anvers of May 25th 1961 and even earlier with Rev. Sven Ohm, Norrtullgatan 10, Stockholm Va, Sweden, I have the pleasure on behalf of the Baptist Union of Sweden to order the above mentioned ambulance to a price C.I.F. Léopoldville via Matadi according to the offer given us in your letters plus an extra cost of about Twohundred-eighty (280) US Dollars for special additions in the equipment of the ambulance. We guarantee that the ambulance is solely to be used by our missionaries in the work to help those having leprosy in the district in the Léopoldville-province of the Republic of Congo where we have been working as a mission more than 40 years. The address of our missionary in charge of our work in the Basakata-area in Congo is Rev. David Colldén, Swedish Baptist Mission, Konkia, Niki via Léopoldville, Republic of Congo.

As far as I understand it do we not need to take any actions regarding means to get the car into Congo.

I hope to have your acknowledgement of this order in due time.

I am dear in

Sincerely yours,

For

Eric Strutz
Secretary of Foreign Missions
of the Swedish Baptist Union