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General Assembly - Eighteenth Session - Written assessments by seven Under-
secretaries-General on the work of committees of the General Assembly

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INTEROFFICE MEMORANDUM

13 December 1963

To: ✓ Mr. Godfrey K. J. Amichree ✓
✓ Dr. Ralph J. Bunche ✓
✓ M. Philippe de Seynes ✓
Mr. C. V. Narasimhan ✓
✓ Mr. Constantin A. Stavropoulos ✓
✓ Mr. Vladimir P. Suslov ✓
Mr. Bruce R. Turner ✓

From: The Secretary-General *J. A. S. [Signature]*

I shall be grateful if, in the course of next week, you could give me an assessment, in writing, of the work of the Committee of the General Assembly which has been your special responsibility. I would appreciate in particular your personal analysis of the atmosphere that prevailed during the discussions and of the constructive achievements of the Session that is now about to close.



CONSTANTIN A. STAVROPOULOS

4 December 1963

TO : The Secretary-General

... Attached is the study which you requested.

Constantin A. Stavropoulos

4 December 1963

Dr. vi

Note on the terms of reference of the
Secretary-General under draft resolution
S/5469 submitted by Norway to the
Security Council

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I. Introduction

1. Operative paragraphs 6, 7 and 8 of draft resolution S/5469, submitted by Norway to the Security Council, provide as follows :

"6. Requests the Secretary-General to establish under his direction and reporting to him a small group of recognized experts to examine methods of resolving the present situation in South Africa through full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed, and to consider what part the United Nations might play in the achievement of that end;

"7. Invites the Government of the Republic of South Africa to avail itself of the assistance of this group in order to bring about such peaceful and orderly transformation;

"8. Requests the Secretary-General to continue to keep the situation under observation and to report to the Security Council such new developments as may occur, and in any case not later than 1 June 1964, on the implementation of this resolution."

2. Operative paragraphs 6 and 7 and operative paragraph 8 appear to confer upon the Secretary-General two independent functions, in establishing and working with an expert committee having certain particular functions and in keeping the situation under review and reporting thereon to the Security Council. These two tasks are therefore considered separately in the paragraphs that follow.

11. Functions under operative paragraphs 6 and 7 of draft resolution S/5469

3. Under operative paragraph 6 the Secretary-General is requested:

- a) to establish a small group of recognized experts, which is to be
- b) under his direction and reporting to him.

4. In setting up the Committee it is left to the Secretary-General to determine the exact number of experts he will invite to serve on it. It is to be noted that the persons to be appointed are "experts", and would therefore be working in an individual

expert capacity and not as representatives of Governments.

5. The Secretary-General is also left to determine, at his discretion, the nature and form of the "direction" he is to exercise over the Committee. "Direction" might take a number of forms. It could be interpreted to mean that the Secretary-General or his personal representative should assume the chairmanship of the Committee. However, it may be doubtful that this is in fact the intention of the Council, in view of the provision in the resolution that the Committee should report to the Secretary-General. It would be a somewhat anomalous situation for a Committee to report to its chairman, who would, by nature of his office, be the most important collaborator in the preparation of the report. It is more likely, therefore, that direction would take the form of observance of the Committee's work, and the issue of directives to it from time to time when there appear necessary. Amongst such directives there might well be a definition, or number of definitions, as the work of the Committee progresses, of its terms of reference.

6. While it would not be appropriate at the present stage and within the limited time available to attempt a detailed analysis of the terms of reference of the Committee some limited observations thereon may be of assistance. These terms of reference are generally defined in operative paragraph 6 as:

- a) examination of methods of resolving the present situation in South Africa and
- b) consideration of what part the United Nations might play in the achievement of that end.

The examination of methods, as laid down in operative paragraph 6, is to be directed to the aim of "full, peaceful and orderly application of human rights and fundamental freedoms to all inhabitants of the territory as a whole, regardless of race, colour or creed." Methods considered would therefore have to fall within the general directives just stated. Relevant to their further definition are certain statements made in the

Security Council, and particularly those of the sponsor. At the 1076th meeting of the Security Council on 3 December 1963, the representative of Norway declared:

"This paragraph [6] should not be regarded as an intervention in matters which are essentially within the domestic jurisdiction, nor are any other hidden motives implied... Can the task of the United Nations be stated as follows: to assist in the achievement of the future pattern of society in South Africa which is desired by the people of that country, rather than a pattern of society prescribed for that people?" [S/PV.1076, pp. 31 and 32]

7. A further statement which might be considered relevant within this context was made by the representative of Ghana at the 1077th meeting of the Council on 3 December 1963. He stated that:

"Supposing the group came out advocating the partition of South Africa --which we all oppose-- what, then will be the position of African States in regard to such a recommendation? We agree that in our talks with our Norwegian colleague these points were brought out and in fact in his statement this morning he made it clear that on no account would there be a society which is divided --that what is conceived is a non-racial society, indivisible and whole." [S/PV.1077, pp. 17-20]

(This statement gives rise to the questions whether the Committee would be precluded from considering the possibility of partition and whether the Secretary-General should so direct in view of his responsibilities in connexion with the Committee. These are questions of considerable importance, requiring further study and the possibility of private discussions with certain members of the Council on this matter, including the sponsor of the resolution, and might be considered by the Secretary-General.)

8. Also of relevance to the terms of reference of the Committee, and more particularly to its methods of work, is the invitation, in operative paragraph 7 of the resolution, to the South African Government "to avail itself of the assistance of [the] group in order to bring about such peaceful and orderly transformation." While this invitation is directed to the Government, as part of his responsibilities in connexion with the group, the Secretary-General may wish to explore, or request the group to explore, ways and means of obtaining the co-operation of the South African Government. As explained by the representative of Norway at the 1076th meeting of the

Council, the co-operation of the Government should take the form of a readiness "to discuss a peaceful and orderly transformation of South African society, instead of pursuing its enforcement of the apartheid policies." [S/PV.1076, p.32]

9. It is to be noted that in terms of operative paragraph 6, the expert group is to report to the Secretary-General. A further function of the Secretary-General would be therefore/to define the time-limits for the submission of a report by the group which limits will necessarily be conditioned by the provision in operative paragraph 8 of the draft resolution that the Secretary-General himself report to the Council on its implementation "in any case not later than 1 June 1964."

III. Functions under operative paragraph 8 of draft resolution S/5469

10. As already observed, operative paragraph 8 of the draft resolution confers on the Secretary-General certain functions independent of those enumerated in the previous section of this note. These functions are:

- a) to continue to keep the situation under observation, and

.../...

- b) to report to the Security Council such new developments as may occur, and
- c) to report on the implementation of the resolution not later than 1 June 1964.

11. The function of continuing to keep the situation under observation would clearly seem to relate to the similar function conferred on the Secretary-General in the previous Security Council resolution S/5386 of 9 August 1963 dealing with the South African situation. It would appear that the Council has in mind that the Secretary-General's duty of observation under resolution S/5386 should be continued and broadened to cover observance on compliance with the operative paragraphs of draft resolution S/5469. In this context operative paragraphs 1, 2, 4 and 5 would appear to be particularly relevant. They provide as follows:

"1. Appeals to all States to comply with the provisions of Security Council resolution S/5386 of 7 August 1963;

"2. Urgently requests the Government of the Republic of South Africa to cease forthwith its continued imposition of discriminatory and repressive measures which are contrary to the principles and purposes of the Charter and which are in violation of its obligations as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rights;

"4. Again calls upon the Government of South Africa to liberate all persons imprisoned, interned or subjected to other restrictions for having opposed the policy of apartheid;

"5. Solemnly calls upon all States to cease forthwith the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa;"

12. The operative paragraphs just mentioned are to a large degree self-explanatory. Operative paragraph 5, however, represents a new element and was explained in detail, as follows, by the representative of Norway at the 1076th meeting of the Security Council:

"... we believe that the next logical step for the Council would be to adopt operative paragraph 5 in the present draft, which contains a call for an embargo on equipment and materials for the South African armaments industry. The purpose is to make a further effective contribution to the curtailment of the build up of the military potential of South Africa. The paragraph in question has been drafted in such a way that the Council would act under the same provisions of the Charter as it did in August after a full debate.

"During the talks leading up to the actual drafting of the resolution, it was generally understood that, and I quote from the text of operative paragraph 5, 'equipment and materials for the manufacture and maintenance of arms and ammunition' would refer particularly to such items as machines, parts and accessories for these machines, and machine tools. These items are, to our knowledge, the most important for a country in the process of expanding its own armaments industry. The paragraph is not meant to include spare parts of a dual capacity, spare parts which can be used for civilian as well as military purposes. I should like to quote one example in this regard which has been used during the consultations. One type of aircraft may be used both as a civilian and as a military transport aircraft. It is not the intention to include spare parts in such a case. Formulations such as 'strategic goods and raw materials' were discussed during the consultations, but were found to be unacceptable. Some members of the Council felt that to use such terms would be to go beyond the intention, which is to curb the military potential of South Africa. I do believe that para reph 5 as it now stands is clear and, if I may say so, realistic."
[S/IV.1076, pp. 27-31]

13. As already indicated, operative paragraph 8 leaves open the possibility of two forms of report by the Secretary-General to the Security Council. Should the Secretary-General consider it desirable, he might, within his discretion, submit periodic reports on "new developments", when he considers these of sufficient importance. These would appear to be developments relating to "the situation" which the Secretary-General is requested to keep "under observation".

14. In addition to such reports, if they prove necessary, and in any event, the Secretary-General is required to report to the Security Council not later than 1 June 1964 on the implementation of the resolution. It would appear that such a report is expected to be a comprehensive one, covering implementation of the resolution as a whole and including not only the results of the Secretary-General's "observations" but also the results of the work of the group of experts as described in the preceding section of this memorandum.