

UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/4569  
9 November 1960  
ENGLISH  
ORIGINAL: FRENCH

Fifteenth session  
Agenda item 85

THE SITUATION IN THE REPUBLIC OF THE CONGO

Letter dated 9 November 1960 from the President of the Republic  
of the Congo (Leopoldville) addressed to the Secretary-General

New York, 9 November 1960

In my capacity as President of the Republic of the Congo, I have the honour to send you a note verbale concerning the documents transmitted to you by the Permanent Representative of Ghana to the United Nations and circulated to the members of the General Assembly in document A/4561.

I should be glad if you would kindly communicate this note verbale to the members of the Assembly.

(Signed) Joseph KASAVUEU  
PRESIDENT OF THE REPUBLIC OF THE CONGO

NOTE VERBALE

The documents communicated to the members of the General Assembly by the Permanent Mission of Ghana on 7 November call for the following observations by the Republic of the Congo.

From the procedural standpoint, it is surprising that the Embassy of a State accredited to the President of the Republic of the Congo should undertake to transmit to the members of the General Assembly documents attributed to the Presidents of the Chamber of Representatives and of the Senate of the Republic of the Congo. There is nothing to indicate that the President of the Republic of Ghana, Mr. N'krumah, or the Ghanaian Government lend their authority to this procedure, which is not in accordance with international usage or diplomatic courtesy and is unfriendly towards the Republic of the Congo, to whose President it is discourteous. The General Assembly has available to it the reports of the Secretary-General and of his representatives on the spot for information from official sources on the situation in the Congo. As for the Parliament and Senate of the Congo, which are not in session at the present time, they have all necessary facilities for communicating with the United Nations either direct or through the services of the Representative of the Congo abroad. It is scarcely necessary to point out that, for reasons amply illustrated by the document in question, Ghana is no longer entrusted with the representation of the Congo and the defense of its real interests abroad. The members of the General Assembly will not have failed to note that Mr. Joseph Okito is not the President of the Senate. Such a serious error can be attributed only to a surprising ignorance on the part of the Ghanaian diplomatic corps, which no doubt did not wish knowingly to be a party to a breach of trust or a falsification.

With regard to the contents of the document, the Government of the Republic of the Congo does not intend to discuss statements that are unfounded, slanderous, and most often erroneous concerning the domestic policy of the Congo, for which it has exclusive competence; for there is nothing to compel Members to submit matters of this kind to a procedure of settlement under the Charter, and it is difficult to conceive on what grounds the Assembly would be called upon to discuss such a matter.

One point only in the documents which the Secretary-General, in response to the request of the Permanent Mission of Ghana, has seen fit to circulate to the members of the General Assembly, deserves to be refuted. That is the statement disputing the right and competence of the President of the Republic of the Congo legally to represent that Republic and to speak on its behalf.

The conditions in which eminent heads of Member States have addressed the Assembly have not been disputed or contested by anyone.

Under the Fundamental Law of 19 May 1960, the President of the Republic of the Congo is the Chief of State. As Chief of State, he is the competent authority to act on behalf of the Congo, in particular in the sphere of foreign relations. That is the rule of Congolese constitutional law. It is also the general presumption of international law upon which rule 27 of the rules of procedure of the General Assembly is based; according to that rule the credentials of delegates must be issued either by the Head of the State or Government or by the Minister for Foreign Affairs. Under article 25 of the Fundamental Law of the Congo, it is the President who makes treaties, and it is his prerogative to appoint the delegations of the Republic to diplomatic conferences and international organizations.

The competence of the President of the Republic to represent the State in international law is subject to only one condition, namely that his acts must be countersigned by a Minister. For article 20 of the Fundamental Law provides: "No act of the Chief of State can have any effect unless it is countersigned by a Minister, who by this very action assumes responsibility for such act."

No constitutional text lays down that the acts of the Chief of State cease to be valid if performed outside the territory of the State. The Chief of State can leave the national territory and go abroad for the purpose of exercising his constitutional powers. Parliamentary approval is in no way necessary for this.

Having been designated by the two legislative Chambers in accordance with the Fundamental Law (article 12), Mr. Kasavubu is unquestionably the Chief of State. He is consequently legally competent to appoint the delegation of the Republic of the Congo to the General Assembly and to give it all necessary instructions on behalf of the State. In the present instance, he has the ministerial counter-signature. Furthermore, the Minister for Foreign Affairs accompanies him.

These observations will no doubt not give the members of the General Assembly or the Ghanaian diplomats any information which they do not already possess. These diplomats, however, have made it necessary to communicate this note verbale by spreading irresponsible and false allegations, for motives which cannot be dictated either by the interests of the Congolese people or by the desire for African solidarity in the true sense.

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