

*Mr. Taff*  
*Legal*

27 December 1961

Gentlemen:

With reference to our discussion of today, I would appreciate your supplying me with the following information:

1. A detailed breakdown of the final settlements made against claims from Congolese under our insurance policy for death, hospitalization and settlement of injuries.
2. Final settlements made in cases of injuries, hospitalization or deaths of non-Congolese. I am particularly interested in receiving information from you as to what amount was claimed for the accident involving the family of Van den Berghe; what settlement you have offered to the family and what your expectancy is as to the final settlement payable in this particular case.

I also would like to have from you a breakdown of the settlements of cases between 1 June and 31 December 1961 for all car accidents involving property damage in order to arrive at a new evaluation of average claim settlement per accident for the period subsequent to 31 May 1961.

Would you please also elaborate on the basis on which you accept claims for settlement from ONUC. What is the basis of determination of ONUC's responsibility. What documentation do you demand in order to determine such responsibility, and in what cases do you refuse to accept claims for settlement under our policy.

You have stated that between 1 August 1960 and 31 October 1961 a total of 650 car accidents were referred to you of which 580 involved third parties. I would like to have an explanation of the nature of the 70 cases which constitute the difference between the two above figures. I would appreciate an early reply.

Yours truly,

B. Grunzweig  
Deputy Chief Administrative Officer

E. van Goethem et Cie.  
Building Kredietbank  
Leopoldville





BOITE POSTALE 7248  
LEOPOLDVILLE  
REPUBLIQUE DU CONGO  
CABLE : ONUC LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

27 December 1961

A : Mr. N. T. D. Kanakaratne, Legal Adviser  
De : B. Grunzweig, Deputy Chief Administrative Officer  
Objet : Claim Received from Lawyer Paul Bodson on behalf of Mr. Georges Kies

1. The Director of the General Legal Division in New York has passed on to ONUC the claim received from a lawyer representing  
..... Mr. Georges Kies, which is submitted to you in the attached memo.

2. You will see that the Director of the General Legal Division has given the lawyer a preliminary reply, and we shall have to report in due course to New York what the results of our investigations in this matter are.

3. From my end I will try to verify the facts as well as can be done under the circumstances, but I will appreciate it if you will let me have at your convenience your views as far as the legal position of the case is concerned.

cc: Mr. B. Halbert

*Mr. Taff*

*For attention, please.*

*WPK*

*28.12.61*

*File sent to Claims Board*



28 December

1

Mr. Grunzweig, Deputy CAO  
C. Taff, Assistant Legal Adviser  
Claim of M. Leon DuBois - Kivu

With reference to your memorandum to Mr. Kanakaratne of 26 December 1961, I note that M. DuBois sent the original of his letter of 8 December 1961, presenting his claim, to New York HQ, with a copy to ONUC. I would think therefore that New York HQ will deal with the claim directly with Mr. DuBois, or will request ONUC to handle the matter. In any event, we would wish to avoid a situation where both New York HQ and ourselves are handling the claim. I suggest therefore that no action be taken on this claim until New York communicates with us. Mr. DuBois's letter of 8 December 1961 is returned herewith.

CT/mb



ORGANISATION DES NATIONS UNIES  
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UNITED NATIONS ORGANIZATION  
IN THE CONGO

BOITE POSTALE 7248  
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CABLE : ONUC LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

26 December 1961

A : Mr. N. T. D. Kanakaratne, Legal Adviser  
De : B. Grunzweig, Deputy Chief Administrative Officer  
Objet : Claim received from Leon Dubois - Kivu

*[Handwritten signature]*

- .....
1. The attached memorandum dated 8 December from the above is sent to you for your information, with the request for the views of the Legal Adviser of ONUC how far the claim of Mr. Dubois should be considered.
  2. As you can see, Mr. Dubois claims "lack of protection from ONUC" during the period of his arrest in Goma. He does not specify the nature of his claim against ONUC in terms of financial recompensation.
  3. I feel it will be necessary to send Mr. Dubois a formal reply since he saw fit to send this same memorandum to U. N. Headquarters in New York and to various governmental offices in Belgium. I would appreciate your letting me have your views so that a pertinent reply can be sent to him at an early date. I will then proceed to send a copy of this reply to Headquarters New York for information.

*Mr. Tapp.*

*The claim of Mr. Dubois*

*appears to be based on an allegation of "non-protection by ONUC forces" from arrest by Congolese. Of course, this kind of claim is not entertained by us. I think Mr. Grunzweig's views are correct. A formal reply to Mr. D. (with copy to N.Y.) should issue from Legal Office. You may discuss this with me if you wish to.*

*Thak.*

*26/12*



file

11 December

1

Miss N. Osborne, Chief of Civilian Personnel  
N. Kanakaratne, Legal Adviser  
Mr. Victor Charlety

Please refer to your memo of 7 December forwarding for my advice letter dated 22 November 1961 from Mr. Charlety.

I have studied the papers in the file attached to your memo as well as Mr. Charlety's letter. In his letter he

- a) protests very vigorously against his dismissal, and
- b) claims that his injuries were incurred in the course of service.

As regards (a), I am of the opinion that the termination of his services with ONUC was justifiable having regard to his past conduct and his temperament. As regards (b), the injury suffered by him in the course of a fight with another employee cannot, in my view, be considered as a case of service - incurred injury falling within the meaning of article XXIII of the Rules for locally recruited staff.

I would therefore advise that Mr. Charlety be simply informed of this fact. It is not necessary for the substance of the matter to be reopened in any correspondence with him.

Your papers are returned herewith.

c.c. Chief Finance Officer.



## ROUTING SLIP

TO

	APPROVAL		NOTE AND RETURN
	SEE ME, PLEASE		YOUR COMMENTS
	YOUR SIGNATURE		YOUR INFORMATION
	NOTE AND FILE		FOR ACTION

DATE

FROM



9 December

1

TO: Mr. A.J. Bronsoma, Chief Finance Officer

FROM: C. Taff, Assistant Legal Advisor

SUBJECT: Purchase of Vehicles from M. Philippe Charbonnier

1. Mr. Grunzweig has referred to me your letter to M. Philippe Charbonnier of 8 December 1961, setting forth the terms upon which ONUC is prepared to purchase his two vehicles in Elisabethville.
2. I am fully in agreement with the terms of your letter to M. Charpentier. I take it to be the case that before ONUC makes payment to M. Charpentier, we will arrange, if conditions permit, to check in Elisabethville to be sure that M. Charpentier still has title to the two vehicles, and, in addition, that there are no outstanding liens or charges that might be payable by ONUC. In connection with the latter point, I have noted that Mr. Igum states in his memorandum to Mr. Wiis of 26 October 1961 that "The Chevrolet is now located in Verfaillie Garage, B'ville. The engine has been burned out ....." This raises the possibility that there may be storage charges due on the vehicle, for which the garage keeper may possibly have a lien.
3. The "Decharge" attached to your letter of 8 December 1961 is intended to serve as a release and contract of sale. It seems to me desirable to follow as closely as circumstances permit the general form of release used by ONUC in the case of compensation paid to a staff member for loss of personal effects. I suggest that this standard release be used here, as modified below:

Contract of Sale and General Release

"In consideration of the payment of One Thousand Seven Hundred Forty-Two Dollars and Eighty-One Cents (US\$1742.81) paid by the Organisation des Nations Unies au Congo, the receipt whereof is hereby acknowledged, the undersigned does hereby sell to ONUC his two automobiles - Pontiac Starchief (1957) No. 5-4121, and Chevrolet Sedan Bel Air (1957) No. 5-5255, both located in Elisabethville, Congo, and does hereby release and forever discharge ONUC, its agents and employees from any and all actions,

/....



causes of action, claims and demands that may now exist or hereafter arise in connection with the prior rental or use of the said vehicles by ONUC, its agents and employees.

Dated: \_\_\_\_\_

Witness:

Signature:

\_\_\_\_\_

\_\_\_\_\_

.... 4. Your letter of 8 December 1961, with attachments, is returned herewith.

cc: Mr. Grunzweig



*File note  
7/12*

7 December

1

Col. H.W.C. Stethem, Commander, Canadian Army Contingent

N. Kanakaratne, Legal Adviser

Disciplinary action - Switchboard operator

*not attached*

1. Please refer to your memorandum of yesterday on the above subject.
2. I have discussed this matter with Dr. Linner in the light of your memo, a copy of which you were good enough to send him. In view of your observation that you are satisfied that the officer who tried the case had awarded a suitable punishment based on the circumstances of the case and the man's records, Dr. Linner does not see the need to pursue the matter any further. He does not therefore think it necessary for you to see him personally to discuss it.

cc. Dr. S. Linner, Officer-in-Charge



7 December

1

TO : Mr. P. Hazou, Chief of General Services  
FROM : C. Taff, Assistant Legal Adviser  
SUBJECT : Claim for Damage to Property Fridam.

1. I wish to refer to your memorandum of 1 December, 1961 (G/ADM/430/3) to the Legal Adviser requesting his advice on the action taken by our Insurance Company in declining responsibility for a claim of 1450 Cfrs submitted by Fridam per damages alleged to have been caused by an ONUC vehicle to their building SONACO, parcelle 228, 4ème rue, Limete on 31 January 1961.
2. In their letter of 25 November, 1961, the Insurance Company state that this building had been leased by ONUC, and that as a consequence ONUC's responsibility to the lessor cannot be considered "extracontractuelle" to a "tiers" within the meaning of our insurance policy. On the basis of this interpretation, they have declined to accept the claim.
3. The Accommodation Section has informed me, however, that the ONUC never leased the said building. The Insurance Company therefore is in error as to the facts, and will no doubt accept full responsibility when this is brought to their attention.
4. In my opinion, the Insurance Company would be liable even if it were the case that ONUC was the lessee of the building at the time of the accident.
5. I would suggest that a letter be written to the Insurance Company informing them of the true facts, and requesting them to pay the claim. For purposes of the record, they should also be advised that we cannot agree with their view that if ONUC were the lessee of the building in question, the claim would not fall within the terms of the policy.
6. The papers transmitted with your memorandum of 1 December, 1961 are returned herewith.



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BOITE POSTALE 7248  
LEOPOLDVILLE  
REPUBLIQUE DU CONGO  
CABLE : ONUC LEOPOLDVILLE

INTER - OFFICE MEMORANDUM

C/ADM/430/3

1 December 1961

To: Mr. N. Kanakaratne, Legal Adviser  
From: Peter J. Hazou, Chief of General Services  
Subject: Claim for Damage to Property - Fridam

Would you please advise on the attached papers from Fridam claiming for damages caused by an ONUC truck to part of their property at Limete on 31 January 1961.

Mr. Taff

For attention please

hok

2.12.61

6 Dec. 1961 W.



# ROUTING SLIP

Mr. Taff.

APPROVAL	NOTE AND RETURN
SEE ME, PLEASE	YOUR COMMENTS
YOUR SIGNATURE	YOUR INFORMATION
NOTE AND FILE	FOR ACTION

We spoke.

DATE

18 Aug

FROM

Khan



Please Fill  
Housing Accommodation



Claim for rent - Mr. Jacques Dubut

Mr. Vallat who was the Housing Officer in Accommodation Section until end September 1961 recalls this case very well.

Briefly, according to Mr. Vallat, Mr. Dubut called at the Accommodation Section in the beginning of July and wanted to know from Mr. Dietchy then, Deputy Chief Accommodation Officer, as to why he has not been paid rent for the last 2/3 months. Mr. Vallat personally examined the case and found that although the Finance had received a copy of the notice to cancel the contract, yet there was no evidence available at the ONUC Post Office that the letter in question had been delivered registered to Mr. Dubut.

However, Mr. Vallat recalls that prior to the visit of Mr. Dubut to the Accommodation Section, Mr. Vallat had passed by the warehouse located at the Avenue Prince de Liège and had seen a notice "A Louer" displayed prominently in front of the warehouse.

It was obvious Mr. Dubut was trying to rent the place, as he had knowledge that the premises had been given over by ONUC.



*File*  
*hmk*

4 December

1

Mr. S.H. Ahmed, Chief Administrative Officer

H. Kanakarathne, Legal Adviser

Damseaux Claims

1. I refer to your memorandum dated 29 November forwarding to me the memo addressed to you by Col. Martin on the Damseaux claims and seeking my advice on the point raised in Col. Martin's memorandum.

2. A study of Col. Martin's memo (a copy of which he was kind enough to send me) suggests that there are two sets of transactions in regard to which disputes have arisen. They are:

- (a) the value of items which Damseaux had received into its Supply Depot on account of ONUC and for which a proper accounting has not been made by Damseaux - GF. 1,438,258.-
- (b) the value of items claimed by Damseaux to have been delivered to various units of ONUC forces in excess of the supplies held in the Supply Depot - GF. 2,199,059.-

The figures are taken from para 5 of Col. Martin's memorandum.

3. Col. Martin has recommended that the Legal Adviser be consulted as to the legal liability of ONUC for the deliveries Damseaux claims were made to military units in excess of the amounts held in FRIDAM Supply Depot, no purchase orders having been issued nor receiving reports completed in these cases. It would appear that the specific point on which legal advice is sought is therefore that relating to 2(b) above.

4. As I have already made it clear to you as well as to Col. Martin in the course of our oral discussions, legal advice must necessarily be based on the facts submitted by those in charge of the Procurement arrangements, financial procedures, and audit verifications. I am neither qualified nor I am sure expected to go through the accounting procedures on which Col. Martin's conclusions are based. The views I express in this memorandum are therefore to be understood as being based essentially on the facts as submitted to me. In this connection the conference held in your office, on the morning of the 2nd, at which Mr. Damseaux himself was present, has necessitated the modification of Col. Martin's memorandum in a very substantial manner in view of the documents which Mr. Damseaux produced showing the written authorization by the Procurement Officer for some of the deliveries. As agreed at that conference this new factor must be taken into consideration in any total settlement to be made with Damseaux.



5. My advice to you regarding this matter is as follows:

(a) Although Article 18 of the contract provides for arbitration in case of disputes between the parties, I am strongly of the view that, having regard to the nature of the dispute, the accounting complications involved, ~~we~~ our own errors of commission and omission, and the highly technical character of the subject, we should not have recourse to the provisions of Article 18. The matter should be settled by negotiation and mutual agreement.

(b) The appointment of an investigation committee to examine the Damseaux records to verify the authenticity of the Damseaux claims, as recommended by the Chief Procurement Officer (para 3 of his memo of 11 November), and endorsed by the Acting Chief Administrative Officer (para 3(b) of his memo of 17 November), does not commend itself in view of the time, duplication of work and cost involved.

(c) As agreed at the conference ONUC should meet all claims for deliveries made by Damseaux where such claims are supported by documents clearly indicating authorization on behalf of ONUC by any of its responsible officials.

(d) ONUC should similarly meet claims made by Damseaux for deliveries alleged to have been authorized orally by responsible ONUC officials provided such officials admit having given such authorization.

(e) The fact that some of these deliveries were in excess of the amounts held in the Supply Depot cannot be used as an argument for refusing payment where such deliveries have actually been made to ONUC contingents on written or oral authorization given by ONUC Procurement staff. This should only be qualified if, and only if, precise written instructions had been given to Damseaux against drawing in excess of the amounts held in the Supply Depot. It has not been established that any such instructions had been issued.

6. As regards the principal question raised by you in your memo, namely ~~namely~~ whether the failure on the part of Damseaux to maintain proper and orderly accounts of the supply operations can be adduced by us as a sufficient basis for rejecting his claim for excess supplies, the answer is already contained in para 5 (c) and (d). Where deliveries have been in fact made and received by various ONUC contingents, the mere failure on the part of Damseaux to maintain proper and orderly accounts cannot form a sufficient basis for rejecting the claim for payment for such deliveries.

7. The above views relate exclusively to the question of the deliveries in excess of the supplies held in the Supply Depot - para 2(b) above. As regards the other question namely the non-accounting in respect of items received into the Supply Depot (para 2(a) above) Damseaux, under Article 2 of the contract, has undertaken to perform certain services for ONUC, one of which was to carry out all the administrative and commercial requirements



necessary to the transaction such as the maintenance of cash-books, stock-books, registers, invoices, etc. If those obligations had been performed with that degree of reasonable efficiency expected in the ordinary course of business transactions, there could not be an accounting shortage in relation to items supplied to the Depot to a value of CF. 1,438,258.- If the Audit and Inspection Report No. 33 of 21 August reflects an accurate position, then it would appear that Damseaux has failed to show that degree of reasonable efficiency which is expected of them. Col. Martin in para 8 of his memorandum to you states:

"From remarks made by FRIDAM-Damseaux in his replies, he has not denied that the staff provided to keep records for the FRIDAM Supply Depot were inadequate for their tasks."

This observation cannot be regarded as providing sufficient evidence on which to base an allegation of failure to maintain reasonable standards of efficiency. If, however, the Audit Report specifically points out cases of inefficient accounting, book-keeping, registering of supplies, etc., from which a pattern of general efficiency or negligence emerges, it is not impossible to attribute to Damseaux the financial responsibility for losses caused to ONUC by reason of such negligence.

8. I would recommend that discussions on the two questions be kept separate until final figures are arrived at in respect of each of them. A final settlement should then be made by offsetting one set of figures against the other, depending on which of the two claims (namely ~~was~~ that of ONUC or that of Damseaux) is the greater.

cc. Col. P.C. Martin, Chief of Audit  
Mr. A. Bronsoms, Chief Finance Officer  
Mr. N. Lasser, Chief Procurement Officer

HE/nr



23 November

1

Secretary, Property Survey and Claims Board

C. Taff, Assistant Legal Adviser

Injuries sustained by ONUC Nigerian soldiers in an accident involving civilian driver Mr. Pierre de Roy, 8 September 1961

1. This will refer to your memorandum of 12 November, 1961, in which you requested the views of the Legal Adviser as to what action can be taken against the civilian driver for the personal injuries and property damage caused to Pte Panchin Yaro and Cpl Kapanka Edward, both Nigerian soldiers.
2. On the basis of the Military Police report transmitted with your memorandum, we consider that the civilian driver was to blame for the accident and therefore responsible for the resultant personal injuries to the two soldiers and for damage to the watch of Pte Yaro. The fact that the marching soldiers carried no lights does not, in our opinion, constitute contributory negligence.
3. The obligation of the civilian driver to pay compensation accrues, in the first instance, in favour of the two soldiers. Any rights which ONUC may have can only be of a derivative character, based upon an assignment by the soldiers of their rights to compensation. As regards the personal injuries, the fact that ONUC may have granted medical assistance to the two men is not sufficient in and of itself to give rise to any rights to ONUC against the civilian.
4. In this connection, I would call your attention to the fact that Article 6 of "Appendix D to Staff Rules" provides that the Secretary-General, as a condition to granting compensation (including medical treatment) for personal injuries, may require the staff member concerned to assign to the United Nations any right of action against the party liable for the personal injuries. Similarly, paragraph 7 of ONUC Administrative Circular No. 75, dated 6 February, 1961, requires a staff member receiving compensation for loss or damage to personal effects, to execute an assignment to ONUC of his rights of recovery from the wrongdoer.
5. As regards the procedural aspects of the matter, it appears that the case does not fall within the competency of the Survey or Claims Board, since no ONUC property has been damaged, nor has any claim been presented against ONUC.



6. I would suggest that, subject to the authorization by the Deputy Chief Administrative Officer, the case be referred to the ONUC Insurance company "La Paix" for their action on ONUC's behalf against the civilian driver. This action should be taken only after an assignment of all rights has duly been executed by the two soldiers. Absent such an assignment, ONUC has no legal rights of any kind against the civilian driver.

7. The Military Police report transmitted with your memorandum of 17 November, 1961, is returned herewith.

cc. Mr. B. Grunzweig, DCAO



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INTER - OFFICE MEMORANDUM

17 November 1961<sup>1</sup>

To: Mr N. T. D. Kanakarathne, Legal Adviser

From: Secretary, Property Survey and Claims Board 

Subject: Injuries sustained by ONUC Nigerian Soldiers in an Accident  
Involving Civilian Driver Mr Pierre de Roy, 8 September 1961

... I am enclosing herewith papers, including Military Police Report, on the above accident in which two Nigerian soldiers - Cpl Kapanka Edward and Pte Panchin Yaro - were injured, and Pte Yaro's watch was destroyed.

I should be grateful if you would advise me what action, if any, can be taken regarding the civilian driver. As Pte Yaro has not made a claim to recover the cost of his watch, any proceedings against the civilian driver would involve compensation for injuries sustained by the two Nigerian soldiers. It must be noted, however, that the marching troops carried no lights.

... ENCLS: Papers on  
above case.

*Mr. Taff*

*For attention and  
advise to Secretary, Claims Board,  
please.*

*Mark  
24/11/61*



File com. note  
20/10

20 October

1

Air Commodore Morrison, Air Commander  
N. Kanakarathne, Legal Adviser

Aircraft chartered by United Nations from private companies

Several matters have come to the notice of the Legal Advisers requiring a careful scrutiny of the terms of contract between these companies and the United Nations. I shall therefore be grateful if you could let me have

- (1) a full list of the companies concerned with the number and type of aircraft chartered from each,
- (2) copies of the contracts entered into by the United Nations with each.

Since some of the matters requiring this scrutiny are of an urgent nature, please be good enough to have this matter attended to without delay.



File copy.

WDC  
13.10.61

13 October

1

Mr. G.G. Hunt, Head of Public Works Section

N. Kanakarathne, Legal Adviser

PW Project No. 9 - OCA - Bukavu -

1. Since our conversation on the above subject of a few days ago with regard to your memo dated 5 October, I have now gone through the papers.
2. As far as would appear from the available documents, confirmed by your memo referred to above, OCA were employed to supervise the work at Stephenson Quarter at a cost not exceeding CF. 200,000. To judge from the letter dated 3 July 1961 addressed to you by Mr. Nyquist, there was no written agreement as such but an exchange of letters between OCA and the Chief Civilian Officer in Bukavu containing the terms of the arrangement. The actual work was to be performed, under contract, by G. Vaccino who was selected by the Award Committee of OCA Management as a result of competitive bidding. The work was supervised by Mr. Albert Habrant, a OCA agent, who was succeeded at the end of January by a Congolese, Mr. Frédéric Kamba, when Mr. Habrant left as a result of the troubles in Kivu during that time. The contractor Vaccino had undertaken to perform the work for a sum of CF. 2,170,760.
3. By letter dated 19 May the Director of OCA, Mr. Yuma, wrote to the Chief of Civilian Operations in Leopoldville pointing out that "the work had not been carried out in conformity with the clauses and conditions of the specifications UN/1/60". In the annex attached to that letter Mr. Yuma points out (at page 4) that "the supplementary work was carried out at the express initiative of the contractor, who did not obtain the agreement of the President of the Awards Committee nor did he advise him of this fact. If the contractor did obtain the agreement of the ONUC delegate, it was without the knowledge of the OCA managing official or its Director. There are many discrepancies between work done and the purchase orders for materials on the various invoices as compared to those given in the price list attached to the contractor's bid. In this matter the contractor knows full well that such discrepancies require the approval of the Awards Committee". The whole tenor of the communication suggests that OCA is not prepared to certify the work done by the contractor. I note from the file that Mr. Van der Oord replied to this letter on 28 August 1961 - three months later - denying any responsibility on the part of ONUC and at the same time refusing to finance any additional work. It was also pointed out that payments for the work had been made with the agreement of OCA. On 8 September 1961 Mr. Yuma, the Director of OCA, replied stating that the invoices had been signed by error. It is to be noted that by cable dated 17 May OCA had in fact requested that payment



to Vaccino be stopped as invoices had been signed in error. Unfortunately the final payment to Vaccino of a sum of CF. 1,119,970 had been paid on 21 April, 24 days earlier. The papers also reveal that the final account was certified jointly by Mr. Yuma and Mr. Kanba for OCA and countersigned by Mr. Nyquist for ONUC.

4. My observations are as follows:-

- (1) ONUC is fully covered in having made payment to Vaccino on the basis of invoices signed by OCA agents.
- (2) Cable dated 17 May from OCA is evidence of acceptance by OCA of errors on the part of its agents.
- (3) Actual payment had been made 24 days ~~earlier~~ before OCA pointed out that a mistake had been made.
- (4) ONUC cannot be held responsible in law for acts resulting directly from the negligence or inefficiency of OCA or its agents.
- (5) Furthermore the fact that the final account is certified by two very senior OCA officials, the Director and the Manager, ~~underscores~~ *underscores* the responsibility of OCA.
- (6) It appears to me to be clear that OCA agents and officials have failed to adhere to the procedures laid down by the Conseil des Adjudications of OCA in signing the account and the invoices without the prior approval or an acceptance from the Conseil. It is therefore clear that OCA is trying to make ONUC responsible for negligence on the part of some of its officials in not observing the internal administrative requirements of OCA. This is no concern of ours.

5. Recommendations:

The Director of OCA should be informed politely that ONUC cannot accept any responsibility for the mistakes of OCA's agents and officials and that the payment of 21 April to Vaccino was made with the full knowledge and concurrence of OCA and its agents. Too long a period had been permitted by OCA to pass before pointing out to ONUC that there had been some error on OCA's part so that payment could not be stopped even if ONUC was prepared to do so. He should also be informed that as far as ONUC is concerned the matter is considered closed.

6. General Observation:

I was somewhat surprised at the fact that OCA itself had been selected to supervise the work of Vaccino, when it was clear that it was the Awards Committee of OCA Management which had selected Vaccino as contractor for the work "after consideration of the bids". To my mind common prudence should have prevented such a choice of a supervisor. Furthermore I am constrained to comment on the unsatisfactory nature of the agreement to pay OCA for supervision. There is nothing concrete in the file to indicate:



- (a) who authorized the arrangement that OCA should supervise the work of a contractor chosen by OCA itself;
- (b) who authorized that the United Nations would pay for such supervision;
- (c) how the figure of CF. 200,000 was reached as a reasonable supervision fee;
- (d) what was to be meant by the term "supervision".

None of these things seems to be clear. In my opinion these matters appear to have been finalized on a very informal and "Off the cuff" fashion. The Legal Advisers of ONUC do not appear to have been consulted at all in any of these negotiations. It is therefore not surprising that major difficulties have now arisen raising questions of law and of liability.

cc. Mr. A. Corradini, Special Assistant to the Chief of Civilian Operations  
(reference his note of 2 October)  
Mr. S.H. Ahmed, Chief Administrative Officer  
Mr. Lindner, Chief of Audit (reference last paragraph)



File copy -  
mk  
7.26

9 October

1

Mr. C. Taff, Secretary, Claims Board

H. Kanakarathne, Legal Adviser

Property Survey Board - Losses sustained by ONUC as a result of motor-vehicle accidents

Please refer to your note of 6 September relating to two cases where the Insurance Company has declined to accept liability to a third party for damages arising from motor-vehicle accidents. My views on the two cases are as follows:-

(1) ONUC vehicle No. MRI 762 (Elisabethville):-

The Insurance Company has denied liability in this case on the ground that the ONUC driver, Sgt. Sullivan of the 35th Irish Battallion, "did not have a license to drive". Under Article 5 B 2 of the insurance policy it is specifically provided that the coverage rendered by the Company shall not apply whenever an accident is caused by a driver who is not "in possession of a valid driver's license (or other valid document in lieu thereof)". The military police report indicates that the driver in question was not a military transport driver and also that "he had no driver's license". I am unable to decide whether this last ~~statement~~ <sup>statement</sup> in the military police report indicates that Sgt. Sullivan had no Driver's license at all or whether he did not have an ONUC driver's license.

Under the circumstances I recommend that further information be elicited on this point. If Sgt. Sullivan had no proper driver's license of any kind, then the Insurance Company is justified in denying liability. Under ~~these~~ <sup>these</sup> circumstances ONUC will have to bear the cost of damages caused to the third party.

(2) ONUC vehicle No. 6003 (Kamina):-

It is difficult for me to understand why this case has been again referred to the Legal Office. On 26 August 1961 I addressed a memo to Mr. P.J. Hazou, Chief of General Services, expressing my views on the legal aspects of the fatal accident involving the above vehicle. In paragraph 2 of that memo I stressed the importance of informing the Insurance Company of this accident. I cannot find a copy of any communication made to the Insurance Company in consequence of my request. On the other hand I find a note "Case to Insurance 29 August 1961" made by some official in the Office of General Services. I also find a letter from the Insurance Company dated 1 September denying liability on four grounds. In my opinion all these grounds are valid grounds on which the Insurance Company could deny liability. In fact three of them were predicted by me in my memo of 26 August addressed to Mr. Hazou.



Under these circumstances I cannot understand why this matter has once again been referred to the Legal Adviser, unless it be for the reason that papers are not fully read by those whose duty it is to read them.

General Observations:-

In both the above cases it has been brought to my notice that important matters have been discussed with the Insurance Company on the telephone and statements made by representatives of the Company in the course of such telephone conversations have been accepted. I must emphasise here that this is an extremely undesirable and unbusinesslike practice, which should be discontinued immediately. In the second case, Mr. Taff has told me that the Insurance Company assured him on the telephone that delay in informing them about an accident would not be held as a ground for denying liability whereas in actual fact the first ground on which the Company has denied liability is delay in informing them. In the same case I presume that the note made that the case has been sent to the Insurance Company refers to a telephone conversation. It is hardly necessary for me to comment on this method of conducting affairs. The Legal Adviser refuses to express any opinion in the absence of documents bearing out oral conversations which are reported to have taken place. It is hoped that this comment will be taken note of for future reference.

cc. Mr. P.J. Hasou, Chief of General Services (particular reference to case 2)  
Mr. B. Grunzweig, Chairman, Property Survey Board



File copy

mark.  
7.10.61

7 October

1

Mr. R. Bernard, Chief of Procurement

H. Kanakarathne, Legal Adviser

Contract with FRIDAM

I. Please refer to your memo of 25 September on the above subject. As far as the legal aspects of the suggested amendments contained in the draft attached to your note are concerned, I have the following observations to make:-

- (1) Article 1. The two amendments deal with a re-adjustment in the composition of the personnel employed. The substance therefore cannot be a matter on which the Legal Adviser is expected to make any observation. It is presumed that the question of specifying in the contract that the Company would place at the disposition of ONUC "a group of three specialists" and "85 Congolese employees" has been the result of discussions based on the requirements of the Procurement Service of ONUC, in consultation with the Administration. The form in which the change is to be incorporated in the contract is not, from a legal point of view, objectionable.
- (2) Article 2. The general question of payment by ONUC in currencies other than Congolese Francs has been the subject of a note addressed by me to the Chief Administrative Officer on 5 September. In that note it was pointed out that "as a general rule ONUC should not undertake to make payment in US dollars, Belgian Francs, or any foreign currency for services rendered, or goods supplied, or accommodation leased, in the Republic of the Congo. A décret-loi of June 29th, 1961, regarding the control of exchange came into force on 24 July 1961 and is now the law of the country." In that same memo to the Chief Administrative Officer I indicated that although there may be cases where special circumstances justify payment in foreign currency these cases must be kept to a minimum. In the instant case, I think it should be pointed out to FRIDAM that the original contract containing a clause for payment in foreign currency was signed on 27 May 1961 before the new regulations came into force. The position is now different. Whether the proportion of the total sum payable to FRIDAM, payment of which is demanded in US dollars (US \$22,200 out of US \$25,360) is reasonable or not is a question which does not fall within my jurisdiction to determine. It seems to me far too high a proportion for payment in dollars "to the account of the Company in a European Bank". The décret-loi cited above provides for an exception where goods are imported from abroad and have to be paid for abroad. In such a case it could be argued that payment for such importations could



be made in foreign currency. There is nothing to suggest that \$22,200 (out of a total of \$25,360) is for payment by FRIDAN of goods imported for the use of ONUC. Having regard to the décret-loi, and bearing in mind the imperative necessity for the United Nations to respect the laws of the State, I am constrained to express the view that the question of payment in foreign currency should be reviewed.

(3) Article 3. I have no objection to the amendment suggested in the draft Annex II.

(4) The suggested amendment to Annex I is purely formal and does not relate to any substantial matter.

II. I wish to make quite clear that I have restricted myself to examining only the legal aspects of the contract and am in no way concerned with, or competent to express any views on, the matters on which the Chief Finance Officer has raised questions in his memo of 28 September addressed to the Chief Procurement Officer.

III. I wish only to invite your attention to the final sentence of para 2 of your reply to the Chief Finance Officer dated 4 October regarding the question of payments in foreign currency:-

"On the other hand you know perfectly well that some contracts like the renting of the Royal, services given by Sabena, are paid in dollars".

All I wish to state is that those contracts were entered into prior to the enforcement of the décret-loi dated 29 June 1961 on 24 July 1961.

Your papers are returned herewith.

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



4 October

1

Mr. S. Linner, Officer-in-Charge

H. Kanakarathne, Legal Adviser

Interrogation of Alexander D'Hoyes, Belgian civilian under UN custody

1. On 29 September 1961 attached cable no. 940 was received from Mr. Cruise O'Brien regarding a Belgian civilian, Alexander D'Hoyes, taken into custody on 27 September at Elisabethville by UN (Swedish) troops. In that cable Mr. O'Brien stated that Mr. Khairy had suggested that the Belgian "should be interrogated by Congolese Sureté while remaining, of course, under UN protection". Mr. O'Brien also said he was sending the papers on D'Hoyes on to us by pouch.

2. Following this cable the attached letter from Mr. O'Brien was received yesterday enclosing the papers referred to in the cable and reiterating Mr. Khairy's view that an interrogation by Sureté personnel "may lead to illicit valuable information about the reorganization of military activities by civilians in Elisabethville".

3. There can be no question whatever that D'Hoyes was actually arrested with "a hand grenade in his breast pocket and a pistol stuck inside the waistline of his trousers", according to the report of the Swedish Warrant Officer who arrested him. Involved in the incident of his arrest was a car driven by a Katangese Gendarme and occupied by 3 Katangese women which was found to contain a sub-machine gun and six cartridge magazines. The Katangese informed the Swedish officer that the weapon and ammunition "belonged to the white man". In these circumstances D'Hoyes clearly falls within para A-2 of the Security Council resolution of 21 February 1961, as participating actively in military activities, and qualifies to be repatriated immediately. His case is thus quite distinguishable from the cases of other Belgian civilians who had been arrested on suspicion and who were later found not to have committed any act justifying their continued detention or their repatriation to Belgium. Several of them have already been flown back to Katanga for release.

4. I am somewhat concerned by Mr. Khairy's suggestion that D'Hoyes should be interrogated by the Congolese Sureté. I cannot understand why D'Hoyes should want to confide whatever he may know about the reorganization of military activities by civilians in E'ville to the Congolese Sureté rather than to UN officials. I should imagine that in his present predicament D'Hoyes would be far more willing to deal with the UN than with any arm of the Central Government in Leopoldville. Quite far from this practical consideration, I am reluctant, on principle, to invite the Congolese Sureté to participate in our handling of the general question of the implementation of para A-2 of the Security Council resolution. Even if the particular circumstances of this case justify such action, I fear that an extremely dangerous precedent might be created.



It would be most embarrassing for us were we faced later with an official request by the Congolese Minister of the Interior in Leopoldville that all Belgian personnel taken into UN custody may also be interrogated by Sureté personnel.

5. Neither the cable nor the letter indicate the basis on which Mr. Khiary has made this suggestion. It may be that he has good reasons which he may not have wished to put down on paper. You may, of course, wish to consult him before making your decision. For myself I am of the view that M'Hoyes should be repatriated to Belgium by arrangements with the Belgian Liaison Mission in Leopoldville. I shall be grateful to have your directions on this matter.

cco. Mr. W.E. Cox  
Lt.-Col. N. Borahjrevink



12 October

1

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

N. Kanakarathne, Legal Adviser

Motor accident involving ONUC 1062 - Survey Board case 154 -

1. Reference your note of 12 September, I see from the letter received from the Insurance Company that no further assistance in tracing Mr. Liponda could be expected from the Congolese police. There is therefore no further action possible on our part which could assist the Company.
2. As regards the original question asked by Mr. Wasser of your Office, as to whether we could ask the Military Police to investigate Liponda's disappearance, in my view it is not one of the functions of ONUC Military Police to undertake what can only be regarded as detective functions. They will have neither the authority nor the facilities to carry out any such task. I do not therefore think we should refer this aspect of the case to the Military Police.
3. I wish to point out to you that your file does not contain any copy of the letter I advised you to address to the Insurance Company requesting them to communicate with the Congolese police. It may be that the omission in the file of the copy of such a letter is due to inadvertence. On the other hand if communication with the Insurance Company on the lines suggested by me has been by telephonic conversation, I must draw your personal attention to the necessity of discontinuing this practice immediately. In this connection please see my memo addressed to the Secretary, Claims Board, on the 9th of October (with copy to you).
4. A further point arising from the study of this case is the lack of a report on the accident from the Congolese police. It is most essential that whenever an ONUC-owned vehicle or an ONUC driver is involved in any street accident the Military Police should, as a matter of routine, immediately contact the nearest Congolese police station and request them to send a police officer to the scene of the accident. The Military Police inquiry at the spot should therefore be conducted in the presence of and as far as possible with the co-operation of the Congolese police. This procedure will not only prevent situations such as have arisen in this case but will also improve the general feelings of cooperation and assistance which we are supposed to be here to engender in the Congolese authorities. I am addressing a separate memo on this matter to the Provost Marshall so that he could take necessary steps in this regard.
5. *Your file is returned herewith.*

cc. Mr. C. Taff, Secretary, Survey Board



29 September

1

Mr. S. Habib Ahmed, Chief Administrative Officer

N. Kanakaratne, Legal Adviser

Claim by SABENA

With reference to your memo to me dated 27 September, enclosing the letter dated 18 September from Sabena Airlines, concerning the destruction of the DC-4 plane chartered by ONUC from them and the injuries to the members of the crew at Kamina airfield, the copy of the contract between Sabena and the United Nations attached to your memo does not contain Exhibit A (the certificate of insurance), which forms part of the contract (vide para 6). Without this document I do not wish to express any legal opinion regarding the degree of our liability for the damage to persons and property resulting from the destruction of the aircraft. I shall be grateful if the Chief of Procurement be requested to furnish me with the contract in full.

Pending receipt of the certificate of insurance, you may wish to send a general reply to Sabena acknowledging receipt of their letter of 18 September and stating that ONUC reserves its position in relation to para 5 of that letter. If so desired you may even indicate that a further communication from us will follow.

cc Mr. R. Bernard



4 September

1

Mr. B. Grunzweig, Deputy Chief Administrative Officer

H. Kanakarathne, Legal Adviser

REGIDESO - BUKAVU

1. Please refer to your memorandum of 28 August on the above subject, forwarding a copy of letter of 16 August from Regideso. I am also in receipt of a memorandum dated 25 August from Mr. Greenendyk, the Chief Finance Officer, enclosing copies of all the relevant documents including the report of Mr. de Gaigneron and a photostat copy of the disbursement voucher.
2. I have gone very carefully through the documents sent to me both by you and by the Chief Finance Officer. As far as I can gather the pertinent facts, which are not disputed, are as follows:
  - (a) A sum of 119,086 Congolese Francs was due from ONUC-Bukavu to Regideso in payment of electricity bills for houses occupied by the Fifth Nigerian Battalion.
  - (b) This entire amount was paid in cash by Mr. de Gaigneron to an unknown Congolese who had presented himself at Mr. de Gaigneron's office claiming to be an authorized representative of Regideso.
  - (c) The disbursement voucher (a United Nations document) dated 1st June 1961 has been certified and approved by the same official namely Mr. de Gaigneron.
  - (d) The signature of the payee is quite undecipherable. The designation of the payee or his official connection with Regideso is not indicated, nor has his name been ascertained and noted under his signature to facilitate identification.
  - (e) The Regideso documents on presentation of which payment was made, according to Mr. de Gaigneron, are not with Mr. de Gaigneron so that there is no evidence on which it could be stated that Regideso were negligent in allowing unauthorized persons to handle their documents.
  - (f) There is no record of any attempt either orally on the telephone or by letter to inform Regideso that a Congolese had been paid this sum of money.
  - (g) Even when Mr. de Gaigneron was informed by Mr. Nette of Regideso that the money paid by ONUC had not been turned in to Regideso and that obviously a fraud had been committed, no complaint or report to the local police seems to have been made by Mr. de Gaigneron. If he had done so, I have not been furnished with the results of the police investigations.



(h) Regidese, by letter dated 16 August, has categorically denied any negligence on their part and has refuted any "settlement of this affair" except on the basis that their bill of 119,086 Congolese Francs be paid in full by ONUC. In this letter Regidese outlines the normal procedure which had been followed in the case of collection of money by Regidese from customers through persons duly authorized to do so and makes the statement that this practice had been followed "in the case of all the other payments that you have made to us".

(i) Mr. de Gaigneron has not so far made known to us whether or not there was any witness present at the time of the payment.

3. If the United Nations is to maintain its position that the sum of money due from it to Regidese was in fact paid, the onus of proving such payment falls, in law, on the United Nations. I regret to have to say that, on the material placed at my disposal for legal advice, the United Nations is quite unable to adduce any proof at all, quite apart from any reasonably convincing proof of payment. Apart from an illegible signature purporting to be that of the person who received payment, we have no evidence to support our contention that payment was in fact made. On the contrary, all the circumstantial evidence appears to be against us and in support of Regidese's contention that they cannot be held responsible for any negligent conduct on our part leading to fraud by a third party: -

- (a) Absence of reasonable precautionary steps to verify identity of payee;
- (b) Complete ignorance of even the name of the payee;
- (c) Complete ignorance as to the status or capacity of the payee;
- (d) Receipt produced by ONUC is on a ONUC printed form and not on the usual Regidese receipt book with counterfeit;
- (e) Inability on our part to produce the statement of account printed on Regidese stationery to support our contention that we acted bona fide in thinking that the payee was duly authorized by Regidese because he presented an official Regidese document;
- (f) Departure in this instance from the usual practice followed by ONUC in the past in making payments to Regidese.

4. Quite apart from the legal position, I consider it my duty to draw your attention to what I consider serious omissions on the part of the Finance Officer concerned, Mr. de Gaigneron. In his report to the Chief Finance Officer, dated 16 August, Mr. de Gaigneron states: "Mr. Kette said he would send somebody to collect". No effort seems to have been made by Mr. de Gaigneron to get confirmation of this from Mr. Kette himself after the discovery of the fraud. He also says, in relation to the Congolese who came to his office to claim payment: "I paid him, making him sign the disbursement voucher". No explanation is available as to why the usual



practice which Regidese refers to in letter of 16 August of obtaining a signature of the payee in Regidese's own receipt books, was not followed in this instance. Nor can Mr. de Gaigneron explain satisfactorily what happened to the statement of account of Regidese which, he says, was presented by the Congolese who claimed the payment, apart from the bald confession: "I found out that the Regidese statement had disappeared". If Mr. de Gaigneron showed that degree of care which is expected of a reasonable man of affairs, the mere loss of the statement together with the illegibility of the signature on the voucher should have put him sufficiently on his guard to have prompted him to telephone Mr. Nette as soon as the loss of the statement was discovered to verify whether or not the money had actually been turned in to Regidese. On his own admission Mr. de Gaigneron has not done so. Mr. de Gaigneron further states in his report of August 16 that "Mr. Nette admitted that the fraud must come from his office ..... he said he would look into the matter to conduct an investigation." There is no confirmation either from Mr. Nette or from Regidese of this admission or of this investigation. Indeed, Mr. de Gaigneron does not appear to have sufficiently interested himself even to inquire whether such an investigation had ever been conducted. Furthermore, even after the fraud had been discovered, Mr. de Gaigneron did not think it necessary to report the matter to the police, even *pro forma*. It is not for me to pass judgment on the acts of commission or omission of officials. But I cannot refrain from commenting on the lack of observance of the minimum standards of reasonable conduct expected of responsible officials particularly those handling financial matters.

5. A study of the telegraphic correspondences between Mr. de Gaigneron and Leopoldville shows a procrastination and a reluctance to furnish reports to Leopoldville which cannot be explained. As early as 15 July Leopoldville called for a full report on the circumstances of the incident. Even at this date much time had elapsed because the telegram of 15 July refers to the discussion the Chief Finance Officer had in Leopoldville with Messrs. Cuperus and de Gaigneron from which the impression was that a full report would be sent without delay. Mr. Greenendyk states in telegram No. FINEC/1364 of 15 July 1961: "In my discussion with de Gaigneron he minimised the seriousness of situation and considered that matter could be arranged reasonably". I am unaware of the date on which this matter was first brought to the notice of the Chief Finance Officer. On 24 July a further telegraphic reminder had been sent to de Gaigneron. The matter was brought to the notice of the Legal Advisers only on the 27 July. Even as late as 14 August 1961 Leopoldville had not been provided with a full report of the circumstances and the facts of the case (cable FINEC/1602). It seems to me both from these telegrams and their contents as well as from the tone of Mr. de Gaigneron's report of August 16 and the covering letter thereto, that more effort and time has been devoted to an apology and a case on behalf of Mr. de Gaigneron himself than to a proper establishment of investigations/necessary steps to ascertain the degree of Regidese's own contributory negligence.



6. In paragraph 2 of your memorandum of August 28 you suggest, quite rightly, that it would be desirable if this question be dealt with in two aspects:

(a) Settlement with Regidese;

(b) Internal measures either for recovery of funds and/or disciplinary action against responsible ONUG officials,

As far as (a) is concerned, on the evidence available, we cannot, in law, maintain a case for either non-payment of Regidese or for recovery of the amount from Regidese if it has been already paid. As far as (b) above is concerned, this is a matter for the Administration and for the Finance and Audit Sections of the United Nations to deal with.

cc. Mr. S.H. Ahmed, Chief Administrative Officer  
Mr. A. Greenendyk, Chief Finance Officer  
Mr. P.C. Martin, Chief of Audit  
Miss N. Osborne, Chief of Civilian Personnel



26 August

1

Mr. S.H. Ahmed, Chief Administrative Officer  
V. Fahry, Legal Adviser  
Claims and write off

1. Before we can proceed with actions to clean off our books all the pending claims, damage, deficiency and write off cases, we should first obtain financial rules which would take into account the particular circumstances of the ONUC operation. The financial rules applicable to the UN Headquarters operation do not contain any provisions regulating subjects such as responsibility of military personnel, handling of third party claims, etc., and I believe it therefore to be essential that separate rules for the ONUC special account be established in the same way and along the same lines as it was done for UNDP.
2. In particular the following points should be covered by the financial rules:
  - a) Authority of the Survey Board to assess responsibility for losses or damaged UN property, not only as regards UN officials, but also ~~any~~ (any) other persons; *against*
  - b) A statement that losses suffered by the UN as a result of recklessness or gross negligence of military personnel may be the subject of counter claims against the governments who supplied such troops;
  - c) A provision that third party claims are payable upon certification of UN liability by the Chief Administrative Officer on the basis of competent legal advice;
  - d) Establishment of limits and guiding lines for ex-gratia payments and payments of compensation for losses of personal effects suffered by members of the Force and UN personnel;
  - e) Compensation payments for death or injury of members of the Force;
  - f) Establishment of conditions under which UN will reimburse governments for losses of contingent owned property, including requirement that importation of such property into the Congo must receive prior approval, its inventory must be submitted to the administration and the causes and circumstances of the loss established by an impartial investigation as prescribed by the Survey Board.
  - g) Provision for inclusion of representative of contingent concerned on Survey Board in meetings dealing with losses of contingent owned property or proposing to assess liability on a member of the contingent.



3. In addition to obtaining the adoption of financial rules, military command orders will be required to institute proper reporting inspection and investigation procedures within the Force. These orders will also have the effect of putting commanding officers on notice that they will no longer be able to cover up losses or indiscipline within their units and that these will be brought to the attention of their governments when they receive statements of counter-claims from the UN. My experience in UNMF shows that losses, accidents and other unpleasant incidents dropped sharply after the commanding officers became aware that they cannot rely on getting away with misdeeds which happen within their units. In this connection I think it is high time to press Headquarters for issuance of the ONUC Force Regulation in sufficient numbers so that we can distribute them to all units.

4. As soon as we obtain the adoption of the financial rules which will permit us to put our affairs in order, the Survey Board should be reorganized so as to be able to tackle the backlog of cases which up to now could not be handled properly. It is my impression that the financial value of these cases, for most of which the responsibility should be shifted on participating governments, will be to the order of several million dollars.

5. Once the financial rules and the rules of procedure of the Survey Board are established, its secretary does not need to be a lawyer, but should preferably be a good administrator with financial experience. His duty will be mostly to assemble the documentation pertaining to the case and to verify that the necessary investigations were carried out. The secretary of the Survey Board should to that end cooperate closely both with the legal advisors and with the auditors and ask for their advice where he is not sure that all the required information is available. The whole case files should be circulated to members of the Board before the meeting and their comments should preferably be made in writing prior to the meeting on the basis of the full information included on file. In any event, in cases involving potential assessment of liability against a member of the Force, the results of the <sup>military</sup> unit investigation and of the UN investigation should be compared before the meeting and if necessary cleared through the Force Commander before the Board makes its recommendation to the Controller for raising a counter-claim against the government. Similarly, losses for which the Congolese authorities <sup>are liable</sup> should also be, wherever possible, checked out on the basis of information from both sides.

6. Third party claims, that is claims against the UN by persons other than UN officials or members of the Force, should not be handled by the Claims Board. After the preliminary investigation was made by the Finance Office with the assistance of UN Military Police or secretary investigators, the file should be submitted to the Legal Office which would make its proposal for a settlement of the claim for the CAO's decision (or if the amount proposed exceeds the CAO's authority, of the Controller). The Claims Board would then handle only those claims which fall properly within its province, namely losses of personal effects or claims for compensation of personal injury submitted by the members of the Force or UN officials. The Secretary of the Claims Board needs not to be a lawyer and can be a junior staff member from the Finance Office. The Chairman of the Board should be either the AGAO or the Chief Finance Officer, and the Board needs not to have more than two other members - a lawyer and a personnel officer, either civilian or military depending on the type of case under consideration.

cc. Dr. Linner, Mr. B. Grunzweig, Mr. N. Kanakarathne



Claims

230.

le 26 mars 1962.

Monsieur le Conseiller Juridique,

Affaire SOTRANSCONGO c/ O.N.U.C.

La SOCIETE DE TRANSPORTS ET DE COMMERCE AU CONGO, en abrégé "SOTRANSCONGO", dont je suis le conseil, sollicite mon intervention en vue d'obtenir règlement de la somme de 170.494 francs dont l'Organisation lui reste redevable.

Je crois bien faire en vous transmettant sous ce pli une photocopie de la lettre de ma cliente datée du 21 mars ainsi qu'une photocopie de l'extrait de compte qui s'y trouvait annexé.

Je ne doute pas que dès réception de la présente lettre, vous voudrez bien intervenir auprès du service compétent pour que la somme de 170.494 francs dont l'Organisation des Nations Unies au Congo reste redevable à ma cliente pour fournitures et prestations effectuées dans le courant du 1er semestre de l'année 1961 fasse l'objet d'un règlement.

Le cas échéant, les fonds peuvent être virés au crédit du compte n° 901.316 du Cabinet JEANTY-LECLERCQ-DE WINNE près la Banque du Congo, Siège de Léopoldville.

Je vous remercie de bien vouloir me confirmer que vous faites le nécessaire dans le sens demandé et vous prie d'agréer, Monsieur le Conseiller Juridique, l'assurance de mes sentiments de considération très distinguée.

Monsieur le Conseiller Juridique  
de l'Organisation des Nations Unies  
au Congo  
Building "LE ROYAL"  
Boulevard Albert Ier  
LEOPOLDVILLE-KALINA

(B.P. 7248)



NOTE FOR DISCUSSION

Subject: Claims against ONUC from private individuals

1. The main purpose of this note is to try to contribute some practical (if preliminary) suggestions in regard to the accumulating, and relatively substantial problem of claims against ONUC alleging damage to life, limb or property, (and with particular reference to those relating to events in Katanga, and similar incidents). On the basis of a so far limited examination of this problem, it seems to me that some clarification may be needed as to the action which needs to be taken, the methods and procedures by which this can best be accomplished, and as to certain aspects of policy and principle which apply.

2. I propose to comment first on the question of the initial action to be taken, - for most of the related questions of procedure and policy should I suggest be considered in the context of actual claims received and pending. I would only mention at this point however, that unless and until some general inter governmental arrangement is made for financing some form of assistance or compensation to persons who suffered losses in the Congo, there would seem to be no immediate alternative but to evaluate and reply to the various claims we receive.

THE INITIAL RECEIPT AND CLASSIFICATION OF CLAIMS

3. Upon receipt of a claim against ONUC alleging damage to life limb or property, it is necessary inter alia to determine which Office should examine it and take or recommend appropriate action. This question apparently sometimes depends on the nature of the claim, especially where it arises from a contract or an accident with an ONUC vehicle, (i.e. more or less technical matters for which a particular administrative Unit has a specialized responsibility). In general however, I understand that the central



coordinating (and action) point for at least the great majority of claims received in Leopoldville, is the secretariat of the Claims Board, which is attached to the Office of the Chief Administrative Officer. I also understand that a certain number of claims are received directly by ONUC Offices in the provinces (mainly in Elisabethville), where they are initially examined by the administrative staff of those offices, and that we do not, at this time, have complete information in Leopoldville as to claims received or currently under investigation elsewhere.

4. Since the great majority of claims received directly by both Leopoldville and Elisabethville relate to events in Katanga, a practical question would seem to arise as to where, and by what methods and staffing arrangements, their initial examination could best be undertaken. Before considering these procedural aspects however, it would seem useful to note the actual practical steps which initially need to be taken when claims are received.

5. In this connection, I understand that a good deal of preliminary work has recently been done with a view to analysing and classifying claims so far received. Although the main issues raised in claims relating to events in Katanga between September and December 1961 may be classified under certain broad categories, it would nevertheless appear that the individual claims themselves are often not susceptible to such simple classification. For example it often happens that a single claim refers to property damage through shelling, as well as losses through looting or unlawful acts allegedly by ONUC troops, and possibly personal injury, or allegedly unlawful detention or expulsion as well. At the same time some claimants transmit more or less detailed descriptions of the circumstances, with or without supporting evidence, while others merely state their damages and losses, and attribute them to actions of ONUC, sometimes without any supporting explanation.



6. The analysis of claims, - especially having regard to the volume of such claims now pending, - can be a time consuming undertaking, and it seems to me that whatever analysis is now to be done should, to the maximum extent possible, reflect and accompany the practical steps required to deal with these claims. As I understand it the immediate practical steps required are:

- (a) enquiries and investigations to the extent necessary  
(see paragraphs 7 to 9 below);
- (b) writing replies (or interim replies) to the claimants  
(see paragraphs 10 to 12 below).

#### ENQUIRIES AND INVESTIGATIONS

7. The extent to which enquiries or investigations are required can only be assessed on the basis of an examination of the individual claims, and it would seem desirable that this be assessed at the time of initial examination. In determining what investigations if any are required, it is first necessary to examine what the claimant alleges. If his allegations are such that, whether they be true or false, they could not in any event engage the responsibility of the U.N., then clearly no investigation is required. If on the other hand the claimant's allegations involve (or could involve) unlawful actions by ONUC personnel (such as looting or deliberate damage to life limb or property not resulting from military necessity or breach of contract) then at least some enquiries are *prima facie* necessary.

8. Although the practical possibilities of fruitful investigation are often limited, especially when initiated long after the event, I understand that it is nevertheless often possible to obtain at least some relevant facts or evidence, (e.g. whether and when a certain building was occupied by ONUC personnel, and if so whether under a contract, actions taken by military contingents in regard to the subject matter of claims, details of persons arrested transferred or expelled, known actions by third parties, sequence of military operations etc.) In pursuing such enquiries it would seem that military sources are often of particular importance.



9. Whatever difficulties or delays may be involved in such investigations however, this need <sup>not</sup> in itself, in my opinion, necessitate delay in sending at least interim replies to at least the great majority (if not all) of the claimants.

REPLIES OR INTERIM REPLIES TO CLAIMANTS

10. Assuming that individual replies are to be sent to these claimants, it follows from the foregoing that the content of these replies will vary to at least some extent from case to case. It is suggested however that in most cases, such replies could take one of, or a combination of, the following forms:

- (a) In cases where the facts alleged by the claimant consist exclusively of acts of self defence or military necessity, or of lawful expulsion under the relevant Security Council resolutions or acts of third parties, a letter should be sent rejecting the claim on this ground; (see where applicable the two form letters forwarded with Mr. Schachter's memorandum of 27 March 1962).
- (b) In cases where the claimant has not sufficiently set out the basis of his claim, (e.g. where there is no indication as to why any liability is attributed to the Organisation or where, even if the damages or losses are stated, there is insufficient information to support a prima facie claim), a letter should be sent pointing out the absence of pertinent details or of a basis for the claim, at the same time drawing attention, where appropriate, to the non-existence of U.N. liability for the consequences of military necessity etc.
- (c) In cases where the claimant's allegations, if true, would constitute unlawful actions by ONUO personnel, (e.g. acts not resulting from military necessity such as unprovoked assault,



deliberate injury to unarmed civilians, maltreatment, looting, pillage or unnecessary destruction of property etc.) a letter should normally be sent acknowledging receipt of the claim, saying that it is under examination and that a further communication will be sent in due course, and adding that the Organisation entirely reserves its position as to the question of any liability arising from the facts alleged.

11. It will be noted that the types of initial reply suggested above would in no case involve admitting the validity of any claim, but rather would consist of:

- (a) rejecting certain claims on grounds of substance;
- (b) rejecting, or declining to consider, certain other claims on the ground that they do not furnish a *prima facie* case, (e.g. inadequate presentation);
- (c) acknowledging and reserving our position on certain other claims.

12. It therefore follows that the only claims which could subsequently give rise to any decision to offer compensation or settlement would be those included under sub-paragraph (c) above.

13. It would seem to be desirable, in my view, that replies to claims on the lines indicated above should be sent as soon as possible, preferably at the time of (or soon after) the initial examination of the claim. To accomplish this it would be necessary to assign this work to appropriate staff, bearing in mind that the letter of reply (which requires the exercise of some judgement) has to be written on the basis of the individual dossier.

14. The sending of initial replies to claims as suggested above would seem *prima facie* to be the most urgent task. Not only should this dispose of a substantial proportion of the claims now pending, but it should also help to mollify claimants, to lessen pressure from governments, and to obviate



unnecessary criticism of the Organisation.

15. When these steps have been taken there remains the question of claims on which we will have reserved our position, (see paragraphs 10(c) and 11(c) above). The latter will doubtless comprise the more difficult cases, which may involve some tricky legal determination. As soon as cases in this category have been identified and investigated to the extent necessary and possible, it would therefore seem that a legal determination will have to be made in each such case.

#### ADMINISTRATIVE MACHINERY AND PROCEDURE

16. If the more immediate practical problem confronting us has been correctly referred to above, then it would seem that the most immediate need is to ensure that adequate machinery and procedures exist for undertaking:

- (a) the initial examination of each claim on the basis of the complete documentation available to ONUC,
- (b) the writing of replies or interim replies to the claimants, and
- (c) enquiries and investigations as necessary.

17. As I understand it, some 400 claims relating to events in Katanga between September 1961 and December 1961 have been received in Leopoldville, not including any others received directly by the Elisabethville Office. Of these, I understand that 22 have so far been considered (and rejected) by the Claims Board, but that no reply or acknowledgement has yet been sent to any of the claimants.

18. This brings me to what I understand to be the existing Claims Board procedure, whereby a Board composed of some eight ONUC officials (on the analogy of ONUC Administrative Circular No. 75 as amended) makes recommendations to the Chief Administrative Officer concerning the decision to be taken on each claim. While it is not doubted that <sup>such an</sup> internal Advisory Body can make



a useful contribution, (especially where coordination between different administrative and organisational units is required), it would nevertheless appear that the most immediate practical problems now confronting us can hardly be resolved by the Claims Board itself. It would also seem worth while to review at this time the extent to which authority has been or should be delegated to reply to claimants without first obtaining a formal Claims Board recommendation.

19. Similarly, it would also seem opportune to review the particular role of the Claims Board in the decision taking process. For example, in a case where a legal determination has been made that the Organisation is under no liability, it is hardly conceivable that the Claims would make a different determination. As I understand it therefore, the Claims Board does not make or vary purely legal determinations, and accordingly, in the event that the latter suffice to dispose of a case, it would not seem necessary for the Claims Board to re-examine it.

20. It is nevertheless appreciated that purely legal determinations do not necessarily embrace all aspects of a case, as for example certain aspects of negotiated settlements, or ex gratia payments proposed in the interests of the Organisation in the absence of liability. In general therefore it would seem that the most constructive role of a Claims Board might perhaps lie in its consideration of those cases in which any payment or compensation is proposed, with or without any admission of liability, especially in so far as a judgement or assessment is required not consisting only of a purely legal determination.

*amount of  
Compensation*

21. The need for and competence of the Claims Board in connection with claims from outside parties would seem to have been subject of various opinions and interpretations in the past. In this connection, I would particularly refer to Mr. Fabry's memorandum to the Chief Administrative



Officer dated 26 August 1961 (entitled "Claims and Write off") which contained a series of recommendations concerning procedures and responsibilities for losses and indiscipline, and expressed the unqualified view that claims from outside parties should not be handled by the Claims Board.

22. As I understand it, the Claims Board was established primarily, if not only, to deal with claims emanating from ONUG personnel (see Administrative Circular No. 75 and amendments), and in spite of past practice, and the information transmitted to the Belgian Permanent Mission concerning Claims Board procedure, there would seem to be serious practical reasons for questioning whether the problem of outside claims here referred to should fall within its province, and if so for what purpose and within what limits. In any event, an early re-appraisal of the role of the Claims Board in this respect would seem to be required.

23. A common feature of virtually all the claims referred to is that they involve (or should involve) a legal determination, and this, it is suggested, must always precede the communication of any decision on a claim. Since however, in any event, it would not seem possible for our available legal staff to undertake the initial receipt and examination of all claims, the preparation of all correspondence and the conduct of all enquiries etc., it would therefore appear that what is needed is a claims unit which, in collaboration with the Legal Office, would receive and examine claims, prepare correspondence and conduct enquiries.

24. If this machinery exists - (and it is appreciated that additional claims officers are at present urgently required) - then it is suggested that claims be processed by the Claims unit, with legal guidance as required, and subject to the coordination with the Legal Adviser of all correspondence involving legal determination. It would then remain to define the limits of the delegation of authority involved. While I



hesitate to draw precise conclusions at this stage, it would seem to me that, whether or not the authority delegated by the Chief Administrative Officer to the Claims Board needs modification, the replies, or interim replies, to claimants (discussed in paragraphs 10 to 14 above) should be prepared and despatched as expeditiously as possible, and it would seem well be worth considering whether this should be done directly by the Claims Office in coordination with the Legal Adviser under a simplified procedure.

25. Finally, there remains the question as to where this initial work should be done. From a perusal of some of the pending claims dossiers now in Leopoldville, (the great majority of which relate to events in Katanga), one is inevitably led to ask how much of the immediate action required can in fact be taken at ONUC Headquarters. It is my impression that in ~~almost~~ many of these cases the necessary information or supplementary documentation can be much more readily obtained, (or can only be obtained), in Elisabethville. Moreover, particularly in view of the work load involved and the present shortage of staff, it would seem highly desirable to reduce to a minimum double initial examinations of the same claim, and referrals back and forth between offices, and to try to establish a procedure whereby a single claims officer (or office) examines a claim when received, institutes any necessary enquiries, and prepares a reply or acknowledgement to the claimant (preferably in a single operation).

26. While it is appreciated that in the case of some Katanga claims, certain essential sources of information are located in Leopoldville, it would nevertheless appear that the major part of the sources needed in these cases are in Elisabethville. In view of this it may be worth



considering whether, for a temporary period, the claims unit should be concentrated in Elisabethville rather than Leopoldville.

PARTICIPATION OF THE MILITARY COMMAND AND NATIONAL CONTINGENT GOVERNMENTS

27. Among the questions not referred to in the foregoing is the application of such relevant Financial rules and ONUC Force regulations as now exist or may in the future be issued. In this connection, it is highly pertinent to consider, at least for the purposes of legal clarification, the question of the respective responsibilities of governments contributing contingents and the United Nations, in respect of unlawful or private acts of contingent military personnel.

28. It is noted for example, that Article 13 of the Draft ONUC Force regulations prepared on 27 March 1961 refers to the authority of the Force Commander to make investigations and inquiries, and to obtain information and reports from contingent commanders concerning the good order of the Force and disciplinary action taken by contingent commanders. Similarly, article 28(4) of the same Draft Regulations refers to the establishment by the Secretary General of procedures, including a claims commission or commissions, for the settlement of disputes "involving the Force and its members".

29. Regardless as to the party which might in fact ultimately assume any financial responsibility there may be for meeting claims, investigations, reports and disciplinary action (if any) of contingent commanders in regard to alleged unlawful acts by military personnel are clearly within the province of the military command. Accordingly, it would seem that all allegations of unlawful acts by ONUC military personnel should be notified to the Force Commander, in order that he may obtain such



reports as he considers necessary, or, in the event that the matter has already been investigated by the military, the results of such investigations may be made available.

30. The further and rather more difficult question as to the extent to which the U.N. may be legally liable for the consequences of private or unlawful acts by military personnel, not arising from military necessity or official duties, needs, I think, to be studied further. Apart from the possibility of U.N. counterclaims against governments in certain instances at the time of settling their accounts (on the analogy of a pre-existing UNRRA practice), or the possibility of attributing certain liabilities directly to governments, there are clearly also certain questions of practical relationship, equity, policy and tactics which need to be carefully considered.

#### CONCLUSION

31. By way of a purely interim conclusion, I would suggest as an immediate line of action that:

- (a) Such suitable staff as can be made available be assigned to proceed urgently with the initial examination of claims, the preparation of replies or interim replies, and such enquiries or investigations as are necessary, in coordination with the Legal Adviser.
- (b) The immediate priority objective should be to send replies to claims received on the lines of the three types of reply set out in paragraph 10 above.
- (c) This work should be undertaken (and the dossiers centralized) in whatever place it can most expeditiously be performed (e.g. perhaps much of it in Elisabethville).



- (d) All allegations of unlawful acts by ONUC military personnel should be notified to the Force Commander, with a view (inter alia) to obtaining through the military command information and reports based on their investigations.
- (e) The respective roles of the Claims Unit, the Legal Office and the Claims Board, and the procedures and delegations of authority involved should be reviewed, and to the extent necessary modified, in order to ensure that the work is carried out in the simplest and most expeditious and efficient manner possible.

32. Needless to say these suggestions do not go as far as is needed, in the context of the problem as a whole, and I am aware that part of the course of action proposed may well be already in progress. It is also appreciated that the apparently crucial shortage of staff (in regard to which I have recently made some suggestions to the Chief of Civilian Personnel), is seriously restricting the rate of progress. I understand however, that at least two additional claims officers have been requested, and in the meantime, it is suggested that some of the improvements in method referred to in the foregoing should enable us to use to better advantage the resources we have.

33. Finally, I would only mention that I have deliberately refrained from commenting in this note on some of the more general and basic policy questions, especially concerning the ultimate legal and financial consequences of any unlawful acts actually committed by ONUC personnel. In this latter connection, I think it is desirable to try to get a more complete picture of the problems and the amounts of damage involved etc. before trying to reach more detailed conclusions on such general questions



as feasibility and methods of indemnification on different hypotheses, sources of funds and settlement of disputes etc.

34. In the meantime, although at this stage, this cannot be more than a preliminary note for discussion, I thought it useful to commit this much to writing, in advance of our forthcoming visit to Elisabethville, with a view to providing at least a tentative outline of some of the points to be considered in devising a practical approach to the current claims problem.

D.B.H. Vickers  
Special Legal Adviser



*Handwritten:*  
Keph  
9  
Hull

CONFIDENTIAL

17th April

2

To : Mr. J. Rolz-Bennett, Chief Civilian Representative, Eville  
From : R.K.A. Gardiner, Officer-in-Charge ONUC  
Subject : Visit to Elisabethville re claims

1. In connection with the greatly increased volume of claims against ONUC, submitted by private individuals or through embassies mainly in relation to events in Katanga, and the various problems which these entail, Mr. Vickers, (Special Legal Adviser), and Mr. Halbert (Secretary of the Property Survey and Claims Board) will be visiting Elisabethville next week, arriving by the scheduled flight on Tuesday 24 April 1962. They will plan to return on Thursday (or if necessary a day or so later), and it is requested that accommodation be provided.
2. The main purpose of this visit is to size up the problem, to identify unresolved questions of policy and procedure etc., and in general to improve co-ordination between Elisabethville, Leopoldville and New York. At the same time Mr. Vickers and Mr. Halbert also intend to look into certain more specific legal and administrative questions.
3. I am sure you will agree as to the usefulness of this visit, and that you and Mr. Bjune and the staff particularly concerned with these questions will provide all the assistance you can. It happened that the ONUC Military Commander in Katanga, Brigadier Naronha, was present when this proposed visit was discussed here last week, and offered us his full cooperation. As promised him by Mr. Vickers, I would be grateful therefore if you would ensure that he is notified as soon as possible of the arrival date.
4. We feel it would be wise in the circumstances to keep the purpose of this visit confidential.

cc: Mr. Ahmad, CAO



# ROUTING SLIP

TO

M. Osorio - la fall

APPROVAL

NOTE AND RETURN

SEE ME, PLEASE

YOUR COMMENTS

YOUR SIGNATURE

YOUR INFORMATION

NOTE AND FILE

FOR ACTION

please

DATE

FROM

25/V

Gorge



25 May 1964

TO : Mr. C.A. Stavropoulos, Under-Secretary, Legal Counsel,  
Office of Legal Affairs, United Nations, New York

FROM : Rémy Gorgé, Principal Legal Adviser and Political  
Adviser, ONUC, Leopoldville

SUBJECT : Hostility Claims

1. Mr. Putteville informed me that Mr. Bal has been designated as a member of the working group which is to review with us here the death and injury cases of Belgian nationals. Mr. Bal is to be assisted by a member of the Belgian Embassy in Leopoldville, and, if necessary, by colleagues from Brussels.

2. I understand that Mr. Spaak's approval is subject to a number of reservations as to the terms of reference of the working group. Despite these limitations, I do not doubt that the group's work will prove helpful.

3. As I already informed you (please see in particular memorandum of 19 May 1964), we are well prepared for the meetings with the Belgian representatives. In view of the progress achieved during the last few weeks in regard to claims other than death and injury cases, it will also be possible to have with Mr. Bal and his associates a discussion on the "damage" claims.

4. I hope that the joint working group will be able to commence its meetings next week. It will be necessary for us to continue with our internal ONUC committee concurrently with our discussions with the Belgians. We have no alternative but to complete the review of the looting cases by the end of June - before the departure of our troops.

5. I cannot help but feel that some of the current work (i.e. obtaining a realistic picture of the looting and irregular requisition cases) could have been done by our Elisabethville office in the earlier days. Many reports of that claims office (reduced to one investigation officer since December 1963) were too timid and did not convey much information. I am however aware that they did not receive the necessary support from our military colleagues. This has now changed, e.g. Major Forslund's cooperation could not be better. Unfortunately, I have lost Captain Von Bayer, who has been sent on a high priority job to Bukavu on account of the deteriorating situation in Central Kivu.

.../...



6. Mr. Spaak's restrictions on the mandate of the working group were no doubt conveyed to you in extenso by Mr. Loidan. M. Rutteville read them to me over the phone. Notwithstanding the group's limited mandate, I plan to conduct our meetings as agreed in New York in a spirit of confidence and frankness - without however committing the United Nations in any way.

cc. Mr. Gabor-Tafall



## ROUTING SLIP

TO

M. Osorio - Tafall

APPROVAL

NOTE AND RETURN

SEE ME, PLEASE

YOUR COMMENTS

YOUR SIGNATURE

YOUR INFORMATION

NOTE AND FILE

FOR ACTION

please.  
(Receiver K. - day  
from N.Y.)

DATE

FROM

2/V

Gorge



21 avril 1964

Conclusions des consultations tenues au Bureau des Affaires Juridiques  
avec M. Gorgé au sujet des réclamations contre l'ONU.

1. Sur le premier point de la discussion, relatif au nombre des réclamations contre l'ONU, pour des dommages consécutifs aux opérations militaires de l'Organisation au Congo, M. Gorgé a indiqué que le nombre total des réclamations en question était de 1700 environ, présentées, en grande majorité, par des ressortissants belges.

En particulier, les réclamations pour décès s'élevaient à 40 environ, dont une trentaine de ressortissants belges et celles pour blessures au même chiffre. Ces dernières ne comprenant que peu de cas importants, notamment d'incapacité totale et permanente.

2. En ce qui concerne le second point (moyens d'enquête employés par le service du contentieux de Léopoldville); M. Gorgé a expliqué que, dès la présentation d'une réclamation, le service du contentieux procédait à sa propre enquête sur le cas déterminé, contrôlait les moyens de preuve produits par le réclamant, avait recours à l'instruction menée par le Parquet local ou, le cas échéant, par la "commission d'information belge", s'adressait en outre aux autorités militaires pour obtenir tout renseignement utile du contingent impliqué dans le cas particulier. Il a ajouté que la coopération de certains contingents était loin d'être satisfaisante.

M. Gorgé s'est rallié entièrement à l'avis de M. Stavropoulos que l'enquête en question, en s'inspirant des idées de justice et de morale qui régissaient l'Organisation, devait être conduite avec une impartialité totale et dans un esprit d'équité et d'humanité. Que, dans cet esprit, les règles habituelles de procédure, relatives notamment à la charge de la preuve, étaient appliquées avec une certaine latitude, surtout lorsque, selon les circonstances du cas particulier, le réclamant était matériellement privé de la possibilité de fournir des moyens de preuve. Dans ce cas, le service du contentieux avait la tâche de recueillir ou de rechercher d'office, pour les besoins de l'enquête, tous les éléments de preuve dont il était en mesure de disposer, indistinctement s'ils étaient favorables ou défavorables au réclamant, pour aboutir à une conclusion objective.

3. Relativement à la question de la responsabilité de l'ONU dans chaque cas déterminé, il a été convenu que les règles qui pouvaient guider le service du contentieux à l'appréciation de cette question étaient celles des conventions internationales en matière de guerre (Convention de La Haye de 1907 et le Règlement y annexé, Convention de Genève du 12 Août 1949) auxquelles d'ailleurs se réfèrent le Règlement de la Force des Nations Unies au Congo et, implicitement, les déclarations du Secrétaire Général.



4. M. Gorgé a été prié de soumettre au Département juridique de l'ONU des rapports concernant les cas de décès, certains cas de blessures graves et quelques cas importants de dommages aux biens (pillages, etc..) pour l'examen de ces cas par le Siège. M. Gorgé croit être en mesure de remettre les rapports en question jusqu'à la fin de juin prochain. Chaque rapport contiendrait :

- (a) Résumé des faits ayant donné lieu à la réclamation tels qu'ils découlent de l'examen par l'ONUC et indication de la nature des demandes présentées à l'égard de l'Organisation.
- (b) Description des enquêtes menées par le service du contentieux et par d'autres organismes (Parquet, Commission d'information belge, etc..).
- (c) Analyse succincte d'éléments essentiels de l'affaire (favorables aussi bien que défavorables au réclamant).
- (d) Recommandation du service du contentieux.
- (e) Indication sur la base des principes et de la jurisprudence applicable (notamment celle des tribunaux au Congo) du montant de l'indemnité qui pourrait être supportée par les Nations Unies au cas où l'Organisation accepterait de faire un paiement.

Les recommandations du service du contentieux se diviseront en trois catégories :

- (a) rejet de la responsabilité de l'ONU.
- (b) acceptation de cette responsabilité, soit totale, soit partagée, en cas de faute de la victime.
- (c) versement *ex gratia*, pour des raisons humanitaires ou, selon le cas particulier, si les doutes au sujet de la responsabilité penchent en faveur du réclamant.

5. A l'occasion des présentes consultations, un entretien privé a eu lieu le 15 avril, au Siège, entre M. G. Stavropoulos, Sous-Secrétaire, Conseiller Juridique, et le Représentant Permanent de la Belgique auprès des Nations Unies, M. Loridan, accompagnés de leurs collaborateurs. Au cours de cet entretien, M. Stavropoulos rappela à M. Loridan la proposition qu'il lui avait faite en Mai 1963 tendant à un examen en commun des dossiers de réclamations à Léopoldville entre le service du contentieux de l'ONUC et des représentants du Gouvernement belge. M. Loridan reconnut l'utilité de telles consultations qui permettraient l'examen objectif des réclamations dans une procédure bilatérale avec l'apport, du côté belge, de nouveaux éléments sous la forme d'enquêtes entreprises par le Gouvernement belge en Belgique ou par la "Commission d'information belge" au Congo.

En cas d'adoption d'une telle procédure bilatérale, les rapports du service du contentieux de l'ONUC contiendront, en plus, un résumé des discussions et tout nouvel élément de preuve produit au cours de celles-ci. Si l'examen commun n'a pas lieu, le service du contentieux demandera à l'Ambassade de Belgique de lui communiquer les enquêtes faites soit par le Gouvernement belge en Belgique, soit par la Commission d'information belge au Congo.



- O N U C -

C / ADM 630

Leopoldville

23 October 1963

To: Office of the Chief Administrative Officer

From: Charles Taff, Legal Adviser

*Charles Taff*Subject: Proposed insertion in ONUC Administrative Report to the Field Service, New York:Your AR 118/24 dated 3 October 1963

The questions of the rights of the parties concerned where a member of the Force has sustained personal injuries as a result of the negligence of a third party in a motor vehicle accident, and the procedures to be observed in the prosecution of such rights, have been dealt with in prior communications between the Office of Legal Affairs and the ONUC Legal Office.

A member of the Force, like any other person in the Congo, possesses the legal right to recover from a third party compensation for the injuries sustained as a result of negligence. For reasons of which the Office of Legal Affairs has been advised, it is doubtful that his government has the legal right under Congolese law to recover from the third party any compensation for the damages it has sustained by reason of services lost or expenses incurred.

In view of these considerations, and having in mind that the Legal Office here is not set up for the trial of cases before a local tribunal, we have taken the position that where a member of the Force, or his government, desires to prosecute a claim arising out of the negligent operation of a vehicle by a third party, the claim should be handled here by a party of their own choosing and not by ONUC. In the instant case, the choosing will presumably be done through the Irish Liaison Officer. ONUC is prepared to extend its assistance to the Irish Liaison Officer and the party selected to prosecute the claim.

Under the terms of the ONUC public liability insurance policy, the ONUC insurers are obligated to prosecute claims by ONUC against a third party to obtain indemnification for damages arising out of a motor vehicle accident. This provision however applies only to the Organization and not to staff members, members of the Force, or their governments. The ONUC insurers, acting on a voluntary basis and as a courtesy to ONUC, are negotiating

NOTE : from the office of the CAO : the above item has been included in

ONUC A/R no. 126 / 18 of 25 / 10 / 1963



in one case on behalf of an injured Irish soldier and attempting also to recover compensation for his Government. After consultation with the Irish Liaison Officer, we have referred the Note Verbale of 27 September 1963 of the Irish Mission, with other related documentation, to our insurance company, but we cannot be certain as to whether or not they will agree to handle the matter. We shall inform you of their decision.

As regards your reference to the local Claims Board, its competence has been limited to claims of staff members and members of the Force for loss of personal effects, and to certain types of claims by third parties for compensation for damages said to have been caused by ONUC personnel. The Board, however, has at no time exercised jurisdiction over a claim by a member of the Force (or his government) or a staff member based upon personal injuries. Even if legal authority for the assumption of jurisdiction does exist, which is highly doubtful, considerations of an administrative and practical character would, in our opinion, make it inadvisable for the Board, at this late stage of ONUC's operation, to enter into the complex and for us virgin field of personal injuries.

However, inasmuch as an ONUC vehicle was involved in the accident which has given rise to these different claims, the Survey Board will examine the case. This examination will be made for the purposes of ascertaining the circumstances which resulted in damage to UN property, and for determining whether the Force members concerned violated any regulation of the Organization or committed any act of negligence.



IV. PERSONNEL (contd)18. Letters of Appointment

..... Enclosed are L/As in triplicate for below-listed; kindly ask them to sign and return one copy to Hqs; the third copy is for your files.

J.J. Bradley; M. Economides; R.P. Nicolle; S.G. Said; A. Samaha; N. Arfaras; D. Baker; G. Bellard; G.M. Cardozo; C. Cogill; C. Coutinas; V. Jerkovic; G. Khalifa; A. Kotsopoulou; J. Teahan; M. Whitmarsh.

19. Hans Huber

Would you kindly give us an appraisal of Mr. Hans Huber's work. Do you think he would qualify as an administrative secretary?

20. John Snelling (your 111-2)

Extension to 31 Mar 64 is granted for Mr. Snelling.

21. Public Works

With reference to your Status of Recruitment as of 31 Aug 63, please advise whether the file of Mr. Jean Hebert should be sent to UNESCO, in order to proceed with his recruitment.

22. Public Finance

..... Enclosed is the interview report on Mr. Guy Soyer, who has been approved by the Government for the post of Custom Expert, but for whom recruitment is held in abeyance until financial clearance is obtained.

23. ONUC Survey Board (your 110-47)

Following received from Secretary of the Property Survey Board:

"Please refer to ONUC AR No. 110 dated 18 Sept 63 regarding ONUC cases that were considered at the 386th Meeting of the Hqs. Property Survey Board.

Your attention is drawn to case 1227 which the Hqs. Board requested that the value of the items to be disposed of be made available for its information. It would appear from ONUC's comments that this information will be available at some stage of the processing in this case. I should, therefore, appreciate being informed of the value of the items listed under the referenced case when it is available."

24. X Corporal A. Franklin and Private M. Purcell (Irish Army) - Claim

..... Enclosed is a copy of note verbale with attachments A, B, C, D dated 27 Sept 63 from Irish Mission to UN concerning injuries sustained by above-mentioned when serving with Irish Contingent in Congo which is self-explanatory. It would be appreciated to have your complete report on this subject as well as Local Claims Board action.



C/ADM 630

14 October 1963

To: Mr. C.A. Stavropoulos, Legal Counsel, United Nations, New York

Mr. O. Schachter, Director, General Legal Division, United Nations, New York

From: Rémy Gorgé, Principal Legal Adviser and Political Adviser, ONUC

Subject: Claims

I. Status of external Administrative Claims as of 14 October 1963

1. According to the report on the status of claims as of 1 September 1963 which we transmitted to you under cover of my memorandum of 18 September, there were pending 93 claims. Since that date 32 claims were presented to the Board. The Board accepted as valid in whole or in part 23 claims; 9 were disallowed. In addition, of the 93 claims 13 did not represent claims against the Organisation, upon renewed examination. Mr. Prieto has been given the files on 13 administrative claims to handle. Some of them are of a complex character, as for example the case of Lamarche (we expect to communicate with you on this latter case in about a week).

2. In addition, two cases were given to the hostility claims branch. Since 1 September only two new administrative claims have been received by the Legal Office.



3. Mr. John Wood, of General Services, is assisting the Leg. Office for a limited period and he will visit Luluabourg and other areas in an attempt to ascertain all pertinent information on claims involving rather large sums of money.
4. The total number of external administrative claims now pending in my office amounts to 41 - a manageable number.
5. Communications have been received by ONUC from Headquarters New York with regard to three cases.

(i) With respect to Mr. Schachter's memorandum of 26 September 1963 (ref. AD/6321 (2) ONUC) dealing with the claim by Mr. Piet Van Neer for 93,000 Congolese francs, it was ascertained that the ONUC Procurement Office had previously directed the Kamina Base Administrator to make payment of the sum of 56,000 Congolese francs, but for reasons not disclosed payment had not been made. The Kamina Base Administrator was again instructed to make payment of this amount. As regards the balance of the claim, 37,000 Congolese francs, Procurement Office has advised that Mr. Piet Van Neer had been requested to produce supporting documentation but had failed to do so. Following the receipt of Mr. Schachter's memorandum, Procurement Office again requested that this supporting documentation be presented. No reply has yet been received from Kamina or Mr. Van Neer.

(ii) Headquarters New York also requested information with regard to Mr. Leclercq. This claim is based on the alleged failure of ONUC to pay for the cost of the construction of a cemetery in Stanleyville. The case was presented to the Claims Board at its 52nd meeting on 4 October 1963. The claim was for 460,125 Congolese francs and the Board recommended that ONUC pay the sum of 120,000 Congolese francs to Mr. Leclercq. ONUC declined to pay the balance requested by Mr. Leclercq on the grounds that it was for work done which ONUC had refused to authorise, but which had been arranged for by Ethiopian officers with Mr. Leclercq.

(iii) A third inquiry received from New York during this period relates to the claim of the Worldwide Grace Testimony Mission based upon the reported loan of two vehicles to ONUC military personnel in Kindu in 1961. We have made several



attempts to locate documentation dealing with this matter but have not yet been able to do so. The ONUC offices in Kindu and Bukavu have also been requested to search for papers but their efforts have not proved to be any more successful. The inquiries are continuing.

App.1

6. I enclose herewith a memorandum from Mr. Prieto on the Sabena claim for refund of custom duties on 600 "Universal" watches imported by the Indonesian battalion. You will note Mr. Prieto has come to the conclusion, on a careful re-examination of the case, that Sabena's claim should be rejected. However, it is the view here that Headquarters New York might wish to approach the Indonesian delegation on the matter. Please let us know if this proposal meets with your approval.

II. Hostility Claims

App.2

7. Reference is made to Mr. Schachter's communication of 17 September in which he refers to the claim for damages done to the farm of Mr. Stanislas Herman. I enclose herewith an additional investigation report prepared by Miss Lorenzo in consultation with myself.

8. The conclusion reached therein is that Mr. Herman's claim should be disallowed. It should be pointed out that the statement made by Mr. Landau to Mr. Herman on 9 July 1963 to the effect that the farm had never been occupied by ONUC troops proved inaccurate.

9. Miss Lorenzo informs me that on 20 July Mr. Herman tried to obtain from her the names and addresses of witnesses in Ireland. She did not disclose them. At the same time Mr. Herman told Miss Lorenzo that he had additional evidence which he had not yet submitted to ONUC and that he intended to go to New York to see Dr. Bunche and Messrs. Stavropoulos, Schachter and Cox. He was told that the file was here in Leopoldville and that it would be more appropriate for him to disclose all the evidence he claims to possess so that the dossier of the case might be complete.



10. Please let me know whether you have observations to make on the additional investigation report and whether you agree that we send a further letter to Mr. Herman, disallowing - once more - his claim.

... 11. Please find enclosed a letter from the Paroisse Notre-Dame de la Paix addressed to "Interpol ONUC Léopoldville". The caption "Interpol" caused considerable delay in the arrival of the letter. Père Barnabé is referring no doubt to the two Swiss, Messrs. Albert Taramarcas and Werner Sauberlin. We would appreciate it if Headquarters could contact them on this matter, presumably through the European Office in Geneva. We have already sent an acknowledgment of the letter to Père Barnabé.



C/ ADM 630

12 October 1963

To: Mr. J. Schoellkopf, Chief Civilian Personnel  
From: Carey Seward, Chief Administrative Officer  
Subj: Claim of SAMOST MWAMBA

I am sympathetic towards this claim. After my own experience in Elizabethville, I am quite willing to believe that this man's wife did try to get in touch with the Administrative Officer and was turned away.

While the charges, in terms of the rate of exchange we are using, are exorbitant, in terms of prices in Cfrs they are not unreasonable, considering the length of the journey and difficulty of travel through that country.

If you can satisfy yourself that we had an obligation to pay for the journey, and if by recognizing this claim, we do not prejudice our position with respect to other claims, I would be willing to settle this.

cc: Mr. R. Gorgé ✓



Mr. C. Taff, Legal Adviser



ORGANISATION DES NATIONS UNIES  
AU CONGO



UNITED NATIONS ORGANIZATION  
IN THE CONGO

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

C/ ADM 630

Case No. ONUC/SB/1740

GAD/kp

11 October 1963

To: Chief Finance Officer

From: Secretary, Property Survey Board

Subject: Theft of equipment of car hired in Entebbe by  
Mr. Norman for UN official use

1. Reference Claims Board memo CLSBD/3/11 dated 4 Oct 63.
2. At its 72nd meeting on 10 Oct 63, the Survey Board recommended that the payment of \$28.19 by Mr. D. Norman while on duty in Entebbe be absorbed by ONUC.
3. The normal confirmation will follow with the publication of the Survey Board minutes.

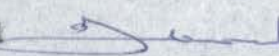
cc: ✓ Mr. C. Taff, Legal Adviser

Mr. A.W. Cooper, Chief, Purchasing and Supply Section



9 October 1963.

TO: Mr. Charles Taff, Special Legal Adviser

FROM: John Wood 

cc: Mr. R. Gorgé, Principal Legal Adviser and  
Political Adviser  
Mr. Carey Seward, Chief Administrative Officer

SUBJECT: Field Trip. Claims, Luluabourg and Kindu

Further to our recent discussion, I suggest that, subject to approval of the journey, my itinerary is as follows:-

Monday, 14 October	Leopoldville to Luluabourg	SF 1
Wednesday, 16 October	Luluabourg to Kindu	SF 2
Thursday, 17 October	Kindu to Leopoldville	SF 2

I suggest that a cable is sent immediately to Mr. Rosso, Accommodation Officer, Stanleyville - who for a period in 1962 handled Kindu accommodation matters - instructing him to meet me in Kindu. I believe that he should be able to throw some additional light on the claim of the Hotel Léopold II in Kindu, which is for more than 1,500,000 CF, and possibly other claims in Kindu. It will be necessary for him to take the Air Congo flight on Monday, 14 October from Stanleyville to Kindu and to return by Air Congo on Thursday, 17 October.

In order to avoid being blocked in Kindu or Luluabourg, I would ask that the Movement Order receives a priority rating. Upon receipt of your confirmation that the journey is approved, I will prepare cables to the field offices concerned covering accommodation, transport and reservations on scheduled flights.

As regards our discussions on accommodation claims in Goma and Bukavu, normally the subject of administrative settlements which are being handled by General Services, the flight schedules onward from Kindu are such that to extend the trip would prolong unnecessarily my absence from Headquarters. I suggest, therefore, that a further separate trip to Goma and Bukavu is considered after my return from



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AU CONGO



UNITED NATIONS OPERATION  
IN THE CONGO

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LEOPOLDVILLE  
REPUBLIQUE DU CONGO  
CABLE: ONUC. LEOPOLDVILLE

C/ADM 630

8 October 1963

To : Secretary, Claims Board ✓  
From : Senior Administrative Officer ✓  
Subject : Corporal A. Franklin and Private M. Purcell (Irish  
Army) - Claim.

1. Herewith extract of New York Admin. Report No. 118/24 dated 3 October 1963:

"Enclosed is a copy of note verbale with attachments A,B,C, D dated 27 Sept 63 from Irish Mission to UN concerning injuries sustained by above mentioned when serving with Irish Contingent in Congo which is self-explanatory. It would be appreciated to have your complete report on this subject as well as Local Claims Board action."

....

2. Attachments A, B, C, and D dated 27 September 63 from the Irish Mission to the U/N. are also enclosed.

file given to Wama  
on 24 Oct 63  
CF



~~SECRET~~

C / ~~SECRET~~ ADM 630

23 September 1963

To : Mr C. Stavropoulos, The Legal Counsel, United Nations,  
New York

From : May Gorge, Principal Legal Adviser and Political Adviser,  
ONUC, Leopoldville

Subject : Claims

1. It has been arranged upon our proposal that the responsibility for the processing of claims of staff members be transferred from the Legal Office to the Administration. Claims of staff members present virtually no legal problems; on the few occasions that questions of a legal character arise, they can in general be readily handled by the representative of the Legal Office on the Claims Board.
2. A review of the administrative claims files (despatched to you on 18 September) shows that 66 cases are based upon alleged delictual acts of military personnel and therefore might possibly be included in the global settlement now being explored by you with the Belgian Government. Thirty of these cases refer to "requisition" of materials, weapons or vehicles and thirty-six to looting of household furniture and other items of personal property. These claims will now be handled by the hostility claims branch (Miss Lorenzo). As a result of this "transfer" the number of outstanding administrative cases has fallen to about 90. These remaining cases are being disposed of at the rate of about six per week. Soon we will reach the hard core of such cases, the number of which is expected to be relatively modest (about 10). We will see to it that the number of these administrative claims remains low.
3. With regard to hostility claims, good progress continues to be made in completing the files (claims notmeeting the conditions for further investigation continue, of course, to be rejected outright). About 25 hostility files are being handled per day and an average of 20 letters per day are sent to third parties. It is our policy to reply to all letters from claimants within two weeks (since mid-September we are up-to-date in this regard).
4. Hostility claims continue to be submitted by the diplomatic missions. The publication of the Belgian Government Press Release of 25 June 1963 which we sent to you has undoubtedly caused a fresh influx.



Since I took over, 103 new claims were presented through the Belgian Embassy. In addition there were 25 claims from Italian subjects. The British representatives in the Congo are also interested in the claims of their nationals; this is also true of the French Embassy.

5. Mr Onkelinx, First Secretary of the Belgian Embassy, called on me upon his return from an extended leave in Belgium. He is assuring liaison between the Belgian Embassy and ourselves on claims matters. While on leave in Belgium he attended a few meetings on claims matters. I gained the impression from our conversation that the Belgian authorities were not too anxious to come to a global settlement in the very near future. Their main concern seems to be at this stage the completion of all their files (as we are doing). Moreover, they fear legal problems would arise if the Government were to settle the claims with UN on behalf of the Belgian claimants. Apparently some lawyers in Brussels are suggesting that all claimants be canvassed and that a kind of power of attorney be sought. Your information on this matter will be much more up to date, but I am passing it to you for what it is worth.

6. Mr Prieto's arrival has been announced for 29 September. Since most of the legal work concerns claims, Mr Prieto will have to deal with them too. I shall see to it that he enjoys his work.

..... 7. I am enclosing copies of this brief note for Messrs Schachter and Cox.

cc: Mr Schachter  
Mr Cox

..... P.S. With reference to your memorandum of 4 September to Mr Dorsinville, please find copy of our letter of 10 September to the Union Minière du Haut Katanga.



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*C / ADM 630*

20 September 1963

To: Mr. R. Gorgé, Principal Legal Adviser and Political Adviser  
From: *P.* Carey Seward, Chief Administrative Officer  
Subj: Administrative Claims

Please refer to your memorandum of 18 September 1963.  
I agree with your suggestion to take over the "administrative claims,"  
but I would appreciate it if we can delay the take over until the  
return of Mrs. Pêche, as explained in para 4 of your memorandum.



18 September

3

TO : Mr. Carey Seward, Chief Administrative Officer  
FROM : Rémy Gorgé, Principal Legal Adviser and Political Adviser  
SUBJECT : Claims of staff members for loss of personal effects

1. As you know, claims against ONUC are presently being handled by the Legal Office. These claims include those of third parties as well as those of ONUC personnel for loss and damage to personal effects. The third party claims presented against ONUC include some 1600 cases arising directly out of hostilities and 150 administrative cases. I wish to suggest that the responsibility for the processing of claims of staff members be transferred from the Legal Office to the Administration.

2. I base this proposal primarily on the consideration that the volume of work required in connection with the third party claims is so great as to require practically the full time of the legal staff. This consideration will hold, it seems to me, even if a global settlement is reached with the Belgian Government on the hostilities claims, for the reason that all the administrative claims shall still remain with us, and, in addition, considerable work will still be required on hostility claims of non-Belgians, and perhaps also on certain types of Belgian claims. While it is true that Mr. Prieto will join the legal staff on 1 October, his services will be fully required for the third party claims, and he will not be able to devote any time to claims of staff members.

3. In connection with the above, there are two other considerations which I should like to bring to your attention. Claims of staff members present virtually no legal problems, and I take it that is because of this consideration that such claims are not handled by the Legal Office in Headquarters or, insofar as I am aware, in any other Mission. On the few occasions that problems of a legal character do arise, they can in general be readily handled by the representative of the Legal Office on the Claims Board. Secondly, up until very recently, claims of staff members and property survey work were handled by the same office within ONUC. This administrative policy was based upon the fact that the work in the two fields was very similar in that it required the processing of materials for presentation to administrative boards, drafting of minutes of board meetings, obtaining information from sources within the Organization. You may wish therefore to consider assigning the work of staff member claims to the office now doing property survey work.

.../...



4. I am informed that claims by staff members have been handled from the beginning of ONUC's operations by Mme N. Pêche. She is a local employee who resigned in May 1963 and is scheduled to return to Leopoldville in about a month. In the past she had arranged with the ONUC Personnel Office to "resign" in order that she might join her husband, who is the Deputy Director of the ICAO Mission, in taking annual leave, and no difficulty was encountered in her being re-hired by ONUC upon her return to Leopoldville. If the present staff of the Property Survey office is insufficient to handle these claims, I take it that Mme Pêche can be re-hired without difficulty.

OT/nn



Léopoldville, le 13 septembre 1963

Monsieur,

J'ai l'honneur de me référer à votre demande d'indemnisation transmise à l'ONUC en mars 1962 par l'Ambassade de Belgique à Léopoldville, concernant des dommages que vous auriez subis du fait des services ou des agents des Nations Unies.

Nous notons que vous réclamez une indemnité d'un montant de 5.100 francs belges comme contre-valeur de certaines armes qui auraient été saisies à Léopoldville en 1960 à la suite de fouilles opérées par les troupes ghanéennes.

Après avoir soigneusement étudié votre cas, je me vois dans l'obligation de vous informer qu'aucune responsabilité légale ne peut incomber à l'ONUC pour les pertes que vous signalez. Par conséquent, l'ONUC ne peut donner suite à cette demande d'indemnisation.

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

Charles Taff  
Conseiller juridique

Monsieur G. DOCK  
8A rue des deux gares  
Bruxelles 7  
Belgique

CT/mm

cc. Claims file

*Belgian Embassy*



12 September 3

TO : Mr. P. Polgar, Deputy Chief Administrative Officer  
FROM : Rémy Gorgé, Principal Legal Adviser and Political Adviser  
SUBJECT : Special Claims Assignment -- Mr. John Wood

1. There are presently pending with ONUC a number of claims that have been presented by residents of Luluabourg, Bakwanga, Kindu and adjoining areas. For the most part, these claims are based upon alleged occupancy and damages to housing accommodations, or the provision of supplies and services to ONUC personnel. Some of these claims are for very substantial amounts, for example, one from MIBA, Luluabourg, for a sum in excess of 2,225,000 GFRs.

2. For reasons of various kinds, the evidence available at Headquarters as to the validity of these claims is highly fragmentary with respect to a number of these pending claims. In order that further essential information can be obtained, I think it would be helpful to have an ONUC official visit these areas and carry out an on-the-spot investigation. Experience with claims in Katanga and elsewhere has clearly demonstrated that investigations, even when carried out long after the incident in question occurred, frequently yield very fruitful results. There is another major purpose which may be achieved by having an ONUC official make a trip to these areas; namely, persuading the claimants to reduce materially the amount of their claims.

3. I have been informed that Mr. John Wood has had experience in the handling of claims during his service as Administrative Officer in Luluabourg and Goma. He has been recommended to me as being qualified to undertake this special assignment, and I would be grateful if you would let me have your concurrence to this proposal. It is expected that Mr. Wood would spend several days familiarizing himself with the claims, and leave Leopoldville towards the end of next week. His stay in the field should not exceed a period of two weeks.

GT/un

cc. Claims Section



C/ADM 630

*thor*

Léopoldville, le 5 septembre 1963

Monsieur,

J'ai l'honneur de me référer à la demande d'indemnité que vous avez présentée à l'ONUC pour la perte de différents effets personnels qui, selon vous, auraient été emportés en juillet 1960 de votre maison, sise au Camp Léopold, par les troupes des Nations Unies.

Par suite des allégations concernant l'enlèvement illégal de biens personnels au Camp Léopold par ses troupes en juillet 1960, l'ONUC a fait effectuer une enquête afin d'établir tous les faits pertinents. Cette enquête a démontré que les vols qui auraient pu être commis là ne l'ont pas été par les troupes de l'ONUC.

Dans ces circonstances, je suis contraint de vous faire savoir que l'ONUC ne peut accepter aucune responsabilité quant au paiement d'une indemnité pour les pertes que vous auriez subies.

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

Rémy Gorgé  
Conseiller juridique principal  
et Conseiller politique

Major BOCCARTE  
145, rue d'Evere  
WOLUWE ST. ETIENNE  
Belgique

ST/m

cc. Mr. Tarr(Chron)  
Claims file



c/ADM 630

3 September

3

TO : Mr. A.W. Cooper, Chief Procurement Officer  
FROM : R. Gergé, Principal Legal Adviser and Political Adviser  
SUBJECT : Continental Deutsche - Invoice No. 223/62

The Continental Deutsche Luftverkehrs G.m.b.h. has submitted to ONUC a claim of US\$ 2,398.- for damages caused to one of its planes in Kamina by a forklift operated by ONUC personnel.

... The liability of ONUC is clear, and the only question involved in this case is as to the extent of damages sustained by the claimant. I am transmitting herewith our file on this subject, and I would be grateful if you would have one of your men review the case and let me know whether the sum of US\$ 2,398.- requested by the claimant appears to be reasonable for the damages caused to its airplane.

Encl.

cc. Claims file

CE/ma



C/ADM 630

3 September

3

TO : Col. H.W. Maden, Senior Administrative Officer  
FROM : Charles Taff, Legal Advisor  
SUBJECT : Claim by Mr. Georges Antipas, Kolwezi

1. This memorandum is addressed to you in your capacity as Chairman of the ONUC Claims Board.

... 2. I would be grateful if you would let me know if the proposal contained in my memorandum of 2 September, a copy of which is transmitted herewith, meets with your approval. If it does, I will prepare a draft cable to our representative in Kolwezi along the lines suggested in my memorandum. Mr. Gorgé concurs with the proposal I have made.

... 3. The file on the claim is submitted herewith for your review and return.

... Encl.

cc. Claims file

CT/ms