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REPORT OF THE OFFICER-IN-CHARGE OF THE UNITED NATIONS OPERATION IN  
THE CONGO TO THE SECRETARY-GENERAL ON DEVELOPMENTS RELATING TO THE  
APPLICATION OF THE SECURITY COUNCIL RESOLUTIONS OF 21 FEBRUARY AND  
24 NOVEMBER 1961

- I. Report on developments in Katanga:
- A. With reference to action taken by the provincial government and Assembly with respect to the Kitona declaration
  - B. With reference to the problem of mercenaries (continued)

A

1. As stated in the report of the Officer-in-Charge (S/5053/Add.1, para. 30 and Annex X), President Tshombe approached ONUC on 5 January 1962 with a view to obtaining the services of a United Nations juridical expert, and confirmed his request in an amended letter of 13 January. According to Mr. Tshombe's letter the United Nations legal expert was to examine the form and presentation of the conclusions drawn from the Assembly's discussions and their conformity to the prescribed procedure, so as to present a document clearly drawn up in accordance with legal rules; there was no question of this expert's being asked to express any opinion on matters of substance. These were said to fall "exclusively within our competence and within the scope of our future discussion with the Leopoldville Government".

2. The request having been submitted to the Central Government for consideration and approval, Prime Minister Adoula, by letter to the Officer-in-Charge dated 20 January, stated that he saw no objection in principle, on the understanding that the expert concerned would at no time be required to pass judgement on the legality of the Central Government's actions (S/5053/Add.2, Annex III). The Secretary-General accordingly assigned the Legal Counsel of the United Nations, Mr. C.A. Stavropoulos, to the task.

3. When Mr. Stavropoulos met President Tshombe in Elisabethville on 2 February, the latter explained that he wanted the Legal Counsel to give advice to a special Commission set up by the Assembly of Katanga to study the Kitona agreement.

4. It should be noted that by decree of 23 December 1961, Mr. Tshombe had convened an extraordinary session of the Assembly for 3 January 1962, to examine "the agreement known as the Agreements of Kitona". The Assembly had appointed a "Commission for Foreign and Political Affairs", consisting of the President of the Assembly and fifteen of its members, to study the matter and to report on it. This was the commission to which the President of the province wanted Mr. Stavropoulos to tender advice. Mr. Tshombe pointed out that the advice should cover matters of presentation and procedure and not of substance, the latter being a matter for the Assembly and the Government to consider. He further explained that the Assembly and the Commission had not been meeting lately in expectation of the legal expert's arrival.

5. Mr. Stavropoulos attended seven meetings of the Commission. At the first meeting, on 3 February, the President of the Assembly presented Mr. Stavropoulos with a number of documents for his consideration. These included a report of the Commission to the Assembly, already adopted by the Commission on 7 January 1962 by 13 votes in favour to 3 against. They also included a draft motion for adoption by the Assembly. At the same time, the President of the Assembly once again made clear to Mr. Stavropoulos that the Commission wanted him to advise on questions of procedure only.

6. Subsequently, Mr. Stavropoulos had several meetings with the Commission in the course of which he gave advice on the question of the quorum and on a list of changes which had occurred in the initial membership of the Assembly on account of incompatibility, resignations and death. He declined, however, to advise on questions which were outside his terms of reference.

7. The Commission suggested that Mr. Stavropoulos should assist it by reviewing with it the report it had adopted on 7 January 1962 with a view to advising on the legality of its content. The Commission expressed the wish that the report should be proper, both in form and in content.

8. Mr. Stavropoulos explained that his terms of reference did not provide for, and indeed excluded, such advice. He had studied the report and had found that

its contents were contrary to the terms of the Loi Fondamentale of 19 May 1960, relating to the structure of the Congo, which, in the present case, was the only criterion for passing on legality. Mr. Stavropoulos noted that the report adopted by the Commission on 7 January provided for compliance with the Loi Fondamentale and with the authority of the Central Government only after a considerable number of stated conditions had been met. The Commission had intended to submit to the Assembly a motion which was even more extreme, by adding new conditions to be fulfilled before acceptance.

9. After discussion, the Commission decided to request the assistance of Mr. Stavropoulos in drafting a new report, legal both in form and in contents. The report would adopt without reservations Mr. Tshombe's declaration of 21 December 1961 made at Kitona. It would also, however, include any observations that the Commission considered fit to make, relating to the implementation of the terms of the Kitona Declaration, and would point out that the permanent, effective and sincere application of the measures set forth in the Declaration could serve as the basis for a settlement of the problem of Katanga and put an end to the sufferings of the population. Mr. Stavropoulos agreed to give such assistance.

10. Subsequently, on 13 February 1962, the Commission adopted its second report by 13 votes in favour and 1 abstention. The report contained several observations and included a resolution recommended by the Commission to the Assembly for adoption. The operative part of the resolution would have the Assembly of Katanga (1) adopt the Declaration of 21 December 1961, known as the Kitona Declaration, and (2) request the Government to take, in collaboration with the Central Government, the measures necessary for the implementation of this declaration. To this end, five recommendations were presented incorporating the observations made in the report.

11. On 14 February, during the second reading of the report adopted by the Commission the previous day, both the report and resolution were altered to make reference to the "draft declaration"; the operative part of the resolution was also changed.

12. On the next day, 15 February, Mr. Tshombe delivered a sharply critical speech to the Assembly. The Assembly, with forty-two members present, then adopted the resolution (see Annex I below) by 35 votes in favour and 4 abstentions.

13. On the following day, Mr. Adoula made a public statement on the action taken by Mr. Tshombe and the provincial Assembly (see Annex II below).
14. On 16 February, Mr. Adoula also sent a cable to Mr. Tshombe which, after noting that the Kitona agreement had been approved by the provincial Assembly, invited Mr. Tshombe to meet with him in Leopoldville on 21 February to discuss the modalities for carrying out the terms of the agreement (see Annex III below).
15. On 16 February, Mr. Tshombe wrote a letter to Mr. Adoula, transmitting the resolution that had been adopted the previous day by the Assembly and suggesting that they meet personally at Kamina at Mr. Adoula's earliest convenience for the purpose of arriving at a solution to their problems (see Annex IV below).
16. On 19 February, the Prime Minister dispatched three letters to Mr. Tshombe (see Annex V below).

B

17. In his two letters of 2 February 1962 (S/5053/Add.6) Mr. Tshombe agreed to the establishment of several joint commissions, two initially, each to be composed of two civilian members and two military officers from each side. The tasks which were given to these commissions in order to expedite the execution of the Security Council resolutions concerning mercenaries are set out in the related correspondence (S/5053/Add.3, Annex I; Add.4, Add.6 and Add.7).

18. In a letter of 7 February 1962, the United Nations representative in Elisabethville notified Mr. Tshombe of the appointment of the following ONUC members to the commissions:

First commission: Mr. G. Fulcheri, Mr. T. Verbrugghe, Lieut. Col. Hazari and Lieut. S. von Bayer. Second commission: Mr. G. Ghaleb, Mr. Jerkovic, Lieut. Col. Ryan, Lt. Lassen.

Mr. Jean Back and Mr. Claude Dovas have served as alternates when one of the civilian ONUC members was unable to attend. Lieut. Lassen later replaced Lieut. Berg on the second commission.

19. In a letter dated 8 February 1962 Mr. Tshombe informed ONUC that he had appointed the following members to the commissions:

Mr. E. Kabaya and Mr. C. Naweji, Major Yava, Lieut. Muteta to serve on the first commission; and Mr. S. Muteba, Mr. P. Nyembo, Major Mbayo, and Lieut. Munyanya to serve on the second commission.

20. On the day that Mr. Tshombe appointed the Katangese members, the commissions held a joint meeting. The Katangese members were not all present and, with the exception of Major Mbayo, aide-de-camp to Mr. Tshombe, were not familiar with the commissions' terms of reference. The ONUC members requested the Katangese representatives to provide them at the earliest possible date with:

- (a) A list of mercenaries, including their name, nationality, rank, date of arrival, present location in Katanga or date of departure, means of departure, destination, units in which they served, amount of severance pay.
- (b) A list of all foreign personnel in the Sud or in the Katanga Police, including name, nationality, rank, date of arrival and unit in which they were serving.

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(c) A list of all areas where Katanga armed forces are stationed and their strength.

The Katangese representatives promised to comply with this request.

21. On 9 February the two commissions left Elisabethville, the first for Kipushi and the second for Jadotville. Both commissions travelled in ONUC vehicles, as the Katanga authorities were unable to provide transport.

22. The first commission which visited Jadotville encountered no difficulties en route except for a brief delay at one of the roadblocks manned by the Gendarmerie. The commission was met by Colonel Mukito, commander of the local Gendarmerie, the chief of police, the district commissioner, and representatives of the Mayor and of the Sûreté. Major Yava explained the purposes of the commission and requested the co-operation of the local authorities. The party proceeded to the Gendarmerie camp, where Col. Mukito led the commission through a visit of the offices and of the soldiers' mess. After a visit to the government hospital, the commission drove through one of the African communes and through the centre of the town. A deputy to the Gendarmerie commander stated that the Gendarmerie contained no European mercenaries or volunteers at the present time. All the Katangese authorities promised their co-operation. The commission returned to Elisabethville at 5.30 p.m.

23. The second commission went to Kipushi, passing four roadblocks without any incident. Owing to an erroneous interpretation of the commission's terms of reference given by Major Mbayo, the Commission saw only the Gendarmerie and local police. The ONUC members made it clear that, in accordance with its terms of reference, the commission was empowered to visit any place it chose and interrogate any person it felt necessary with regard to mercenaries. At the Gendarmerie headquarters commanded by Major Atakombe, the commission was told that Col. Faulques had been arrested on Mr. Tshombe's orders but had escaped on or about 15 February with about sixty mercenaries, whose whereabouts were unknown. Other mercenaries had fled after 18 January. Major Atakombe expressed contempt for the mercenaries who, he said, had only looked after their own interests. At Police Headquarters no information was available, as the only records said to be kept there were those of Europeans working at the Union Minière plant. It was stated to the commission that all information on mercenaries was

in the hands of President Tshombe only. Major Mbayo, when introducing members of the commission to local authorities, stressed that the commission's aim was to find mercenaries, "of whom obviously there are none here". The commission returned to Elisabethville at 2 p.m.

24. On 10 February the mixed commissions held their second joint meeting, in the course of which ONUC representatives stressed the fact that the commissions, on the basis of their terms of reference, were entitled to visit any place they chose and to interrogate anybody they wished. This was placed on record in order to avoid misunderstandings such as had occurred at Kipushi (paragraph 23 above).

25. On 11 February, the ONUC members decided to postpone a visit to Kolwezi, which was to have taken place the next day, in order to allow the commissions time to examine the various lists and documentation pertaining to mercenaries and make plans for future work. It was felt that while the visits to Jadotville and Kipushi had proved useful in some respects, the lack of documentary preparation had severely hampered the work of the commissions.

26. On 12 February 1962 the commissions held another joint meeting. Major Mbayo delivered to the ONUC representatives a letter from Mr. Tshombe of the same date and a list purporting to contain the names of eighty-nine "other volunteers" (in addition to those appearing on a list transmitted by Mr. Tshombe on 30 January) who were said to have been paid off and dismissed by the government of Katanga and to have left on 8 February. He stated that these "volunteers" had left the country, some by regular means, others simply by taking off "through the bush" to Ndola in Northern Rhodesia and from there to Europe. Two newspaper clippings from Northern Rhodesia were attached to the list, showing a photograph of about ten mercenaries descending from an aircraft at Salisbury Airport. This list gave only the names of the mercenaries, with no details. An examination of the list further showed that a number of the names listed thereon had been included in the list delivered by Mr. Tshombe on 30 January. The ONUC members of the commissions insisted that other essential information should be provided concerning every name on the list, including rank, location of unit, date of engagement, etc. as had been requested several times previously. The Katangese replied that it was very difficult for them to furnish such details for the following reasons:

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1. Most of the records concerning mercenaries had been kept by their commanders, e.g. Col. Faulques. These records, they claimed, were not made available to the Katanga authorities.

2. Col. Faulques either destroyed before he fled or took with him most of the documents on mercenaries.

3. The Katangese lacked experience in keeping accurate records.

The ONUC members of the commissions constantly pressed the Katanga representatives to supply more details, and the latter finally agreed to provide a new list with more detailed information on the following day at 4 p.m.

27. In spite of continued efforts by the ONUC members of the commissions, it was not until 16 February at 10 a.m. that a new list was provided, containing eighty-three out of the original eighty-nine names and giving only the locations of the units in which the mercenaries had served. Again the ONUC members pressed their Katanga counterparts to provide the missing details and, in order to facilitate the clerical work involved, the ONUC members supplied forms with appropriate columns for the details to be filled in. The Katanga members again promised to furnish the required information as soon as possible.

28. At the time of writing the present report, which covers the period up to 17 February, no further information had been provided by the Katangese authorities.

29. The commissions were due to meet on 19 February in order to agree on plans for an inspection of Kolwezi. It is intended that one of the commissions should travel to Kolwezi for an inspection of several days' duration. The other commission is to inspect another area selected on the basis of information obtained up to the present date.

## II. Report on developments relating to Mr. A. Gizenga (continued)

30. On 7 February, fifteen deputies of the Chamber of Representatives presented a motion requesting the immediate liberation of Mr. Gizenga. After some preliminary debate, it was decided to postpone a vote on the motion until after Mr. Adoula's return from New York so that the Chamber would have the opportunity to hear him on the matter. On 12 February, Mr. Adoula addressed the Chamber and requested an expression of confidence for the manner in which he had handled the Gizenga affair. By a vote of 76 to 10 with 1 abstention, the Chamber expressed its support for Mr. Adoula. Mr. Gizenga is presently being held on a small island at the mouth of the Congo river.



ANNEX I

Resolution adopted on 15 February 1962 by the Katanga  
Provincial Assembly

The Legislative Assembly of Katanga summarizes the eight points of the draft declaration of Kitona in the motion hereafter.

The Katanga Assembly, having been convened in second special session on 5 February 1962, by an Order issued on 23 December 1961 by the President of Katanga, with a view to considering the draft declaration drawn up at Kitona at 21 December 1961;

Having regard to the statement made at the first special session on 3 January 1962 before this Assembly by President Tshombe, in which statement he presented that draft declaration;

Having considered the eight points of the draft declaration of Kitona;

Noting that the Prime Minister of the Congo, Mr. Adoula, in contrast to what has been done in the past, proposes to restore order in the former Belgian Congo;

Noting that in these circumstances it is necessary to co-operate with the Central Government with a view to restoring order and peace in the country;

Having established that the urgent need of preparing a new constitution is admitted by all the parties at issue;

Considering that a loyal application by all the parties of the conclusions of the Katanga Assembly on the draft declaration of Kitona could serve as a basis for the settlement of the Katanga problem and put an end to the sufferings of the population;

(1) Accepts the draft declaration of Kitona of 21 December 1961 as a potential basis of discussion with a view to the settlement of the Congolese conflict; authorizes the Government of Katanga to establish contact with the Central Government with a view to ensuring a solution in the spirit of the draft declaration; and stresses that the Government of Katanga must arrive at that solution by negotiation and peaceful means, with all due dispatch.

(2) Presents the following recommendations:

(a) Expresses the hope that the Fundamental Law will hereafter be strictly applied, both by the six entities and by the Central Government; that the designation of a Commissioner of State be hereafter made in consultation with the Prime Minister or, failing him, in consultation with the President of the Assembly (articles 181 and 201 of the Fundamental Law), it being understood, among other things, that the provisions on parliamentary immunity shall be strictly observed; takes note of the provisions of article 3 authorizing amendments to the Fundamental Law;

(b) Recommends that account be taken of the provisions of article 7 of the Fundamental Law fixing the number of entities composing the State and determining their limits (see article 159 of the said Law); declares that Mr. Kasavubu is President of the Congolese State as the same is defined in article 7 of the Fundamental Law;

(c) Stresses the fact that the Central Government must in future show understanding and take into account the particular characteristics of Katanga.

To that end, acting in the necessary spirit of conciliation, the Central Government must forego taking punitive measures against any civil or military officers who may have executed the orders of the Katanga Government since 30 June 1960. It must also avoid sending to Katanga civil or military officers who may be hostile to the Katanga authorities, and must refrain from sending there armed forces liable to spread disorder or panic among the population. The Central Government must also refrain from showing any form of partiality in the internal dissensions of Katanga and must not in any manner oppose the restoration of the authority of the Government of Katanga over the whole of the Province, in conformity with the provisions of the Fundamental Law. It must also take, in agreement with the Government of Katanga, the measures necessary to balance the budget of the Congo and prohibit all monetary, fiscal or administrative measures liable to prejudice the economic and financial situation of Katanga or the smooth running of public services.

(d) Recommends that, in view of its urgent character, the work of preparing the new constitution, taking into account the aspirations of each entity,

shall be speedily concluded in order to enable the Congo to benefit from institutions adapted to the special conditions prevailing in the country;

(e) Considers that, for purposes of their application, the Government of Katanga should agree with the Central Government on the interpretation to be placed on articles 23, 26 and 219 of the Fundamental Law; and gives it assurance that the exercise of authority envisaged under this point shall be determined in co-operation with the Government;

(f) Decides that it is not required to rule on the eighth point of the draft declaration, which comes within the exclusive competence of the Executive;

(g) The Katanga Legislative Assembly reserves its right to ratify the final agreements which may be concluded between the authorities at Leopoldville and those of Katanga in conformity with the authority given to the Government of Katanga.

Done at Elisabethville on 15 February 1962,

MUTAKAWA-DILCMRA Charles  
President of the Katanga Legislative  
Assembly

ANNEX II

Statement made by Mr. Cyrille Adoula, Prime Minister  
of the Republic of the Congo, on 15 February 1962

We went to Kitona reluctantly because we had had dealings with Mr. Tshombe for many years and were well acquainted with his virtues and his weaknesses. I, personally, never ceased to warn the Congolese public, the United Nations and the whole world of the danger of attaching too much value to Mr. Tshombe's statements. The speech he made yesterday in the Katanga Provincial Assembly and the resolutions which he obviously inspired have provided further evidence of the difficulties facing those who, despite apparent contradictions, seek to trust the word of the northern Katangese leaders. The speech by Mr. Tshombe and the resolutions of the Provincial Assembly purport to leave the door open for further negotiations. I shall make a detailed statement very shortly after I have studied what took place yesterday in the Provincial Assembly.

ANNEX III

Letter dated 16 February 1962 addressed to the Officer-in-Charge of the United Nations Operation in the Congo by the Prime Minister of the Republic of the Congo, transmitting a cable addressed to the President of the Province of Katanga

I have the honour to request you to transmit the following cable to Mr. Tshombe, President of the Province of Katanga:

"President Tshombe, Elisabethville. With a view to the application of the Kitona agreement just approved by the Provincial Assembly, I invite you to meet me at Leopoldville next Wednesday, 21 February, for the purpose of discussing the procedure for carrying it into effect.

"I have the honour to be, etc.

Adoula, Prime Minister"

ANNEX IV

Letter dated 16 February 1962 addressed to the Prime Minister of the  
Republic of the Congo by the President of the Province of Katanga

I have the honour to inform you that the Katanga Assembly, at its meeting on 15 February, announced its acceptance of the Kitona draft declaration of 21 December 1961 as a possible basis for discussions with a view to the settlement of the Congolese conflict. It also authorized the Katangese Government to establish contact with the Central Government for the purpose of bringing about a solution in the spirit of the Kitona declaration. In view of this authorization, as well as in the desire to find a solution to our problems as rapidly as possible in the interest of our peoples, I suggest that we meet personally at your earliest convenience at Kamina base, a site offering full guarantees of security and all the necessary communication facilities.

I have the honour to be, etc.

(Signed) M. TSHOMBE

ANNEX V

Three letters dated 19 February 1962 addressed to the President of the Province of Katanga by the Prime Minister of the Republic of the Congo

A

Subject: Gendarmerie

I have the honour to inform you that I have duly noted the resolution which was adopted on 15 February 1962 by the Katanga Provincial Assembly accepting the declaration which you made at Kitona on 21 December 1961.

In order to enable the Head of State to regularize, in accordance with article 23 of the Fundamental Law, the appointments of officers and non-commissioned officers which have been made in the gendarmerie, I should be grateful if you would send me, as quickly as possible, a complete list of the officers and non-commissioned officers now in service.

(Signed) C. ADOULA

B

Subject: Reorganization of the Army

I have the honour to inform you that I have duly noted the resolution which was adopted on 15 February 1962 by the Katanga Provincial Assembly accepting the declaration which you made at Kitona on 21 December 1961.

With a view to consideration of the problem of the reorganization of the Army, I have summoned all general officers together with their staff to a meeting at Leopoldville on 26 February 1962 at which this question will be discussed.

General Moke and his staff are also invited to attend this meeting.

I should be grateful if you would let me know the date on which General Moke and his colleagues will arrive at Leopoldville.

(Signed) C. ADOULA

C

Subject: Provincial Assembly

I have the honour to inform you that I have duly noted the resolution which was adopted on 15 February 1962 by the Katanga Provincial Assembly, accepting the declaration which you made at Kitona on 21 December 1961.

With a view to the settlement of the internal problem of Katanga, it would be desirable for a session of the Provincial Assembly, attended by all the provincial elected representatives of Katanga, to be convened as quickly as possible in a place where security and freedom of expression could be fully guaranteed.

The United Nations would be in a position to take all the necessary steps to ensure the safety of the provincial elected representatives.

You, for your part, will also take all the necessary measures to enable this session to proceed normally.

(Signed) C. ADOULA

