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REPARATION FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

Memorandum by the Secretary-General

PART I: HISTORY OF PARTICULAR CASES

In his statement at the opening meeting of the third session of the General Assembly, the Secretary-General gave the tragic list of the servants of the United Nations who had been killed while performing official duties in Palestine. Referring to the death of Count Bernadotte and Colonel Serot, he stated: "The death of these two brave and honourable men must demand full satisfaction from those who were responsible. It raises again, and more urgently than ever before, the question of what the United Nations shall do to make certain, so far as is humanly possible, that its representatives will enjoy a maximum amount of protection in the future while performing their duties in areas of physical danger."

The series of incidents began with the killing of Thomas Wasson, American Consul-General in Jerusalem, and a member of the United Nations Truce Commission, who was shot by a sniper on 23 May 1948 while returning to his home after a meeting of the Commission. He died on the following morning.

On 6 July 1948, Commandant René de Labarrière and Commandant de Canchy, two United Nations observers from France, were victims of an explosion in front of a Jewish barricade in the Nazareth region. Commandant de Labarrière was killed, and Commandant de Canchy wounded. Jewish soldiers at the scene stated that the observers had been struck by exploding mines. According to Commandant de Canchy, the explosions could have been made by hand grenades rather than by mines, and, in his opinion, he and his companion appeared to have been the victims of a deliberate attack by Jewish soldiers.

On 13 July 1948, a convoy moving under United Nations auspices was made the target of rifle fire in the vicinity of Mount Scopus. A jeep in the convoy was driven by Ole Helge Bakke, a member of the United Nations Secretariat, and a United Nations guard in Palestine. Bakke was killed /instantly by a

instantly by a rifle bullet. Brigadier Lash of the Arab Legion informed the Mediator that the proceedings of a Court of Inquiry led to the conclusion that Bakke had been shot by an Arab soldier who was excited by enemy fire.

On 28 August 1948, two French observers, Lieut-Colonel Joseph Guern and Captain Pierre Jeannel, landed at the Gaza airfield in an area under the control of the Egyptian Army. On leaving the plane, the two observers were attacked by Saudi Arabian irregulars, to whom the Egyptian Army had entrusted the guarding of the airfield, and were killed and robbed.

On 17 September 1948, Count Folke Bernadotte, United Nations Mediator in Palestine, and Colonel Serot, a United Nations observer from France, were shot and killed while proceeding in a car through Jewish-held territory in Jerusalem. The attack was made by several men dressed in Israeli Army type uniform. While the assailants have not been apprehended, the circumstances of the attack have led officials of the United Nations and of Member Governments to presume that they belong to the Stern gang, a group of Jewish irregulars operating in Jerusalem.

In addition to these cases of death and injury, cases of firing on United Nations officials have occurred in Palestine. The latest of these occurred on 22 September 1948, when a convoy under United Nations auspices, accompanied by United Nations observers, was fired on by three men dressed in Arab uniforms identified by the Chief of Staff of the Mediator as attached to the Arab forces of Transjordan. None of the United Nations personnel was hit, but four other persons in the convoy were killed.

PART II: ACTION TAKEN BY THE SECRETARY-GENERAL

After several of the incidents in Palestine referred to above, the Secretary-General wrote to the authorities who had control of the territory in which the representative of the United Nations had been killed or injured, emphasizing the immediate concern of the United Nations and stating, on behalf of the United Nations, the attitude which it might adopt in the matter as regards the protection of its interests and rights as well as of the rights of the families of the victims.

Commercial group accident insurance has been taken to cover all regular staff members of the United Nations. However, no agreement could be reached with commercial insurance companies to cover military observers and United Nations guards with the exception of ordinary accidents not resulting from acts of war.

The Secretary-General has undertaken the responsibility of paying an indemnity to the legal heirs of all persons assigned to the Palestine mission and killed or totally disabled as a result of service with the
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mission, to the amount of \$25,000, or four times the annual salary of the person concerned, whichever is the higher. The Secretary-General has also agreed to make partial payments of the amount stated above for injuries which result in partial disability resulting from service with the Palestine mission.

The only deduction made from these payments is for any insurance which may be paid to the heirs of the deceased observers or to the disabled observers by their Governments, but not for any payments made by virtue of pension rights. These payments are also over and above any payments which may be made to members of the staff of the United Nations by reason of workmen's compensation or staff pension schemes.

In addition to the indemnity mentioned above, the Secretary-General has decided to make payments for medical and hospital bills as well as for funeral and other related expenses.

The same principles have been made applicable to all other field missions established by the United Nations, except that the maximum indemnity has been fixed at \$15,000, or twice the annual salary, whichever is the higher. The indemnities are paid only to persons who receive United Nations salary or allowances.

PART III: QUESTIONS PRESENTED FOR CONSIDERATION

The Secretary-General, in placing this item on the agenda of the General Assembly, assumes that the General Assembly will not desire to consider itself as a fact-finding body or judicial tribunal for determining the facts in these matters, or for the assessment of responsibility in individual cases. He considers that these must be determined elsewhere, as far as individual cases are concerned, that is to say, either by direct negotiations between the appropriate organ of the United Nations and the State or authority concerned, or by an arbitral tribunal. However, before appropriate action can be taken to advance claims for reparation in these cases, it would appear that a number of questions of law, policy and procedure should be determined by the General Assembly. In the view of the Secretary-General, the following questions need consideration by the Assembly:

- (1) Whether, in the view of the General Assembly, a State may have a responsibility as against the United Nations for injury to or death of an agent of the United Nations;
- (2) What should be the general policy with respect to the reparations or measure of damages which should be claimed;
- (3) What should be the procedure for the presentation and settlement of claims

/1. Whether.

1. Whether, in the view of the General Assembly, a State may have a responsibility as against the United Nations for injury to or death of an agent of the United Nations

The Secretariat is not aware of any situation which has previously presented itself and which is precisely analogous to the cases now under consideration. No case has been found in which an international organization has presented a claim against a State for injury to or death of one of its officials or agents.

On the other hand, there is a large body of legal precedent relating to the responsibility of a State for injury to the nationals of other States. A classic statement of the legal doctrine underlying these precedents was made by Vattel in 1758: "Whoever ill-treats a citizen indirectly injures the State, which must protect that citizen. The sovereign of the injured citizen must avenge the deed and, if possible, force the aggressor to give full satisfaction or punish him, since otherwise the citizen will not obtain the chief end of civil society, which is protection." (Vattel, The Law of Nations (text of 1758, 3rd ed., 1916, page 136)). An authoritative judicial statement of this principle is to be found in the opinion of the Permanent Court of International Justice in the case of the Mavrommatis Palestine Concessions: "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights - its right to ensure, in the person of its subjects, respect for the rules of international law." (Mavrommatis Palestine Concessions, Publications of the Permanent Court of International Justice, Series A, No.2, page 12).

It can be said to be an established principle of international law that an injury to an alien, committed by a State in violation of international law, is an injury to the State of which he is a national. It is the view of the Secretary-General that the same principles on which this legal doctrine is based lead to the conclusion that an injury to an agent of the United Nations in the course of his official mission, committed by a State in violation of international law, is an injury to the United Nations, and that the United Nations is entitled to claim reparations for such an injury.

The Secretary-General emphasizes again that he is not, at this point,
/requesting a decision

requesting a decision or advice as to whether there is any responsibility on any given State or authority with respect to any particular instance mentioned in the first part of this document. This would depend, in the first place, on the facts regarding the injury, and, in the second place, on whether such injury was committed in violation of international law under circumstances entailing the responsibility of the State. In the latter connexion, it may be observed that it is generally recognized in international law that a higher degree of diligence is required of a State with regard to the protection of foreign diplomatic and consular agents exercising their functions in its territory. The Secretary-General believes that the same principle applies here, and that a State owes a special duty of vigilance with respect to an agent of the United Nations engaged in the exercise of official functions, particularly when in connexion with the maintenance of peace and security in a disturbed area.

The Secretary-General has no doubt that the United Nations, which has capacity to enter into international agreements with States, possesses the legal capacity to present a claim under international law against a State, whether a Member or non-Member of the United Nations.

2. What should be the general policy with respect to the reparations or measure of damages which should be claimed

It is clear that the United Nations should be entitled to claim as the first item of reparations, prompt and adequate punishment of the offenders, and the taking of such measures as will protect agents of the United Nations against future injuries. This element of reparation appears in numerous claims dealt with in diplomatic correspondence and in the decisions of international tribunals.

The next item which it would appear that the United Nations is clearly entitled to claim, is reparation for the direct costs incurred by the United Nations, such as medical services, funeral expenses, and payments to the injured official or his family. Again, there are precedents which would support such a claim. The most important item of damages which appears in the precedents is the payment of damages by the responsible State to the injured individual or his family as compensation for the loss suffered by them. In the words of the Permanent Court of International Justice: "It is a principle of international Law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law. This is even the most usual form of reparation." (Case of the Factory at Chorzow, Publications
/of the Permanent

of the Permanent Court of International Justice, Series A, No.17, page 27). The Secretary-General believes that it would be desirable for the General Assembly to give consideration as to whether the United Nations should advance claims for such compensatory damages in appropriate cases. In his view, the analogy of the payment of compensatory damages to nationals on presentation of a claim by a State, may appropriately be applied to these situations.

The question of the measure of compensatory damages would necessarily vary from case to case.

Lastly, there is the question whether the United Nations should, in appropriate cases, make a claim for exemplary (or, as they are sometimes called, punitive) damages.

International tribunals have generally not looked with favour on the award of exemplary damages. (See opinion of Umpire Parker in Lusitania, United States - German Mixed Claims Commission, Consolidated Edition of Decisions and Opinions, pages 17, 24-31). There is, however, one outstanding case in which damages were assessed against a State for injury to the rights of the claimant State as distinct from compensation for injury to the nationals of the claimant State. In the case of the I'm Alone, an arbitral tribunal awarded the Canadian Government \$25,000 as against the United States of America for the wrong done to Canada by the United States in intentionally sinking a vessel.

It is to be noted that there have been a number of instances in which exemplary damages have been claimed and paid in diplomatic settlement.

In view of the uncertain state of international law with respect to the awarding of exemplary damages by international tribunals, the Secretary-General makes no recommendation with regard to the inclusion of such an item in a claim for reparations, although he believes that the question deserves consideration by the General Assembly.

3. What should be the procedure for the presentation and settlement of claims

The General Assembly will need to consider which would be the appropriate organ for the presentation of claims. Under Article 97 of the Charter, the Secretary-General is the Chief Administrative Officer of the Organization. In this capacity he enters into contracts and settles claims of a private law character on behalf of the Organization. By the same token, he would appear to be the appropriate organ for the prosecution and settlement of claims of the character here discussed. Should the General Assembly agree with this view the Secretary-General could proceed

/to present claims

to present claims to the States or authorities concerned. It is conceivable that in the discussion which would follow the presentation of such claims, the State or authority concerned might suggest resort to arbitration. It would assist the Secretary-General in such cases to know the wishes of the General Assembly as to whether he should agree to submit particular claims to arbitration.
