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LETTER DATED 17 JUNE 1954 FROM THE REPRESENTATIVE OF SYRIA
TO THE PRESIDENT OF THE SECURITY COUNCIL

Sir,

I have the honour to forward to you herewith a copy of each of the notes sent by the Chief of Staff of the Truce Supervision Organization in Palestine to the Ministry of Foreign Affairs of the Republic of Syria in reply to its notes of 3, 13 and 23 May 1954.

I should be grateful if you would kindly communicate the texts of the above-mentioned notes to the members of the Security Council.

I have the honour to be, etc.

(Signed) Rafik ASHA,
Permanent Representative of Syria
to the United Nations

54-17595

UNITED NATIONS

Jerusalem, 10 May 1954

The Chief of Staff of the United Nations Truce Supervision Organization in Palestine presents his compliments to the Ministry of Foreign Affairs of the Republic of Syria and has the honour to acknowledge receipt of its note F16/604/5 of 3 May 1954, to which he refers in the present note.

As the Chief of Staff has already had occasion to inform His Excellency the Minister of Foreign Affairs, he attaches the utmost importance not only to the timely settlement by the Israel-Syrian Mixed Armistice Commission of the matters of which it is seized, but also to its effective functioning as an organ performing its duties in the spirit of the General Armistice Agreement and, to the extent possible, on the basis of the principle of unanimity. Consequently, when a question relating to the competence of the Mixed Armistice Commission is raised by a Party in a manner likely to impair the effectiveness of the Commission, the Chief of Staff considers it his duty to seek the full participation of the Parties. It was for this purpose alone that the Chief of Staff communicated with the absent Party on 30 April 1954, and it was merely because conversations were still in progress that he requested, through the Chairman of the Commission, that the meeting should be adjourned from Friday, 30 April, to Monday, 3 May. The Chief of Staff's actions were dictated by the importance he attached to the Syrian complaint, and not by considerations of a contrary nature.

The Chief of Staff has already given his personal assurance to the Syrian Government that his request for a brief adjournment was in no way based on the assumption that one of the Parties had the right or the power to prevent the calling of a meeting of the Mixed Armistice Commission, but was due to the fact that he was still in touch with the absent Party, upon whose attendance at the meeting of the Commission he relied. It is the opinion of the Chief of Staff that the attitude of the Chairman of the Commission, who acceded to his request, is unobjectionable. He is convinced that it was not in any way the intention of the Ministry of Foreign Affairs to suggest that the Chairman personally failed to observe impartiality in the matter.

The Chief of Staff cannot concur in the view that the Chairman's proposal to adjourn the meeting, as requested by the Chief of Staff, constituted a breach of the General Armistice Agreement or of the rules of procedure. The Mixed Armistice Commission is always master of its own procedure, and although its Chairman does not claim the right of veto, he is invested with the normal and usual authority of a Chairman with respect to the conduct of discussions. The rules of procedure contain no provision restricting the Chairman's right to make the proposal in question. On the contrary, they confer considerable freedom of action upon him with regard to the convening of emergency meetings, of which the meeting in question was one, having been convened "after such short notice as the Chairman deems appropriate". It should be pointed out in this connexion that, while the Syrian delegation expressed in the most vigorous terms, on 30 April, its disagreement with the aims sought through the adjournment, it did not contest the actual decision to adjourn and request its reversal.

In conclusion, the Chief of Staff has the honour to refer to the desire expressed by the Ministry of Foreign Affairs that the confusion caused by the present situation should be removed. He wishes to recall in this connexion that the emergency meeting of 30 April has, instead of being adjourned until 3 May as requested by him, been adjourned sine die on the proposal of the Head of the Syrian Delegation to enable a conversation to be held between the Government of Syria and the Chief of Staff. This conversation has now taken place, and the Chief of Staff is informed that the Chairman of the Mixed Armistice Commission proposes to convene a meeting of the Commission for 13 May.

The Chief of Staff has the honour to be, etc.

(Signed) V. BENNIKE

Ministry of Foreign Affairs of
the Republic of Syria

DAMASCUS

UNITED NATIONS

Jerusalem, 19 May 1954

The Chief of Staff of the United Nations Truce Supervision Organization in Palestine presents his compliments to the Ministry of Foreign Affairs of the Republic of Syria and has the honour to acknowledge receipt of its note P/20/604/5/4604 of 13 May 1954, to which he refers in the present note.

2. The Chief of Staff understands that the delay in opening the meeting of the Mixed Armistice Commission on 30 April, and the meeting's subsequent adjournment, were bound to cause dissatisfaction to the Syrian delegation. He advised the Chairman of the Commission to postpone the opening of the meeting for a few hours because he hoped that the Israel delegation might be present on the afternoon of 30 April. When he learned that the Israel delegation could not attend on 30 April but would probably do so on Monday 3 May, he requested the Chairman to open the meeting on 30 April - which was in accordance with the wishes of the Syrian delegation - and then to adjourn it until 3 May, on which date the Commission would meet again whether the Israel delegation was present or no. At the meeting on 30 April the Syrian delegation could have formally opposed the adjournment and moved that the meeting should continue. The Chief of Staff believes that the Syrian delegation acted rightly in not putting forward such a motion on the evening of 30 April and in setting forth its objections so that they would appear in the record.

3. The Ministry of Foreign Affairs refers to the conversation which the Chief of Staff had the honour to have with the Minister of Foreign Affairs on 4 May 1954. During that conversation the opinion of the Chief of Staff was sought regarding the jurisdiction of the Mixed Armistice Commission over the Demilitarized Zone.

4. Having considered the various aspects of the question, the Chief of Staff has the honour to submit the following observations:

- (a) Article VII, paragraph 8, of the Armistice Agreement stipulates the following: "Where interpretation of the meaning of a particular provision of this Agreement, other than the preamble and articles I and II, is at

issue, the Commission's interpretation shall prevail". It follows from this that neither the Chief of Staff nor the Chairman of the Mixed Armistice Commission has the personal authority to give a final interpretation to any provision in the Agreement. All they can give is a provisional interpretation which is subject to possible revision by the Armistice Commission. This reservation also applies to the present statement of the Chief of Staff's views.

(b) The inclusion in the Armistice Agreement of the provisions of article V concerning the Demilitarized Zone places the Chairman of the Mixed Armistice Commission under a duty to take a preliminary decision on the question whether a claim or complaint received from either party falls within the jurisdiction of the Commission or within his own jurisdiction under article V. By calling, in particular, upon the Governments of Israel and Syria to bring before the Mixed Armistice Commission or its Chairman, whichever has the pertinent responsibility under the Armistice Agreement, their complaints and to abide by the decisions resulting therefrom the Security Council resolution of 18 May 1951 recognized the existence of these two areas of jurisdiction. In order to determine whether a complaint is within his jurisdiction, the Chairman must refer to the provisions of the Armistice Agreement, to the records of the 1949 Armistice Conference and in particular to Dr. Bunche's interpretative commentary regarding article V, to the agreements and reciprocal undertakings referred to in rule III, 2 (b), of the Commission's rules of procedure, and to any previous decisions which are relevant.

(c) A preliminary decision by the Chairman that a complaint is either within his competence or within that of the Mixed Armistice Commission may be upset by decision of the Commission.

(d) Dr. Bunche's interpretative commentary on article V refers exclusively to the restoration and protection of civilian life in the Demilitarized Zone. It assigns general supervision to the Chairman of the Mixed Armistice Commission. The Chief of Staff considers that the Chairman has responsibility in respect of civilian life in the Demilitarized Zone. It was in his capacity as Chairman of the Mixed

Armistice Commission that he requested the Israeli Government, in September 1953, to halt the work begun in the Demilitarized Zone, without his authorization, on the construction of a canal utilizing the waters of the Jordan.

(e) The responsibility of the Chairman of the Mixed Armistice Commission in respect of matters other than those of a civilian nature in the Demilitarized Zone must be considered in the light of the provisions of paragraphs 5(b) and 5(c) of article V. Both Parties to the Armistice Agreement were alive to the grave consequences which would ensue from "any advance by the armed forces" of either into the Demilitarized Zone. They agreed that such an advance, if "confirmed by the United Nations representatives" (the Chairman of the Commission and the United Nations observers), would constitute a "flagrant violation" of the Agreement. The Chairman of the Commission and the United Nations observers are responsible for ensuring the full implementation of this provision. The Parties relied on them to take urgent action (the procedures of the Mixed Armistice Commission might be too slow). The action which the United Nations Truce Supervision Organization in Palestine can take to deal with any situation of such seriousness consists in the Chairman's requiring the Party whose forces have advanced to withdraw them from the Demilitarized Zone and in submitting to the Security Council a report on the violation of the provisions of article V.

(f) Article V, paragraph 5(c), stipulates that the Chairman of the Mixed Armistice Commission and United Nations observers "shall be responsible for ensuring the full implementation of this article". Does this clause place all matters relating to the Demilitarized Zone under the exclusive jurisdiction of the Chairman? Ought he, for instance, to have dealt with the Syrian complaint of 26 April 1954 himself, without reference to the Commission? Ought he to have examined the facts in the light of the investigation made by United Nations observers, and ought he, if he had concluded as a result of his examination that a violation of the Armistice Agreement had been committed, to have addressed to the party which had committed the violation such request as he deemed appropriate?

(g) It does not seem that the Chief of Staff should attempt to reply to the above questions in the present note, as the Syrian complaint of 26 April appears on the Commission's agenda proposed by the Chairman, and as a meeting of the Commission was held on 30 April and a further meeting is provided for. The Israeli delegation has objected to the agenda proposed by the Chairman. In the view of the Chief of Staff, who is anxious to ensure the implementation of the Armistice Agreement, it is desirable that the Israeli delegation should place its views before the Mixed Armistice Commission; the Commission will decide. The Chief of Staff has the honour, etc.

(Signed) Major General Vagn Bennike

UNITED NATIONS

Jerusalem, 27 May 1954

The Chief of Staff of the United Nations Truce Supervision Organization in Palestine presents his compliments to the Ministry of Foreign Affairs of the Republic of Syria and has the honour to acknowledge receipt of its note P 22 (604/5/4909) of 23 May 1954, to which he refers.

The Chief of Staff had stated in his note of 19 May 1954 that a reply to the question asked by the Ministry of Foreign Affairs regarding the jurisdiction of the Mixed Armistice Commission over the Demilitarized Zone could be given only subject to a reservation, as the Commission alone had authority to interpret the provisions of the Armistice Agreement. The Chief of Staff had therefore confined himself in his note to putting forward certain observations which he considered pertinent. As the Security Council indicated in its resolution of 18 May 1951, the Armistice Commission has responsibility in respect of some complaints and its Chairman has responsibility in respect of others. Opinions may differ as to where the boundary between the two areas of jurisdiction lies.

The Chief of Staff is very anxious to be informed as accurately as possible of the arguments on which the Syrian Government bases the position it has adopted concerning the jurisdiction of the Mixed Armistice Commission. He feels that an exchange of views between legal advisers would be very useful at this juncture, and he is happy to accept the suggestion that Mr. Cox, legal adviser to the United Nations body, should have a conversation with Dr. Tarazi at Damascus before the next meeting of the Mixed Armistice Commission.

The Chief of Staff has the honour to be, etc.

(Signed) V. BENNIKE

To the Ministry of Foreign Affairs
of the Republic of Syria,
DAMASCUS

