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REPARATION FOR INJURIES INCURRED IN THE SERVICE
OF THE UNITED NATIONS

Report of the Secretary-General

1. The General Assembly, on 1 December 1949, adopted resolution 365 (IV) concerning reparation for injuries incurred in the service of the United Nations. By the terms of that resolution the Secretary-General was authorized, on the basis of proposals made by him in his report of 23 August 1949 (A/955), to present an international claim against the Government of a State, Member or non-member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration such claims as cannot be settled by negotiation. The resolution further authorized the Secretary-General "to take the steps and to negotiate in each particular case the agreements necessary to reconcile action by the United Nations with such rights as may be possessed by the State of which the victim is a national".
2. In accordance with paragraph 3 of resolution 365 (IV), the Secretary-General submits herewith a report on the status of claims for injuries incurred in the service of the United Nations, and proceedings in connexion with them.

Procedure adopted by the Secretary-General

3. In accordance with the proposals previously submitted by the Secretary-General to the General Assembly (A/955, paragraph 21) the Secretary-General decided to adopt the following procedure: Determine which of the cases appear likely to involve the responsibility of a State; consult with the Government of the State of which the victim was a national in order to determine whether that Government has any objection to the presentation of a claim or desires to join in submission; present, in each such case, an appropriate request to the State involved for the initiation of negotiations to determine the facts, and the amount of reparations, if any, involved.

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4. With respect to the damages, the Secretary-General was guided by the following principles (A/955, paragraph 23): The reparations requested should be reasonable and adequate to compensate the Organization and the victim or the persons entitled through him; the State involved should be given appropriate assurances that it would not be subjected to multiple claims by the United Nations, the victim and the State of the victim's nationality for the same damages; the Secretary-General would not advance any claim for exemplary damages.

Injuries and death of United Nations agents in Palestine

5. On the basis of information available to the United Nations, the following cases of injuries or death of United Nations agents in Palestine were first considered by the Secretary-General,^{1/} and a preliminary determination was made to the effect that these cases might involve the responsibility of States:

The death of Thomas C. 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 in Jerusalem.

The death of Commandant Rene de Labarriere and the wounding of Command Etienne de Canchy, United Nations observers from France, who were victims of an explosion on 6 July 1948 in the Nazareth region.^{2/}

The death of Ole Helge Bakke, a member of the United Nations Secretariat who was shot by a soldier of the Arab Legion near Jerusalem on 13 July 1948

^{1/} See A/674 of 7 October 1948.

^{2/} By a letter of 28 September 1948, the Minister for Foreign Affairs of the Provisional Government of Israel informed the Secretary-General that the cause of the tragic event was the entry of the United Nations observers into a min area without prior notice, and that this was contrary to the established practice of informing the Israeli authorities in advance and awaiting an escort before crossing into Israeli-occupied territory.

^{3/} In a letter of July 1948 from Brigadier Commander Iash of the Arab Legion to Colonel Brunsson, the Mediator's personal representative, it was stated: "After studying the proceedings of the Court of Inquiry into the incident, I have come to the conclusion that Bakke has been shot by an Arab Legion soldier who was excited by enemy machine gun fire. The Commanding Officer of the Company concerned has been relieved of his command and is under arrest awaiting trial by court-martial. The entire company of which the guilty soldier is a member has been withdrawn from the City of Jerusalem. I have to express my profound regret that troops under my command should have been involved in such an incident."

The death of Lt. Colonel Joseph Guery and Captain Pierre Jeannel, United Nations observers from France, who were killed at the Gaza airfield on 28 August 1948 by troops under Egyptian command.^{4/}

The death of Count Folke Bernadotte, United Nations Mediator in Palestine, and Colonel Andre Serot, United Nations observer from France, who were killed by irregular forces in territory under Israeli control in Jerusalem on 17 September 1948.

Communications to the Governments of the countries
of which the victims were nationals

6. In December 1949, the Secretary-General addressed a letter to each of the Governments of the countries of which the victims were nationals, namely, France, Norway, Sweden and the United States of America, in which those Governments were advised that the Secretary-General contemplated bringing international claims against the responsible States for the damage caused to the United Nations in connexion with the death of or injury to its agents. The Secretary-General stated that he was also prepared to claim reparation for the damage caused to the victims or to persons entitled through them, and asked the Governments whether they had any objection to the presentation by the United Nations of a claim in this respect, and if not, whether they desired to join in the submission of the claim.

Claim for the death of Count Bernadotte

7. After receiving appropriate assurances from the Swedish Government regarding the presentation by the United Nations of a claim with respect to the death of Count Folke Bernadotte, the Secretary-General, on 21 April 1950, addressed a letter to the Minister for Foreign Affairs of Israel requesting a formal apology to the

^{4/} In a letter dated 13 September 1948 from the President of the Council of Ministers of Egypt to the Mediator, it was stated that the incident was due to a combination of unfortunate circumstances outside the control of the Egyptian authorities. It was added, however, that the Egyptian military command would not fail to take all appropriate measures to prevent any recurrence of such a mistake in the future. In a subsequent letter dated 4 December 1948 from the Egyptian Minister for Foreign Affairs to the Acting Mediator, the position of the Egyptian Government was confirmed, and it was stated that it was difficult for that Government to assume responsibility for this unfortunate incident. While expressing the Egyptian Government's profound regret for the incident, the Minister for Foreign Affairs added that the Egyptian military command had already taken all the necessary measures to avoid the recurrence of a similar error in the future.

United Nations for the murder of the Mediator in territory under the control of the Israeli Government, the continuation and intensification of the Government's efforts to apprehend and bring to justice the perpetrators of the crime, and the payment to the United Nations of the sum of \$54,628 as reparation for the monetary damage borne by the United Nations. It was stated in the letter that, in view of the decision of the widow of the late Mediator not to present a claim for pecuniary redress with regard to the damage suffered by her on account of the death of Count Bernadotte, the monetary reparation demanded was limited to the pecuniary damage suffered by the United Nations in connexion with the murder of the Mediator.

The claim by the United Nations was based upon three elements of responsibility: failure to exercise due diligence and to take all reasonable measures for the prevention of the assassination; liability of the Government for actions committed by irregular forces in territory under the control of the Israeli authorities; and failure to take all the measures required by international law and by the Security Council resolution of 19 October 1948 to bring the culprits to justice.

8. The Israeli Government replied to the Secretary-General by a letter dated 14 June 1950 (S/1506). With respect to the Secretary-General's contention that the Government had failed to exercise due diligence in the protection of the Mediator, the Israeli Government stated: "It is clear that the Government would have done wiser had it been more precise in acquainting itself with the real desires and attitude of Count Bernadotte and not allowed the matter to rest on inferences, however strong, which led to the belief that an armed escort was not desired in view of his special position as United Nations Mediator". As regards the complaint that the Government had failed to take all the measures which would have been required to apprehend the culprits, the Israeli Government admitted that a number of gaps and omissions had been established in the policy inquiry following the assassination. It was stated in the letter that the Israeli Government had decided, without admitting the validity of all the legal contention put forward on behalf of the United Nations, to take the action requested in the Secretary-General's letter. Accordingly, a remittance of \$54,628 was enclosed as reparation for the damage borne by the United Nations. Furthermore, the Government expressed to the United Nations "its most sincere regret that this dastardly assassination took place on Israeli territory, and that despite all its efforts the criminals have gone undetected", and added that "these facts are deeply /deplored".

deplored". With regard to the continuation and intensification of the Government's efforts to apprehend the culprits, the Israeli Government stated that "the Government is forced to the conclusion that nothing fresh is likely to emerge from a re-examination of the crime, carried out on the basis of the existing material, both that on the police file and that assembled by the army. This does not, however, imply that the Government regards the case as closed, but that the course of further investigation will depend on the nature and value of any fresh evidence that may come to light."

9. On 22 June 1950, the Secretary-General replied to the Government of Israel. After expressing his regret that the efforts so far made by that Government had not resulted in the apprehension and trial of the perpetrators of the crime, the Secretary-General stated that the payment of indemnity, the expression of regret and the report on the steps taken to date, which were included in the Israeli Government's letter, constituted substantial compliance with the claim submitted in the Secretary-General's letter of 21 April 1950.

Action taken with respect to the injuries or death
of French military observers in Palestine

10. With respect to the death of Commandant de Labarriere, Lt. Colonel Queru, Captain Jeannel and Colonel Serot, and the injuries to Captain de Canchy, United Nations military observers from France, the French Government has advised the Secretary-General that it has no objection to the presentation of claims by the United Nations for damage caused to the victims or persons entitled through them. After receiving this assurance, the Secretary-General, on 31 July 1950, addressed a letter to the French Government in which it was stated that the United Nations would include in its claims a demand for reparation for damage to the victims if a request to this effect were made by the claimants through the French Government. Furthermore, the Secretary-General indicated that, with respect to the amount of the indemnity to be demanded for the death of the military observers, he intended to apply the generally accepted principle of international law to the effect that the indemnity should be equivalent to the financial contribution which the dependants would have probably received from the deceased during a normal life expectancy. In accordance with this principle, the Secretary-General indicated the elements of information to be submitted by the claimants, on the basis of which the Secretary-General would determine the amount of reparation to be demanded for damage to the victims or persons entitled through them. It was further stated

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that the United Nations had already paid the sum of \$25,000 as compensation with respect to each of the death cases, and would therefore withhold that amount from any recoveries obtained from the responsible Governments as compensation for damage to the victim's dependants. Finally, the Secretary-General, in order to avoid the possibility of multiple claims against the responsible Governments, requested assurance from the French Government that it had no intention of presenting claims with respect to the injuries or death of the French military observers in Palestine.

11. On receipt of a request from the claimants and of appropriate assurance from the French Government, the Secretary-General will initiate negotiations with the Governments held responsible in connexion with the incidents involving the French military observers in Palestine. If, on the other hand, any or all of the victims dependants decide not to request the United Nations to present claims on their behalf, the Secretary-General intends to limit the claims to the damage caused to the United Nations in connexion with the injuries and death of these United Nations agents.

Death of Ole Helge Bakke

12. An exchange of letters took place between the Secretary-General and the Norwegian Government in connexion with the death of Mr. Bakke, a national of Norway. Appropriate assurances have been received that the Norwegian Government has no objection to the presentation by the United Nations of a claim in respect of damage caused to the victim's dependants, and that the Government does not intend to present a separate claim for the death of Mr. Bakke.

13. The Secretary-General, on 27 July 1950, addressed a letter to Mr. Bakke's widow inquiring whether she wished to request the United Nations to include in its claim a demand for reparation for the pecuniary damage suffered by her as Mr. Bakke's principal dependant. Mrs. Bakke replied that she did not wish to press charges against the Jordan Government in connexion with her husband's death. Having been informed by the Norwegian Government that Mr. Bakke's mother was partially dependent upon her son, the Secretary-General asked the Norwegian Government to ascertain whether Mr. Bakke's mother wished to bring a claim through the United Nations. Since Mr. Bakke had a daughter by his first wife, a Swedish national, and he had contributed to the child's support, the Secretary-General also requested the Swedish Government to ascertain whether a claim should

be brought by the United Nations on behalf of Mr. Bakke's daughter. Further action on this claim will be taken by the Secretary-General upon receipt of replies from the Governments of Norway and Sweden.

Death of Thomas C. Wasson

14. The Government of the United States of America, on 23 February 1950, advised the Secretary-General that it was not possible, in the light of the information available to that Government, to fix responsibility for the death of Mr. Wasson. On the basis of the reports submitted to the Secretary-General by the Government of the United States and the information available to the United Nations, the Secretary-General has decided that, unless new evidence is obtained, there are not sufficient elements to enable him to bring an international claim against a Government. Accordingly, the Secretary-General does not at the present time intend to take any further action with respect to the death of Mr. Wasson.
