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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

Annexes to the report on the Adoula-Tshombe talks

Annex 1

Communiqué to the Press by Mr. Adoula, dated 27 March 1962

At the very first meeting with the Katanga delegation on 18 March 1962, it was expressly agreed with Mr. Tshombe that in no case would the subject matter of the discussions be revealed without the prior agreement of both parties before the conclusion of the talks.

On 26 March 1962, Mr. Tshombe sent to certain diplomatic missions a document on the points he intends to raise during the current conversations. It should be noted that the Prime Minister did not receive this document until several hours after its transmission to the embassies in question.

In the face of Mr. Tshombe's flagrant violation of the secrecy of the talks, the Central Government considers itself released from any undertaking in that regard. It wishes to state that on 18 March 1962 Mr. Tshombe received an agenda proposed by the Central Government. It was clearly pointed out to Mr. Tshombe that the current negotiations could have no other object than to give effect to the Kitona declaration: i.e., to ensure full application of the Fundamental Law to the Province of Katanga and to rectify every situation conflicting with that Fundamental Law. Over more than a week of discussions, Mr. Tshombe has refused to get down to the substance of the problem, but has contented himself with declaring that he had no mandate to take final decisions, and that all decisions reached as a result of these conversations must be submitted to the provincial Assembly for ratification.

The Prime Minister has repeatedly drawn Mr. Tshombe's attention to the dilatory attitude taken by the Katangese delegation. He has made it quite clear to Mr. Tshombe that this position is contrary to the categorical mandate given him by the Provincial Assembly in its resolution of 15 February 1962 and that, if he persists in this attitude, the current conversations can only end in an impasse for which he, Mr. Tshombe, will be wholly responsible.

It will be noted, moreover, that Mr. Tshombe, in the agenda which he has just issued, completely ignores the Fundamental Law and his Kitona commitments. He would like to drag the Central Government into a discussion on constitutional principles and on a presumptuous demand - the institution of a "transitional regime" for Katanga.

The Central Government wishes to point out that the current discussions were agreed to, and can only be conducted, on the basis of the Kitona declaration and the Katanga Provincial Assembly resolution of 15 February 1962: that is to say, on the basis of application of the Fundamental Law to the Province of Katanga.

The Central Government has clearly stated to Mr. Tshombe that it cannot go beyond this frame of reference and that discussions on constitutional problems and possible modifications of the Fundamental Law are being carried on - with, moreover, the participation of parliamentarians from the Province of Katanga - in other bodies which have sole competence in such matters. The Central Government, then, has been able only to repeat to Mr. Tshombe that the essential aim of the current discussions is the restoration of legality in Katanga and the full application of the Fundamental Law in that Province.

ANNEX 2

Statement made to the Press by Mr. Cyrille Adoula,  
the Prime Minister, on Thursday, 29 March 1962

In December 1961, when military measures had been taken and certain positions occupied at Elisabethville following provocations by the Katangese Gendarmerie, and in order to safeguard the civilian population from oppression by racist mercenaries, Mr. Tshombe requested talks with the Central Government with a view to ending the secession.

Although the Gendarmerie was then on the point of final elimination as a military factor, making it possible to restore the Province of Katanga to legality by force, we nevertheless agreed to a discussion with Mr. Tshombe and proceeded to Kitona. We agreed to these talks solely out of anxiety to spare the civilian population unnecessary suffering.

Since we ourselves were acting in good faith, we took it that Mr. Tshombe was of the same mind and was coming to Kitona to seek ways and means of ending the secession once and for all.

After more than twenty-four hours of discussion, Mr. Tshombe informed us that he had no authority to take decisions binding on the Province of Katanga, and that the Kitona talks could lead to no decision on his part.

Here was a most surprising situation: Mr. Tshombe asks for talks with the Central Government in order to terminate his secession. The same Central Government, which could have waited until the possibility of that secession had been eliminated by force of arms, nevertheless agrees to meet Mr. Tshombe and then, at the Kitona meeting for which Mr. Tshombe has pressed, he declares that he is not empowered to negotiate on behalf of the authorities of the secessionist Province.

At Kitona, as on the previous occasion, we were compelled to realize that Mr. Tshombe had asked for talks only in order to gain time, in an effort to restore what he knew to be a very adverse military situation. Finally, Mr. Tshombe agreed to make the declaration with which you are familiar. However, he made it clear that he was returning to Elisabethville in order to seek from the Provincial

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Assembly general authority to decide with the Central Government on measures to end the secession. He formally acknowledged that, once he had secured such authority, he would be empowered to take irrevocable decisions on Katanga's return to legality.

On 15 February 1962, the Provincial Assembly of Katanga adopted a resolution in which - and I quote - it

"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."

The following day, on 16 February 1962, Mr. Tshombe sent a letter to the head of the Central Government, which contained the following statement (I quote):

"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 ...".

To us, as to any impartial observer, the situation seemed quite clear: Mr. Tshombe had been authorized to take the necessary measures to end the secession, Mr. Tshombe was asking for a meeting with the Central Government in order to agree on those measures. We consented to such a meeting.

Although we had had some experience of Mr. Tshombe and his tergiversations, we felt some optimism as we began the talks which have just taken place. The Central Government was unanimous in believing that Mr. Tshombe, now that he had full powers, was left with no way out and would live up to his responsibilities. We hoped that, since the return of Katanga Province to legality was settled in principle, the problems to be solved in giving effect to this return to the

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Fundamental Law would present no insurmountable difficulties. In short, we were convinced, before beginning the talks, that since the essentials had already been settled, we would be able to find a way of putting an end to the crisis which the country had endured for almost two years.

Imagine our bewilderment, at our first meeting, at hearing Mr. Tshombe declare that he was not entitled to take final decisions and that, in any event, anything which might be agreed upon as a result of our talks would have to be ratified by the Provincial Assembly of Katanga. It was the Kitona performance all over again: Mr. Tshombe asks for negotiations with the Central Government and, then, at the crucial moment, declares that he has no authority to take decisions. All the talks we have been able to have with Mr. Tshombe have convinced us that the attitude of the Katangese delegation has not changed, and that Mr. Tshombe came here firmly determined not to agree to anything which would not be reopened for discussion on his return to Elisabethville.

What is far more serious is that, although the Provincial Assembly of Katanga has agreed that the Fundamental Law should serve as the basis of discussion and has given Mr. Tshombe full powers to act within the framework of the Fundamental Law, Mr. Tshombe no longer regards that Law as the basis of our talks. He even goes so far as to make non-implementation of the Fundamental Law a condition for the termination of the secession. That is a decided step backward from Kitona. With Mr. Tshombe nothing can be considered settled: what he agreed to at Kitona, and what his Assembly has directed him to do, Mr. Tshombe now refuses to accept. In these circumstances, if the Kitona declaration is no longer valid, the talks cannot continue. Over and over again, during the ten days these conversations have lasted, we have had to show calm and patience in the face of Mr. Tshombe's changes of attitude. We even went so far as to hand him a statement in which we agree that, so far as the Central Government is concerned, any decisions taken as a result of the talks will be final, irrevocable and enforceable. But the good will and patience shown by the Central Government have met with no response. Conscious of the vast interests at stake, we delayed as long as possible in informing you that our efforts had proved fruitless, and in reporting to you the bad faith of your brothers of the Katangese Government.

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We now know that Mr. Tshombe began the talks with the Central Government only in order to gain time and improve his military position by recruiting additional mercenaries and by purchasing weapons and aircraft. After ten days of talks we had got no further than discussing the powers of the Katangese delegation. Once again international public opinion has been enlightened as to Mr. Tshombe's good faith and desire to negotiate. The Central Government, for its part, can no longer countenance such performances while the sufferings of the people daily increase. I solemnly declare that our desire for peace, which we have repeatedly demonstrated, must not be regarded as a sign of weakness. After two years of talks, negotiations and discussions, the situation is graver today than it was at the beginning of the crisis. Our patience is at an end. We have exhausted all peaceful means. We have agreed to every meeting, but we have got nowhere.

I say to you all that there must be an end of equivocation, and that no more procrastination can be tolerated. We, for our part, have decided what line to follow, with your support. So long as we have the confidence of the people's representatives, we shall see to it that the unity of our country becomes a reality.

If we find ourselves in an impasse today, it is because Mr. Tshombe is making recognition of the secession, and of a Katangese State, a condition for any solution to the problem. Only on that condition is Mr. Tshombe prepared to discuss a possible association with the rest of the Congo. This we cannot accept, because to do so would be to betray our duty; to follow Mr. Tshombe's lead in this matter would be a violation of the mandate we have received from Parliament. We can never recognize the secession. We can never allow ourselves to be dragged into talks which Mr. Tshombe would like to put on the diplomatic plane. The solution, as we see it, is clear: Katanga is a Province which withdrew from the national community at a certain stage, and which must now return to it. There has never been and there never will be a Katangese State. That is something everyone should know.

Public opinion is becoming weary of Mr. Tshombe's dilatory attitudes and changes of front. Mr. Tshombe came to Leopoldville to gain time, but he must not count on the Central Government to let him continue his equivocations and criminal pastimes.

We made it perfectly clear to Mr. Tshombe that his obstinacy was liable to have the most serious consequences, and that he would bear full responsibility for the sufferings which the civilian population would endure if he persisted in his attitude.

In 1960 Mr. Tshombe took it upon himself to violate the law by placing himself above the Fundamental Law. Today Mr. Tshombe is violating the orders given him by the Provincial Assembly. It is becoming a habit.

The Central Government, which is responsible for ensuring that the law is observed, cannot allow Mr. Tshombe to continue regarding himself as above the law. He must obey the Provincial Assembly's instructions or resign.

We expect from Mr. Tshombe a firm and final decision. We hope that reason will ultimately prevail. If it does not, the Congolese people and, in particular, our brothers in the Province of Katanga will form their own opinion of Mr. Tshombe's duplicity and will take the necessary steps to safeguard the higher interests of the country. Our will to bring Katanga back to legality is unshakable. We shall bring to bear every means in our power. You can rely on the Government; it will do its full duty, and carry out to the end the task you have entrusted to it.



Annex 3

Agenda submitted by Mr. Tshombe to Mr. Adoula

26 March 1962

Subjects to be examined

The primary concern of the talks should be to consider the following items:

- A. Position of the Central Government on the amendments to the Fundamental Law requested by the Government of Katanga on the initiative of Katangese members of Parliament.
- B. Examination of principles for a workable political organization of the former Belgian Congo as a whole. Adoption of the principles.
- C. Discussion of transitional regime (pending the implementation of the new Constitution on the basis of the principles referred to in B above).
- D. Examination of agreements to be concluded on financial, economic, customs and fiscal matters.

ANNEX 4

Communiqués to the Press by the Katangese  
delegation, dated 29 March 1962

First communiqué

Mr. Adoula and Mr. Tshombe held a conversation on Tuesday, 27 March 1962. At the end of the meeting, they decided to meet again in a few days' time.

However, in the afternoon the Central Government broke the agreement that had been reached at the beginning of the talks concerning relations with the Press.

The pretext given by Mr. Adoula for breaking that silence was that Mr. Tshombe had sent to various embassies a text entitled "Subjects to be examined", which was communicated to Mr. Adoula at the latter's request. Yet Mr. Tshombe knows that Mr. Adoula keeps certain embassies, as well as the United Nations, informed of their talks. For instance, on 27 March the public learned Mr. Adoula's intentions through "information received by the United States Embassy at Leopoldville".

It may therefore be considered important that these agencies should not be given one-sided information, since they are kept informed by the Central Government. Furthermore, the Leopoldville radio, an official organ of the Central Government, has been broadcasting information on the talks continuously from the outset.

This time, without any justification, Mr. Adoula broke our agreement concerning the dissemination of news on our talks by issuing a unilateral communiqué.

President Tshombe is in no way taking a "dilatory attitude". He agreed to come to Leopoldville because Katanga is ready to give up some of its de facto prerogatives in a spirit of understanding and of unity with the rest of the Congo. He knows that "unity is made up of the combination of all regional particularities". The Fundamental Law must be modified. To save the Congo, Katanga wishes a satisfactory regime to be defined by agreement, and acceptable solutions to be found through the joint efforts of those who have at heart the higher interests and the happiness of the population.

The President knows that agreements made in this spirit will not be opposed and will certainly be ratified by the Katangese Assembly. He wishes to observe democratic principles out of respect for the Assembly and for the people of Katanga.

This, unfortunately, does not seem to be the road that the Central Government wishes to follow when it announces its intention to convene, illegally, the Provincial Assemblies.

The delegation of Katanga remains firmly resolved to continue the discussions, and believes that the voice of reason will ultimately be heard.

The President of Katanga

Second communiqué

President Tshombe declares that he is in a position to reply to the Press conference given today by Prime Minister Adoula but does not wish to become involved in long-drawn out, fruitless arguments; he states that he is full of good will, and hopes that the negotiations already started will culminate in tangible results satisfactory to both sides.

Convinced that it is high time the Congolese crisis was resolved, President Tshombe got into touch with the Prime Minister personally at 4 p.m. today, 29 March.

In the course of their meeting, which lasted two hours, President Tshombe asked the Congolese Prime Minister to restore a brotherly atmosphere, instead of indulging in propaganda fraught with hatred and slander, and even in physical attacks on him, such as an important member of the Central Government had perpetrated during a meeting on 23 March.

Following that meeting, it was agreed that the talks would resume.

Leopoldville, 29 March 1962.

M. Tshombe, President of Katanga.

ANNEX 5

Letters dated 29 March 1962 from Mr. Gardiner  
addressed to Mr. Adoula and Mr. Tshombe

At the present stage of the negotiations I should like to make a special appeal to both parties. The original agreement that you accepted and the purpose of which was to avoid any publicity gave the guarantee that internal Congolese problems would be discussed without outside interference. Without trying to determine the respective responsibilities, I wish to urge you to comply with that agreement.

If communiqués and press conferences as well as broadcasts can be avoided and if meetings are strictly held in private, I am sure that the judgement and political sense of the Congolese leaders will save the Congo from the disaster with which it is now threatened. I hope that you will take this solemn appeal into serious consideration.

R.K. Gardiner

Annex 6

Memorandum from Mr. Tshombe addressed to the Officer-in-Charge  
of the United Nations Operation in the Congo

The President of Katanga is considering the desirability of taking, as suggested by the Officer-in-Charge of the United Nations Operation in the Congo, a "bold initiative" in connexion with the aims of the discussions which he came to Leopoldville to hold with Mr. Adoula.

Before taking up the various points made in the proposals for action on his part, the President of Katanga wishes to be assured that such a position will not lead Katanga into an impasse but will actually contribute to the salvation of the Congo and to the happiness of all its inhabitants.

The Katangese people certainly have the right, under the principle of self-determination, to reject a law which the former colonial Power imposed upon them, and to proclaim their complete independence. Neither force of arms nor methods such as those used at Kitona can have any radical effect on their resolve. However, while they are resolved upon self-determination, they are also very deeply conscious of the common destiny which links them with their brothers in the former Belgian Congo. In that spirit, the Katangese Government came to Leopoldville to seek, with the Central Government, ways and means of ending the secession which circumstances made necessary, and to conclude there, with that Government, a generous and constructive agreement.

Should it decide to take a bold initiative, as suggested, the Katangese Government does not intend to run the risk of introducing chaos and poverty into Katanga, and wishes to make an effective contribution towards a viable political reconstruction of the entire Congo. To that end, it is obliged to take all necessary precautions. In particular, it must know what assurances and guarantees the United Nations can give it regarding the situation to which the proposed initiative would give rise.

I. Assurances regarding the situation

1. Katanga could not take this course without an assurance that, pending the constitutional changes which are essential for a viable organization of the Congo, no change will be made in the existing situation unless it has been expressly and freely agreed to.
2. Katanga must have an assurance that its integrity will be respected. Whatever name the new Constitution may eventually give to the various political units which will compose the Congo, the Central Government must cease to oppose the authority of the Government of Katanga throughout the length and breadth of Katanga, as defined by its boundaries on 30 June 1960, by installing rival or dissident Governments, as at Albertville, by supporting such Governments through the secondment of a commissioner extraordinary, by methods of political subversion, or by any other means.
3. The Government of Katanga must be assured of the normal authority to maintain law and order throughout Katanga. The Government of Katanga intends to undertake a very thorough decentralization of the administration of the territory, taking into account the natural groupings of population. An internal administrative reorganization was planned to that end, and would have been carried out if circumstances had not hampered its execution. However, it is obvious that all the forces of order operating in Katanga must be subject exclusively to the direct authority of the Katangese Government. If it is to be made possible to station National Army troops in Katanga, as elsewhere in the territory of the Congo, that must be done only in case of necessity for purposes of national defence against threats from abroad, and after measures have been taken to ensure that such stationing of ANC troops will not impede the maintenance of law and order and the normal exercise of police powers by the Government of Katanga.
4. The Government of Katanga must be assured of an appropriate agreement on economic and financial matters. It is prepared to contribute, in a proportion to be determined, towards the public expenditures of the Congo as a whole, and to consider possible means of restoring a unified currency at a later date while, at the same time, maintaining the soundness of its own economy. However, it must have assured authority to levy, within its jurisdiction, the tax to finance the payment of its agreed contribution to the Central Government.

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5. The Government of Katanga must be assured of the authority to organize within its jurisdiction the services required for sound administration. In that connexion, it is inconceivable that two administrations should coexist in the same place, one subordinate to the central authority and the other to the Katangese Government, with a complex and delicate distribution of powers between them. The administration must function under the direct authority of the Government of Katanga. Wherever necessary, it is this latter administration that must perform any administrative activities for which the Central Government is responsible in the Provinces, by delegation from the Central Government to the Governments of the political units which make up the over-all Congolese system.

6. The Katangese Government must be assured of the assistance of freely chosen technicians in various fields of activity. In particular it attaches great importance to respect for the principles enunciated in article 250 of the Fundamental Law, which were originally adopted at the request of the Congolese in order to guarantee the success of independence. The Katangese Government cannot understand why the number of United Nations civilian personnel at present staying at Elisabethville should be increasing. In military matters in particular, if a basis for agreement can be reached with the Central Government concerning the choice of technicians to serve in the Katanga Gendarmerie, the latter must have access to the services of technicians and to an appropriate proportion of trainee posts on the same footing as the National Army. The Katangese Government is conscious that all these assurances are prerequisites of the initiative which it is being asked to take, and that the successful outcome of that initiative depends on them. Although that Government cannot fail to be particularly concerned for the future of Katanga, it is none the less desirous of serving the Congo as a whole. Most of the assurances it is seeking are at least as important to the future of the Congo and to the happiness of the population as a whole, as to the future and happiness of each constituent part. The Congo will be saved, not by heaping upon the Central Government all the local conflicts which may arise, and thus making every difficulty a general and inextricable problem, but, on the contrary, by localizing the difficulties and their solutions. It is therefore necessary that, when understanding has been restored, the authorities in the various regions should be left the widest possible responsibilities, and that the requisite unity should be

ensured through close co-operation among those various authorities. It is not the task of a Central Government to govern the various "provinces" in place of the authorities responsible for them. Its task is to co-ordinate fair and active co-operation among the Governments of the various constituent political units of the Republic. In specifying the assurances which he deems necessary in connexion with de facto political stability pending the constitutional changes and the aforesaid arrangements with regard to technical assistance, the President of Katanga is impelled by the conscious desire to promote the rehabilitation of the Congo as a whole by laying down certain fundamental conditions, which are as necessary for the recovery of the other regions as for that of Katanga. The rehabilitation of the Congo can be brought about only through the political organization of the distinctive regional entities. It is in order to make our contribution to the happiness of the Congo as a whole that we wish to receive assurances concerning the situation which would be produced by the initiative proposed.

As Mr. Gardiner writes in his letter of 4 April, the document which will come out of the present talks between the President of Katanga and Prime Minister Adoula will have more than local importance. Even if the United Nations does not endorse it formally, any violation of these provisions will not be overlooked by the Organization. It is also necessary that this document, limited as it will be to a few points, should meet with assurances relating to the situation which it would create. While it is true that the United Nations is not required to give formal endorsement to the talks taking place with the Central Government, it is necessary that the document agreed to by the Central Government should create a situation for which the Central Government itself will give these important assurances or, failing that - and in view of the intentions which certain members of the Government and even the Prime Minister appear to entertain, more or less secretly, towards the President of Katanga - that these assurances should be forthcoming in some other valid form.

## II. United Nations guarantees

Should the President of Katanga decide to take a bold initiative, as is suggested to him, he must be able to count on United Nations support for his

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initiative - support which, the Officer-in-Charge of ONUC was good enough to hint, would be forthcoming. Not only would the Katanga Gendarmerie not be placed under the orders of the Central Government, as has been said, but it would also be incumbent upon the United Nations: (1) to adapt the performance of its duties to the situation which would be created by the initiative to be taken, and to decide on appropriate steps to ensure that the Central Government was not given any aid conflicting with the assurances required of it under points 1-6 above, whether they had actually been given or not; and (2) to support the initiative to be taken by the President of Katanga.

1. The President of Katanga hopes that the Officer-in-Charge of the United Nations Operation in the Congo, in the spirit of understanding by which he is prompted, will send him in writing, on behalf of the competent authority, a valid undertaking by the United Nations to guarantee to him in those matters that:

(A) The United Nations recognizes that the President is justified in seeking the assurances enumerated in points 1-6 above, with a view to ending the secession;

(B) The United Nations, even if it does not feel called upon to take any position as to the substance of the assurances properly requested from the Central Government, regards these requests as a matter of internal constitutional disputes in which it will not intervene, and which can be settled only through peaceful negotiation between the Government of Katanga and the Central Government;

(C) The United Nations will take, within the jurisdiction of the Government of Katanga, no action that would conflict with the requests enumerated in points 1-6 above;

(D) The United Nations will withdraw from Katanga without delay such civilian personnel as are not strictly necessary for the operation of its own services;

(E) The United Nations voluntarily decides progressively to adapt the strength of its forces and its military installations in Katanga to the new situation created by the initiative to be taken, in accordance with a plan whose general principles will be fixed by a gentleman's agreement between the United Nations authorities and the Government of Katanga before the President takes the proposed initiative.

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If the Officer-in-Charge of the United Nations Operation in the Congo is kind enough to send the President of Katanga a letter containing these guarantees, it should not be made public immediately, in order not to prejudice the discussions taking place between the Prime Minister and the President of Katanga.

2. The President of Katanga also hopes that, in order to support his initiative, the Officer-in-Charge of the United Nations Operation in the Congo will send him, in the same way, a guarantee in writing that as soon as the President has taken the suggested initiative, and presumably before the Central Government makes known its reactions, the Officer-in-Charge of ONUC will make an official statement concerning the initiative taken by the President of Katanga. The latter hopes that the Officer-in-Charge will announce that as a result of the initiative taken by the President, Katanga is no longer in the state of secession referred to in the resolutions of the United Nations Security Council and the differences which it has still to settle with the Central Government are henceforth a purely internal constitutional dispute that can be solved only by peaceful means.

The President of Katanga thanks the Officer-in-Charge of the United Nations Operation in the Congo for kindly considering this memorandum, in which he has sought to prepare the way for the initiative suggested to him by the Officer-in-Charge. He hopes to be able to take this initiative in the very near future, as soon as he is assured of its potential consequences.

The President of Katanga takes this opportunity to renew to the Officer-in-Charge of the United Nations Operation in the Congo the assurances of his highest consideration.

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ANNEX 7

Letter dated 12 April 1962 from Mr. Gardiner  
addressed to Mr. Tshombe

Sir,

I have the honour to acknowledge receipt of your memorandum of 9 April, which I have studied very carefully.

Most of the points which you raise and on which you request assurances are of a constitutional nature, and I hope that the broad decisions you may arrive at with the Central Government will incorporate all the necessary guarantees.

I should like to reiterate that the United Nations is always ready to offer its good offices for your talks, by whatever means may be deemed necessary and appropriate. I believe that the assurances which you now seek can most opportunely be given when you have made clear your differences with the Central Government. Any measures which might be taken at this time would be liable to prejudice the issue.

It is a reasonable assumption that, as peace and order are restored everywhere, the United Nations will reduce its military and civilian strength in the Congo. However, the United Nations authorities cannot reasonably be expected to review their position with regard to the Congo until the present talks have been successfully concluded and the decisions arrived at have been implemented.

R.K. GARDINER

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ANNEX 8

Letter dated 6 April 1962 from Mr. Tshombe, addressed to Mr. Adoula

Sir,

Further to our discussion this morning, I have the honour to submit for your consideration the following two vital points:

1. I am empowered and prepared to renounce the absolute sovereignty of Katanga.

2. In return I would request you to confirm to me formally the internal sovereignty of Katanga.

I trust that we may reach agreement on these two points.

Accept, Sir, etc.

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ANNEX 9

Proposals submitted to Mr. Tshombe by Mr. Adoula on 16 April 1962

Sir,

I have the honour to acknowledge receipt of your letter (ref. 10/103/VDE) of 6 April 1962.

I note with satisfaction that you now consider yourself empowered to take irrevocable and final decisions on behalf of the Province of Katanga. I therefore regard as finally settled the problem of the Katangese delegation's terms of reference.

With regard to the substance of your proposal, I share your concern to ensure that the Provinces enjoy the broadest possible administrative autonomy. My Government is prepared to submit to Parliament a draft Constitution which will take account of the various "distinctive identities" ("particularismes") and will enable each Province to manifest its personality by administering its own affairs. In this connexion you will find attached draft conclusions on the current talks which reflect both your concern and the intentions of the Central Government.

As you will note, the Central Government, in its desire to achieve a broad measure of national reconciliation, agrees to give you the assurances you are entitled to demand with regard to the future constitutional system of the Republic.

I am convinced that the aforesaid draft will allay all your anxieties and thereby bring us rapidly to the final conclusion of the current talks.

At all events, the Central Government has gone to the limit in conciliation and has shown a good will to which you must respond if, like us, you wish to resolve the crisis through national reconciliation.

Accept, Sir, etc.

Draft conclusions on Leopoldville talks

The Central Government of the Republic of the Congo, represented by Mr. Cyrille Adoula, its Prime Minister, and the Provincial Government of Katanga, represented by Mr. Moise Tshombe, its President, determined to arrive at a final settlement of their differences in a spirit of national understanding and

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reconciliation, hereby recognize, solemnly, irrevocably and without any ulterior motives, reservations or conditions, the following:

Article 1. The Republic of the Congo remains one and indivisible within its frontiers of 30 June 1960. Nevertheless, as the President of the Republic stated on 24 March 1962:

"Unity in no way signifies any desire to disregard the distinctive features (particularismes) of the various regions of the country. On the contrary, the unity of the country is made up of the contribution, the strength and the ideas of each of the distinctive regional identities."

Article 2. The Central Government accordingly undertakes to lay before the Legislative Chambers, within a period of two months, a draft Constitution which maintains the unity of the State, while ensuring that the Provinces enjoy a broad measure of administrative autonomy.

The unity of the State shall be ensured, in particular, by:

(a) Conferring upon the central power exclusive competence in the following matters: foreign affairs and treaties; armed forces; the Gendarmerie, subject to special arrangements to regulate assistance by this corps to the provincial power; State security; legislation concerning nationality; immigration and emigration; criminal law; the establishment of regulations concerning judicial organization and procedure; appointment and regulation of the judiciary; State finances, in accordance with the provisions of the special legislation which will regulate the distribution of financial competence between the State and the Provinces; currency; foreign exchange policy; weights and measures; customs; tax system; university and higher education; establishment of regulations concerning equivalence of primary, secondary, technical and teacher-training certificates; establishment of regulations on standard qualifications for teaching staff; the appointment of provincial inspectors to exercise educational supervision of primary, secondary, technical and teacher-training schools; legislation on the art of healing; scientific policy; general economic policy; commercial code; general regulations concerning land tenure; general regulations concerning the grant of farming and forestry concessions in State lands; general regulations concerning the mining and underground exploration; general regulations concerning the grant of mining concessions awarded by the Provinces; the co-ordination of energy sources of national importance, including hydro-electric plant and resources; geological, geodetic, cartographic and hydrographic services; sea and river navigation, including ports and beacons;

aviation, including airports and air protection; national railways; national roads; general organization of the postal service, including the issue of postage stamps; telecommunications and radio; national public works; supervision of local agencies on which the central power confers direct responsibility for carrying out on its behalf tasks of national importance, in particular in the sphere of civil registration.

(b) The presence in each Province of a representative of the central power responsible for exercising the functions conferred on the Central Government by the Constitution.

Article 3. The administrative autonomy which the Provinces are recognized to possess shall be affirmed by:

(a) The organization of a provincial legislature and executive.

(b) The organization of a Constitutional Court responsible for upholding the division of competence between the central power and the provincial powers.

(c) Conferring on the provincial power exclusive competence in the following matters: law and order in the Province; organization of provincial services and administrative subdivisions; education, except higher and university education; customary courts; grant of forestry, farming and mining concessions; and, in general, all matters in which competence is not expressly conferred on the central power.

(d) A clause specifying that no law modifying the distribution of competence shall enter into force without the consent of all the Provincial Assemblies.

Article 4. Special legislation to define the respective financial competence of the State and the Provinces and to organize the Constitutional Court shall be enacted and shall enter into force simultaneously with the Constitution.

Article 5. The following provisions shall be applied in Katanga immediately:

1. The Loi fondamentale is and remains applicable throughout the Republic.

2. The text known as the "Constitution of 5 August 1960" is withdrawn.

3. The Provincial Government undertakes not to exercise the powers conferred on the central power by the Fundamental Law; in particular:

(a) Questions of national defence are within the exclusive competence of the Central Government.

(b) The Katanga Gendarmerie is transferred to the control of the central power and will be integrated into the Congolese National Army.

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(c) The Kolwezi, Jadotville, Kipushi, Baudouinville and Sakania are placed under the control of the United Nations Force and the ANC.

(d) The security and immigration services are placed under the authority of the central power.

(e) The Katangese currency is withdrawn and replaced by local currency. Currency of the Republic which was withdrawn from circulation before the signature of these presents by the Katangese Government will be returned to the Monetary Council.

(f) Customs, treasury and tax officials are responsible exclusively to the central power.

(g) Postal, telecommunication and radio services are provided by the Central Government.

4. Only provincial councillors elected before 30 June 1960 in accordance with the electoral law of the Republic and in the event of their death or if they are under one of the disabilities specified in the Fundamental Law, their alternates may sit in the Provincial Assembly.

5. The Provincial Government may include only members elected by the Provincial Assembly in accordance with the provisions of the Fundamental Law.

6. A representative of the Central Government appointed after consultation with the Provincial Government shall reside at Elisabethville and, as the delegate of the Central Government and under its authority, shall exercise in Katanga the functions reserved to the Central Government by the Fundamental Law.

7. Pending the enactment of the legislation referred to in article 4 above concerning the distribution of financial competence between the central power and the provincial powers, the Central Government is prepared to explore forthwith a provisional arrangement on this question.

Article 6. To the extent that the provincial authorities comply with these presents, the Government undertakes to lift the state of exception in Katanga.

Article 7. These conclusions shall enter into force one full day after they are signed by both parties



Done at Leopoldville in duplicate on \_\_\_\_\_.

For the Provincial Government of Katanga:

Moïse Tshombe, President

For the Central Government of the Republic of the Congo:

Cyrille Adoula, Prime Minister

ANNEX 10

Exchange of correspondence between Mr. Gardiner, Mr. Tshombe  
and Mr. Adoula on 18 April 1962

1. Letter from Mr. Gardiner to Mr. Tshombe

Sir,

I have the honour to refer to our recent conversation and to your intention of returning to Elisabethville during the Prime Minister's absence in order to attend to some affairs.

I informed Mr. Adoula of your intention, and he assured me that he would return to Leopoldville on Saturday, 22 April, as he told you during your conversation with him last Monday. He expects the conversations to be resumed on Monday, 23 April, at the latest, when he looks forward to receiving your observations and counter-proposals. I hope that you have arranged your business at Elisabethville in such a way that you can return in time for the resumed talks.

I agree with you that, now that a start has been made and both delegations have shown their determination to arrive at a final result, every effort must be made to achieve that goal and to spare the Congolese people unnecessary conflict and suffering.

Please accept. Gardiner."

2. Letter from Mr. Tshombe to Mr. Gardiner

Sir,

I have the honour to confirm my decision to leave for Elisabethville during Mr. Adoula's absence.

As soon as he returns, I shall immediately come to Leopoldville to resume the conversations.

I wish to express my warmest thanks to you and your associates for all the security measures taken for me and for the members of my party, and for your excellent hospitality.

My close contact with Members of the United Nations has given me a better appreciation of your concern for peace and happiness in the Congo.

You may count on my frankness and sincerity in doing all I can to find a rapid solution to the Congolese crisis.

I trust that the guarantees given to me for my first visit remain in force for my return.

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S/5053/Add.10/Annexes

English

Annex 10

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3. Letter from Mr. Tshombe to Mr. Adoula

Sir,

Following our conversation of 16 April, during which you announced that you were going to be absent from Leopoldville, I have the honour to inform you that I have decided to go to Elisabethville to deal with some current business, and that I shall come to Leopoldville again as soon as you have returned.

ANNEX 11

Letter dated 20 April 1962 from Mr. Tshombe to Mr. Gardiner

Elisabethville, 20 April 1962

Sir,

Although I have not yet recovered from the fatigue of yesterday's journey, I should like, before all else, to thank you for your intervention during the past few days. In doing so, I am addressing you personally, rather than as a representative of the United Nations. I know that it is owing to your personal qualities as much as to the undertakings given by the United Nations, which you represent, that the events of Wednesday evening did not take a tragic turn. I am touched to be back in my dear Katanga and at Elisabethville, and to be with these people for whom I am ready to give of my best. As I promised you, and because it is thought that the happiness of the people of the Congo and of Katanga is at stake, I shall come to Leopoldville again. This will require some effort on my part, since I am not in the best of health and I ought to have some rest after the events I have passed through since December and in recent days. I would be grateful if you would inform me whether the United Nations is prepared to give me the same guarantees for this further visit as I had before. I ask you to forward your reply immediately, since any delay will mean a prolongation of my stay here. I hope to see you again at Leopoldville on my return.

Moise Tshombe  
President of Katanga

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ANNEX 12

Letter dated 22 April 1962 from Mr. Gardiner to Mr. Tshombe

I have the honour to acknowledge receipt of your letter of 20 April which, I was pleased to see, justifies my confidence in your promise that you would return to Leopoldville to resume negotiations with a view to bringing the secession of Katanga to an end and restoring the unity of the Republic of the Congo. I shall be at Leopoldville on Thursday, 26 April, and sincerely hope that you will arrive there to resume your talks with Prime Minister Adoula on Monday, 30 April, at the latest.

On behalf of the Secretary-General, I renew all the guarantees, including those relating to your return, which the United Nations gave you in connexion with these talks with the Prime Minister, for so long as such talks continue.

ROBERT GARDINER

ANNEX 13

Address by Mr. Adoula on 21 April 1962

My dear compatriots.

I have made it my duty, ever since the Government took office, to speak to you whenever necessary of the preoccupations, the hopes and the intentions of the Central Government. As a Government of the people and by the people, we have a duty to keep you informed on a question which concerns the whole nation, for I am convinced that with your support the Government, which enjoys the confidence of your representatives, will be able to succeed in the immense task before it.

Our chief concern is and must remain the termination of the secession of Katanga. The solution of this problem must take precedence over any other task, for it must always be borne in mind that the solution of all the remaining difficulties would be greatly facilitated if the secession of Katanga was finally brought to an end. Only thus will the people, the Parliament and the Government be able to turn their whole efforts to economic recovery, the reconstruction of the country, the development and extension of education and the training of a civil service; only thus will the people be able to enjoy the benefits of independence, for which it fought so hard.

However, before turning to the fundamental problem, namely, the secession of Katanga, I should like to clarify the so-called incident which occurred when Mr. Tshombe was leaving - an incident which in some quarters has been greatly magnified and given a significance and an importance which, in our minds, it never had. First I should like to recall the facts. On Monday, 16 April, I received Mr. Tshombe and handed him the Central Government's reply to his letter of 6 April. At the same time I gave him a draft agreement in connexion with the conversations that were taking place. Mr. Tshombe told me that he would study the Central Government's draft and would give me his comments at our next meeting. He asked for a few days to consider the matter, and we therefore agreed that the next meeting would be held on 21 April; this was confirmed in a letter from the Minister for the Interior to Mr. Tshombe.

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During this conversation on 16 April, I informed Mr. Tshombe that I intended to visit the interior, but made it clear that, in any event, I should be back at Leopoldville for the meeting on 21 April. The next day, just as I was about to leave, Mr. Gardiner, the head of the United Nations Mission in the Congo, informed me that Mr. Tshombe had expressed the desire to return to Elisabethville, but I was not told either the date of his departure or his reasons for leaving. I pointed out to Mr. Gardiner that, since Mr. Tshombe would need all the time he had requested to study the Central Government's proposals and, in any event, the date of our next meeting had already been fixed, I saw no purpose in Mr. Tshombe's departure, which he had never told me he was contemplating. My objections were based solely on the fact that, if Mr. Tshombe returned to Elisabethville, he would never be able to attend the meeting on 21 April.

The next day Mr. Tshombe, although he knew that I had already left, sent a letter to my cabinet expressing his desire to go to Elisabethville. Simultaneously, those Ministers who were at Leopoldville learnt that an aircraft had been placed at Mr. Tshombe's disposal and that he would be leaving the capital at any moment, although no Congolese authority had been notified that his departure was imminent. The Council of Ministers met immediately and decided to request an explanation of the reasons for this abrupt departure and of the exact circumstances. This request for an explanation resulted in a delay in the take-off of Mr. Tshombe's aircraft.

However, people ill-disposed towards the Republic, among the first of whom is Mr. Tshombe, have tried to create the impression that the Central Government had intended to violate the guarantees afforded to Mr. Tshombe or to prevent the United Nations from fulfilling the undertakings it had given Mr. Tshombe in respect of his freedom of movement. It was obviously the design of these people to cause a breach of the good relations which have always existed, and which still exist, between the Central Government and the United Nations.

I deny most emphatically that the Central Government had such an intention at any time. When Mr. Tshombe last February expressed his desire to come to Leopoldville, we afforded him all the guarantees he could legitimately ask. At the same time and - I stress this point - with our consent, the United Nations afforded its own guarantees to Mr. Tshombe. The decision of the

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Council of Ministers to request an explanation of Mr. Tshombe's abrupt departure was perfectly well-founded and justified by the fact that we had not been notified of either the date or time of his departure. We had been placed in a position where we could not discharge the obligations we had undertaken with respect to Mr. Tshombe. The guarantees afforded by the United Nations would be valueless and ineffective unless backed by the guarantee of the Central Government; yet the decision to leave was taken and the aircraft was placed at Mr. Tshombe's disposal in such circumstances that the Central Government could no longer discharge its obligations.

Mr. Tshombe has sought to place the decision of the Council of Ministers in a different light. Of course, we are accustomed to Mr. Tshombe's untruths, and his insinuations would not deserve mention if other persons of good faith had not been the object of his misrepresentations, and that is why I wish to make this clarification. It is obvious that we never intended not to adhere to the guarantees which, after all, we had given freely. To think us capable of violating the obligations we have assumed would be to insult us; it would be to forget the sacred value we, as Africans, attach to keeping the pledged word and to belittle our political sense to think that we could prevent the United Nations from discharging the obligations it had assumed towards Mr. Tshombe, and that with our express consent.

For my part, I regard the incident as closed; besides, it would be bad policy to attach any importance to an affair which has been magnified by some circles whose hostility to the Government is only too well known. In our eyes, Mr. Tshombe as a person never has the importance which certain quarters seek to attach to him; for this is not a personal matter. The Central Government cannot overlook the fact that the basic problem is actually the secession of Katanga, and that Mr. Tshombe as a person is of no importance whatever in relation to the essential problem of the secession. The Council of Ministers took this decision, not to prevent Mr. Tshombe from leaving, but simply because a principle had been challenged and because the guarantees afforded by the Central Government and the United Nations were interlocking and complementary, so that no decision could be taken by either party unless the other was in a position to discharge its obligations.

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It would be ridiculous to think that an affair of this kind could affect in any way the confidence, co-operation and esteem we have given the United Nations which is a part of ourselves. It would also be an insult to the leaders of that Organization to believe that they could change their feelings towards the Central Government as the result of an incident which has been magnified beyond measure by all who have never accepted the idea of an independent, united and strong Congo. Once again, the agitators and fishers in troubled waters will find that they have achieved nothing. To us - and I stress this point - the essential question is and will continue to be the termination of the secession, whatever the persons involved, and that is the problem on which I should like to address to you today. In my last speech, I told you that the conversations would lead nowhere if Mr. Tshombe persisted in his refusal to assume firm and irrevocable obligations. After more than twenty days of talk and equivocation, Mr. Tshombe at last admitted that he was empowered to enter into commitments binding upon Katanga Province. Once this preliminary question was finally settled, the Central Government immediately took up matters of substance and handed Mr. Tshombe the draft agreement which has just been published.

At this point I would draw attention to the particular importance of this draft and to the spirit of conciliation displayed by the Central Government in these proposals. You are aware that, according to the Katanga Provincial Assembly's resolution and Mr. Tshombe's letter of 16 February 1962, the conversations between the Central Government and the Katangese leaders were to take as their sole basis the declaration of Kitona, in other words, the total and complete application of the Fundamental Law in Katanga Province. The Central Government could have adhered to this basis and refused to deal with other problems during these conversations. However, in a spirit of national reconciliation, the Central Government agreed to give assurances to Mr. Tshombe concerning the country's future constitutional system. It was never the intention of the Central Government to disregard the individual characteristics of each region. As you know, the President of the Republic solemnly declared, on 24 March 1962, that the preservation of national unity in no way implied disregard for the individual features of each province and each region. It is in this sense that the Central Government agrees to give Mr. Tshombe, and indeed all the provinces, reassurances concerning the future

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constitution. To that end, the Central Government is prepared to submit, within two months, a draft constitution to the legislative chambers. This draft will give the provinces a very large measure of autonomy to manage their own affairs. It will thus enable each region to display and develop its personality. This large measure of autonomy will be guaranteed in the constitution by an equitable division of powers and spheres of jurisdiction between the Central Government and the provincial authorities.

The text which has been handed to Mr. Tshombe defines clearly and unequivocally the powers to be exercised by the Central Government and the regions respectively. Furthermore, a constitutional court will be responsible for supervising the division of spheres of jurisdiction between the Central Government and the provinces. It will also be stipulated that the division of spheres of jurisdiction may not be changed unless all the provincial assemblies signify their consent to any changes. The provincial authorities will consist of a legislative power and an executive power. In financial matters, pending the adoption of a law delimiting the respective powers of the Central Government and the provinces, the Government is prepared immediately to seek a provisional arrangement concerning the distribution of State revenue among all the parties involved. All other questions which have caused difficulties will, of course, be settled by the new constitution. Pending its adoption, the Fundamental Law will continue to be applied.

The Central Government feels that the assurances thus given to Mr. Tshombe should dispel fears and misgivings and that we should quickly come to an agreement, if Mr. Tshombe really wants an honest understanding. In any event, no reasonable person can henceforth doubt the desire for peace and reconciliation which inspires the Central Government. No one can deny that the Central Government's proposals are generous and conciliatory. Everything now depends on similar goodwill on Mr. Tshombe's part.

However, the Central Government is becoming increasingly convinced that Mr. Tshombe came to Leopoldville, not to seek an agreement, but rather to gain time. As I told you in my last speech, while Mr. Tshombe is talking and hedging at Leopoldville, the Katangese leaders at Elisabethville are continuing actively to strengthen their military preparedness. In my last speech I denounced this duplicity on the part of the Katangese leaders, and I do so again.

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We have irrefutable proofs and authentic documents revealing the amount of war material acquired by the Katangese authorities since the Kitona conversations and even recently. These documents - which will be published at the appropriate time - show that the situation is serious and that the Katangese leaders have no thought of an agreement but are nearing a trial of strength.

We know exactly the amount of arms and munitions which has entered or is about to enter Katanga. We know which countries are providing Tshombe with arms and thus encouraging the secession. It is astonishing that these same countries, even while they provide Tshombe with the military means for his secession, loudly proclaim their full support for the Central Government! This duplicity must cease. We cannot conceive how either individuals or groups within these countries can continue their criminal activities without provoking from their Governments such reaction as, in accordance with human rights, may legitimately be expected of them. It is unthinkable that individuals should be allowed indefinitely to imperil the good relations which exist between their countries and the Republic of the Congo. The Central Government is entitled to ask of these countries a clear and unequivocal attitude. Their present policy can only render them a disservice in the eyes of all justice-loving peoples.

I hope that this warning and this solemn appeal to reason will bring these countries to a better understanding of their national obligation not to meddle in the affairs of the Congo by allowing their nationals to arm the rebels with impunity.

As I have already said, Mr. Tshombe has shown no desire for peace and reconciliation; on the contrary, his aggressive intentions are apparent from the purchases of arms and the recruitment of mercenaries.

Does this mean that the Central Government must remain idle in the face of this danger? Does it mean that we must continue to tolerate Mr. Tshombe's consolidation of his secession day by day without ourselves reacting in any way? We cannot overlook the fact that we have a duty to put an end to Tshombe's secession, as to any other attempt at secession.

I am addressing myself today particularly to the United Nations, to which I say that, while we appreciate the help and assistance it is giving us in many

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spheres, we cannot but take note of the fact that the basic problem, namely, the secession, remains untouched. This situation has existed now for almost two years. For almost two years, our territorial integrity has been in jeopardy, our sovereignty has been at stake. There is ever-increasing intervention in our internal affairs. Indeed, the situation is now much more serious than it was in 1960, when the secession began. The balance of forces, which at that time was in favour of the Central Government, is now completely reversed to Tshombe's benefit. Because the Central Government complies with the resolutions of the Security Council and the General Assembly, it has been unable to acquire the arms necessary for its defence. Because Tshombe daily violates the decisions of the United Nations and treats them with the greatest contempt, he has been able to acquire arms freely and without hindrance. All nations should take note of this fact and draw the proper conclusions from it. Should we, because we are faithful to the Organization, its principles and its decisions, remain weak and enfeebled before the forces of evil, before those who covet our wealth?

Today, all parties should assume their responsibilities. All parties should indicate clearly and unequivocally the stand they intend to take on the Congolese problem. If the United Nations considers that its present mandate is not clear and does not allow it to take more direct action to safeguard our integrity, then the higher bodies must make that mandate more specific and clearly define the role they intend to assign to its operations in the Congo.

The Central Government, for its part, cannot remain in such fatal indecision. The equivocal approach adopted by certain countries must cease. The United Nations must define the purpose of its mission and how it is to be accomplished.

I solemnly declare: our intention to end the secession of Katanga by every means - I repeat, by every means - is irrevocable; we are determined to pay whatever price we must, to accept every sacrifice that may be required of us. The Central Government has not, meanwhile, remained inactive. It has been in touch with the heads of sister countries in Africa and Asia and with other friendly countries. It has explained our problems and difficulties to them. It has informed them of the procedures and methods it intends to apply to terminate the secession of Katanga. It has told them that, as a matter of African and Asian solidarity, it

may have to ask them for more assistance in order to end the secession once for all. I may say, incidentally, that the replies we have received so far are extremely encouraging.

If Mr. Tshombe returns to Leopoldville, we are ready to resume conversations, but we cannot allow the previous equivocations and endless talking to continue. We shall expect a sincere and unequivocal desire to settle the problem once for all. This will not prevent us from continuing to take the necessary precautionary measures so long as Mr. Tshombe continues to arm to the teeth. We shall not fall into the trap Mr. Tshombe has set for us by giving him time for a military build-up to maintain his secession.

The draft agreement we have handed to him is evidence of our desire for peace, our wish to achieve a national reconciliation. If Mr. Tshombe creates difficulties merely to gain time, we shall know what conclusion to draw.

The Congolese people must, from this moment, prepare themselves for the trial of strength to which madmen and rebels in the pay of foreign business interests wish to subject us. I am confident that, if Mr. Tshombe and his supporters continue their aggressive policy towards the Congo, they will find themselves face to face with a strong and united people, determined to defend its rights, its unity and its dignity.

With confidence and discipline, respecting order and the rights of others, we are ready to engage in the final battle if we are forced to do so, and we are sure of victory because our cause is just and because we can count on the solidarity of the whole justice-loving international community.

To those hundreds of millions of people who uphold us and support us, we must set an example of a disciplined and united people. Thus we can show all the nations of the world that we deserve their confidence and their support.

ANNEX 14

Letter dated 15 April 1962 from Mr. Tshombe addressed to  
Mr. Rolz-Bennett

Sir,

Further to our conversation this morning, I have the honour to inform you that, being in poor health, as I explained to you, I plan to return to Leopoldville on 3 May 1962. Meanwhile, I have the honour to inform you that a Katangese Government delegation will be leaving for Leopoldville in order to prepare for the resumption of talks.

Moise Tshombe  
President of Katanga

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ANNEX 15

Letter dated 2 May 1962 from Mr. Adoula addressed to Mr. Gardiner

Sir,

I have the honour to acknowledge receipt of your letter of 28 April 1962 (Ref GVT-342/62).

Although the considerations put forward by your representative in Elisabethville deserve special attention, I nevertheless feel that there is a need for you to go to Elisabethville in order to satisfy yourself of Mr. Tshombe's will to reach a final solution as soon as possible.

I would also confirm to you my request in the course of our conversations for your good offices to ensure that Mr. Tshombe sends us his counter-proposals to the conclusions I transmitted to him on the Central Government's behalf on 16 April 1962.

For your information I attach to this letter a copy of a cable which I sent to Mr. Tshombe on 28 April to arrange the next meeting.

The Prime Minister.

Copy of cable to Mr. Tshombe

Mr. Moise Tshombe, President, Provincial Government of Katanga, Elisabethville. I am happy to learn that you will return to Leopoldville on 3 May next to resume the talks. Inviting you to attend first meeting in my office at 10 a.m. on Friday 4 May. I also hope that on that occasion you will present your counter-proposals to the conclusions which I transmitted to you on the Central Government's behalf.

Cyrille Adoula, Prime Minister of  
the Central Government, Leopoldville.

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ANNEX 16

Revised text of the draft conclusions on the Leopoldville talks,  
proposed by the Central Government

The Central Government of the Republic of the Congo, represented by Mr. Cyrille ADOULA, its Prime Minister, on the one hand,

and the Provincial Government of Katanga, represented by Mr. Moise TSHOMBE, its President, on the other hand,

determined to arrive at a final settlement of their differences in a spirit of national understanding and reconciliation,

do hereby solemnly, irrevocably and without any ulterior motives, reservations or conditions, recognize the following:

Article 1

The Republic of the Congo remains one and indivisible within its frontiers of 30 June 1960.

Nevertheless, as the President of the Republic stated on 24 March 1962:

"Unity in no way signifies any desire to disregard the distinctive features (particularismes) of the various regions of the country. On the contrary, the unity of the country is made up of the contribution, the strength and the ideas of each of the distinctive regional identities."

Article 2

The Central Government accordingly undertakes to lay before the Legislative Chambers, within a period of two months, a draft Federal Constitution which maintains the unity of the State, while ensuring that the Provinces enjoy a broad measure of genuine autonomy.

The Central Government undertakes to put the case for its draft Constitution before the Legislative Chambers.

The unity of the State shall be ensured, in particular, by:

- (a) Conferring upon the central power exclusive competence in the following matters:

Foreign affairs and treaties;

The armed forces and gendarmerie;

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The external and internal security of the State;

Regulations concerning judicial organization, procedure and the status of judges;

Immigration and emigration;

Public freedoms, including electoral law;

Legislation concerning nationality;

Criminal law;

Currency and foreign exchange policy;

Tax system and customs;

Formation of the general economic policy of the country;

General legislation on economic matters;

General regulations concerning land tenure and the grant of farming; forestry and mining concessions;

Communications and sources of energy of national importance;

National public works;

General legislation on social matters;

Higher education;

Posts, telecommunications and radio.

- (b) The presence in each Province of a Representative of the Central Power responsible for exercising the functions conferred on the Central Government by the Constitution. Such representative shall be appointed after consultation with the Provincial Government.

### Article 3

The autonomy which the Provinces are recognized to possess shall be affirmed by:

- (a) The organization of a Provincial Legislature and Executive;
- (b) The organization of a Constitutional Court responsible for upholding the division of competence between the Central Power and the Provincial Powers;

- (c) Conferring on the Provincial Power exclusive competence in the following matters:

Law and order in the Province;

Organization of provincial services and administrative sub-divisions;

Education, except higher and university education;

Customary courts;

The grant of forestry, farming and mining concessions and, in general, all matters in which competence is not expressly conferred on the Central Power;

The appointment of staff for the provincial services.

- (d) A clause specifying that no law modifying the distribution of competence shall enter into force without the consent of all the Provincial Assemblies;
- (e) The granting of immunity to members of the Provincial Governments on the same terms as to members of the Central Government;
- (f) The armed forces under the control of the Central Government may not intervene in provincial affairs or in the maintenance of law and order save in one of the following cases:

At the request of the provincial authorities;

If the provincial authorities are unable to discharge their obligations of security and maintenance of law and order; in such event, the armed forces of the Central Government may intervene only after an official order to the provincial authorities to discharge their obligations has proved ineffective and after the Council of Ministers has declared a state of emergency in the region or Province in question;

If a provincial authority refuses to comply with a ruling of the Constitutional Court to the effect that such provincial authority has violated the Constitution;

- (g) The right of the Central Government to take measures to enforce compliance with a law or ordinance by a Province shall be exercised only when the following conditions are fulfilled:

When the provincial authorities have not complied with such law or ordinance;

When two successive notices of non-compliance have been addressed to the President of the Provincial Assembly or to the President of the Provincial Government and have remained unanswered;

When the Council of Ministers of the Central Government has declared a state of emergency with respect to the enforcement of the law or ordinance in question;

- (h) In matters within its competence, the Central Government may, in case of need and with the consent of the provincial authorities, delegate administrative functions to officials of the Provincial Government who, in such case, shall act under the authority of the representative of the Central Government in the Province;
- (i) Within the framework of the laws, ordinances or international agreements concluded by the Central Government, the Provincial Government shall have the right to employ such foreign technicians as it requires.

#### Article 4

Special legislation to define the respective financial competence of the State and the Provinces, and to organize the Constitutional Court, shall be enacted and shall enter into force simultaneously with the Constitution.

The said legislation on financial matters shall recognize the right of the Provincial Government, save in respect of customs duties, to impose taxes on persons and activities within the Province concerned and to collect such taxes. It shall also be recognized that the Central Government shall have the right to levy and to collect similar taxes; in addition, the Central Government alone shall be entitled to arrange for the collection of public revenue, particularly in the form of royalties or rentals, by means of general legislation relating to underground exploration and mining and to farming, forestry and mining concessions.

It shall be specified that revenue from underground exploration and mining and from farming, forestry and mining concessions in any Province shall be divided in the ratio of 70 per cent for the Central Government and 30 per cent for the Government of the Province concerned.

#### Article 5

The following provisions shall be applied in Katanga immediately:

- (1) The Fundamental Law is and remains applicable throughout the Republic.
- (2) The text known as the "Constitution of 5 August 1960" is withdrawn.

(3) The Provincial Government undertakes not to exercise the powers conferred on the Central Power by the Fundamental Law, in particular:

- (a) Questions of national defence are within the exclusive competence of the Central Government;
- (b) The Katangese gendarmerie, divested of all foreign elements, and as now organized, is transferred to the control of the Central Power;
- (c) The United Nations forces are authorized to station detachments at Kolwezi, Jadotville and Kipushi;
- (d) The Katangese currency is withdrawn and replaced by the national currency. Currency of the Republic which was withdrawn from circulation before the signature of these presents by the Katangese Government will be returned to the Monetary Council;
- (e) Agents of the Sûreté, immigration, revenue, customs and telecommunications services are placed under the authority of the Central Government.

(4) Only Provincial Councillors elected before 30 June 1960 in accordance with the electoral law of the Republic and, in the event of their death or if they are under one of the disabilities specified in the Fundamental Law, their alternates may sit in the Provincial Assembly.

(5) The Provincial Government may include only members elected by the Provincial Assembly in accordance with the provisions of the Fundamental Law.

(6) A member of the Central Government appointed after consultation with the Provincial Government shall reside at Elisabethville and, as the delegate of the Central Government and under its authority, shall exercise in Katanga the functions reserved to the Central Government by the Fundamental Law.

(7) Pending the enactment of the legislation referred to in article 4 above concerning the distribution of financial competence between the Central Power and the Provincial Powers, the Central Government is prepared to explore forthwith a provisional arrangement on this question. To that end it undertakes to convene, within one month, a Conference of the Presidents of the Provincial Governments with a view to determining an equitable division of public revenues between the State and the Provinces.

#### Article 6

Subject to the observance of these presents by the provincial authorities, the Central Government undertakes to terminate the state of emergency in Katanga.

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Article 7

The new Constitution shall provide that the frontiers of the Provinces, as established by the Fundamental Law, shall not be modified unless, among other conditions, two-thirds of the members of the Assembly of the Province concerned consent to such modification.

Article 8

It is agreed that the Constitution shall include in its Preamble a clause supporting the Universal Declaration of Human Rights and shall lay down specific guarantees for the full enjoyment by the Congolese people of their civil and political rights.

Article 9

These conclusions shall enter into force one clear day after they are signed by both parties.

Done at Leopoldville in duplicate on

For the Provincial Government  
of Katanga:

Moise TSHOMBE  
President

For the Central Government of the  
Republic of the Congo:

Cyrille ADOULA  
Prime Minister

ANNEX 17

Demands made by Mr. Tshombe in his memorandum, with  
cross-references to Mr. Adoula's "conclusions"

1. Assurances of constitutional reform (cf. art. 2 of Adoula proposals).
2. Territorial integrity (cf. art. 7 of Adoula proposals).
3. Control over provincial police (cf. art. 3 of Adoula proposals).
4. Administrative co-ordination. Autonomy.  
The provincial organs to exercise authority in matters which lie within the competence of the Central Government in the territory of the provinces (cf. art. 3 (c) and (h) of Adoula proposals).
5. Role of National Army contingents in the Provinces (cf. art. 3 (f) and (g) of Adoula proposals).
6. Economic and financial matters. Financial autonomy. (cf. art. 4 of Adoula proposals).
7. Assistance by foreign technicians (cf. art. 3 (i) of Adoula proposals).
8. The proposal that the Katangese gendarmerie should not be placed under the control of the Central Government (cf. art. 5 (b) of Adoula proposals).
9. The UNITED NATIONS gives the following guarantees:  
The Organization would be willing:
  - (a) Gradually to adapt its operations in Katanga to keep pace with developments after the negotiations between the Province of Katanga and the Central Government come to an end.
  - (b) To make every possible effort to ensure that any agreements resulting from the Adoula-Tshombe negotiations are carried out quickly and fairly, particularly as regards the conditions which must be observed and the steps which ought to be taken during a period of transition from the present situation back to normal life and political conditions.

ANNEX 18

Comments on the document entitled "Demands made by Mr. Tshombe in his memorandum, with cross-references to Mr. Adoula's 'conclusions'"

The document in question accompanies a new draft of "conclusions" to the Leopoldville negotiations which reproduces in part the document attached to Mr. ADOULA's letter of 16 April 1962, with certain changes and additions.

The document entitled "Demands made by ..." seems to imply that the assurances requested by President TSHOMBE in his memorandum have been given in a satisfactory manner by Mr. ADOULA in the new "Draft conclusions".

That is not the case.

The first assurance requested by President TSHOMBE was that "no change will be made in the existing situation unless it has been expressly and freely agreed to". The document "Demands made by ..." passes over in silence the question of assurances on this point. On the other hand, article 5 of Mr. ADOULA's new "Draft conclusions" states that:

"The following provisions shall be applied in Katanga immediately:

1. The Fundamental Law is and remains applicable throughout the Republic.
2. The text known as the Constitution of 5 August 1960 is withdrawn.
3. The Provincial Government undertakes ... etc."

It is plain that there is here a glaring contradiction between the positions of Katanga and Leopoldville, and that it must be clearly resolved.

This point cannot be passed over in silence.

Let us now examine the cross-references given in the document "Demands made by ..." between Mr. TSHOMBE's memorandum and Mr. ADOULA's new "Draft conclusions".

Mr. ADOULA's draft conclusions

1. Assurances of constitutional reform:

"The Central Government undertakes to lay before the legislative chambers, within a period of two months, a draft Federal Constitution ... etc."

Mr. TSHOMBE's memorandum and comments

This text gives no assurances to Katanga. The fact that Mr. ADOULA will submit a draft Constitution to the Chamber does not mean that the latter will adopt it. Mr. ADOULA could even deliberately delay matters since under article 5 of his draft he would already have applied the Fundamental Law. There can be no worthwhile assurances of constitutional reform

unless a special statute is planned for the transitional period and it is decided, by agreement between the two parties, that the statute for the transitional period shall apply until the new Constitution has been approved, not only by the Legislative Chambers, but also by the different constituent entities of the Congo, in accordance with the procedure laid down in article 101 of the Fundamental Law or by a referendum (cf. the proposal made by President KASA-VUBU at Liège on 25 January 1962.)

2. Territorial integrity:

"The new Constitution shall provide that the frontiers of the Provinces, as established by the Fundamental Law, shall not be modified."

This case calls for the same comment as item 1 above.

The territorial integrity of Katanga will be respected in the new Constitution (if it is ever adopted), but who can guarantee that it will be respected during the transitional period? That is not an idle fear, for the Leopoldville Government claims to have acted legally in amending article 7 of the Fundamental Law, under which the number of Provinces in the former Belgian Congo was fixed at six. On the basis of the Fundamental Law, which, under article 5 of Mr. ADOULA's conclusions, should already be in application, and of the amendment to article 7, Mr. ADOULA could claim even now that it is legal for him to establish the Province of Lualaba.

3. Control over provincial police:

Article 3 (c) of Mr. ADOULA's draft conclusions confers on the Provincial Power control over "law and order in the Province".

What President TSHOMBE claimed in his memorandum was "normal authority to maintain law and order". Some clarification is needed because, so far as President TSHOMBE is concerned, "authority to maintain law and order" means the power to maintain order throughout his territory in whatever manner he thinks fit, whereas for Mr. ADOULA the provincial authorities are merely to be given the right to have under their command a police force, to be known as the "provincial police".



4. Administrative co-ordination and autonomy:

In the document entitled "Demands made by ...", President TSHOMBE's expressed desire to maintain the authority of the Katangese Government throughout Katanga is met by a cross-reference to article 3, paragraphs (c) and (h), of Mr. ADOULA's new "draft conclusions", which enumerates the powers of the Provincial Governments and specifies how a delegate of the Central Government may be sent to Katanga to act on the Central Government's behalf.

It is to be regretted that the document "Demands made by ..." passes over in silence article 3, paragraph (g). That paragraph establishes the right of the Central Government to take any measures it considers necessary in order to put a law or ordinance into effect in a Province when it has not been carried out by the authorities of that Province. It is immediately obvious that a provision of this kind conflicts directly with the authority of the Katangese Government. Furthermore, the presence of a representative of the Central Power (article 2 (b)) and the right of the Central Government to apply its own decisions directly, against the wishes of the provincial authorities, are inconsistent with paragraph 5 of President TSHOMBE's memorandum, which says: "The Government of Katanga must be assured of the authority to organize within its jurisdiction the services required for such administration. In that connexion, it is inconceivable that two administrations should coexist in the same place, one subordinate to the central authority and the other to the Katangese Government." Lastly, the competence reserved to the provincial Power by article 3 (c) are absolutely laughable; the provincial authorities have even been deprived of powers reserved to them under article 220 of the Fundamental Law. It is clear that, if the Katangese people refused to accept the Fundamental Law because it took too many powers away from the provincial authority and gave them to the central authority, they cannot accept a new Constitution which grants the Provincial Government even further powers than the Fundamental Law.

5. Role of National Army contingents  
in the Provinces:

The document refers to article 3 (f) and (g) of Mr. ADOULA's proposals, which provide inter alia that the Central Government's armed forces may intervene in the Province "if the provincial authorities are unable to discharge their obligations of security and maintenance of law and order" or if the Provincial Government does not give effect to a decision of the Central Government.

6. Economic and financial matters:

Mr. ADOULA states that special legislation will be enacted on economic and financial matters, which will establish the respective competence of the State and the Provinces. However, it is stated in the second paragraph of article 4 even now that the Central Government reserves the right to customs revenue, that it has the power to levy taxes of any kind in the Province, and that it alone is entitled to arrange for the collection of public revenue. The third paragraph states that revenue from underground exploration and mining and from farming, forestry and mining concessions shall be divided in the ratio of 70 per cent for the Central Government and 30 per cent for the Provincial Government.

Article 3, paragraphs (f) and (g), give the National Army the right to intervene in the Province at any time. Either they will intervene because the Provincial Government does not bow to a law or even an ordinance of the Central Government, or they will do so because there have been "disturbances" in the Province. That means in effect that whenever the Central Government becomes dissatisfied with the Provincial Government, some tribal faction which considers itself unfairly treated will always be found ready to provoke disturbances. The Central Government will then intervene, having found a pretext to overthrow the provincial authority. If the provincial authority does not displease the central authority, but still fails to obey its orders, the latter merely has to issue an ordinance, and its word immediately becomes law in the Province. We are far from the assurances requested by Mr. TSHOMBE: "the Central Government must cease to oppose the authority of the Government of Katanga" (item 2).

In his memorandum (item 4), President TSHOMBE claimed the "authority to levy, within its jurisdiction, the tax to finance the payment of its agreed contribution to the Central Government". The right to levy taxes, and to remit a contribution to the Central Government, implied that the Central Government could not itself levy taxes in Katanga. But Mr. ADOULA's article 4 completely reverses the position. The Katangese Government would have nothing more than a sort of "residual power" to levy taxes on its own territory, and the Central Government could levy in Katanga as many taxes as wished.

Still worse, customs, public revenue and mining royalties are reserved exclusively to the Central Government, which would grant a proportion (30 per cent) to the Provincial Government.

7. Assistance by foreign technicians:

The document refers to article 3 (i) of the ADOULA proposals: "Within the framework of the laws, ordinances or international agreements concluded by the Central Government, the Provincial Government shall have the right to employ foreign technicians."

What will happen if the Government of Katanga considers it needs a certain type of technical aid, but the Central Government has other ideas on the matter? The Katangese Government would be thwarted, and thus has no assurance "of the assistance of freely chosen technicians in various fields of activity" (item 6 of the memorandum). Furthermore Mr. ADOULA's draft deals only with the positive aspect of the question. If, for example, the Central Government wanted to put a foreign technician in charge of a service under the authority of the Provincial Government, would the latter have the right to object? According to Mr. ADOULA's article 3, it would not.

8. Katangese gendarmerie:

According to Mr. ADOULA: "The Katangese gendarmerie, divested of all foreign elements, and as now organized, is transferred to the control of the Central Power.

It should be noted that article 5, which contains the paragraph concerning the Katangese gendarmerie, is to be applied immediately. The Katangese Government would therefore have to surrender immediately its authority over the gendarmerie, which would be incorporated into the ANC straight away. In President TSHOMBE's memorandum (item 2), the Katangese gendarmerie was to remain a separate entity under the direct authority of the Provincial Government, just as the National Army comes directly under the Central Government. It/must also be pointed out once more that the Fundamental Law authorized the creation of provincial gendarmerie.

The document "Demands made by ..." goes on to state the guarantees which the United Nations would be willing to give to ensure that any agreements reached between the Central Government and the Katangese Government following the ADOULA-TSHOMBE negotiations would be put into effect.

Merely by reading the above text, it can be seen quite clearly that the two parties are not yet so close together that the time can be said to have come for discussing the procedure for putting agreements into effect and the guarantees to be provided by a third party. At the present stage of negotiations, the role of the United Nations should be confined to providing guarantees for the various participants so that the talks can continue.

Katanga is prepared to proceed with genuine negotiations, but not to listen to a monologue by the Central Government in which it seeks to impose on Katanga - which has already gone through two wars without abandoning its ideas - a Constitution even more centralized than the Fundamental Law of 19 May 1960 and a statute for the transitional period which goes beyond that same Fundamental Law.

Elisabethville, 1 May 1962

ANNEX 19

Comments on the "Draft conclusions on the Leopoldville talks"  
submitted by Mr. Adoula

For the substance of this new draft, and the Katanga Government's attitude, see today's "Comments" on another text submitted by the United Nations.

However, the new text should be compared with the old one. Articles 4 and 7-9 of the new text represent an attempt to make an adequate response to the comments made by President TSHOMBE in his memorandum. Another text, also of today, discusses the value of Mr. ADOULA's proposals.

A quick look at the old articles might suggest that Mr. ADCULA has taken a more conciliatory attitude, but this is not so.

Instead of undertaking to submit a new draft "Constitution", Mr. ADCULA in article 2, paragraph 1, of his new draft speaks of submitting a draft "Federal Constitution". Only one word has been added, presumably to please President TSHOMBE, or perhaps to deceive him about the Central Government's real intentions. Yet the new proposed new Constitution for the Congolese State has not changed one iota.

Now consider article 2, paragraph 2. The old draft merely listed the thirty-six spheres of competence defined in article 219 of the Fundamental Law, except that it added the "tax system" to "customs". This addition was dropped as unnecessary in view of item 10, "The finances of the State".

It was probably felt that Mr. ADOULA's first list was too long and liable to give the impression that the Provinces were to be left with hardly any powers. Accordingly:

1. The appointment of provincial inspectors has been removed from the list; and,
2. Certain groups of powers have been combined, for example:
  - establishment of regulations concerning equivalence of primary, secondary, technical and teacher-training certificates;
  - the appointment of provincial inspectors to exercise educational supervision of primary, secondary, technical and teacher-training schools;
  - the establishment of regulations on standard qualifications for teaching staff;
  - legislation on the art of healing.

These items have been deleted, and are now covered by the two words "Higher education", which mean that higher education is reserved to the Central Government. The educational system forms a pyramid with higher education at the top, and if any Congolese wants to have a university diploma legally recognized in future, his Provincial Government will obviously have to observe regulations laid down at the Central Government level. In the circumstances the list given in the old text was quite unnecessary, and whoever drafted the new text realized this.

As to the general regulations concerning underground exploration - "the co-ordination of energy sources of national importance, including hydro-electric plant and resources, geological, geodetic, cartographic and hydrographic services" - it is evident that all these spheres of competence are covered by the "general regulations concerning land tenure and the grant of farming, forestry and mining concessions; communications and sources of energy of national importance", as enumerated in the new text.

The same short passage also covers the following three powers, which were set forth separately in the old text:

- aviation, including airports and air protection;
- national railways;
- national roads.

Lastly, the supervision of local agencies by the Central Government has been moved from article 2 (a) to article 3 (f), (g) and (h). Article 5, paragraph 3 (b), which provided that "The Katanga Gendarmerie is transferred to the control of the central power and will be integrated into the Congolese National Army", has been toned down and replaced by another form of words, which purports to be more generous but which is no different in substance: "The Katanga Gendarmerie, divested of all foreign elements, and as now organized, is transferred to the control of the Central Power". Incidentally, the words "divested of all foreign elements" were added to bring the text more closely into line with the resolutions of the United Nations.

This brief examination shows clearly enough that Mr. ADCULA's new draft does not differ from the old one in any way.

Elisabethville, 1 May 1962.

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ANNEX 20

Observations on the Katanga Government's comments

1. Federal

(a) The insertion of the word "Federal" should not be interpreted lightly. In fact, it clearly indicates the type of political and administrative organization with which the Congo would be invested under the draft Constitution.

(b) The use of the word "Federal" represents a major concession.

(c) The use of this word ensures the granting of real autonomy to the Provinces.

(d) The word has both a constitutional and a juridical meaning.

(3) It is a compromise between a confederal State and a unitary State.

2. Division of competence

(a) The new list of spheres of competence conferred on the Central Government has not merely been simplified. In fact, it transfers to the provincial authorities all matters relating to primary, secondary and technical education and teacher training; it abolishes the system of inspectors of education subordinate to the Central Government; it vests in the provincial authorities the right of inspection under the educational system.

As to land tenure and the grant of farming, forestry and mining concessions, it should be noted that the powers of the Central Government are limited to the promulgation of general regulations, while the actual grant of concessions is assigned to the provincial authorities.

Competence in matters of communications and sources of energy of national importance is naturally conferred on the Central Government. It could not be otherwise, since these are matters of general concern affecting the whole nation and transcending the interests of each constituent part of the country.

Obviously, no Government can give an absolute undertaking that it will delegate to the provincial authorities the performance of all the functions for which the central authorities are responsible, since the very existence of a central government would then be unnecessary. Article 3, paragraph (h) is so worded as to provide for the delegation of functions by agreement with the provincial authorities, and this is in itself a major concession.

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(b) There is a limit to the number of spheres of competence which can be transferred to the Provinces in a federal State.

(c) The sentence: "... it is inconceivable that two administrations should coexist in the same place, one subordinate to the central authority and the other to the Katangese Government" does not accurately describe the conditions which exist in any federal State.

(d) Article 3 provides for:

- (i) The organization of provincial services and their subdivisions;
- (ii) The appointment of staff;
- (iii) Arrangements for the division of competence;
- (iv) Arrangements for the delegation of functions.

(e) It is suggested that the question of the representation of the Central Government in the Provinces should be considered separately.

(f) It would be important to obtain from the Katangese authorities an alternative list of spheres of competence, bearing in mind the federal character of the proposed Constitution.

### 3. The Katangese gendarmerie

(a) Article 5 (b) is in fact more generously worded than the earlier text, since it permits the retention of the gendarmerie as now organized, while reconciling that concession with the principle that all the armed forces of the nation should be under the control of the Central Government. No nation can exist as such without unified basic control of its armed forces. This principle is not inconsistent with the undertaking to retain the Katangese gendarmerie as now organized - an undertaking which is in accordance with the assurances requested by Mr. Tshombe.

As stated by Mr. Tshombe in his comments of 1 May 1962, the stipulation that the gendarmerie should be "divested of all foreign elements" is in conformity with the resolutions adopted by the United Nations Security Council. Moreover, it should create no problem for the Katangese gendarmerie, since Mr. Tshombe has given an assurance that there are no longer any "foreign elements" in the gendarmerie and that he no longer wishes it to have any.



(b) The troops owe allegiance to the Chief of State, and this allegiance cannot be transferred to a Federal Ministry or to a Province.

(c) Fears have been expressed that, if the Katanga problem was settled in accordance with the Fundamental law, that might lead to an invasion by the ANC, which might clash with the gendarmerie or cause confusion in the Province. In view of the stipulation that the United Nations would continue to play a part, this arrangement gives Katanga the best possible guarantee of security and stability. It is a concession obtained by dint of great effort. Moreover, article 3, paragraphs (f) and (g), lay down the precise conditions which must exist before any action can be taken in the Provinces by the armed forces of the Central Government. These conditions provide the Provinces with adequate safeguards and, indeed, limit the action the Central Government can take to maintain order and peace or to enforce its laws throughout the country.

(d) The Katangese comments of 1 May 1962 say that the Fundamental law authorizes the creation of "provincial gendarmeries". This section of the Fundamental law should be quoted, because it is not clear whether or not the Fundamental law does in fact authorize the creation of such units.

(e) The phrase in the Tshombe memorandum: "just as the National Army comes directly under the Central Government" calls for an explanation.

#### 4. Assurance of constitutional reform

(a) From the political and constitutional standpoint, the best assurance a Government can give is an undertaking that a constitutional instrument will be adopted by the legislative authorities. It should also be noted that whatever agreement is reached at the end of the Adoula-Tshombe conversations will form part of an official report to the Security Council. During the transitional period, this agreement will be an important document which will guide the United Nations in its operations in the Congo. All these considerations, coupled with the formal nature of the agreement concluded at the end of the negotiations, will help to ensure the faithful discharge of whatever undertakings are given.

(b) The delay which, it is suggested, Mr. Adoula might be tempted to cause would constitute a most serious infringement of this agreement.

(c) Any special transitional arrangement which might be agreed upon would apply only to Katanga. This is because only Parliament has the right to set aside the Fundamental law.

(d) The wording of article 101 of the Fundamental law - the article which Katanga suggests should apply in this case - could be proposed as a supplementary article to the "conclusions".

(e) Some provisions for the transitional period, although based on the Fundamental law, have been adapted to take account of Mr. Tshombe's requests. A number of adaptations from the Fundamental law are given for the transitional period in article 5; these include, in particular, the following:

- (i) Retention of the gendarmerie as now organized "divested of all foreign elements" and under "the control of the Central Power" (article 5/(3) (b));
- (ii) It might be possible to clarify article 5, paragraph (6), which deals with the appointment of a representative of the Central Government in the Province, by adding that the member of the Central Government would be appointed by the Chief of State in consultation with the Provincial Government;
- (iii) Article 5, paragraph (7), establishes a special arrangement in respect of finances.

## 5. Territorial integrity

If the stipulation in article 7 of the Adoula "Conclusions" was applicable immediately after the signature of the "Conclusions", a Province of Lualaba could be created during the transitional period only with the consent of two thirds of the members of the Katangese Provincial Assembly.

## 6. The role of National Army contingents in the Provinces

(a) The stipulations made in article 3 (b), (g) and (h) have not simply been transferred from one article to another. They represent a considerable effort and constitute, in fact, a major concession in the direction of provincial autonomy and an assurance to the provinces regarding the conditions under which the Central Government could take steps to enforce the laws and ordinances falling within its jurisdiction.

The provisions of article 3 (f) and (g) are designed to delimit the right of the Central Government to intervene in provincial affairs and to take action for the enforcement of laws. The comment by the Katangese authorities approaches this question from the opposite angle, so as to create the impression that it opens the way for the Central Government to take arbitrary action in the provinces.

No conceivable nation can exist, nor can the Central Government of any nation be expected to function, if it is deprived of the right to have national laws enforced in the Provinces. What the Provinces can legitimately demand are safeguards to ensure that the central authorities must comply with suitable conditions in enforcing the law throughout the country. Such conditions are precisely spelled out in article 3, paragraph (g). Article 3, paragraph (f), enumerates conditions which constitute a very broad safeguard for the Provinces and which go a long way towards meeting the Katangese authorities' demand for non-intervention by the Central Government's armed forces in the affairs of the Provinces. Paragraph (h) offers a further large concession in providing that certain functions, which would otherwise be naturally assumed by officials of the Central Government, may be delegated to provincial officials.

(b) It is obvious that, with this agreement and the arrangement to be made for putting it into effect, the idea of the Central Government's waging war on Katanga is out of the question.

(c) It would be useful, however, if the Katangese authorities would present an alternative draft of an instrument, bearing in mind the federal character of the proposed Constitution.

#### 7. Economic and financial matters

(a) Article 4 contains provisions for the enactment of legislation to define the respective financial competence of the State and the Provinces, and for the establishment of a "Constitutional Court".

It is impossible to contemplate a Central Government with no means of obtaining revenue. The establishment of a customs system is one of the basic prerogatives of the central authorities in any country. It is obvious, therefore,

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that any fundamental law or constitution must recognize such a principle. It should be noted that article 5, paragraph (7) mentions a provisional arrangement for the division of financial competence during the transitional period. It is proposed that the Provincial Presidents should meet in conference one month after the signature of the document in order to decide upon an equitable division of public revenues between the State and the Provinces.

(b) A list of eleven federal States, showing how other States and Central Governments obtain their revenue, is annexed hereto. It is suggested that Katanga should submit an alternative list or whatever formula it may wish to propose.

#### 8. Technical assistance

(a) The agreement or the constitutional clause on this subject would deal, not with the type of service, but rather with procedure. The Central Government will determine the form in which technical assistance matters are to be dealt with in the Congo; this is only natural, for technical assistance derives from international agreements which the Central Government alone is competent to sign, whether with international agencies or with individual countries. However, article 3, paragraph (i), establishes the right of the provincial Governments to employ, within the framework of these laws or international agreements, such foreign technicians as they require.

(b) There is no question of forcing the Province to accept any personnel.

(c) It is suggested that an alternative formula should be proposed to meet the misgivings expressed in the comments.

#### 9. Co-ordination and administrative autonomy

It is obvious that no Government can directly undertake to delegate to the provincial authorities the performance of all the central authorities' functions. If that were done, the very existence of a central government would become unnecessary. Article 3, paragraph (h), provides authority for the delegation of functions in agreement with the provincial authorities. This is in itself a major concession.

Relations between the federal and the provincial services do not imply that two administrations must coexist in the same place, for they deal with distinct and separate matters.

10. The United Nations guarantees

(a) President Tshombe's memorandum of 9 April 1962 asked the United Nations for guarantees. In reply to that request, the United Nations signified its willingness to ensure that the conclusions were put into effect fairly and impartially.

(b) It is hoped that these preliminary explanations will bring Katanga and Leopoldville close enough together to produce conclusions acceptable to both sides.

ANNEX 21

Summary record of the meeting held at Mr. Tshombe's residence  
on 2 May 1962, at 4.30 p.m.

PRESENT:

Mr. R.K. Gardiner	
Mr. J. Rolz-Bennett	
Mr. A.B. Tatistcheff	
Mr. Tshombe	President
Mr. E. Kimba	)
Mr. C. Munongo	)
Mr. J.B. Kibwe	)
Mr. G. Kitenge	)
Mr. P. Muhona	)

Ministers

Mr. Gardiner asked Mr. Rolz-Bennett to read out extracts from a document which he and Mr. Rolz-Bennett had drafted and which contained their observations on the comments submitted by the Katangese Government and handed to Mr. Gardiner by Mr. Tshombe at the morning meeting.

Thereafter the meeting was devoted to a point-by-point discussion of the ten questions dealt with in Mr. Gardiner's document. The main arguments of the two parties were as follows:

Mr. Kimba and Mr. Munongo, on behalf of the Katangese, said that they could not simply accept the word "Federal" since there were many kinds of federal constitutions and the Katangese were not sure that the kind finally adopted would be acceptable to Katanga. They maintained that the bare list of the spheres of competence assigned by Mr. Adoula, in his "Conclusions", to the Central and Provincial Governments respectively went far beyond their own ideas of what the division of powers should be within a federal structure.

Mr. Gardiner emphasized very strongly that it was incumbent on the Katangese party to submit its own list of the respective spheres of competence to be conferred on the Provinces and the Central Government. All Provinces had the right to

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present their own views on the subject, and it was in the interests of the Katangese themselves to do so now. Moreover, by comparing the two lists it would be possible to hold a useful discussion leading to the establishment of a single list acceptable to both parties.

The Katangese agreed to prepare such a list.

Mr. Munongo, Mr. Muhona and Mr. Kimba stated emphatically that the federation must be a genuine one acceptable to all the Provinces and all the people of the Congo. It was not enough merely to state that the Constitution would be "Federal". Mr. Munongo said he had been shocked at the use of the word "Province" to describe Katanga. In his opinion, Katanga was an entity, as had been proved by the shedding of Katangese blood in September and December 1961 before the eyes of the country and of history. It was distasteful to him to hear unilateral statements concerning the powers which would devolve upon Katanga and those which would devolve upon the Central Government.

Mr. Gardiner reminded the Katangese that there was a Parliament in which all the peoples of the Congo, including the Katangese, were represented. It was the task of that Parliament to draft the Constitution, and all the people would have the opportunity of making their views known through their representatives. He again urged the Katangese to submit their ideas, for they were particularly well qualified to put forward the point of view of Katanga, and the early conclusion of an agreement between Mr. Tshombe and Mr. Adoula would give them an opportunity to state their position at the very outset of the drafting of the Constitution.

Mr. Muhona stated that Mr. Adoula's proposals could represent only the views of some members of the Congolese Government; he wondered whether they reflected the opinion of the leaders of the Provinces. In his view it would be desirable to consult the representatives of other Provinces beforehand, in order to arrive at a document which would truly reflect the majority views of the Congo as a whole.

Mr. Rolz-Bennett reminded the meeting that, in accordance with article 98 of the Fundamental law, the substance of the Adoula/Tshombe conclusions must be submitted to the constituent power, on which all the provinces and their points of view were represented.

Such conclusions as might be agreed upon during the Adoula-Tshombe conversations would serve as the basis of a draft Constitution which the constituent power would have to discuss and approve. That procedure would make it unnecessary to hold the type of consultations suggested by Mr. Muhona.

Mr. Kitenge then said that the meeting seemed to be making real progress, and that it might perhaps be desirable to continue the discussions while Mr. Gardiner shuttled between Leopoldville and Elisabethville; Mr. Tshombe and Mr. Adoula need not meet until agreement seemed assured, when they would have to sign the final document.

Mr. Gardiner said that, while he personally wished to do everything in his power to bring about an agreement, he thought that the main question was the existence of a conflict between Katanga and the rest of the Congo, and that it was imperative to settle that conflict as quickly as possible; that could not be done without meetings between Mr. Tshombe and Mr. Adoula. The problem of the division of competence was of great importance, and he suggested that the Katangese should prepare their own proposal on the subject that evening. Mr. Tshombe would thus leave for Leopoldville, taking with him an expression of the point of view of his whole Cabinet. Subsequently, during the negotiations, he could communicate with his people by cable or telex. He added that the "fact of Katanga" was recognized at Leopoldville.

Mr. Tshombe felt that there would perhaps be no difficulties with the ONUC guarantees. Mr. Gardiner replied that he was prepared to tell Leopoldville that ONUC would give its guarantees.

Mr. Munongo gave as an example of the "difficulties" experienced with ONUC guarantees the case in which General Rikhye had authorized the ANC to enter Kongolo and other localities in the region despite a previous agreement prohibiting such action.

Mr. Gardiner replied that the Katangese delegation could place full reliance on the ONUC guarantees, which would be backed by both the Secretary-General and himself. However, the Katangese, for their part, would have to stop authorizing the importation of such items as weapons into Katanga.



The conversation then turned to the Central Government's power to levy taxes, and Mr. Gardiner stated that he could not take seriously any Katangese proposal which would deny the Central Government that right in the Provinces.

Mr. Tshombe feared that, if the Central Government was granted the right to collect taxes in Katanga, the money would be wasted, squandered and lost to both parties. If, for example, the Katangese customs agents were appointed tax collectors by the Central Government, they would become "infatuated" with their own importance and would misappropriate and steal the money.

Mr. Gardiner pointed out that the manner of collecting the money was a mere detail. What was important was that the Katangese should recognize the Central Government's right to collect taxes in the Provinces. Subsequently, the Katangese could insist that their Minister for Finance - Mr. Kibwe in the present instance - should act as the agent of the Central Government, which would mean that the revenue from the taxes would in fact remain in the hands of the Katangese.

Mr. Munongo replied that that would be the ideal solution if one could be sure that honesty would prevail.

Mr. Tshombe warmly thanked Mr. Gardiner for all his very useful suggestions; he regretted that it had not been possible to hold the present talks earlier, for they would have saved a great deal of time. The Katangese, for their part, had prepared some proposals, but in the light of the discussions he thought that they had been largely superseded. Mr. Gardiner's observations were of the greatest importance, and the problem now was one of timing. The Katangese would draft their proposals taking Mr. Gardiner's observations into account. However, he, Mr. Tshombe, had already announced publicly that he would be leaving for Leopoldville the following day. If he did not leave at the scheduled time, confusion, misunderstanding and misinterpretation of his motives would result. He felt, however, that the Katangese would need one or two days to draft their proposals, and that it might be useful to have further discussions with Mr. Gardiner before taking those proposals to Leopoldville. He asked Mr. Gardiner for his help in resolving the difficulty.

Mr. Gardiner replied that he fully understood the importance of the problem; he was quite prepared to explain it at Leopoldville and to make the appropriate statement to the Press.

Mr. Tshombe assured Mr. Gardiner that he fully intended to keep his promise to return to Leopoldville and wished to be sure that there was no misunderstanding on the subject.

Mr. Gardiner agreed, adding that they might perhaps leave together on the Saturday or Sunday; he would keep New York abreast of the progress of the negotiations.

. . . . .

ANNEX 22

Counter-proposals submitted by the Katangese Ministers  
to Mr. Gardiner on 3 May 1962

Article II

A. Conferment upon the central power of exclusive competence in the following matters:

- Foreign relations and treaties. (However, it is essential for all the federated States of the Congo to be represented abroad).
- Armed forces; however, Katanga insists that the President of each State should be Commander-in-Chief of the Army.
- External security.
- Regulations concerning judicial organization and procedure and the status of judges. Katanga insists on the adoption of minimum qualifications for judges.
- Legislation concerning nationality.
- Criminal law - Katanga insists that the judiciary must be independent of the executive.
- Tax system.
- Formation of the general economic policy of the country.
- Communications and sources of energy of national importance. Katanga insists that each State should be given the right to fill the gaps left by the central power.
- National public works (should be within the concurrent competence of the Central Government and of each member State).
- General legislation on social matters - However, this may not come into force until it has been approved by each member State.
- Higher education (concurrent competence).
- Post and telecommunications.
- Radio (concurrent competence as above).

/...

- B. The powers conferred on the Federal Government by the Constitution must be exercised by the President of each State. (Two men cannot sit on the same leopard-skin).
- C. Internal security of the State and of the Federation, immigration and emigration. (Same comment as for general legislation on social matters).
- Electoral law - (Katanga insists that the regulations governing federal elections should be approved by each member State before their entry into force. However, each State has the right to legislate on internal elections.
- Customs, currency and exchange policy, general economic legislation. Katanga insists that the competent Minister of each State must be consulted beforehand and that legislation on these three matters shall not come into force until it has been approved by the Assembly of each State.

### Article III

- (c) Generally speaking, all competence not expressly conferred on the federal power pertains to each State. In addition to these powers conferred on the member States, there are also the concurrent powers mentioned above.

State police and gendarmerie.

- Except for higher and university education, competence in which is held concurrently, all education is within the exclusive competence of each State.

- (d) A clause specifying, etc. ....

- (f) - The armed forces ..... - If the provincial authorities are unable .... after the President of the Federation (former text: Council of Ministers) has declared ... - Katanga cannot accept this provision unless the "inability" in question is defined and illustrated by examples.

- (g) The right of the Central Government ...

- When the provincial authorities ...
- When the Constitutional Court has passed judgement in adversary proceedings ...
- When two successive notices ...
- When the President of the Federation ...

- (i) Officials of the federal services shall be under the administrative authority of the President of the State in which they serve. The said President shall be accountable to the Federal Government for their activities. In consultation with all the States, a system of inspection shall be established for the federal services.

/...

The Government of each State shall have the right to employ such foreign technicians as it requires, subject to such general regulations as the Federal Government may make or to such international agreements as it may conclude by virtue of its constitutional powers. The general regulations must be made subject to prior consultation with and the consent of the member States.

#### Article IV

Paragraph 1 - O.K.

Paragraphs 2, 3: Provisional arrangement to be made later  
(see table of duties and taxes).

#### Article V

Delete 1 and 2.

N.B. Clause explaining why 3 is unnecessary.

- (d) The principle of a single currency for the Federation is accepted. The Katangese currency remains in circulation, but no new notes will be issued; it remains in circulation until new currency has been issued for the whole Federation.

- Only (d) is retained.

#### Article VII

The present frontiers of Katanga will not be modified unless the Assembly of Katanga gives its consent to such a modification by at least a two-thirds majority of the members present.

N.B. (1) The Chief of State is the Commander-in-Chief of the Army.

- (2) The word "Province", wherever it occurs, must be replaced by the word "State".

ANNEX 23

Comments on the counter-proposals discussed by the  
Katangese Ministers with Mr. Gardiner

Article 2 - Distribution of competence

Competence conferred exclusively on the central authorities (Federal Government):

1. The request that the members of the diplomatic and consular corps should be chosen from all the member States of the Federation is reasonable, provided it is clearly stated that these members must be chosen on the basis of their qualifications, competence and integrity.
2. The armed forces - There is no valid basis for the formula recommended, and this approach would seem to involve some danger for the Federation's future.
3. No comment.
4. The establishment of minimum qualifications for judges is reasonable.
5. No comment.
6. The independence of the judiciary from the executive is a universally recognized constitutional principle, and therefore its adoption should create no difficulty.
7. No comment.
8. No comment.
9. The right of member States of the Federation to supplement the efforts and activities of the Federal Government in connexion with sources of energy and communications of national importance is reasonable, given the necessary co-ordination between the Federal authorities and those of the States.
10. The activities of the Federal and State authorities in connexion with national public works are a matter for co-ordination rather than for concurrent competence. The principle of concurrent competence here and in other fields might operate to impede action instead of facilitating it through combined efforts, which appears to be the intention of this clause.

11. The reservations expressed concerning legislation in social matters reduce the Federal Government's competence in this field to nil and, in effect, transfer that competence to the member States of the Federation. A reasonable formula would be to impose on the Federation the obligation to respect the distinctive characteristics of each member State in the social field.
12. Instead of providing for concurrent competence in the field of higher education, it would be better to allow the States to aid and assist the Federal Government in its action in that field.
13. No comment.
14. Radio broadcasting is of necessity a federal activity, inasmuch as the international broadcasting regulations must be taken into account by the national authorities. Consequently, the establishment of concurrent competence in this field does not appear to be justified.
15. With respect to item (b) of the counter-proposals, it might be better to adopt the formula used in article 108 of the Fundamental Law and to state, for instance: "The Presidents of the States shall act as representatives of the Federal Government in their respective States and shall thus be responsible to the Federal Government."
16. It is not clear whether the reservations on item (c) (internal security of the State, immigration and emigration) relate to legislation in these fields or to administrative services. This might usefully be clarified as follows:

Legislation concerning and the services responsible for the internal security of the Federation and questions of emigration and immigration shall be within the competence of the Federal authorities. Each State shall be entitled, if circumstances so require, to establish an internal State security service which shall be co-ordinated with the security service of the Federation.

17. The reservations concerning the electoral laws are contradictory because, on the one hand, the member States would have a veto over federal electoral legislation while, on the other hand, each State would have an exclusive right to legislate on internal election matters. It seems extraordinary to demand a veto on federal legislation and, at the same time, to reserve for the States an unlimited right to promulgate internal laws. Here again there appears to be some misunderstanding of the operation of the federal organs, which seem to be regarded as completely unrelated to the organs of the member States. An acceptable course would be to confer on the federal authorities legislative power with respect to federal electoral laws, and to reserve to the States similar legislative powers with respect to internal elections, on the basis of electoral principles which would apply to the Federation as a whole.

18. The reservations expressed on the subject of customs, currency and exchange policy, and general economic legislation will probably be unacceptable to the Central Government. A better plan would be to confer these powers on the Federal Government, with a clear stipulation that each member State of the Federation would be supplied with foreign currency to meet its economic needs, in proportion to its contribution to the national economy. To that end, a system of close consultation should be established between the competent Federal and State Ministries for the purpose of fixing their respective quotas, at regular intervals.

#### Article 3 - Competence of the member States of the Federation

1. The reference in paragraph (b) to concurrent powers or competence has already been commented on above.
2. Paragraph (c) deals with the police and gendarmerie. To give each member State of the Federation power to maintain not only a police force but also a gendarmerie would be tantamount to encouraging separatist movements and, perhaps, even providing a basis for action by the other States which would be just as destructive of the proposed Federation. The present gendarmerie - particularly the Katangese gendarmerie - is more a military force than an organization for the preservation of law and order. There is no restriction on its strength or on the military equipment which may be placed at its disposal.

If it proved impossible to provide each member State with forces in addition to a police force, a less dangerous course would be to provide for the establishment of a guard, of limited strength and equipment, to perform law enforcement duties in rural areas, leaving the police to maintain security in the towns. The Federation would thus have a national army, and each State a police force for the towns and a guard for the rural areas. Control over the strength and armament of the police force and guard might be exercised through a suitable inspection system in which ONUC might render assistance.

3. The proposal to replace the Council of Ministers by the President of the Federation in paragraphs (f) and (g) might be improved by providing for a joint decision by the President of the Federation and the Prime Minister.
4. The request for a definition of the "inability" of the provincial authorities to discharge their obligations of security and maintenance of law and order is neither reasonable nor necessary. A guarantee against any abuse by the Federal Government is provided by the fact that the Federal authorities cannot take any action unless the President of the Federation, in agreement with the Prime Minister, has declared a state of emergency in the region or province (State) in question.



5. The addition to paragraph (g) of a condition calling for a decision by the Constitutional Court before measures may be taken to enforce a law or ordinance in a province (State) would have the effect of hampering any action by the Federal Government. An acceptable reservation would be to leave the door open for member States to appeal to the Constitutional Court for a decision and, if necessary, a remedy against what are regarded as illegal measures taken by the federal authorities to enforce a law or ordinance in the territory of the member State.
6. The reservations contained in paragraph (i), which appear to refer to paragraph (h) of the Adoula conclusions, have no sound political or administrative basis. However, if some suggestion along these lines is considered necessary, a less objectionable formula would be: "Officials of the federal services shall be under the administrative control of the federal authorities through the President of the State in which they serve. The said President shall remain accountable to the Federal Government for the enforcement of laws, ordinances and directives promulgated by the federal authorities and for the effective functioning of federal services within their State. A system of inspection for the federal services shall be established in consultation with all the member States of the Federation."
7. With regard to the employment of foreign technical personnel, the text contained in the counter-proposals is not the most suitable formula even for a very loose Federation. What is more desirable, however, is to eliminate the proposal that the member States should have a veto over Federal Government regulations concerning technical assistance.

It would be more important for the member States to obtain the right of prior approval of any foreign expert selected for service in their territory.

#### Article 5 -

The basic purpose of the provisions in article 5 of the Adoula Conclusions is to put an end, both de jure and de facto, to the Katangese secession. Without such a provision, the status quo of the Katangese secession would be maintained, thus casting doubt on Katangese intentions and further compromising the ultimate adoption of the Constitution.

If paragraphs (1) and (3) of article 5 are deleted, alternative proposals should be put forward for the transitional period, particularly in relation to the armed forces, the gendarmerie, currency, customs, immigration and emigration, security, telecommunications and the ONUC's role in helping to carry out measures during the transitional period.

Paragraph (2) of article 5 should be retained. The maintenance in force of the Constitution of 5 August 1960 would run directly counter to the termination of the Katangese secession, which should be brought to an end.

ANNEX 24

Draft Conclusions on the Leopoldville talks  
prepared by the Katangese representatives

The Government of the Republic of the Congo, represented by Mr. Cyrille ADOULA, its Prime Minister, on the one hand

and

The Government of Katanga, represented by Mr. Moise TSHOMBE, its President, on the other,

With a view to the final solution of the Congolese problem, as a result of the conciliatory efforts made by the United Nations in the territory of the former Belgian Congo,

With a view to the immediate institution of co-operation in the political, economic, financial and military fields,

HAVE AGREED AS FOLLOWS:

Article I

The parties recognize that the solution to the Congolese problem must be worked out in two stages: the first period, to be known as the transitional period, shall run from the signature of this agreement until the adoption and application of the new Constitution; the second period, to be known as the final period, shall be that in which the new Constitution is applied.

A. FINAL PERIOD

Article II

The future Constitution shall respect the following principles:

1. The Republic of the Congo shall be organized as a Federal State;
2. The States shall be governed by their own laws and shall be subject to the federal authority only in the matters of which a limitative list is given below;
3. The organs of the Federation shall be: the President, the Federal Assembly and the Federal Government;

/...

4. No State may prohibit the free movement of persons and property throughout the territory of the Federation;
5. The States shall be equally represented in the Federal Government;
6. The Federal Assembly shall be composed of an equal number of elected deputies from each State;
7. The President of the Federation shall be Commander-in-Chief of the army. Each State shall maintain its own gendarmerie;
8. The budget of the Federation shall be established by the Federal Assembly. Each State shall contribute, in an equal proportion, from its own revenues;
9. The Federal authority shall have competence in the following matters:
  - (a) Diplomatic representation and treaties, each State being at liberty to arrange for its own representation abroad for economic purposes;
  - (b) The National Army shall be subject to federal authority and shall be placed under the command of the President of the Republic. However, the President of each State shall ipso jure hold supreme authority over the Army contingent stationed in his territory;
  - (c) The external security of the Republic;
  - (d) Legislation concerning nationality;
  - (e) Criminal law;
  - (f) Economic co-ordination;
  - (g) Communications and sources of energy of national importance. However, each State may make up any deficiency left by the federal power;
  - (h) The co-ordination of social policy between the States;
  - (i) Post and telecommunications;
  - (j) Legislation concerning immigration and emigration;
  - (k) Electoral law concerning federal elections;
  - (l) Customs, in so far as import duties are concerned;

- (m) Currency and foreign exchange policy, as soon as, through a co-ordinated economic policy, it has proved possible to unify the currency without damage to the economy of the federation and of its member States;
  - (n) The status of judges;
  - (o) The Federal police;
  - (p) The public service of the Federal Power and the status of its officials;
  - (q) Legislation concerning the art of healing;
  - (r) Posts, telephones and telegraphs; also the determination of wave-lengths for radio and television broadcasting;
  - (s) Meteorological, geodetic, cartographic and hydrographic services;
  - (t) Weights and measures;
  - (u) The public finances of the Federal Republic, subject to stipulations hereinafter;
  - (v) Legislation concerning literary, artistic and industrial property;
10. The Federal authority and the States shall have concurrent competence in the following matters:
- (a) National public works;
  - (b) Higher education;
  - (c) Judicial organization and procedure;
  - (d) Information;
  - (e) Basic legislation concerning energy and mining;
  - (f) Air, sea and other communications of national importance, and legislation concerning road traffic control;

The federal authority shall enact no legislation on these matters save with the consent of the State concerned.

11. Each State shall have competence in the following matters:

- (a) The State Police and gendarmerie;
- (b) The State electoral law;
- (c) Customs, in so far as export duties are concerned;
- (d) Tax legislation, except in matters reserved to the Federal authority;
- (e) Internal State security;
- (f) Currency and foreign exchange policy, until such time as, through a co-ordinated economic policy, it has proved possible to unify the currency without damage to the economy of the federation and of its member States;
- (g) Education, except at university level;
- (h) The appointment of judges and the establishment of regulations to supplement those laid down by the federal authority;
- (i) Radio broadcasting;
- (j) The grant of farming, forestry and mining concessions.

Generally speaking, all competence not expressly conferred on the federal power shall be reserved to each State. In addition to the powers conferred on the member States, there are also concurrent powers, as mentioned above.

12. The President of each State shall be the representative of the federal authority in each State.

The officials of the federal services shall be under the administrative authority of the President of the State in which they serve. The said President shall be accountable to the Federal Government for their activities. A system of inspection for the federal services shall be established in consultation with all the States.

13. Taxes, royalties, duties and levies of all kinds shall be imposed and collected by each State.

The federal authority may impose federal taxes which shall not exceed X per cent of export duties, import duties, royalties and rentals for mining and for farming, forestry and mining concessions.

The federal taxes shall be collected by each State, which shall deliver the proceeds to the federal authority.

The federal authority may not contract loans to be charged to the federal budget save with the consent of each State.

Two or more States in association may contract a loan for which they shall be responsible in such proportion as they may determine.

### Article III

The new Constitution shall be drawn up by the commission mentioned in article XI.

Efforts shall be made to give the work of the constitutional commission fresh impetus and to guide it towards the adoption of a highly flexible federal system which will assure to member States genuine internal autonomy.

### Article IV

The new Constitution shall be submitted by the Leopoldville Government to the Legislative Assemblies, which shall meet in joint session of all chambers. It shall require approval by one-half of the votes cast, representing one-half of the elected members. The organization of any "conclave" shall be prohibited. The deputies and senators shall be free to take part or to refrain from taking part in the debates and deliberations. Every deputy or senator, individually or in groups, may claim the protection of the United Nations for the duration of the deliberations.

When the Constitution has been approved, it shall be submitted to the Congolese people by referendum. The new Constitution must be approved by each of the States in accordance with the principles stated by President Kasa-Vubu at Liège on 30 January 1960: "One of its main tasks will be to draft a Federal Constitution, which will serve as the basis for drafting a Constitution for each of the federated States. This Constitution will be submitted to the Congolese peoples for approval and then accepted or rejected in a referendum. Then and only then, on the basis of this Constitution as a democratic guarantee for the peoples, we shall hold our elections and, thereafter, form our duly elected Government."

The States shall be determined by the new Constitution itself, and none of them may extend beyond the boundaries of the Provinces of the former Belgian Congo.

If the new Constitution fails of approval by referendum, it shall be referred back to the commission mentioned in article XI.

## B. TRANSITIONAL PERIOD

### Article V

During the transitional period the relations between the Central Government and the Government of Katanga shall be limited exclusively to those described in the following articles, unless new agreements are concluded on specific matters.

### Article VI

In order to promote the economic recovery of the Congo, the authorities at Leopoldville and Elisabethville shall do everything in their power to develop trade between them in manufactured goods and agricultural products. Pending the re-establishment of a unified currency, such trade shall be conducted through bilateral compensation operations.

For this purpose, the delegates of the Leopoldville Monetary Council shall be authorized to attend as observers the meetings of the Katanga Exchange Office, and vice versa. The two bodies shall exchange the instructions and statistics compiled by their services.

### Article VII

In the interest of the Congolese peoples, the national route via Port Francqui shall be re-opened to traffic to and from Katanga.

Katange undertakes to transport a major proportion of its products and the bulk of its imports from the Atlantic via the so-called national route, namely Kamina, Port Francqui and Leopoldville.

Pending the final settlement of political questions through the adoption of a new Constitution, export duties shall continue to be levied by Katanga, without prejudice to its financial obligations towards the Congo.

The Congo, in return, undertakes to place a satisfactory transport service at the disposal of Katangese exporters and importers, and to export and import, via Katanga, products to and from South Africa, the Rhodesias and the Indian Ocean. Similarly the two parties undertake to restore air transport, telephonic and telex communications between Katanga and the rest of the Congo.

#### Article VIII

Pending the enactment of legislation to determine the respective financial competence of the Central Government and of Katanga, Katanga shall remit to the Central Government X per cent of customs duties (Import and export duties), royalties and rentals for mining and for farming, forestry and mining concessions.

#### Article IX

The deputies and senators elected in Katanga shall continue to sit at Leopoldville and shall participate in the work of the Legislative Assemblies.

#### Article X

Since the Katangese wish to play their rightful part in the exercise of the powers conferred on the Central Government, they shall be given ministerial portfolios, including some of major importance, including the portfolios of Foreign Affairs, Finance and National Defence.

#### Article XI

Katanga shall continue to participate in the commission currently engaged in drafting the new Constitution.

#### Article XII

There shall be established a National General Staff Committee composed of representatives of the Congolese National Army (ANC), the United Nations and the Katangese Gendarmerie. The Committee shall enjoy freedom of movement throughout Katanga. It shall be the Committee's duty, in particular, to verify any reports of the importation of weapons and the withdrawal of ANC forces, wherever they may be.



Article XIII

The technicians necessary for the smooth functioning of the administrative services of Katanga shall be freely recruited by the Katangese authorities.

The Government of Katanga shall communicate to the Central Government the names of such technicians as it recruits.

Article XIV

The structures of the Katangese State shall be maintained in their existing form, together with the personnel currently serving.

Article XV

The existing frontiers of Katanga, as fixed on 30 June 1960, shall not be modified unless the Assembly of Katanga gives its consent to such a modification by at least a two-thirds majority of the members present.

Article XVI

This Agreement, which seals the national reconciliation, shall be accompanied by a general political amnesty and, consequently, all political prisoners shall be released immediately, regardless of the party to which they belong.

Elisabethville.

ANNEX 25

Draft Conclusions on the Leopoldville Talks  
prepared by the Katangese representatives

The Central Government of the Republic of the Congo, represented by Mr. Cyrille ADOULA, the Prime Minister, on the one hand,

and

Mr. Moise TSHOMBE, President of the Government of Katanga, on the other,

Resolved upon the final settlement of their differences in a spirit of understanding and national reconciliation,

Do hereby solemnly, irrevocably and without any ulterior motives, reservations or conditions, recognize the following:

Article I

The parties recognize that the solution to the Congolese problem must be worked out in two stages: the first period, to be known as the transitional period, shall run from the signature of this agreement until the adoption and application of the new Constitution; the second period, to be known as the final period, shall be that in which the new Constitution is applied.

Article II

For this purpose, the Central Government undertakes to lay a draft Federal Constitution before the Legislative Chambers within a period of ... months.

The federal nature of this Constitution shall be assured, inter alia, by:

A. The competence vested in the federal power:

- (a) diplomatic representation and treaties, each State being at liberty to arrange for its own representation abroad for economic purposes;
- (b) the National Army shall be subject to federal authority and shall be placed under the command of the President of the Federation. However, the President of each State shall ipso jure hold supreme authority over the Army contingent stationed in his territory;
- (c) the external security of the Federation,
- (d) legislation concerning nationality,
- (e) economic co-ordination;

- (f) the co-ordination of social policy between the States;
- (g) posts and telecommunications;
- (h) legislation on immigration and emigration, in agreement with the member States;
- (i) Electoral law concerning federal elections;
- (j) currency and foreign exchange policy;
- (k) the federal police;
- (l) the public services of the federal power and the status of its officials;
- (m) legislation concerning the art of healing;
- (n) weights and measures;
- (o) the public finances of the Federation, subject to the stipulations hereinafter;
- (p) the federal authority may fix the federal taxes, which shall not exceed X per cent of the export duties, import duties, royalties and rentals for mining and for farming, forestry and mining concessions.

B. The competence vested concurrently in the federal authority and in the States:

- (a) national public works;
- (b) higher and university education;
- (c) judicial organization and procedure;
- (d) information;
- (e) basic legislation concerning energy and mining;
- (f) air, sea and other communications of national importance, and legislation concerning road traffic control;
- (g) meteorological, geodetic, cartographic and hydrographic services;
- (h) communications and sources of energy of national importance.

The federal authority shall enact no legislation on these matters save with the consent of the State concerned.

C. The competence vested in each State:

- (a) the police and gendarmerie necessary to maintain law and order in towns and rural areas within the States;
- (b) State electoral law;
- (c) internal State security, in agreement with the federal power;
- (d) currency and foreign exchange policy;
- (e) education;
- (f) the appointment of judges and the establishment of regulations to supplement those laid down by the federal authority;
- (g) radio broadcasting;
- (h) the grant of farming, forestry and mining concessions;
- (i) taxes, royalties, duties and levies of all kinds shall be imposed and collected by each State. The federal taxes shall be collected by each State, which shall deliver the proceeds to the federal authority.

Article III

The new draft Constitution shall be prepared by the commission mentioned in article VIII.

Efforts shall be made to give the work of the constitutional commission fresh impetus and to guide it towards the adoption of a highly flexible federal system which will assure to member States genuine internal autonomy.

Article IV

The new draft Constitution shall be submitted by the Central Government to the Legislative Assemblies, which shall meet in joint session of all chambers. It shall require approval by one-half of the votes cast, representing one-half of the elected members.

When the Constitution has been approved, it shall be submitted to the Congolese people by referendum. The new Constitution must be approved by each of the States in accordance with the principles stated by President KASA-VUBU at Liège on 30 January 1960: "One of its main tasks will be to draft a Federal Constitution which will serve as the basis for drafting a constitution for each of the Federated States. This Constitution will be submitted to the Congolese peoples for approval and then accepted or rejected in a referendum. Then and only then, on the basis of this Constitution, as a democratic guarantee for the peoples, we shall hold our elections and, thereafter, form our duly elected Government."

The States shall be determined by the new Constitution itself, and none of them may extend beyond the boundaries of the Provinces of the former Belgian Congo.

If the new Constitution fails of approval by referendum, it shall be referred back to the commission mentioned in article VIII.

#### Article V

In order to restore understanding and co-operation between the Central Government and the Government of Katanga during the transitional period, the relations between the two parties shall be those described in the following articles, unless new agreements are concluded on specific matters.

#### Article VI

In order to promote the economic recovery of the Congo, the authorities at Leopoldville and Elisabethville shall do everything in their power to develop trade between them in manufactured goods and agricultural products. Pending the re-establishment of a unified currency, such trade shall be conducted through bilateral compensation operations.

For this purpose, the delegates of the Leopoldville Monetary Council shall be authorized to attend as observers, the meetings of the Katanga Exchange Office, and vice versa. The two bodies shall exchange the instructions and statistics compiled by their services.

#### Article VII

In the interest of the Congolese peoples, the complete freedom of road, river, rail and air traffic shall be restored, not only between different parts of the Congo but also across the frontiers. Each of the contracting parties shall organize such traffic.

It is clearly understood that traffic, including air traffic, shall be entirely free throughout Katanga.

#### Article VIII

The deputies and senators elected in Katanga shall continue to sit at Leopoldville and shall participate in the work of the Legislative Assemblies.

Katanga shall continue to participate in the commission currently engaged in drafting the new Constitution.

#### Article IX

There shall be established a tripartite committee composed of civilian representatives of the Central Government, of the United Nations and of the Government of Katanga. The committee shall enjoy freedom of movement throughout

the country. It shall be the countries' duty, in particular, to verify any reports of the importation of weapons and the withdrawal of ANC forces from Katanga, wherever they may be.

Article X

The technicians necessary for the smooth functioning of the administrative services of Katanga shall be freely recruited by the Katangese authorities.

The Government of Katanga shall communicate to the Central Government the names of such technicians as it recruits.

Article XI

The administrative structures of the Katangese State shall be maintained in their existing form, together with the personnel currently serving.

Article XII

The existing frontiers of Katanga, as fixed on 30 June 1960, shall not be modified, unless the Assembly of Katanga gives its consent to such a modification by at least a two-thirds majority of the members present. The authority of the Elisabethville Government shall be recognized throughout Katanga.

Article XIII

Katanga hopes that the dispute between Belgium and the Congo will be settled as soon as possible; for that reason it insists on participating in the commission appointed to settle this dispute.

Article XIV

This agreement, which seals the national reconciliation, shall be accompanied by a general political amnesty and, consequently, all political prisoners shall be released immediately, regardless of the party to which they belong.

/...

ANNEX 26

Draft Conclusions on the Leopoldville Talks  
prepared by Mr. Gardiner

The Central Government of the Republic of the Congo, represented by Mr. Cyrille Adoula, its Prime Minister, on the one hand,

and Mr. Moise Tshombe, President of the Government of Katanga, on the other hand,

Resolved upon the final settlement of their differences in a spirit of understanding and national reconciliation,

Do hereby solemnly, irrevocably and without any ulterior motives, reservations, or conditions, recognize the following:

ARTICLE 1

The Republic of the Congo remains one and indivisible within its frontiers of 30 June 1960.

Nevertheless, as the President of the Republic stated on 24 March 1962:

"Unity in no way signifies my desire to disregard the distinctive features (particularismes) of the various regions of the country. On the contrary, the unity of the country is made up of the contribution, the strength and the ideas of each of the distinctive regional entities."

ARTICLE 2

Pursuant to their decision to reach a final settlement of their differences, the undersigned agree that there shall be two stages: the first period, to be known as the transitional period, shall run from the signature of this agreement until the promulgation of the new Constitution; the second period shall begin at the promulgation of the new Constitution.

ARTICLE 3

The Central Government undertakes to lay a draft Federal Constitution before the Legislative Chambers within a period of ..... months.

The Central Government undertakes to put the case for the draft Constitution before the Legislative Chambers.

The aforesaid draft Constitution shall uphold the following principles:

1. The Republic of the Congo shall be organized as a Federal State.
2. No State may prohibit the free movement of persons and goods within the territory of the Federation.

3. The President of the Federation shall command the National Army;
4. The budget of the Federation shall be approved by the legislature of the Federation.
5. A Constitutional Court shall be established for the purpose of upholding the division of competence between the federal power and the powers of the member States of the Federation.
6. No law modifying the distribution of competence shall enter into force without the consent of the Assembly of each State.
7. Members of the State Governments shall enjoy immunity on the same terms as members of the Federal Government.
8. The federal authority shall have competence in the following matters:
  - (a) Foreign affairs and treaties;
  - (b) The National Army;
  - (c) The external and internal security of the Federation;
  - (d) Immigration and emigration;
  - (e) Legislation concerning nationality;
  - (f) Criminal law;
  - (g) Legislation concerning judicial organization, procedure and the status of judges;
  - (h) The federal police;
  - (i) General economic policy;
  - (j) Currency and foreign exchange policy. However, each member State of the Federation shall be provided with foreign exchange to meet its economic needs;
  - (k) Customs;
  - (l) The public finances of the Federation;
  - (m) General legislation concerning land tenure and the grant of land and mining concessions in State lands;
  - (n) Communications and sources of energy of national importance. However, each State may make up any deficiency left by the federal power in this respect;

/...



- (o) National public works. However, each State may make up any deficiency left by the Federal power in this respect;
- (p) Posts, telecommunications, information, radio and television;
- (q) Civil liberties, including federal electoral law;
- (r) General legislation on social matters. However, each State shall be entitled to legislate on social matters of special concern to itself;
- (s) Higher and university education;
- (t) Legislation concerning literary, artistic and industrial property;
- (u) Meteorological, geodetic, cartographic and hydrographic services;
- (v) Weights and measures;
- (w) Legislation concerning public health and hygiene. The Federal and State services in this field shall be co-ordinated.
- (x) The public services of the federal power and the status of its officials.

9. In matters within its competence, the Federal Government may, in case of need and with the consent of the State authorities, delegate administrative functions to officials of the State Governments who, in such case, shall act for and be accountable to the Federal Government. A system of inspection for the federal services shall be established in consultation with all member States of the Federation.

Each State shall have competence in the following matters:

- (a) The urban and rural police;
- (b) Each State may, if circumstances so require, establish an internal security service which shall be co-ordinated with the security services of the Federation;
- (c) Electoral law concerning elections within each State;
- (d) Local communications, with the right to remedy the deficiencies of the federal power in the matters referred to in sub-paragraph 8 (n);
- (e) The right to make up any deficiency left by the federal power in matters relating to national public works;
- (f) The right to legislate on social matters of special concern to the State itself;
- (g) Public health and hygiene services at the State level;

- (h) Education, except higher and university education;
- (i) The State finances;
- (j) The organization of State services and administrative subdivisions;
- (k) The appointment of staff for the State services;
- (l) The grant of forestry, farming and mining concessions;
- (m) Local rates, duties and taxes;
- (n) The customary judicial system;
- (o) All competence not expressly conferred on the federal power.

10. The armed forces under the control of the Federal Government may not intervene in State affairs or in the maintenance of law and order save in one of the following cases:

At the request of the State authorities;

If the State authorities are unable to discharge their obligations of security and maintenance of law and order; in such event, the armed forces of the Federal Government may intervene only after an official order to the State authorities to discharge their obligations has proved ineffective and after the President of the Federation has declared a state of emergency in the region or State in question;

If a State authority refuses to comply with a ruling of the Constitutional Court to the effect that such State authority has violated the Constitution.

11. The right of the Federal Government to take measures to enforce compliance with a law or ordinance by a State shall be exercised only when the following conditions are fulfilled:

When the State authorities have not complied with such law or ordinance;

When two successive notices of non-compliance have been addressed to the President of the State Assembly or to the President of the State Government and have remained unanswered;

Where the President of the Federation has declared a state of emergency with respect to the enforcement of the law or ordinance in question;

12. The member States of the Federation shall be entitled to appeal to the Constitutional Court for a ruling and, if necessary, redress against what they consider illegal measures taken by the federal authorities in connexion with the enforcement of a law or ordinance in the territory of the member States.

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13. In matters within its competence, the Federal Government may, in case of need and with the consent of the State authorities, delegate administrative functions to officials of the State Government who, in such case, shall act under the authority of the representative of the Federal Government in the State, and shall be responsible to the Federal Government.

14. Within the framework of the laws, ordinances or international agreements concluded by the Federal Government, the State Government shall have the right to employ such foreign technicians as it requires.

#### ARTICLE 4

The draft of the new Constitution shall be prepared by the parliamentary commission currently engaged in that task. The Katangese representatives shall continue to participate in the work of the aforesaid commission.

#### ARTICLE 5

The constitution shall be drawn up in accordance with the procedure prescribed by the relevant provisions of articles 98 to 105 of the Fundamental Law.

#### ARTICLE 6

During the transitional period, the following provisions shall be applied:

1. In order to promote the economic recovery of the Congo, every effort shall be made to restore the movement of goods between Katanga and the rest of the Republic as soon as possible.

2. The deputies and senators elected in Katanga shall continue to sit at Leopoldville and shall participate in the work of the Legislative Assemblies and commissions thereof.

3. Such Katangese administrative structures as are compatible with Katanga's reintegration within the Republic shall be maintained, together with the personnel currently serving.

4. Save as otherwise provided below, the Fundamental Law is and remains applicable throughout the Congo;

- (a) The Katangese gendarmerie shall be maintained as now organized and General Moke, its Commanding Officer, and the other officers shall take an oath of allegiance to Mr. Kasa-Vubu, the Chief of State. Mr. Tshombe declares that the gendarmerie contains no foreign elements.
- (b) One or more tripartite commissions, composed of civilian and military representatives of the Central Government, the United Nations and the Katangese authorities, shall be established. The said commissions

shall enjoy freedom of movement throughout Katanga and shall be responsible for ensuring that the military potential of the gendarmerie is not increased and that no weapons, munitions or military equipment are imported.

- (c) The Katangese currency shall be withdrawn and replaced by national currency. The currency of the Republic which was withdrawn from circulation before the signature of these presents by the Katangese authorities shall be returned to the Monetary Council.
- (d) The officials of the security police and of the immigration, revenue, customs and telecommunication services shall be placed under the authority of the Central Government.
- (e) Only provincial councillors elected before 30 June 1960 in accordance with the electoral law of the Republic, and, in the event of their death or if they are under one of the disabilities specified in the Fundamental Law, their alternates may sit in the Provincial Assembly.
- (f) The Katangese Government may include only members elected by the Provincial Assembly in accordance with the provisions of the Fundamental Law.
- (g) Pending the promulgation of the new Constitution, the Central Government is prepared to explore forthwith a provisional arrangement concerning the distribution of financial competence between the central power and the provincial powers. To that end it undertakes to convene, within one month, a Conference of the Presidents of the Provincial Governments with a view to determining an equitable division of public revenues between the State and the Provinces.
- (h) The existing frontiers of Katanga, as fixed on 30 June 1960, shall not be modified unless the Katangese Assembly gives its consent to such a modification by a two-thirds majority of its members.

#### ARTICLE 7

Subject to the observance of these presents by the Katangese authorities, the Central Government undertakes to terminate the state of emergency in Katanga.

#### ARTICLE 8

This agreement, which seals the national reconciliation, shall be accompanied by a political amnesty throughout Katanga.

#### ARTICLE 9

Negotiations shall begin immediately to determine which ministerial posts in the Central Government shall be assigned to Katangese leaders.

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#### ARTICLE 10

These conclusions shall enter into force one clear day after their signature, and the "Constitution of 5 August 1960" shall cease to have effect as from the date of such signature.

#### Amendment

#### ARTICLE 6

4. (a) The Katangese gendarmerie shall maintain its present organization and remain under the control of the Katangese authorities. However, General Moke and the other officers shall take an oath of allegiance to President Kasa-Vubu.

President Tshombe declares that the gendarmerie contains no foreign elements.

#### Amendment

#### ARTICLE 6

4. (c) The principle of a single currency for the entire Federation is recognized. During the transitional period, however, Katangese currency shall remain in use, but no new currency shall be issued.

After the new currency of the Federation has been issued, Katangese currency shall be withdrawn from circulation at a rate of exchange to be determined by agreement with the Central Government.

ANNEX 27

Draft Conclusions on the Leopoldville Talks  
acceptable to the Katangese representatives

The Central Government of the Republic of the Congo, represented by  
Mr. Cyrille ADOULA, Prime Minister, on the one hand,

and Mr. Moïse TSHOMBE, President of the Government of Katanga, on the other hand,

Resolved upon the final settlement of their differences in a spirit of  
understanding and national reconciliation,

Do hereby solemnly, irrevocably and without any ulterior motives, reservations,  
or conditions, recognize the following:

ARTICLE I

The parties recognize that the solution to the Congolese problem must be  
worked out in two stages: the first period, to be known as the transitional  
period, shall run from the signature of this agreement until the adoption and  
application of the new Constitution;

ARTICLE II

The Central Government accordingly undertakes to lay a draft Federal  
Constitution before the Legislative Chambers within a period of ... months.

The federal nature of this Constitution shall be assured, inter alia, by:

A. The competence vested in the federal power:

- (a) Diplomatic representation and treaties, each State being at  
liberty to arrange for its own representation abroad for economic  
purposes;
- (b) The National Army shall be subject to federal authority and shall  
be placed under the command of the President of the Federation.  
However, the President of each State shall ipso jure hold supreme  
authority over the Army contingent stationed in his territory;
- (c) The external security of the Federation;
- (d) Legislation concerning nationality;
- (e) Economic co-ordination;

- (f) The co-ordination of social policy between the States;
- (g) Posts and telecommunications;
- (h) Legislation on immigration and emigration, in agreement with the member States;
- (i) Electoral law concerning federal elections;
- (j) Currency and foreign exchange policy;
- (k) The federal police;
- (l) The public services of the federal power and the status of its officials;
- (m) Legislation concerning the art of healing;
- (n) Weights and measures;
- (o) The finances of the Federation, subject to the stipulations hereinafter;
- (p) The federal authorities may impose federal taxes, which shall not exceed X per cent of export and import duties, royalties and rents payable for the exploitation of underground resources or agricultural, forestry and mining concessions.

B. The competence vested concurrently in the federal authority and in the States:

- (a) National public works;
- (b) Higher and university education;
- (c) Judicial organization and procedure;
- (d) Information;
- (e) Basic legislation concerning energy and mining;
- (f) Air, sea and other communications of national importance, and legislation concerning road traffic control;
- (g) Meteorological, geodetic, cartographic and hydrographic services;
- (h) Communications and sources of energy of national importance.

/...

The federal authority shall enact no legislation on these matters save with the consent of the State concerned.

C. The competence vested in each State:

- (a) The police and gendarmerie to maintain law and order in towns and rural areas within the States;
- (b) State electoral law;
- (c) Internal State security, in agreement with the federal power;
- (d) Currency and foreign exchange policy;
- (e) Education;
- (f) The appointment of judges and the establishment of regulations to supplement those laid down by the federal authority;
- (g) Radio broadcasting;
- (h) Taxes, royalties, duties and levies of all kinds shall be imposed and collected by each State, which shall deliver the proceeds to the federal authority.

ARTICLE III

The new draft Constitution shall be prepared by the commission mentioned in article II.

Efforts shall be made to give the work of the constitutional commission fresh impetus and to guide it towards the adoption of a highly flexible federal system which will assure to member States genuine internal autonomy.

ARTICLE IV

The new draft Constitution shall be submitted by the Central Government to the Legislative Assemblies, which shall meet in joint session of all chambers. It shall require approval by one-half of the votes cast, representing one-half of the elected members.

When the Constitution has been approved, it shall be submitted to the Congolese people by a referendum. The new Constitution must be approved by each of the States in accordance with the principles stated by President KASA-VUBU at Liège on 30 January 1960: "One of its main tasks will be to draft a Federal



Constitution, which will serve as the basis for drafting a constitution for each of the federated States. This Constitution will be submitted to the Congolese people for approval and then accepted or rejected in a referendum. Then, and only then, on the basis of this Constitution as a democratic guarantee for the peoples, we shall hold our elections and, thereafter, form our duly elected Government."

The States shall be determined by the new Constitution itself, and none of them may extend beyond the boundaries of the Provinces of the former Belgian Congo. (Alternative proposed by ONUC but not accepted by the Katangese: "The States shall be determined by the new Constitution itself, in such a way that the Federation remains one and indivisible within its frontiers of 30 June 1960.")

If the new Constitution fails of approval by referendum, it shall be referred back to the commission mentioned in article 6 (3).

#### ARTICLE V

In order to restore understanding and co-operation between the Central Leopoldville Government and the Government of Katanga during the transitional period, the relations between the two parties shall be those described in the following articles, unless new agreements are concluded on specific matters.

#### ARTICLE VI

During the transitional period, the following provisions shall be applied:

1. In order to promote the economic recovery of the Congo, every effort shall be made to restore the movement of goods between Katanga and the Congo as soon as possible.
2. The deputies and senators elected in Katanga shall continue to sit at Leopoldville and shall participate in the work of the Legislative Assemblies and commissions thereof.
3. The administrative structures of the Katangese State shall be maintained in their existing form, together with the personnel currently serving.
4. (a) The Katangese gendarmerie shall be maintained as now organized and shall remain under the control of the Katangese authorities. After the ratification of the new Federal Constitution, the Commander-in-Chief and senior officers shall take an oath of allegiance to the President of the Federation;

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- (b) The principle of a single currency for the entire Federation is recognized. During the transitional period, however, Katangese currency shall be used.

After the new currency of the Federation has been issued, Katangese currency shall be withdrawn from circulation at a rate of exchange to be determined by agreement with the Federal Government.

- (c) A Katangese passport shall have equal status with a passport of the Republic of the Congo throughout the transitional period.

#### ARTICLE VII

In the interest of the Congolese peoples, complete freedom of road, river, rail and air traffic shall be restored, not only between different parts of the Congo but also across the frontiers. Each of the contracting parties shall organize such traffic.

It is clearly understood that traffic, including air traffic, shall be entirely free throughout Katanga.

#### ARTICLE VIII

There shall be established a tripartite committee composed of civilian representatives of the Central Government, of the United Nations and of the Government of Katanga. The committee shall enjoy freedom of movement throughout Katanga and the Congo. It shall be the committee's duty, in particular, to verify any reports of the importation of weapons and the withdrawal of ANC forces from Katanga, wherever they may be.

#### ARTICLE IX

The technicians necessary for the smooth functioning of the administrative services of Katanga shall be freely recruited by the Katangese authorities.

The Government of Katanga shall communicate to the Central Government the names of such technicians as it recruits.

#### ARTICLE X

The existing frontiers of Katanga, as fixed on 30 June 1960, shall not be modified unless the Assembly of Katanga gives its consent to such a modification by at least a two-thirds majority of the members present. The authority of the Elisabethville Government shall be recognized throughout Katanga.

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ARTICLE XI

Katanga hopes that the dispute between Belgium and the Congo will be settled as soon as possible; for that reason, it insists on participating in the Commission appointed to settle this dispute.

ARTICLE XII

This agreement, which seals the national reconciliation, shall be accompanied by a general political amnesty and, consequently, all political prisoners shall be released immediately, regardless of the party to which they belong.

ANNEX 28

Party accompanying Mr. Tshombe

Following party accompanied President Tshombe to Leopoldville: Minister Kibwe (Finance), Minister Kitenge (Public Works), Major Mbayo (Ordonnance Officer), Mr. Meli (Chief of Cabinet of the President), Mrs. Vanderkelen (Secretary), Dr. Szeles, Mr. N'Dua, Adviser, Messrs. Mweni, Moma, Kisimba, Kambola, Kishiba, Gabriel Nawezi, Stanislas Nawezi, Lulilash, Mutombo, Tshaka, Mwamba, Lt. Tunda (Bodyguard), 1 Military, Sebastien (boy), Charles Ebia (journalist), Mrs. Ndumba.

ANNEX 29

Letter from Mr. Adoula to Mr. Gardiner, received by him on 18 May 1962

Sir,

As an indication of the importance and seriousness which the Congolese Government attaches to the new talks between Mr. Adoula and Mr. Tshombe, and also in order to ensure greater security for Mr. Tshombe, the Congolese Government has decided to request your assistance in carrying out the following decisions:

(1) No visitors will be admitted to the apartments reserved for the Katangese group;

(2) All the persons included in the list of Mr. Tshombe's party will remain permanently in their apartments and will not be allowed to go out in the city;

(3) The members of our security force will work hand in hand with those of the Organization's security force at the Royal Building to ensure the protection of the Katangese delegation.

I should be grateful if you would confirm to me in writing your agreement concerning the carrying out of this task, which will make it possible for the Government and the Organization to expect better results from the talks, free of all outside pressure or any unnecessary propaganda.

/...

ANNEX 30

Statement to the Press by Mr. Tshombe at Elisabethville  
on Thursday, 17 May 1962

Two months ago almost to the day, I left Elisabethville on my first journey to Leopoldville, although the people of Katanga would have liked to dissuade me. I was convinced that the higher interest of the country obliged me to proceed, despite the dangers I would run at Leopoldville. Today, it is not the interest of Katanga which obliges me to make the same journey. I am convinced that our position has never been stronger and that the surrender of sovereignty which we are prepared to concede to the people at Leopoldville has never been so great as today - it is, in the full sense of the term, a surrender of sovereignty. However, all Katangese are determined to take this step, because all Katangese feel themselves to be Africans and know that our union with our Congolese brothers is a step, difficult to take, but useful - I emphasize useful, and not necessary - towards the unity of black Africa.

It is in the awareness of this truth that I am going to Leopoldville. Few people, I believe, have accused the United Nations as violently as I. I have done so because what I said was true, because my whole people has suffered humiliation, insults, violence and death because of a few individuals, ignorant or dishonest, who wished to destroy the awakening of a national conscience by making the world believe that we were motivated only by selfishness or by servility towards foreign financial groups. Naive people, or people scarcely concerned at the plight of a few negroes in the depths of Africa, took the easy course of giving assistance to adventurers with such names as O'Brien or Tombelaine, or whom it is better not to name, like the United Nations representative at Leopoldville who pretended, on 8 September 1961, to be carrying out an order by Mr. Adoula.

Fortunately times have changed. The United Nations, haughty in its strength, has given way to sensible and honest people. The great and noble principles which are the basis of that Organization no longer serve as a hypocritical shield behind which base deeds are done. The United Nations, whose role might sometimes have been criticized but which, let us not forget, is behind the great movement for the liberation of colonial peoples, seems to have reverted to serving its true cause -

/...

bringing about peace in the world by returning to all men, whatever their colour, their human dignity. It is because of my confidence that the United Nations has at last turned its hand to that task in the Congo, instead of becoming involved in the rivalries of world groups, that I am going to Leopoldville. The mission of the United Nations must not fail, and my journey will be my contribution to the realization of that high ideal.

It must be understood, however, that I shall be found to be a man of good will only for that purpose. It is a mistake to believe that I can be involved in cunning machinations in order to keep Mr. Adoula in power. I am very disappointed in Mr. Adoula. The purpose of my journey to Leopoldville was to establish contact with him with a view to reaching a true national reconciliation, which is possible only through the inauguration of a federal constitution.

On 16 April 1962, Mr. Adoula submitted to me a draft agreement which is an insult to good sense. For almost two years, we have been fighting because we believe that the Fundamental Law bequeathed to us by Belgium is bad, and Mr. Adoula finds nothing better than to state not only that this law will be re-applied but that its centralizing aspect will be even more marked. Apparently, Mr. Adoula wants the negotiations to fail. It seems as though he is trying to assuage an appetite for power and that, to that end, he wants to destroy Katanga. And that, he believes, he will be able to obtain from the United Nations (for he has no illusions concerning the real power of the Leopoldville Government) only if the talks end in a deadlock and if the situation of 8 September 1961 is repeated, so that he can issue orders to O'Briens and their like.

I am sorry to tell him that times have changed; the new leaders of the United Nations are aware of the realities of Africa, and the generous moneylenders are beginning to question the wisdom of the Congolese adventure. Katanga has put forward a positive solution - federalism based on the interest and happiness of the people. Our ideas are so well known that I need not repeat them here. We are prepared to discuss them and to amend them if necessary, but we must be able to deal with a valid spokesman. I fear that Mr. Adoula is not the man.

I do not say this lightly. No matter how I try to analyse Mr. Adoula's behaviour since independence, I do not find in it a single positive action he has taken which has contributed to the greatness or prosperity of the country. On the

contrary, I see much which leads me to believe that he is pursuing a purely personal and selfish interest. Mr. Adoula was a trade-unionist but, at a time when the people of Leopoldville are sunk in poverty and unemployment, he imprisons leaders like Mr. Boboliko or Mr. Makoso who dare to say that the people are hungry. Mr. Adoula calls himself democratic and tolerant, but it is he who sent Messrs. Finant, Fataki, Muzungu, Nzuji, Elengeza, Luzau and others to Bakwanga, where they died. Mr. Adoula has had Mr. Kalondji convicted because he imprisons his political opponents. Yet the latter are still in prison in Southern Kasai and Mr. Adoula does not lift a finger to release them. I have mentioned only people who are well known, those who have a certain fame which arouses interest in their plight; but in the prisons at Leopoldville and Makala and at the paracommandos' camp, there are more than 4,000 persons; nor have I mentioned prisoners in the interior who thought that independence meant freedom and happiness.

Mr. Adoula, who is supposed to represent legality in the Congo, cares little for the laws which prohibit such imprisonments. By professing high principles which he did not practise, Mr. Adoula was able to deceive the United Nations and more particularly the Americans who, by the "Council of Lovanium", brought him to power. Since then, he clings to power with all his strength, and he would like to remove the leaders of Katanga from the path which is to lead him to absolute despotism. He thought his moment had come when, at the end of our talks, he left Leopoldville for Coquilhatville, knowing fully well that a complete plan had been prepared for my arrest. Mr. Adoula wanted to establish an alibi. He made a mistake; he showed the world what he was.

So much duplicity cannot take him very far. I am prepared, however, to trust him once more, but I want certain pledges from him. Be assured, these have nothing to do with me personally. The United Nations guarantees are enough for me. If Mr. Adoula is really the democrat he says, if he is truly an African, loving his African brothers, if he is not guided by personal interest, if he believes in freedom, let him release the 4,000 prisoners whose only crime is not to be devoted to him, not to have the same political ideas. When he has done that, I shall consider him a valid spokesman.

So far as I am concerned that is a sine qua non. Freedom is a matter of fact, not of words. When Mr. Adoula has shown that he wants the union of the various



parts of the Congo in fact and not only in words, I shall be ready to believe him. We must solve the Congolese problem in the interest of the peoples of the former Belgian Congo. There are so many questions calling for a solution. As an example, I may mention the many unemployed who must find work. Children everywhere must have a proper education and schools must be established for that purpose.

The State University at Elisabethville enables all the best elements of the African peoples to obtain proper advanced training. We are proud of our university, and its principles of Africanism must be applied to all the higher institutions in the Congo. We have always worked in the interest of our Katangese peoples. We shall now work also on that basis, so that all our Congolese brothers may know the same social progress, the same confidence in a happier future. The same smile must be on the lips of the children of the Congo, for whom we must work in order to ensure for them and their descendants a life of happiness, work and prosperity.

ANNEX 31

Security arrangements for the Katangese delegation

1. The Congolese security service will appoint teams of officers, who will remain in permanent contact with the ONUC security service while the Katangese delegation is at Leopoldville;
2. ONUC vehicles used for the transport of members of the Katangese delegation will maintain radio contact with the Royal;
3. ONUC will provide members of the Katangese delegation with identity cards;
4. In order that the members of the security service may have regular hours of work, the hours during which the members of the Katangese delegation may go into the town will be fixed by joint agreement.
5. The ONUC security services will take note of the names of all persons visiting the Katangese delegation at the Royal.
6. Members of these teams, accompanied by ONUC guards, will follow in another vehicle whenever members of the Katangese delegation go into the town.

ANNEX 32

Joint communiqué dated 25 May 1962

The delegations of the Central Government and of Katanga met for the fourth time at 10 a.m. today in the office of the Prime Minister; Mr. Gardiner and Mr. Rolz-Bennett, representatives of the United Nations, were also present.

The two delegations discussed and agreed on the agenda, which they adopted as a whole.

The next meeting is scheduled for 4 p.m. today.

1. Adoption of the ONUC suggestions as a basis for discussion.
2. Procedure to effect the solution of the territorial integrity of the Republic of the Congo. (a) Terms of reference of the Commission and sub-commissions (United Nations experts to be consulted). (b) Appointment of members of the Commission and sub-commissions.
3. Specific decisions concerning consolidation.
4. Acceptance and signature of the joint communiqué.

ANNEX 33

Working document prepared by ONUC

CONTENTS

1. Positions
2. Draft joint communiqué
3. Commission of National Reconciliation
4. Subjects for discussion
5. Draft terms of reference for the Monetary Sub-Commission
6. Draft terms of reference for the Economic and Fiscal Sub-Commission
7. Note on the fiscal system in the Congo
8. Terms of reference for a Military Sub-Commission of the Commission of National Reconciliation
9. Draft terms of reference for the General Sub-Commission (Political Reconciliation)
10. Comments on President Tshombe's letter of 16 May 1962
11. Draft terms of reference for a Communications and Transport Sub-Commission

## 1. POSITIONS

Tshombe maintains that his proposals for the transitional period are based on:

- (1) Fear that unconditional acceptance of the Fundamental Law might be considered a betrayal of Katanga,
- (2) The resistance he would meet from the gendarmerie if he were to hand over control immediately,
- (3) The desire to avoid any hasty action which would adversely affect the value of the Kantangese franc,
- (4) The wish to safeguard the administrative structure against arbitrary dismissals and transfers on instructions from the Central Government,
- (5) His hesitation, pending the rehabilitation of the Congolese economy, to become involved with the rest of the Congo and to suffer the consequences of heavy budgetary deficits. His fear and mistrust of the Congo are at the root of these reservations.

Adoula, for his part, maintains that:

- (1) The special concessions requested by Tshombe are legally and constitutionally indefensible,
- (2) The Parliament will not accept such an arrangement,
- (3) International public opinion, particularly in the African and Asian countries, would regard such acceptance as a total surrender to foreign financial interests,
- (4) This arrangement would set a dangerous precedent for the other Provinces and would weaken the already tenuous hold of the Central Government. These arguments are motivated by Adoula's suspicion that Tshombe is seeking to strengthen his position and has no intention of uniting with the Congo.

## 2. DRAFT JOINT COMMUNIQUE

The Prime Minister of the Republic of the Congo and the President of the Province of Katanga have held a series of talks at Leopoldville with the aim of reconciling their divergent views and making fresh efforts to strengthen the territorial integrity and constitutional life of the Congo.

The Central Government is bound by its oath of office, by its duty to the Congolese Parliament and people, and out of respect for the sacrifices already made by the United Nations, to safeguard the constitution of the Republic of the Congo and to strengthen the integrity of its territory.

The Province of Katanga, whose isolation from the rest of the Congo has been due chiefly to the incidents that occurred at the outset of the Republic's independence and to the resultant confusion, but which has always been anxious to preserve and extend its ties with the rest of the Congo, keenly desires to assure all persons residing in that Province that consolidation with the rest of the Congo will not compromise their vital interests, nor give rise to social, economic and political instability.

In order to reconcile their points of view, and with a view to the speedy and successful accomplishment of their aims, the Prime Minister of the Republic of the Congo and the President of the Province of Katanga have agreed to establish immediately, with the technical assistance of the United Nations, a body which would be made responsible for consolidating the gendarmerie, economy, currency and administrative structure of Katanga with the rest of the Congo.

In such a harmonious consolidation, the fruit of mutual co-operation in the pursuit of a common aim, the question of victory or defeat for either party in relation to past disputes does not arise.

The Prime Minister of the Congo and the President of the Province of Katanga officially and solemnly declare that Katanga is henceforth a part of the Republic of the Congo, within the frontiers of the Republic as they existed on 30 June 1960.

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### 3. COMMISSION OF NATIONAL RECONCILIATION

Without prejudice to the Provisional Constitution now in force or to the work of the Constitutional Commission, the meeting would announce (through the Prime Minister) that a Commission of National Reconciliation is established, with the following membership and Sub-Commissions:

#### A. Members

Either two members from the Central Government and two members from Katanga, or two members from each of the existing Provinces. The tone and content of the recent talks at Coquilhatville suggest that the best solution would be for all the Provinces to be represented. In any event, it is my considered opinion that ONUC should provide the technical Chairman and the secretariat.

#### B. Sub-Commissions

##### 1. General (Political Reconciliation)

This Sub-Commission would submit its conclusions to the Central and Provincial Governments and to the Constitutional Commission.

##### 2. Military

This Sub-Commission will be an executive body responsible for the effective reintegration of the armed forces of the different parts of the Congo, including Kasai and Katanga and, to some extent, Orientale Province.

##### 3. Monetary

Will consider practical measures to re-establish a national monetary and financial system.

##### 4. Economic and Financial

Will deal with practical measures to restore normal economic relations.

##### 5. Transport and Communications

Will deal with practical measures to re-establish means of transport and communications throughout the Republic.

#### 4. SUBJECTS FOR DISCUSSION

##### 1. CONSTITUTION

The Prime Minister of the Republic of the Congo has decided to take all possible steps to expedite the preparation of a draft Federal Constitution on the Republic of the Congo, for submission to the constituent power.

##### 2. CABINET

In consequence of the attached statement by the Prime Minister of the Republic of the Congo, the following has been agreed: firstly, the Government of the Republic of the Congo will be remodelled and ministerial portfolios will be allotted to the representatives of Katanga.

##### 3. PROVINCIAL ASSEMBLY

Secondly, the Katangese Government will convene the Provincial Assembly in order to effect a reconciliation between the various parties. The attendance of all members of the Provincial Assembly will be secured with the co-operation of the United Nations.

##### 4. GENERAL MOKE TAKES THE OATH

##### 5. TEXT OF GENERAL AMNESTY TO BE APPROVED

##### 6. DISTRIBUTION OF REVENUE

The divergence of view between the Central Government and the Government of Katanga with regard to the distribution of tax revenue should be easily resolved if both parties understand what this distribution means in figures in relation to the overall budgetary position of either party, the Central Government and the provinces. Under the Fundamental Law the Central Government is required to make up the difference between the budgetary revenue and expenditure of a Province. If the Province automatically receives a larger share of the proceeds of a given tax, that simply means a reduction in the subsidy it receives from the Central Government. Vice versa, if the Province receives a smaller share than was provided for in the budget, it follows that its subsidy from the Government will be increased in proportion.

It is consequently more important to find a financial system which would ensure an efficient tax administration than to dwell on questions relating to the distribution of fiscal revenue between the Central Government and the Provinces.



On this understanding, I propose the following system:

(1) Taxes on joint stock companies, in the shape of "personal taxes" and "income taxes", would be promulgated, assessed, collected and apportioned by the Central Government.

(2) Taxes similar to those referred to in (1) above, but applicable to all other undertakings whose tax liability is confined to a given Province, would be promulgated, assessed, collected and apportioned by the authorities of that Province.

(3) "Consumption duties". These duties would be promulgated, assessed, collected and apportioned by the provincial authorities.

(4) "Import and export dues". The import and export dues would be promulgated, assessed and collected by the Central Government, in order to centralize the customs authority.

(5) The "import dues" would be earmarked for the Central Government. It is recommended that 50 per cent of the "export dues" should be returnable to the Province of origin of the goods.

(6) Revenue from public lands and administrative revenues would go to the authority which owned the portion of public property, or which must meet the cost of the services, yielding that revenue.

(7) The Provinces would be entitled to levy taxes in the shape of surtaxes, within fixed limits, on agreed categories of taxes.

(8) The Provinces would be authorized to levy remunerative taxes on persons and organizations in consideration of the services rendered them by those Provinces.

(9) The Central Government would remain responsible for making up the difference between the budgetary revenues and expenditures of the individual Provinces in accordance with article 241 of the Fundamental Law.

5. DRAFT TERMS OF REFERENCE FOR THE MONETARY SUB-COMMISSION

This Sub-Commission will determine what measures are necessary in order to establish a national monetary system and in order to promulgate and implement a national policy with regard to foreign currency. It will deal more particularly with the following questions:

1. Powers and duties of the National Bank and its relations with the Central and Provincial Governments.
2. National monetary policy, including questions concerning the issue and withdrawal of money and paper, cover for the currency and similar questions
3. Credit policy and national banking policy, including advances, compulsory reserves, banking regulations and similar questions.
4. Exchange policy, including regulation of imports and exports, repatriation of foreign currency, determination of external value of the currency and similar questions.

## 6. DRAFT TERMS OF REFERENCE FOR THE ECONOMIC AND FISCAL SUB-COMMISSION

This Sub-Commission will determine what measures are necessary in order to establish an appropriate fiscal system and to promote sound economic relations. It will deal more particularly with the following questions:

1. Taxes, customs duties and other sources of public revenue. Powers and responsibilities with respect to the promulgation, assessment and collection of taxes and customs duties. Apportionment of revenues from taxes, duties and other sources. Determination of other sources of revenue.
2. Establishment of the central and provincial budgets and of authorizations to incur expenditure.
3. Control of the budget and of the public accounting system.
4. Public indebtedness and loans, investment revenues, supervision of State and parastatal undertakings.
5. Wages and labour policy, including the question of powers and responsibilities with regard to the minimum wage, working conditions, labour law and similar questions.
6. State policy on industry and business, including such questions as operating licences for private firms and the regulation of agriculture, mining, industry, trade and services.
7. Foreign technical and financial assistance, including conditions governing application for, acceptance of and allocation of foreign aid among beneficiaries in different parts of the country.

## 7. NOTE ON THE FISCAL SYSTEM IN THE CONGO

prepared by A.Y. Badre  
at the request of Mr. R. Gardiner  
10 May 1962

This note is divided into four parts. The first briefly describes the fiscal system in the Congo before independence. The second outlines the division of fiscal powers between the Central Government and the Provinces as proposed by the Administration at the time of independence and as subsequently modified in April 1962. The third part outlines the division between the Central Government and Provinces as proposed by the United Nations experts in March 1962. In the fourth and last part, the author offers a critical analysis and some recommendations.

### A. The fiscal system in the Congo before independence

From the standpoint of the division of fiscal powers and fiscal revenue between the Central Government and the Provinces there are four questions to consider:

- (1) the power to vote each tax;
- (2) the body responsible for imposing the tax;
- (3) the body responsible for collecting the tax;
- (4) the authority empowered to use the revenue produced by the tax.

For the sake of brevity we shall abbreviate these to:

- (1) promulgation;
- (2) assessment;
- (3) collection; and
- (4) appropriation.

The authorities concerned with public revenue under the colonial régime were divided into three categories:

- (1) Belgium, including the Special Office of Taxation at Brussels, the Customs Office at Antwerp and the Fiscal Department of the Ministry of African Affairs;
- (2) the Tax Service of the Government at Leopoldville; and
- (3) the tax offices in the Provinces.

It should be noted, however, that the three divisions - Belgium, Government General and Provinces - constituted a single, unified administration. It is most important to bear in mind that the tax offices in the Provinces were merely branches of the Central Tax Office at Leopoldville.

The fiscal revenue of the Congo may be conveniently classified according to five sources:

- (1) personal tax;
- (2) income tax (Congolesse undertakings);
- (3) income tax (Belgian-Congolesse undertakings), including
  - (a) personal property tax; and
  - (b) additional tax;
- (4) customs and excises, including
  - (a) import duties;
  - (b) export duties and
  - (c) consumption duties; and
- (5) income from public lands and administrative revenue.

All taxes were promulgated in Belgium, because any decree creating a tax had ultimately to be signed by the King. Taxes (1), (2) and (5) above were assessed by the provincial tax offices; tax (3) was assessed by Belgium, and tax (4) by the Tax Service of the Government General. Taxes (1), (2), (3b) and (5) were assessed by the provinces, tax (3) by Belgium, and tax (4) by the Tax Service of the Government General. The appropriations were made by the Government General in all cases except for one-fifth of the revenue from (3a). No revenue was allotted to the provinces; they had only an expenditure budget which formed part of a single general budget, and their expenditure was covered by transfers from the Government General. The situation is summarized in the following table:

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Table I  
The fiscal system in the Congo before independence  
(B - Belgium; G - Government General; P - Provinces)

<u>Category of tax</u>	<u>Promulgation</u>	<u>Assessment</u>	<u>Collection</u>	<u>Appropriation</u>
1. Personal tax	B	P	P	G
2. Income tax (Congolesse undertakings)	B	P	P	G
3. Income tax (Belgian-Congolesse undertakings)				
a. Personal property tax	B	B	B	G-4/5; B-1/5
b. Additional tax	B	B	P	G
4. Customs and excise				
a. Import duties	B	G	G	G
b. Export duties	B	G	G	G
c. Consumption duties	B	G	G	G
5. Income from public lands and administrative revenue	B	P	P	G

B. Finance act proposed at the time of accession to independence

While the fundamental law was being drafted, or shortly afterwards, a finance bill was prepared in Belgium but was never enacted. With some modifications it was resubmitted to the Congolesse Government in April 1962.

Under the terms of this bill, all taxable undertakings are divided into two groups: those which operate in only one Province, and those whose activities extend over several Provinces. For the first group, the personal tax is promulgated, assessed, collected and appropriated by the Provinces. The tax on the income of Congolesse undertakings is promulgated by the Central Government, assessed and collected by the Provinces, and appropriated by the Provinces as to 90 per cent and by the Central Government as to 10 per cent. The tax on the income of Belgian-Congolesse undertakings is promulgated and assessed in Belgium; the part termed "personal property tax" is collected in Belgium and appropriated as follows: 20 per cent by Belgium, 72 per cent by the

Provinces, and 8 per cent by the Central Government; the part termed "additional tax" is collected by the Provinces and appropriated as follows: 90 per cent by the Provinces and 10 per cent by the Central Government.

The second group (undertakings with activities extending over several Provinces) is treated differently. The personal tax and the tax on the income of Congolese undertakings are promulgated, assessed, collected and appropriated by the Central Government. The tax on the income of Belgian-Congolese undertakings is promulgated and assessed by the Belgian Government; the part termed "personal property tax" is collected by Belgium and appropriated as follows: 20 per cent by Belgium and 80 per cent by the Central Government; while the part termed "additional tax" is collected and appropriated by the Central Government.

All customs and excise duties, including import, export and consumption duties are promulgated, assessed, collected and appropriated by the Central Government. Nevertheless, the Central Government is required to find, out of its own revenue, subsidies for the Provinces to cover 80 per cent of the difference between their total expenditure and the revenue they derive from the 90 per cent allotted to them out of the Congolese share of the income tax and additional tax paid by undertakings operating only in the Province concerned.

In addition, a Province has three further sources of revenue: the income from public lands and administrative revenue; the remunerative taxes; and the provincial surtaxes. The income from public lands and administrative revenue consist mainly of royalties and administrative fees. The remunerative taxes are imposed in consideration of services rendered to the taxpayer by the Province. These services may be either voluntary or compulsory. The provincial surtaxes are increments of not more than 15 per cent which the Province is allowed to add to such taxes as the rent tax, and to levy on undertakings which operate only within its territory. All taxes in these three categories are promulgated, assessed, collected and appropriated by the Province. An exception is public lands income derived from ownership royalties; this revenue is divided equally between the Province and the Central Government.

The foregoing information is tabulated below:

Table II

The fiscal system prescribed in the bill prepared at  
the time of accession to independence

(B - Belgium; G - Central Government; P - Provinces)

<u>Category of tax</u>	<u>Promulgation</u>	<u>Assessment</u>	<u>Collection</u>	<u>Appropriation</u>
1. Personal tax				
a. One province	P	P	P	P
b. Several provinces	G	G	G	G
2. Income tax (Congolese)				
a. One province	G	P	P	P-90%; G-10%
b. Several provinces	G	G	G	G
3. Income tax (Belgian-Congolese)				
a. Personal property tax				
(i) One province	B	B	B	B-20%; P-72%; G-8%
(ii) Several provinces	B	B	B	B-20%; G-80%
b. Additional tax				
(i) One province	B	B	P	P-90%; G-10%
(ii) Several provinces	B	B	G	G
4. Customs and excise				
a. Import duties	G	G	G	G
b. Export duties	G	G	G	G
c. Consumption duties	G	G	G	G
5. Income from public lands and administrative revenue				
a. Land service	P	P	P	P-50%; G-50%
b. Other	P	P	P	P
6. Provincial surtaxes	P	P	P	P
7. Remunerative taxes	P	P	P	P

C. Finance act proposed by the United Nations experts

A finance bill was prepared by a United Nations expert and submitted to the Cabinet of the Ministry of Finance in April 1962. It differs at four points from the bill described in part B above.

Firstly, it eliminates the distinction between Congolese and Belgian-Congolese undertakings. All undertakings operating in the Congo are to be

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regarded as Congolese undertakings subject to the Congolese fiscal authority. This would obviously entail the conclusion of a convention between the two countries for the avoidance of double taxation.

Secondly, it preserves the distinction between undertakings operating only in one Province and undertakings operating in several Provinces, but only for personal tax and not for income tax purposes. On the other hand, it introduces a major new distinction between incorporated and unincorporated undertakings.

Revenue from tax levied on the former goes to the Central Government, while revenue from tax levied on the latter goes to the Provinces; this applies both to personal tax and to income tax.

Thirdly, the consumption duties are to be left entirely to the Provinces. The tax involved is an excise duty on domestic products; it would be promulgated, assessed, collected and appropriated by the Provinces.

The fourth difference relates to income from public lands and administrative revenue. This is divided into three groups, specifying which royalties and duties fall into each. Those in the first group would be promulgated, assessed, collected and appropriated by the Provinces. Those in the second group would be promulgated by the Central Government, assessed and collected either by the Central Government or by the Provinces depending on the case, and appropriated by the Provinces. Those in the third group would be promulgated and appropriated by the Central Government, but assessed and collected by either authority depending on the case.

The bill expressly stipulates that, in accordance with article 241 of the Fundamental Law, the Central Government may return to the Provinces a certain proportion of the export duties collected on products originating in the Provinces concerned.

Lastly, the bill clearly states that all revenue derived from the Congolese investment portfolio is to go to the Central Government. This would include the securities held by the Katanga Special Committee and the revenue derived from parastatal and mixed undertakings.

The following table outlines the fiscal system prescribed in the bill discussed above:

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Table III

The fiscal system proposed in the bill drafted by  
the United Nations experts

(G - Central Government; P - Provinces)

<u>Type of Tax</u>	<u>Assessment</u>	<u>Distribution</u>	<u>Collection</u>	<u>Allocation</u>
1. Personal tax				
a. Limited liability companies				
(i) One province	P	P	P	P
(ii) More than one province	G	G	G	G
b. Others				
(i) One province	P	P	P	P
(ii) More than one province	G	G	G	G
2. Income tax (Congolese)				
a. Limited liability companies	G	G	G	G
b. Others	G	P	P	P
3. Income tax (Belgian-Congolese)				
a. Limited liability companies	G	G	G	G
b. Others	G	P	P	P
4. Customs and excise				
a. Import duties	G	G	G	G
b. Export duties	G	G	G	G
c. Consumption duties	P	P	P	P
5. Income from public lands and administrative revenue				
a. Group I	P	P	P	P
b. Group II	G	P or G	P or G	P
c. Group III	G	P or G	P or G	G
6. Provincial surtaxes	P	P or G	P or G	P

D. Appraisal and recommendations

The bill drafted by the United Nations experts is more practical than that prepared at the time of independence (draft B). The distinction drawn in ~~xx~~ draft C between incorporated and unincorporated undertakings makes possible a clear distinction between the Central Government's powers and the powers of the

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Provinces. The transfer of consumption duties to the provincial administration should make this important tax easier to administer. The amalgamation of all income taxes in a single group is in keeping with the type of political evolution which may be anticipated for this country.

Draft C suggests that a certain percentage of export duties should be allocated to the Provinces from which the taxable exports come. This recommendation is not without justification. It should be noted, however, that the introduction of export duties is left in the hands of the Central Government: in other words, a single customs authority will continue to legislate uniformly for the entire country. If this system can be put firmly into operation and the establishment of different customs tariffs thus avoided, there is no reason why a given percentage of export duties should not be divided automatically between the exporting Provinces. The rate that has been suggested is of the order of 50 per cent.

It would be useful to see how the revenue of the Provincial Governments and Central Government would be affected by the differences between drafts B, C, and C as modified by granting the Provinces half the export duties (Draft D). The following table has been prepared with this in mind.

Table IV

Distribution according to the various drafts  
Revenue in 1958 and estimated revenue for 1962  
(in millions of Congolese francs)

Province	Distribution of revenue in 1958					Budget estimates for 1962			
	Draft B 1	% 2	Draft C 3	% 4	Draft D 5	% 6	Estimated revenue for 1962 and distribution according to draft D	Subsidies or advances from the National Bank	Estimated expenditure
Léopoldville	1,071.8	10	1,205.3	11	1,462.7	14	1,050.0	1,967.0	3,017.0
Equateur	337.2	3	413.5	4	466.7	4	300.0	899.0	1,199.0
Orientale	500.0	5	680.0	6	799.5	7	525.0	1,420.0	1,953.0
Kivu	464.0	4	549.1	5	641.0	6	450.0	1,085.0	1,535.0
Katanga	1,034.9	10	1,138.4	11	1,460.2	14	1,050.0	1,044.0	2,094.0
Kasai	324.6	3	465.7	4	593.2	5	375.0	1,150.0	1,525.0
Central Government	6,762.3	65	6,182.8	59	5,263.5	50	3,750.0	3,849.0	7,599.0
TOTAL	10,634.8	100	10,634.8	100	10,634.8	100	7,500.0	11,422.0	16,922.0

...

The table shows the real revenue for 1958 distributed among the Provinces and Central Government according to the three drafts mentioned above. The results are given as amounts in columns 1, 3 and 5 and as percentages in columns 2, 4 and 6. It should be noted that these figures are approximate calculations based on assumptions regarding the ratio of incorporated to unincorporated undertakings, the ratio of localized to dispersed undertakings, the distribution of Belgian-Congolese undertakings among the Provinces, etc.

These inaccuracies should not, however, affect the ultimate conclusion to be drawn from the above estimates. Take for example draft D, which grants the Provinces half the export duties and the Central Government 50 per cent of the revenue. Even if more precise calculations put the percentage at, say, 40 or 60, the effect would be the same since the Central Government grants subsidies to the Provinces: it would merely mean raising or lowering the amount of the subsidy.

By way of illustration, the maximum budget estimates now before the Parliament set the revenue for the Congo as a whole at 7,500 million Congolese francs. If this total figure is divided according to draft D, we obtain the figures given in column 7. The estimated expenditure for each Province is shown in column 9, while the subsidies from the Central Government and loans from the National Bank appear in column 8.

It is clear from these figures that the violent controversy over the distribution of revenue from export duties is a storm in a teacup. So long as the customs authority remains intact there is no difficulty in granting the Provinces whatever proportion of export duties may be preferred. The 50 per cent proposed in draft D seems a fair proportion and calculated to ensure that both the Central Government and the Provinces take an interest in promoting exports.

The really important question, which will have to be dealt with in the greatest detail in whatever Finance Act is finally promulgated, is the procedure for compiling the expenditure budgets of the Provinces and for arriving at the Central Government's decisions regarding subsidies. These questions are not dealt with here because they do not seem to have been raised during the negotiations, and can accordingly be left for a later stage. However, we shall have definite proposals to make on this subject at the appropriate time.

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8. TERMS OF REFERENCE FOR A MILITARY SUB-COMMISSION OF THE  
COMMISSION OF NATIONAL RECONCILIATION

1. A Military Sub-Commission, responsible to the Commission of National Reconciliation, is hereby established in accordance with the joint communiqué.
2. The Sub-Commission shall be an executive body with the task of reintegrating the armed forces of all parts of the Congo in an effective manner.
3. The Sub-Commission shall:
  - (a) Establish, in consultation with the Central Government, the permanent structure of the armed forces which the Central Government intends to maintain for the defence and security of the Congo, and divide the country into military zones based on the territorial division of powers;
  - (b) In the light of what is decided under sub-paragraph (a) above, evaluate the existing forces and decide what increases or reductions are required, having regard to the structure, organization, equipment and weapons needed by the permanent forces;
  - (c) Draw up an inventory of all the military equipment in the country and recommend the purchase of such additional military equipment as may be necessary for the permanent armed forces as a whole;
  - (d) Take measures to reabsorb into the forces of the Central Government all military and paramilitary forces at present maintained in Orientale, Kasai and Katanga Provinces by agencies other than the Central Government.
4. The Sub-Commission shall be composed of two officers of the rank of ..... from each military zone. The Chairman of the Sub-Commission shall be responsible for its work. He shall be appointed by ONUC, which shall also appoint two members of appropriate rank. A Chairman of the War Council shall be a member of the Sub-Commission ex officio in an advisory capacity. The Chairman may request ONUC to appoint additional members.
5. The Sub-Commission shall be authorized to appoint groups of observers composed of one or two members of the ANC General Staff at Leopoldville and an equal number of members from the military zones concerned. These groups shall be headed by a Chairman appointed by ONUC. They shall be under the general direction of the Chairman of the Sub-Commission and shall operate in situ, negotiating with and advising the local authorities in order to ensure that the

integration of the armed forces proceeds smoothly. The groups of observers shall communicate to the Sub-Commission all relevant details of their activities and shall advise the local military authorities on the detailed procedure for reintegration. The Sub-Commission shall bear a similar responsibility to the Commission of National Reconciliation.

6. In areas where units are acting in an undisciplined and uncontrolled manner or in disregard of the policy of reintegration, ONUC shall establish a neutral zone in order to facilitate the disarming and disbanding of such units.

7. There shall be no foreign military advisers save those recruited by the United Nations or the Central Government. The Sub-Commission shall take the necessary measures to expel from the Congo all persons found to be employed by forces other than those of the Central Government.

8. ONUC shall supply the Sub-Commission and its groups of observers with the secretariat staff required for the efficient conduct of their work.

9. The Sub-Commission and its groups of observers shall be free to go anywhere in the Congo and shall have access to all military camps and installations. ONUC shall be responsible for their safety and transport and for all other relevant administrative matters.

10. It shall be the duty of the Sub-Commission and its groups of observers to ensure that the forces of the Congo are integrated smoothly. They shall inform ONUC of all difficulties they encounter, including any failure by the personnel concerned to obey orders, so that ONUC may take appropriate measures.

9. DRAFT TERMS OF REFERENCE FOR THE GENERAL SUB-COMMISSION  
(POLITICAL RECONCILIATION)

The Sub-Commission shall hold direct consultations with the Provincial Governments of the Congo and shall obtain their views and recommendations on the substance and form of the new draft Federal Constitution for the Congo.

The Sub-Commission shall submit to the Central and Provincial Governments its conclusions on the new draft Federal Constitution for the Congo.



10. COMMENTS ON PRESIDENT TSHOMBE'S LETTER OF 10 MAY 1962

A. Future Constitution

The following text could be added to the draft joint communiqué:

"It is agreed that full use will be made of the Sub-Commission on General Political Questions in ascertaining the views and opinions prevailing in the Provinces and in laying a realistic foundation for the drafting of a Federal Constitution acceptable and applicable throughout the country. The views and opinions expressed to the Sub-Commission will be communicated to the existing Constitutional Commission, so that it may examine them and make any necessary additions."

B. Fundamental Law: Upon the signature of the joint communiqué, the Fundamental Law will theoretically (de jure) apply to the whole country; but in fact (de facto) agreements will have to be concluded with the local authorities on the measures to be taken in the Provinces, in accordance with current practice all over the country. In other words, the present conflict will pass from the sphere of law and military measures into that of politics and practical measures. If Katanga accepts this interpretation, it will be able to co-operate fully with the Central Government and the rest of the country, and also with the United Nations, in restoring law and order, rebuilding the economy and strengthening the independence and sovereignty of the future Federal Republic.

C. Commissions and Sub-Commissions: These will be executive organs of appropriate type, whose conclusions will be communicated, in the case of the General and Political Sub-Commission, to the Constitutional Commission, and, in the case of the other Sub-Commissions, to the Central Government and the provincial authorities. It is expected that in most cases decisions will be taken immediately, so that technical and financial assistance will be forthcoming to carry them out. In no case, however, will measures be taken without the full knowledge of the Central Government and the provincial authorities.

D. Status quo: So far as the application of the Fundamental Law is concerned, this will be as decided, but Katanga will have to take two decisions entailing definite action on its part: (a) the appointment of the Chief of the gendarmérie, and (b) an agreement on the distribution of customs revenue.

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These matters do not justify a continuation of the conflict, which would involve a serious risk of international repercussions and unforeseeable consequences.

11. DRAFT TERMS OF REFERENCE FOR A COMMUNICATIONS AND TRANSPORT  
SUB-COMMISSION

Measure to be taken immediately

1. Abolish all restrictions or measures at present in force - customs, police, military, etc. - which prohibit or hamper the free movement of goods and passenger traffic between Katanga and other parts of the country.
2. Proclaim the principle of freedom of all forms of communications and transport - railways, waterways, metalled roads and tracks.
3. Prohibit all violence or arbitrary acts which may prejudice and hinder the achievement and maintenance of freedom of movement for goods and passenger traffic.
4. Take all measures necessary for the reconstruction, as quickly as possible, of all surface transport routes damaged or destroyed since independence, including the railway bridges over the Lubilash and Lenge-Luguvu, outside Kongolo, and the road bridge over the Lubilash.
5. Promote the restoration and resumption of trade and traffic in produce and consumer goods between areas still isolated from each other.
6. Restore all administrative relations between the provincial and the central telecommunications, civil aviation, postal and meteorological services.
7. Reopen and keep in operation all direct telecommunication links between Katanga and the territory of the Congo as a whole.
8. Restore the circulation and exchange of all information issued by the civil aviation and meteorological services in connexion with flight protection and safety, weather forecasting, etc.
9. Restore the direct routing of mail, postal parcels, postal orders, money orders, etc. between Katanga and other parts of the country.
10. Withdraw Katangese postage stamps from circulation and use, and permit only Congolese stamps to be used.

ANNEX 34

Terms of reference of the Military Commission

Article 1. A Military Commission is hereby established in accordance with the joint communiqué.

Article 2. It shall be the duty of the Commission to carry out the instructions laid down herein in order to integrate the armed forces of all parts of the Republic of the Congo in an effective manner.

Article 3. The Commission shall:

- (a) Evaluate the manpower and equipment of the existing forces and such increases or reductions as may be required, having regard to the structure, organization, equipment and weapons needed by the forces of the Republic;
- (b) Determine the measures required to integrate into the armed forces of the Republic all military and para-military forces at present maintained in the Provinces of Kasai and Katanga.

A report shall be submitted to the Government of the Republic and the Provincial Governments for approval before the measures are put into effect.

Article 4. In all regions of the Republic where units act in disregard of the policy of integration, ONUC, in agreement with the Central Government and the provincial authorities, shall, while these terms of reference are in effect, take all necessary action to put an end of this state of affairs.

The position of the Government of the Republic and of the Provincial Governments concerned must be communicated to the Commission not later than fifteen days after submission of the reports. In the event of disagreement, a meeting of the governmental authorities concerned shall be convened without delay in order to reach a settlement.

Article 5. The Commission shall be composed of three officers, of the rank of major or above, from each principal military group concerned. The Chairman of the Commission, who shall conduct its proceedings, shall be a member of the ONUC forces and be appointed by ONUC. ONUC shall likewise appoint two members of the Commission, of appropriate rank.

Article 6. The Commission is authorized to appoint mixed groups of observers composed of two members of the ANC Headquarters at Leopoldville and an equal number of members of the principal military groups. These groups shall be headed by a Chairman appointed by ONUC. Under the general direction of the Chairman of the Commission they shall operate in situ with the local military authorities and advise them in order to ensure that the Commission's task is discharged smoothly. The groups of observers shall communicate to the Commission all relevant details of their activities.

Article 7. ONUC shall supply to the Commission and to its groups of observers the secretariat staff required for the efficient conduct of their work.

Article 8. The Commission and its groups of observers shall be free to go anywhere in the Congo and shall have access to all military and para-military camps and installations. ONUC shall be responsible for their safety and transport and for all other relevant administrative matters.

Article 9. It shall be the duty of the Commission and its groups of observers to ensure that the forces of the Congo are integrated smoothly. They shall inform the Central Government, the Provincial Governments and ONUC of all difficulties they encounter in carrying out their duties, including any failure by the personnel concerned to obey orders.

ANNEX 35

Communications relating to the incident of 2 June 1962

1. Statement by the Katangese delegation dated 4 June 1962

The Katangese delegation greatly regrets to inform the public that a deplorable incident took place during the Tshombe-Adoula talks on 2 June 1962, when Mr. Sendwe not only threatened President Tshombe with arrest, but went so far as to attempt to summon Prime Minister Adoula's bodyguard to make the arrest. In view of the constant recurrence of such incidents caused by Mr. Sendwe - in addition to the various incidents already reported and the measures taken latterly by the Central Government to keep President Tshombe and his party incommunicado - the Katangese delegation feels obliged, unless radical steps are taken to put an end to his obnoxious attitude, to doubt the good faith of the Central Government and its willingness to arrive at a peaceful solution of the dispute between the Congo and Katanga.

2. Denial by Mr. Sendwe

I have noted with astonishment the text of a communiqué just issued by Mr. Henri Ndala Kimbola on behalf of the delegation of South Katanga, which arrived at Leopoldville a fortnight ago to hold talks with Prime Minister Adoula on the problem of Katanga. The communiqué, which is tendentiously worded, alleges that, as the result of a small incident that took place between Mr. Tshombe and myself, I sought to have the latter arrested by the gendarmes of Prime Minister Adoula's bodyguard. In the first place, I wish most categorically to deny this mendacious accusation, which is merely one of the customary manoeuvres of the representatives of South Katanga. It is inconceivable that, at the very time when Prime Minister Adoula, on behalf of the Central Government, has given assurances to Mr. Tshombe regarding his security while he is at Leopoldville - it is inconceivable that I should act in defiance of this formal undertaking on the part of the Central Government. The only cause of the small incident between Mr. Tshombe and myself is the secessionist attitude of the leader of CONAKAT, who opposes the policy of my party, BALUBAKAT,

a staunch supporter of the national integrity of the Congo. My wish, my only wish, I say, is that all our brothers in the south should sincerely and finally forswear their separatist ideas and return to the Congolese fold. I have always expressed, and am still inspired by, the desire to come to an understanding with my brethren in South Katanga, so that we may live in one Katanga, as part of one Congo. As far as I am concerned, the small incident that occurred on Saturday is closed. I have forgotten it.

3. Letter dated 5 June 1962 from Mr. Adoula to Mr. Tshombe

I have the honour to refer to the conversation I had with you today, Tuesday, 5 June, in the presence of the representatives of the United Nations, and to confirm to you my desire to resume our talks tomorrow, Wednesday, 6 June, at 10 a.m. in my office.

I very much regretted the breaking-off of the negotiations, without prior notice from your delegation, as a result of the incident of Saturday last.

My surprise was even greater when this afternoon you informed me of your decision to resume discussions only if the Central Government expressed its regrets and if Mr. Sendwe, Deputy Prime Minister, was completely excluded from our proceedings.

I should like, in this connexion, to confirm the proposal I made to you, namely, that any member of my delegation who might disturb the atmosphere of cordiality should immediately be excluded from the meetings for twenty-four hours. Upon his return, he should not be allowed to speak until he had given guarantees that he would respect the climate of confidence and brotherliness which should prevail in our work.

I consider this proposal an acceptable compromise.

I hope that, in the higher interests of the country, the undertaking I have given you will be satisfactory to you and also that it will be reciprocated.

ANNEX 36

Exchange of letters between Mr. Adoula and Mr. Tshombe  
on 6 and 7 June 1962

1. Letter dated 6 June from Mr. Tshombe addressed to Mr. Adoula

Sir,

With reference to our conversation of 5 June, in the presence of the representatives of the United Nations, I have taken due note of your letter No. 2818/62/CAB/IM whose fourth paragraph in particular held my attention.

However, a happy issue for our talks depends primarily on respect for the pledged word. Such threats might have been thought to warrant an expression of regrets. More particularly, it might have been expected that you would be anxious to dispel the uncertainty into which you have thrown our delegation since we returned to Leopoldville, or rather since your Government tried to stop us at Ndjili on 17 April.

In order to prove once again our desire to continue the negotiations in the higher interests of the country, we have decided to resume the talks. However, we insist that the person concerned should apologize to us.

2. Letter dated 6 June from Mr. Adoula addressed to Mr. Tshombe

Subject: Resumption of talks

Sir,

I have just received your letter 10/19/VDK of 6 June 1962. I note with satisfaction your decision to resume the talks, and your presence in my office today was proof of this.

In my earlier letters I stressed the need to consider only the higher interests of the country and to dismiss as unimportant anything which might jeopardize our search for a peaceful solution. I observe with pleasure that you share the same concern.

With regard to the incident which we have decided to consider finally closed, I should, I feel, recall that up to Saturday last we never thought of asking for apologies or regrets from anyone at the talks, whether in your delegation or in mine, for the use of unguarded language in the heat of discussion.



I am sure that, like myself, you are anxious that the current talks should be continued in search of a solution beneficial to all. I think, therefore, that the proposal set forth in my letter No. 2818/62 of 5 June 1962 is calculated to preserve the necessary mutual respect and calm in our future talks.

3. Letter dated 7 June from Mr. Adoula addressed to Mr. Tshombe

Subject: Continuation of our talks

Sir,

At our meeting yesterday evening it was agreed that the next meeting would take place today, 7 June, at 10 a.m.

However, I was not informed until 11 a.m. that the Katangese delegation could not come this morning.

While pointing out that this delay, which involved the Central Government in fruitless waiting at a time when the members of my delegation had a great deal to do, was discourteous to say the least, I regret to have to observe that failure to keep appointments can only delay the solution of the problems outstanding, and also jeopardize the interests of the peoples who have placed great hopes in the success of these talks.

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ANNEX 37

Press communiqué circulated by Mr. Tshombe on 12 June 1962

At Leopoldville today, Mr. Moise Tshombe gave the Press to understand that there was still a long way to go before an understanding could be reached with Prime Minister Adoula. The Katangese President was invited to a reception given by Mr. Robert Gardiner, Officer-in-Charge of the United Nations Operation in the Congo, in honour of the two delegations, at which journalists were present. He was very discreet in discussing the outcome of his talks with the Central Government which should, in principle, lead to the reintegration of Katanga into the Congolese Republic.

According to Mr. Tshombe, after three weeks of discussions, the only agreements reached are on matters of procedure, while the problems of substance remained untouched. The Military Commission which is to arrange for the absorption of the Katangese gendarmerie into the ANC has not yet been formed and, in any case, Mr. Tshombe said, its role will be simply to submit suggestions to the two Governments; it will have no power to decide anything by itself.

With regard to the currency, the fate of which is now in discussion between the two delegations, Mr. Tshombe seemed in no hurry to reunify his own, which has been circulating in Katanga alongside that of the rest of the Congo, for the past year and a half. "It would serve no purpose", he pointed out, "to drown the Katangese franc, which is still worth something, in the present devaluation of the Congolese franc".

Mr. Tshombe, who had had no chance to make contact with the Press before this, took the opportunity to speak his mind. He made a point of reaffirming that, in spite of everything, the talks would go on until an agreement was reached.

ANNEX 38

Terms of reference of the Transport and Communications Commission

Article 1. A Transport and Communications Commission is hereby established in accordance with the final joint communiqué.

Article 2. The two delegations have accepted the principle that the movement of persons and goods by every means of transport and communication between Katanga and the rest of the territory of the Republic shall be free.

They instruct the Commission to propose to the authorities of the Central Government and the Government of Katanga the technical measures necessary for the re-establishment of all channels of communication between Katanga and the rest of the territory of the Republic.

Article 3. The Commission shall also be responsible for informing the authorities of the Central Government and the Government of Katanga of any failure to carry out the provisions for the abolition of all restrictions or measures which are now in force and which hamper the free movement of persons and goods between Katanga and the rest of the territory of the Republic.

Article 4. The Commission shall be composed of two representatives of the Central Government, two representatives of Katanga and two representatives of ONUC.

The Chairman shall be appointed by the members of the Commission by joint agreement.

ANNEX 39

Exchange of letters between Mr. Gardiner, Mr. Adoula and  
Mr. Tshombe on 22 June 1962

1. Letters from Mr. Gardiner addressed to Mr. Adoula and Mr. Tshombe  
respectively

The charges made and discussions held during the present talks regarding troop movements indicate a reciprocal desire to avoid any conflict and to seek peaceful means of resolving the problems confronting the Congo.

As will have been apparent, these charges have made it difficult to create a tranquil atmosphere in which constructive discussion can take place.

The unfortunate allegations of Wednesday last prove once again that this peaceful climate, which has facilitated discussions up to now, can be disturbed at any moment.

In the light of the findings yielded by the inspection tour which Minister Kimba carried out yesterday, accompanied by the acting representative of ONUC at Elisabethville, and which enabled him to ascertain the facts quickly, and also in order to avoid disturbing the current discussions in any way, the United Nations has decided, with the co-operation of the Central Government and that of Katanga, to station groups of observers in the Kongolo/Kabalo and Baudouinville/Albertville areas.

The Kongolo/Kabalo group will be stationed at Kabalo.

The Baudouinville/Albertville group will be stationed at Baudouinville.

These groups of observers should be given all necessary assistance in carrying out reconnaissance by air and road in the areas in which they are posted.

In addition the United Nations intends to ask the Press correspondents to designate four representatives, two of whom will be attached to each of the groups of observers thus set up.

The decision I have the honour of communicating to you herewith should be applied immediately, and I should be grateful if you would kindly signify your consent as soon as possible so that the groups of observers may be posted in the course of the day.

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2. Reply by Mr. Adoula

I have the honour to confirm to you the agreement of the Central Government to your proposal to set up groups of United Nations observers at Kabalo and Baudouinville, to which your letter GVT/448/62 of 22 June 1962 refers.

I am happy to note that the United Nations was able to ascertain on the spot the inaccuracy of Mr. Tshombe's accusations regarding the ANC.

I would recall, moreover, that on 20 June, immediately upon being informed of Mr. Tshombe's accusations, the Central Government asked for United Nations observers to be sent to the areas in question.

Accept, Sir, the assurances of my highest consideration.

3. Reply by Mr. Tshombe

I am in receipt of your letter No. KAT/121/62 of 22 June.

I appreciate your desire to restore a tranquil atmosphere in which constructive discussions can take place; indeed, I referred to the same matter in my letter of 20 June.

With regard to your proposal to send groups of observers to the Kongolo, Kabalo, Baudouinville and Albertville areas: since this matter falls within the terms of reference of the Military Commission, it will doubtless be settled as soon as the members of that Commission and the observers are appointed.

ANNEX 40

Conversation between Mr. Tshombe at Leopoldville and Mr. Kimba  
at Elisabethville by radiotelephone on 21 June 1962

Mr. Kimba:

We arrived at Kongolo at 11.25 a.m. and heard the evidence of Colonel Kimwanga. According to this evidence, a number of ANC soldiers were beyond Luika. There were also ANC soldiers at Solie and at Kitule; and more ANC soldiers at Kaseya and Esombo. Two weeks ago there was a skirmish between the Katangese gendarmerie and ANC at Luika. Yesterday an engagement between the Katangese gendarmerie and ANC soldiers took place at Kaseya, 36 kilometres from Kongolo. One Katangese soldier was slightly wounded. The situation calmed down again after this engagement. Colonel Kimwanga says that, following yesterday's attack, a massive attack might take place on 25 June. We ourselves have seen and noted some broken-down vehicles and some cars in good working order.

The vehicles were on the road from Kongolo to Esombo. There was also a tank truck at Esombo. Major Selamani, who was with me, said that he had seen a few soldiers. A detailed report on the air reconnaissance will follow. We did not reconnoitre Kamipini; this reconnaissance did not take place in the morning because of bad visibility; it did not take place in the afternoon either because of a petrol shortage. The present report has been approved by the delegates of the United Nations and of Katanga.

Mr. Tshombe observed to Mr. Kimba that there was a contradiction between what he had said and a remark by the United Nations representative to Mr. Back that he had seen absolutely nothing at all.

Mr. Ghaleb, speaking after Mr. Kimba, said that he thought everyone was in agreement. "Mr. Kimba has given you Colonel Kimwanga's evidence."

Mr. Tshombe:

Who is the garrison commander at Kongolo?

Mr. Ghaleb:

We collected this evidence together with Minister Kimba. We did not go to the site of the engagement. We were thirty-six kilometres from the place where the engagement occurred. This we must tell you. We did not go to this place and we took the evidence of Colonel Kimwanga.

Mr. Tshombe:

The result of your investigation is that there is no conclusion because you did not take the trouble to go to the site of the engagement, and it seems to me that you do not place much faith in Colonel Kimwanga's evidence. One person tells me that he has seen absolutely nothing at all, while another tells me that one man was wounded.

Mr. Kimba:

There is no dispute at all between Ghaleb and myself about the engagement. There was an engagement, and the situation has returned to normal. There is no attack. I think that is the main point. We did not consider it necessary to go to the spot because there was no attack.

Mr. Tshombe:

I want there to be no contradiction between the statements. I should like Mr. Ghaleb to tell his chiefs that there was an engagement and that, for the moment, the situation has returned to normal.

Mr. Kimba:

There was an engagement between the Katangese gendarmes and ANC soldiers; the situation has returned to normal.

Mr. Tshombe:

The engagement which took place, was that in fact the one reported yesterday?

Mr. Kimba:

Yes, according to Colonel Kimwanga's evidence. The engagement took place yesterday.

Mr. Tshombe:

Would you ask Mr. Ghaleb to confirm that there was an engagement yesterday. Was it in fact in yesterday's engagement that a man was wounded?

Mr. Kimba:

The engagement took place yesterday according to Kimwanga's positive evidence. The driver who drove me has been all the way to Kaseya.

Mr. Tshombe:

Would you ask Mr. Ghaleb to confirm that? There is a difference of opinion. According to your statement and the evidence of Colonel Kimwanga, the engagement took place yesterday.

Mr. Ghaleb:

According to the evidence of Colonel Kimwanga, the engagement took place yesterday. Therefore there is no contradiction between Mr. Kimba's statement and mine.

Mr. Tshombe:

There was a contradiction between Mr. Back and yourself.

Mr. Ghaleb:

I do not think there is any contradiction between Mr. Back and myself. The important thing is that calm now prevails.

Mr. Tshombe:

To summarize the conversation, there was an engagement last week. There was an engagement yesterday. After this, calm prevails at Kamipini and Kapona and the weather was unfavourable for reconnaissance.

Mr. Ghaleb:

That is correct - visibility was very bad.

Mr. Tshombe:

Van Roey will leave Leopoldville for Elisabethville tomorrow. He has finished his work.

Mr. Back:

Mr. Ghaleb, I have a question to ask you because I should not wish there to be any misunderstanding. Mr. Kimba indicated that you and he had agreed to state that you had ascertained that there was an engagement yesterday. Is this correct or is it merely Colonel Kimwanga's evidence?

Mr. Ghaleb:

We did not go there yesterday. We heard the evidence of the Colonel.

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Mr. Back:

So it is a matter of the Colonel's evidence and not of your own and Minister Kimba's observations.

Mr. Ghaleb:

Yes, that is the case.

Mr. Tshombe:

I am sorry you did not go the thirty-six kilometres to the actual place, to find out what had happened, because I know very well what people will say.

Mr. Kimba:

We thought the main point was that, as the Colonel said, there was no more fighting going on.

ANNEX 41

Terms of reference of the Economic and Fiscal Commission

Article 1. An Economic and Fiscal Commission is hereby established in accordance with the final joint communiqué.

Article 2. Pending the adoption of the new constitution laying down the appropriate fiscal system, Katanga agrees to participate immediately in the expenditures of the Republic. The delegation of the Central Government takes note of this decision.

The two delegations instruct the Commission to propose to the Central Government and the Government of Katanga the technical measures necessary for such participation and to submit to the Constitutional Commission a technical study of the appropriate fiscal system.

Article 3. The Commission shall propose to the Central Government and the Government of Katanga appropriate measures for the regulation of foreign assistance (technical, financial and other).

Article 4. The Commission shall consist of three representatives of the Central Government, three representatives of Katanga and two United Nations experts.

The President shall be appointed by the Commission by joint agreement.

ANNEX 42

Terms of reference of the Monetary Commission

Article 1. A Monetary Commission is hereby established in accordance with the final joint communiqué.

Article 2. The two delegations have adopted the principle of the establishment of a single monetary authority. They instruct the Commission to propose to the Central Government and the Government of Katanga the technical measures necessary for the establishment of this authority.

Article 3. The two delegations also instruct the Commission to propose to the Central Government and the Government of Katanga the necessary technical measures concerning:

- (a) The arrangements relating to the circulation of the two currencies, taking into account the circumstances of time and place and the requirements of the country's general situation, in accordance with the provisions of the report of the group of experts dated 20 June 1962,
- (b) The elaboration of a national monetary policy, credit policy and banking control policy;
- (c) The regulation of foreign exchange and trade;
- (d) The temporary arrangements and measures needed to attain the objectives set forth in these terms of reference.

Article 4. The Commission shall consist of three representatives of the Central Government, three representatives of Katanga and two experts of the International Monetary Fund.

The Chairman shall be appointed by the Commission by joint agreement.

ANNEX 43

Draft of final joint communiqué, submitted by the Central Government

The Prime Minister of the Republic of the Congo and the President of the Province of Katanga have held a series of talks at Leopoldville with a view to achieving a peaceful settlement of the Katangese problem in a spirit of national reconciliation and respect for the territorial integrity of the Republic of the Congo within its frontiers of 30 June 1960.

To that end four commissions have been established and have been assigned specific tasks with a view to proposing practical means of achieving the objectives set by the two delegations, namely the unity and integrity of the Republic. The Military, Monetary, Economic and Fiscal, and Transport and Communications Commissions, which will be composed of representatives of the Central Government, the Provisional Government of Katanga and United Nations and International Monetary Fund experts, will start work as soon as the members have been appointed and in any case not later than 10 July 1962.

The two delegations have agreed to meet again in six weeks' time in order to review the work of the Commissions and to take all necessary steps to apply the agreements reached between the two parties.

With a view to the reintegration of Katanga in the rest of the Republic of the Congo, and out of respect for the unity of the country, the two delegations have accepted the principle of a single monetary authority and the free movement of goods and persons throughout the Republic as delimited by its frontiers of 30 June 1960. The Central Government has also taken note of the decision of the Province of Katanga to participate in the expenditures of the Republic from now on, pending the adoption of an appropriate fiscal system under the new Constitution.

With regard to the future constitutional system of the Republic, the Prime Minister has stated his readiness to submit to the Legislative Chambers, within a period of .... months, a draft federal Constitution which will take account of the various regional identities and will enable each Province to manifest its personality by administering its own affairs. The Constitutional Commission of the Central Government will work towards these objectives.

Lastly, the Central Government, in the context of reconciliation of the whole Congolese people, will decree a general political amnesty for Katanga.

The two delegations are determined to preserve the spirit of understanding and brotherhood in which their work has been done. In this way they hope to be able to devote themselves, in restored peace and unity, to rebuilding the country for the well-being of the peoples.

ANNEX 44

Draft of final joint communiqué, submitted by the Katangese delegation.

1. The Prime Minister of the Republic of the Congo and the President of Katanga have met at Leopoldville from 24 May 1962 to 25 June 1962 and have held a series of talks with a view to reconciling the different points of view and making fresh efforts to achieve a broad national reconciliation.
2. They held 41 meetings, during which they decided to establish four Commissions - Military, Monetary, Economic and Fiscal, and Transport and Communications - which will be able to call on the United Nations for technical assistance. These Commissions will be purely advisory in character. Their instructions are to study and propose measures for adoption. Nothing in their terms of reference can under any circumstances be interpreted or implemented in a manner inconsistent with that advisory character.
3. The proposals made by each of the Commissions under their respective terms of reference will be submitted to the Central Government and the Government of Katanga in a consolidated report.
4. In each case the Central Government and the Government of Katanga will make known their position within three months after receiving the Commission's report. In the event of disagreement, a meeting between the delegations of the Central Government and the Government of Katanga respectively will be convened rapidly in order to agree on a solution. In no case may any measures of application be taken without the consent of both Governments.
5. The date of implementation of the measures decided upon by the Central Government and the Government of Katanga on the proposal of each Commission will be fixed by agreement and will be synchronized with the implementation of any other measures decided upon on the proposal of each of the other Commissions.
6. In order to safeguard the social, economic, and political stability of Katanga and thus to create a propitious climate for the proper functioning of the Commissions and for the accomplishment of their work, the Central Government and the Government of Katanga recognize that the Commissions to be established in conformity with this final communiqué will not enter upon their duties until the following conditions have been met:

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- (a) Proclamation of the lifting of the state of war in Katanga between the United Nations troops, the ANC and the Katangese gendarmérie;
- (b) Maintenance of the unity of Katanga within its frontiers as fixed on 30 June 1960;
- (c) Preservation of the institutional and administrative structures of Katanga and abolition of the Commissionerships Extraordinary in Katanga;
- (d) Maintenance in office of serving members of the security forces, judiciary and administration of Katanga;
- (e) Freedom for Katanga to recruit the technicians needed for the smooth functioning of its administrative services;
- (f) Cessation of hostile acts and interference in the internal affairs of Katanga;
- (g) A decree of general amnesty must be promulgated by the Chief of State.

7. The Katangese Constitution of 5 August 1960 will remain in force until the adoption, and the acceptance by Katanga, of the new Federal Constitution under which the member states are assured a genuine autonomy.

8. The two delegations have agreed to meet again in order to review the work of the various Commissions and to take all necessary steps to give effect to the proposals agreed upon between the two delegations.

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ANNEX 45

Draft of final joint communiqué presented by the Officer-in-Charge of ONUC

1. The Prime Minister of the Republic of the Congo and the President of Katanga have held a series of talks at Leopoldville with a view to reconciling the different points of view and making fresh efforts to achieve a broad national reconciliation.
2. Four Commissions - Military, Monetary, Economic and Fiscal, and Transport and Communications - whose terms of reference are annexed hereto, are hereby established and are entrusted, under their terms of reference with specific tasks. These Commissions will be composed of representatives of the Central Government and of the Government of Katanga, together with United Nations and International Monetary Fund experts. The members of these Commissions will be appointed not later than fifteen days after the delegation of Katanga arrives at Elisabethville. These Commissions will submit to the Central Government and to the Government of Katanga proposals which must be approved before they are put into effect.
3. The two delegations have agreed to meet again within a period of .... in order to take all necessary steps to implement the proposals agreed upon between the two Governments and in order to remove all obstacles to action in accordance with the terms of reference of the Commissions.
4. The two delegations have agreed that a decree of general amnesty shall be promulgated by the Chief of State in order to give every assurance to the responsible leaders of the Congo who must participate in the task of national reconstruction.
4. The discussions between the Prime Minister of the Republic of the Congo and the President of Katanga, which were also attended by representatives of the United Nations, took place in an atmosphere of understanding that made it possible to reach agreement.

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ANNEX 46

Statement to the Press by the Officer-in-Charge of ONUC,  
dated 26 June 1962

Since 18 May 1962 the delegations of the Central Government and of Katanga have been meeting in Leopoldville.

The Katangese delegation had received the same guarantees from the United Nations as during their first series of meetings from 15 March to 18 April 1962. The representatives of the United Nations have attended the meetings and the two delegations adopted an agenda presented by the United Nations and also accepted a United Nations draft as a working document.

During the 41 meetings, the terms of reference of four commissions were adopted: military commission, monetary commission, transport and communications commission, and economic and fiscal commission.

The delegations agreed to designate the members of the commissions not later than 15 days after the arrival in Elisabethville of the Katangese delegation. They did not reach agreement on a joint final communique.

At the request of the Katangese delegation, which expressed its desire to return to Elisabethville, the talks were suspended on 26 June 1962 and, in accordance with its commitments, the United Nations will assure the return of President Tshombe and the Katangese delegation to Elisabethville.

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