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THE KOREAN QUESTION

REPORT OF THE

UNITED NATIONS COMMAND ON THE

OPERATION OF THE NEUTRAL NATIONS

REPATRIATION COMMISSION

GENERAL ASSEMBLY

OFFICIAL RECORDS : EIGHTH SESSION

SUPPLEMENT No. 19 (A/2642)

NEW YORK, 1954

47p

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Note by the Secretary-General

At the request of the Government of the United States of America, acting as the Unified Command in Korea, the Secretary-General has the honour to circulate to Members of the General Assembly the Report of the United Nations Command on the operation of the Neutral Nations Repatriation Commission.

The Interim and Final Reports of the Neutral Nations Repatriation Commission have been distributed as document A/2641, Supplement No. 18 to the Official Records of the eighth session of the General Assembly.

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REPORT OF THE UNITED NATIONS COMMAND ON THE OPERATION OF THE NEUTRAL NATIONS REPATRIATION COMMISSION

I. Introduction

1. On January 23, 1954, some 22,000 former soldiers of the North Korean and Chinese Communist Armies, having freely chosen not to return to Communist control, were released from prisoner of war status. Their release vindicated the UNC's stand for the humanitarian principle that prisoners should not be forced against their will to return to their countries of origin and reaffirmed the legal principle that prisoners of war have the right to seek political asylum. Given real opportunity of free choice, these former prisoners were able to resist the tactics of coercion and subterfuge used against them by the Communist Command at every opportunity. They chose freedom over Communist tyranny.

2. During the Armistice negotiations, the UNC insisted that prisoners must not be repatriated forcibly or held indefinitely in captivity. This position was endorsed in the General Assembly of the United Nations by a vote of 54-4 on December 3, 1952. The UNC had sought without avail to have the Geneva Convention provision as to voluntary repatriation of sick and wounded prisoners of war observed. However, following the decisive support of the General Assembly for the principle of non-forcible repatriation, the Communist side, on June 8, 1953, finally indicated its willingness to apply these provisions of the Geneva Convention. Out of the resulting negotiations came renewed discussions at Panmunjom of the problem of prisoners of war, resulting finally in acceptance by the Communist side of the UNC's principle, endorsed by the United Nations, that no force should be used to effect repatriation and that no prisoners should face a possibility of indefinite captivity. This principle, specifically stated by UNC representatives, was made completely clear to the Communists and there was no possibility of misunderstanding. The agreement on prisoners of war which forms part of the Armistice Agreement was signed, therefore, on June 8, 1953.

3. In brief, the agreement provided that those prisoners resisting repatriation should be turned over to the custody of the NNRC in order to ensure their right to be repatriated, that both sides should be afforded the opportunity to give appropriate explanations to the non-repatriated prisoners, and that the Commission should declare the release from prisoner of war status to civilian status of any prisoners who had not exercised their right to be repatriated and for whom no other disposition had been agreed to by the Political Conference within one hundred and twenty (120) days after the NNRC assumed their custody. The armistice provisions were particularly framed to ensure that neither side would be in a position to delay beyond the agreed period of 120 days the release to civilian status of any prisoner who continued to refuse repatriation.

4. The NNRC, composed of Sweden, Switzerland, Czechoslovakia, Poland, and India, with India serving as Chairman and Executive Agent and providing some 6,000 custodial troops, assumed its duties in the Demilitarized Zone during the first week of September, 1953. By September 24, the UNC had placed in CFI custody

approximately 14,700 Chinese and 7,900 Korean prisoners of war who had refused to return to Communist control. The Communists turned over 23 Americans, one British, and 335 ROK prisoners who had refused repatriation.

5. Of the 90 days allotted by the Armistice Agreement for explanations, the Communists utilized only ten for interviews with the prisoners. They persuaded only 137 or 4 per cent of the men interviewed to return to their control. Despite every effort to bring pressure on the prisoners and to intimidate them, the Communists found that they could not persuade any substantial number of the prisoners to return to their control. Thereafter, they abandoned any real effort to interview the prisoners. They concentrated instead on seeking to sabotage the prisoners' agreement in the hope of forcing the continued captivity of these prisoners, and of rationalizing their own failure by falsely alleging that United Nations agents in the camps were coercing the prisoners. To sabotage the agreement, they refused to conduct explanations for groups of prisoners willing to attend, while demanding that the NNRC use force to compel other prisoners to attend explanations against their will. The Commission held that the use of force against the prisoners would have violated both the Armistice Agreement and the Geneva Convention. Toward the end of the explanation period, the Communists, having refused to utilize fully their opportunity to make explanations, then demanded that the NNRC hold the prisoners and extend the period for explanations. They also demanded that the prisoners be held until the Political Conference recommended to be held had considered the prisoners of war question, while resorting to delaying tactics which prevented the Political Conference from convening prior to the time fixed in the Armistice Agreement for the release of the prisoners.

6. In rejecting Communist demands for an extension of the period for explanation, the UNC adhered to the terms and the purpose of the Armistice Agreement which established a definite termination period for explanations and NNRC custody in order to protect the prisoners against indefinite captivity. Termination of NNRC custody at the end of 120 days was mandatory under the Armistice Agreement. This termination date (January 23) could not in any way be affected by the Communist actions in delaying the convening of the Political Conference or in failing to take advantage of their opportunities to complete the explanations during the allotted time.

7. On January 14, India, as Executive Agent of the NNRC, requested both sides to accept the restoration of custody on January 20 of all prisoners. The UNC pointed out that the Armistice Agreement made it obligatory that the NNRC declare the release of the prisoners to civilian status 120 days (January 23) after the NNRC had assumed custody. Consequently, the UNC could not concur in any action which constituted default by the Commission of this obligation nor accept any conditions inconsistent with the duty of all concerned to respect the right of the prisoners of war to their freedom on

January 23. Accordingly, while willing on humanitarian grounds to be prepared prior to January 23 to arrange for the accommodation and disposition of the prisoners, the UNC made it clear that, under the Armistice Agreement, release of the prisoners by the NNRC on the 20th could in no way prejudice their right to become civilians on January 23 and their right to go to the countries of their choice.

8. On January 20, the first prisoners were released from the Demilitarized Zone. In accordance with their free choice, the Chinese were embarked for Formosa and the Koreans went to the Republic of Korea. On January 23, the UNC reaffirmed that "all prisoners who have not chosen to be repatriated are entitled, now that the 120-day period for their custody by the NNRC has expired, to their freedom as civilians and to have this freedom respected by all concerned. The UNC considers that these former prisoners now have civilian status. As of 0001 hours on January 23, 1954, they became free men".¹

9. By February 23, following the dissolution of the NNRC, all personnel of the Indian component of the NNRC and CFI had left Korea. President Eisenhower on February 19 sent a message of appreciation and commendation for the performance of the Indian Custodial Force to Prime Minister Nehru.

II. Agreement on Terms of Reference

10. In the summer of 1953, after days of discussion by the Armistice negotiators in which the Communists used their familiar pattern of delay and interminable propagandizing, the UNC was finally able to secure their agreement to a workable plan to handle those prisoners of war of both sides who would refuse direct repatriation. This agreement was contained in the Terms of Reference for the Neutral Nations Repatriation Commission, signed at Panmunjom by the Senior Delegates of both sides on 8 June 1953, to become effective on the date the Armistice Agreement was effective. The document provided for the establishment of a Commission composed of representatives of five nations: India, Sweden, Switzerland, Poland, and Czechoslovakia. India's representative was to be the Chairman and Executive Agent, to take temporary custody in Korea of those prisoners of war who, while in the custody of the detaining sides, had not exercised their right to be repatriated and to ensure that those prisoners of war had the opportunity to exercise that right.

11. The Terms of Reference provided for the holding of explanations and interviews by each side for those who had not chosen repatriation. Specifically: "The Neutral Nations Repatriation Commission, after having received and taken into custody all those prisoners of war who have not exercised their right to be repatriated, shall immediately make arrangements so that within ninety (90) days after the Neutral Nations Repatriation Commission takes over the custody, the nations to which the prisoners of war belong shall have freedom and facilities to send representatives to the locations where such prisoners of war are in custody to explain to all the prisoners of war depending upon these nations their rights and to inform them of any matters relating to their return to their homelands particularly of their full freedom to return home to lead a peaceful life. . . ." (para. 8 of the Terms of Reference).

¹See Enclosure I.

III. Initial contact with Indians, Swedes, and Swiss (Enclosure A)

12. The initial meeting of UNC with representatives of the Government of India took place at Headquarters UNC on 7 August. A detailed briefing was given, covering the entire prisoner of war situation. Particular emphasis was placed on the violent antagonism which anti-Communist prisoners had toward the Communists and the difficulties which might be encountered in moving them to the Demilitarized Zone.

13. After a personal reconnaissance of the Panmunjom area, additional discussions with commanders in Korea concerned with NNRC support, and a final conference in Tokyo, the GOI party departed.

14. Subsequently, the Commander of the Custodial Force, India, Major General S. P. P. Thorat arrived. He was briefed, travelled to Korea to see the situation for himself, and on his return, conferred again with UNC officials. He submitted to UNC the text of a personal message from him to all the prisoners of war of both sides, assuring them of fair treatment by the CFI and requesting their co-operation during the period they would be in NNRC custody. The UNC published General Thorat's message to all the prisoners of war in its custody, and through the MAC delivered the text to the Communist side.

15. In early September, Lt. General K. S. Thimayya, Indian Chairman of the NNRC, together with Mr. Armin Daeniker and Mr. Carl J. Stenstrom, Senior Swiss and Swedish Delegates respectively, were given the same type of orientation as the first party.

16. Conversations with these representatives made it clear that they were sincere in their desire to perform a strictly impartial task.

IV. Activation of United Nations Command Repatriation Group

17. To provide for a co-ordinated and continuous support echelon to maintain contact with the NNRC and represent the UNC, the United Nations Command Repatriation Group was established on 1 September as a separate command of the UNC under Brigadier General Archelaus L. Hamblen. As the representative of the Commander in Chief, United Nations Command (CINCUNC), CG, UNCREG was to represent and act for CINCUNC in connexion with all matters arising out of the mission and operations of the NNRC.

18. The value of this special agency was realized quickly. Attached to it were the best qualified Korean and Chinese linguists available in the FEC. Carefully selected officers and enlisted men were ordered to duty with UNCREG to plan and execute the UNC's responsibilities in explanation procedures to anti-Communist personnel, as well as alleged UNC non-repatriates turned over to NNRC by the Communists. As their operations progressed, an effective working relationship was quickly established between UNCREG, NNRC, and CFI personnel. The friendly spirit generated among working personnel at all levels helped immeasurably in resolving what might have become many serious problems.

V. Reception of Custodial Forces of India and NNRC

19. Immediately following the signing of the Armistice Agreement in July, preparations were made to complete the tremendous logistic responsibilities required by the Agreement. Construction on an around-the-clock

schedule was under way to provide the camp sites and facilities in the Demilitarized Zone necessary to support over 22,000 prisoners of war, 6,000 troops of the Custodial Force, India, and the personnel of the NNRC headquarters. Considerable effort was expended in the establishment of a fully equipped 2,400-bed hospital in the prisoner of war camp area for the sick and wounded who were to be transferred from UNC hospitals in South Korea. At the same time, arrangements were made for the movement of the Neutral Nations personnel from Sweden and Switzerland and for both NNRC representatives and CFI troops from India. After arrival off Inchon, Indian troops were transferred to UNC vessels and then lifted by helicopter into the Demilitarized Zone in the largest lift of its kind undertaken in the FEC.

VI. Movement of anti-Communist prisoners of war to Demilitarized Zone (Enclosure B)

20. Prior to the movement to the Demilitarized Zone of the anti-Communist Korean and Chinese prisoners of war, the prisoners were informed of the conditions and operations attendant upon their turnover to the custody of the NNRC as prescribed in paragraph 4 of the Terms of Reference. This was done in order to offset the extreme fears and apprehensions which prisoners of war had toward any move that would place them in proximity to the Communists they so violently opposed. But for their willing co-operation, the movement could not have been accomplished without the exercise of force, with consequent violence and bloodshed. Visits were made to the prisoner of war camps by UNC commanders who assured them of fair and impartial treatment from Indian troops and from the neutrals concerned. The UNC succeeded in gaining their co-operation and acceptance of an orderly move north to the Demilitarized Zone. Particular emphasis was placed on assurances of the goodwill of the Government of India. A major factor in this co-operation was the prisoners' belief that custody was being relinquished by the UNC and accepted by the Indian forces—not the Communists—and that the Terms of Reference would be adhered to scrupulously. They knew and accepted in good faith the principal provisions of the Terms of Reference of interest to them, namely, that they could not be held indefinitely in custody, and that no force could be used to effect their repatriation.

21. After an orderly movement from their island camp to Munsan-ni, the first group of prisoners of war arrived at the reception point in the Demilitarized Zone on 10 September. Violence and disorder erupted as soon as the prisoners of war saw Communist observers present in the area. Rushing attacks, throwing of stones and frenzied shouting by the prisoners against recognizably Communist personnel caused serious disruptions in the transfer operation during the next few days. Consequently, the Commander, CFI, requested the deliveries be cut from 3,000 prisoners of war to 1,000 per day until the Indian forces had been increased.

22. Alarmed over the possibilities of a breakdown in this operation and the subsequent failure to complete the delivery by 25 September as required by the Terms of Reference, UNC representatives dispatched letters to the Chairman of the NNRC, pointing out that the cause of all these disturbances was the presence of Communist observers in the reception area. Communists had been stationed close to the processing tables, were seen taking notes by the prisoners of war, and further, were present in such numbers as to cause some apprehension and misunderstanding as to who was assuming custody—the Indians or the Communists. By comparison, attention was drawn to the orderly and disciplined attitude of the

prisoners of war when only the Indians, Swedes, and Swiss were present. The UNC felt that the delivery of prisoners of war was a purely mechanical operation between the UNC and CFI and did not constitute an NNRC operation for which observers of the other side need be present. Therefore, representatives or observers of the other side should not have been authorized in the area until the start of the explanation period on 25 September. It was requested that, since the continued presence of the Communist delegation would surely induce more violence among the prisoners of war and would probably cause them to question the Indians' good faith and impartiality, the Communist observers be immediately banned from the reception site. The Communists insisted their observers be present even though it was clear they were endangering the entire operation.

23. On 12 September, a letter was received from the NNRC which reviewed the events of 10 and 11 September and, because of "the need for an expeditious and smooth transference of the custody of the Prisoners of War", requested that the two commands agree to withdraw their observers. The UNC quickly agreed and so informed the NNRC on 14 September. The Communist side rejected the request. The Commission felt it could not act without the agreement of both commands. Although the Communist personnel were still permitted in the area during the remainder of the turnover period, the CFI limited the number of Communist personnel authorized and kept them far enough away from the prisoners of war so as not to permit easy recognition or eavesdropping on the processing proceedings. Thereafter, with slight adjustments to the delivery schedule, the UNC was able to complete the shipment of prisoners to the South Camp, CFI, by 24 September.

24. On 23 September, during the turnover by the Communists of non-repatriates to the CFI in the Northern Camp, the UNC declined to send observers, following the original line of reasoning that neither side should run the risk of interfering with a purely military and non-NNRC operation.

VII. Construction of explanation sites (Enclos. E)

25. Explanations by either side to its former personnel were intended by the Terms of Reference to commence as soon as necessary arrangements could be made after 24 September, the day on which the NNRC assumed full custody of all non-repatriated prisoners of war. Actually, the Communists refused to begin explanations until 15 October on the pretext that facilities, originally constructed in accordance with specifications laid down by the CFI, were not satisfactory. This extended delay was directly attributable to the inability of the KPA/CPV and the NNRC to come to agreement on the type and location of facilities required. If the Communists had desired, explanations to the anti-Communist prisoners of war could have been conducted during the time additional facilities were being constructed since, on 22 September, the explanation area requested by CFI had been completed and equipped.

26. An additional enclosure, to be constructed in the vicinity of that completed on the 22nd, was requested by the NNRC on 27 September, and work was started the same evening on clearing of the area. The next morning, UNC engineers were notified that their choice for this new enclosure was acceptable to neither the CFI nor the NNRC. At the same time, a new site for this additional enclosure was chosen by the CFI and the NNRC, and UNC troops immediately transferred their construction effort to the new location. That evening, UNC was

informed that not only was the second location selected for the new enclosure unsuitable, but that the original enclosures also would have to be moved, and that the NNRC was preparing an entirely new plan for enclosures.

27. On 1 October, the CFI indicated another entirely new and different site at which they desired to have an extensive explaining area constructed. The request was confirmed in writing on 6 October of the request of the UNC. Construction of explaining areas in the new location was started on 7 October. By employing round-the-clock operations, the temporary explaining area was completed on 11 October and the permanent areas were completed on 14 October.

28. On 5 November, the CFI made an urgent appeal to have an additional prisoner of war holding compound constructed. This was necessary because of Communist stalling tactics during explanations. Although they had previously agreed not to employ the rule on segregation until enough prisoners of war had been repatriated to free a compound for this use, the Communists now began to repeat their demand that the CFI keep segregated those prisoners of war (from any one compound) who had received explanations from those who had not. A site for this compound was selected and approved and materials assembled, but construction was never requested by the NNRC. (Detailed events in Enclosure E.)

29. Throughout all the discussions on construction, the UNC stood fully prepared to do and did do whatever was possible to assist the NNRC. The Communists' allegations that the UNC deliberately stalled on the construction of facilities were completely false and have been refuted beyond question by the record of events.

VIII. Rules of Procedure and conduct of explanations (Enclosure C)

30. On 19 September, prior to the time prisoners of war had reached the Demilitarized Zone, the UNC received a communication from the NNRC, requesting its views as to the content of a set of rules of procedure for the conduct of explanations. Among the several points offered for NNRC consideration in the reply of the UNC were the following:

(1) Each side should be permitted to observe explanations.

(2) No force or coercion could be used.

(3) During explanations, the rights of the prisoners of war should be respected without reservation, including their right to answer, ask questions or remain silent. The explanation must be limited to expositions and must exclude inquisitions. Interrogations, including requests for names, homes or social status, should be forbidden.

(4) Representatives from the detaining side should have the right to intercede on behalf of the prisoners in order to protect their rights and insure that, under no guise, would intimidation, coercion or indignities be perpetrated.

(5) Prisoners of war, individually or collectively, may refuse to submit themselves to explanations.

31. The Communists, having received a similar request for views from the NNRC offered the following suggestions, which were totally opposed to UNC views, and contrary to the principles upon which the Terms of Reference were built. They insisted:

(1) All prisoners must be forced to submit to explanations, regardless of their personal desires.

(2) Representatives from a detaining side would have no right to interfere during an explanation (the clear in-

ference being that no objection could be raised by UNC representatives to Communist coercion or intimidation).

32. The Rules of Procedure as adopted by the NNRC were published on 29 September. They encompassed many of the demands set forth by the Communists which the UNC considered contrary to the principle set forth in the Terms of Reference. After careful review, the UNC lodged a formal protest with the NNRC, pointing out that, while it would participate in explanations and interviews, it reserved the right to make protests on any phase when, in its opinion, such an action was justified. The primary objection of the UNC centred on the absolute unacceptability of forcing a prisoner, regardless of his desires, to attend explanations. This position subsequently was supported by a majority of the NNRC, with the Poles and Czechs objecting violently.

33. General Clark, on 5 October, dispatched a letter to General Thimayya wherein he reiterated the UNC position on the principle of freedom of choice. Specifically, he stated, "Having continued, at heavy cost, the conflict in Korea for more than a year while our negotiators at Panmunjom were striving to achieve an honorable Armistice which would uphold the principle of freedom of choice as to their future by the prisoners of war of both sides, the United Nations Command cannot now condone any abrogation or compromise of this principle. Nor can it condone the use of force or coercion, either overt or implied, in connexion with this principle, while these prisoners are under the control of the Neutral Nations Repatriation Commission".² General Hull, who assumed command shortly thereafter, reaffirmed the UNC position in his first official communication to General Thimayya. He said, in part, "In assuming command of the UNC, I feel it in order at the very beginning of my service in the Far East to state briefly yet clearly my over-all policy with respect to our mutual responsibilities in this grave and complicated situation. I saw and subscribed fully to the letter which General Clark dispatched to you on 5 October. I believe it will prove of material aid to you if, as the new UNC commander, I not only reassert my adherence to present basic UNC policy, but also inform you of my comprehension of your vast problems and of my determination to support you and help you whenever and however possible".³

34. The Communists could find no further reasons for delaying the start of explanations. On 15 October they made their initial request to the NNRC to explain the 1,000 Chinese prisoners. At first, the prisoners refused to leave their compounds, but after a "show of force" by the CFI, one compound of about 500 proceeded to the explanation points. The results set the pattern for the remainder of the explanation period, for on the first day only 10 Chinese asked to be repatriated. The next day, Korean prisoners of war who had been requested by the Communists refused to leave their compound. On the 17th, explanations were conducted for about 500 Chinese, but only nine sought repatriation. Obviously hoping for a higher percentage of Korean repatriates, the KPA/CPV, during the following week, demanded the CFI bring Koreans out of the compounds, using force if necessary. When the NNRC pointed out that the Koreans refused to attend and recommended explanations be held for Chinese prisoners of war instead, the Communists refused and explanations were cancelled.

35. Finally, on 31 October, the first group of Korean prisoners agreed to attend explanations. Of 459 pris-

²See Enclosure I, letter No. 4.

³*Ibid.*, letter No. 6.

ners of war interviewed, only 21 returned to the Communist side. From that time on, the Communists began searching desperately for excuses to explain their failure to win back their former personnel. They appear to have realized, finally, that they had lost any hope of regaining any sizable number of their former soldiers.

36. From 15 October up to and including the 23rd day of December, the last scheduled day for explanations, the Communists utilized only 10 days to conduct explanations to anti-Communist prisoners of war. The days not utilized for explanations were spent in making charges of UNC control by agents, NNRC failure to fulfil its duties, lack of desire by the CFI to fulfil its mission, and in abortive attempts to influence the NNRC to use force. Stalling any delaying tactics such as requesting that Chinese prisoners be produced for explanations and then quickly changing to Korean prisoners and holding individuals in the explaining tents for protracted periods highlighted their objective of stretching out explanations in order to lend plausibility to their subsequent insistence that the over-all 90-day explanation period should be extended. During the month of November, the Communists repeatedly demanded segregation of prisoners of war, knowing full well it was impossible until explanations had progressed to a point at which one compound could be made available for separation. These manoeuvres continued through 23 December, when, in accordance with the express provisions of the Terms of Reference, the explanations were terminated by the NNRC.

37. The UNC commenced its explanations to Korean prisoners of the Northern Camp on 2 December and continued through 11 December. These explanations were as orderly as the Communist explanations were disorderly. It was obvious that the Korean non-repatriates had been well-trained and coached in trying to advance political arguments. When they found that UNC explainers were interested only in knowing their desires on repatriation and not their views on political philosophy, they appeared disappointed and chagrined. In any case, on 11 December, the non-repatriates of the Northern Camp refused to attend further explanations. The UNC made one final effort on 23 December when, from the perimeter of the compound in the Northern Camp, broadcasts were made reminding non-repatriates that this was the last day of explanations and emphasizing that their decision on repatriation should be carefully considered before they made their final choice.

38. At the close of 23 December, the last day scheduled for explanations to prisoners of war of both sides, the results of the explanations were as follows:

<i>POW's who received explanations</i>	<i>POW's who requested repatriation</i>	
Chinese	2,014	90
North Korean	1,210	47
South Korean	255	0
American	0	0
British	0	0

IX. Communist allegations of UNC "agent" control

39. The Communists' main propaganda theme that the UNC was "forcibly retaining" prisoners of war of the KPA/CPV side through the use of planted "agents" in the prisoner of war compounds was introduced into NNRC meetings even before there had been an opportunity to observe the prisoners. On 10 September the Czech and Polish members made a statement to the effect that, unless the prisoner organizations established prior to the assumption of custody by the NNRC were

"reshuffled" and the "representatives" segregated, the future work of the Commission would be endangered, "if not rendered completely impossible". On 20 September, the Czech member "demanded that immediate steps . . . be taken to break up the existing organizations . . . to isolate the 'agents and ring leaders', and segregate them".

40. The KPA/CPV side repeated the same allegation to the NNRC, claiming that the blame for failure of explanations must be laid on the UNC. They stated that "the obstacles to listen to explanations were created by the special agents of Chiang and Rhee under the instigation of the original detaining side".

41. The false charges that the UNC was connected with the prisoner of war organizations were repeated many times in the following months, both at Pannunjom, and through Communist propaganda media. Prisoners who had lived closely for three years and were banded together by ties of common interest and hatred of oppression naturally preferred to live as a unit during the critical days immediately before their release, but the UNC categorically rejected the allegation that it was at all connected with such organizations. Agents whom the Communists themselves had planted among prisoners were utilized upon "electing repatriation" to make carefully prepared statements repeating the agent charges for which no proof was ever adduced.

42. The UNC position was given in a letter to the NNRC⁴ in reply to a formal protest occasioned by the discovery of a radio receiving set in an Indian warehouse, apparently intended for the prisoners of war in the Southern Camp. The letter said, in part, "such activity is completely contrary to UNC policies. . . . I have been able to determine that no UNC agency has established, or is attempting to establish, an intelligence outlet from either the Northern or Southern CFI Camp; we have very little information available other than that reported by our authorized observers and liaison personnel. . . ."

43. This position was reiterated on 3 January when CINCUNC, in a letter to the NNRC commenting on an interim report issued by the Indians, Poles and Czechs, stated that "The United Nations Command categorically denies any implications that we have attempted, in any way, to exercise control to the slightest degree over prisoners in the Southern Camp by the introduction of *agents provocateurs*, or that we have attempted to maintain any type of covert intelligence network"⁵. These Communist charges can only be interpreted as a futile endeavour to explain their failure to persuade any substantial number of prisoners to seek repatriation.

X. Termination dates

44. By late September when the NNRC had been in operation for only a few weeks, another problem arose which was later to grow into one of the major issues between the UNC and the Communists. The UNC had insisted, during the time the Terms of Reference were being negotiated, that there had to be a definite terminal date of confinement for non-repatriate prisoners. As a result, a definite time-table was included in the document, paragraph 8 of which states that, "within 90 days after the NNRC takes . . . custody the nations to which the prisoners of war belong shall have freedom and facilities . . . to explain to all the prisoners of war . . . their rights . . . particularly of their full freedom to return

⁴See Enclosure I, letter No. 9.

⁵*Ibid.*, letter No. 11, paragraph (a).

home". Para. 11 states, "At the expiration of 90 days after transfer of custody . . . access of representatives to captured personnel . . . shall terminate and the question of disposition . . . shall be submitted to the Political Conference . . . which shall endeavour to settle this question within 30 days during which period the NNRC shall . . . retain custody". This paragraph continues by asserting that "within 120 days" the NNRC "shall declare the relief from the prisoner of war status to civilian status" of any prisoners who have not elected repatriation and for whom no other disposition has been made by the Political Conference.

45. The UNC unalterably opposed any attempt to twist these specific provisions to mean anything else than a cessation of explanations within 90 days, and full release in 120 days, from the date the NNRC assumed custody. The UNC position was repeated many times. The NNRC recognized that any change in terminal dates was outside its scope of authority and could be made only if the two commands concerned agreed. The UNC defined its position in a letter of 15 October which stated that, while there could be some delay in convening a political conference, this could in no way affect the NNRC operation or alter the 90- and 120-day periods of custody. The existence of a political conference actually could have no bearing on the subject except that, if it were in session 23 December—22 January it could elect to consider the prisoner of war question. Despite strong and continued opposition from the Communists, the NNRC in accordance with the provisions of the Terms of Reference terminated explanations on 23 December, thus marking the end of the first two steps in the timetable of prisoner of war custody.

XI. Developments after 23 December

46. With the cessation of explanations, the Communists immediately strengthened their propaganda attacks on every agency concerned in an effort to exert influence to extend explanations and termination dates of custody and to establish a link between the prisoner of war question and the Political Conference. For this they used the Poles and Czechs in the NNRC, their representation in the MAC and their propaganda radio. One thing was clear—the Communists were under a strong compulsion to justify the failure of their explanations. They also knew there was a strong possibility that these thousands of prisoners who had been guaranteed their freedom on 23 January would break out if they found that the NNRC had any intention of holding them indefinitely. They may have believed that such a breakout would provide them with further alibis. The violence and bloodshed that would follow appeared to be of no concern to them. The UNC, on the other hand, was adamant in its refusal to violate the POW Agreement and to break faith with the prisoners.

47. On 28 December, the NNRC delivered to the UNC an interim report prepared by the Indians, Poles and Czechs and a dissenting report prepared by the Swedes and Swiss. The majority report requested that the UNC give "earnest consideration to the problem of disposition of prisoners of war in a manner consistent with the fundamental objectives imposed in the Terms of Reference".⁵ The report of the Swedes and Swiss was designed to present an honest and factual résumé of NNRC developments. The majority report, on the other hand, contained numerous unsupported allegations of

coercion of the prisoners by "UNC agents", while virtually ignoring the well-established actions of the Communist command designed to disrupt the explanations. In their propaganda statements the Communists very carefully played down the Swedish and Swiss version and attempted to establish the other report as fully representative of the view of the Commission.

48. CINCUNC, on 3 January⁷ presented his views in a letter to the NNRC in which he indicated that he considered the report prepared by the Swedes and Swiss much more objective, factual and indicative of the operations of the NNRC. In order to clarify unmistakably the position of the UNC on certain key elements, he reiterated that :

(a) The UNC denied categorically any implication that it had attempted in any way to exercise control to the slightest degree over prisoners in the Southern Camp by the introduction of *agents provocateurs* or that it had attempted to maintain any type of covert intelligence network.

(b) The primary causes of the failure of the explanations were the severe disappointment of the Communists to secure more than a nominal percentage of returnees from groups receiving explanations; delaying tactics, including unreasonable and changing demands for facilities, refusal to accept reasonable numbers of willing prisoners for explanations during each day, and refusal to utilize available explaining time unless the NNRC and CFI conformed to their demands which included the use of force and other impractical actions.

(c) The UNC supported the strong stand taken by the Indians, Swedes and Swiss in prohibiting the use of force against defenceless prisoners.

(d) The UNC was unable to accept any alternate proposal to extend explanations or to amend the date, 22 January, the last day upon which prisoners in NNRC custody could be denied their freedom.

(e) After release of the prisoners on 230001 January, they should be moved south in orderly, manageable groups and received by the UNC and assisted to move to destinations of their choice.

49. In a subsequent communication, 2 January⁸ the NNRC requested the views of the UNC on a continuance of explanations, the likelihood of a political conference meeting, whether the UNC would agree to enter negotiations with the Communists to consider the problem of non-repatriate prisoners and whether it would agree to the continuance of present custodial duties of the CFI (beyond 23 January).

50. This communication was answered on 6 January⁹. CINCUNC's position had already been clearly stated in his 3 January letter, but in order to remove any possibility of doubt or misunderstanding, he reiterated that :

(a) The UNC could not agree to a reopening or continuance of explanations.

(b) He was not in a position to speak authoritatively on the opening of a political conference, but it was extremely improbable that it would be in session prior to 23 January.

(c) The UNC could see no justification for further discussions with the Communists on the prisoner of war question since the Terms of Reference were plainly intended to prevent either party from frustrating the basic purpose of avoiding indefinite captivity.

⁷See Enclosure I, letter No. 11.

⁸*Ibid.*, letter No. 10.

⁹*Ibid.*, letter No. 12.

⁵See *Official Records of the General Assembly, Eighth Session, Supplement No. 18*, Interim Report, Letter of Transmittal.

(d) CFI right to custody ceased 23 January. After 21 February, the date of dissolution of the NNRC, CFI troops would no longer be required.

51. On 14 January, the NNRC dispatched another communication to the UNC¹⁰ which, after discussing the views of both sides and of the Commission, proposed to request both sides to accept the restoration of custody 200900 January of those prisoners of war given over to the NNRC by each side. In CINCUNC's reply, made on 16 January¹¹ he emphasized his previous positions, namely, the Communist responsibility for failure of explanations, and the solemn obligation of the NNRC to fulfil its responsibilities and to release the prisoners to civilian status at 230001 January. He further said "failure of the NNRC to fulfil this obligation would be a deliberate avoidance of an important element of the Terms of Reference and the United Nations Command could not concur in an action constituting default by the NNRC." However, in view of General Thimayya's stated intention to release the prisoners starting 20 January, the UNC must necessarily be prepared to arrange for their accommodation and disposition. This return could only be regarded as a failure by the NNRC to discharge its duties, but it would in no way affect the right of prisoners to become civilians 23 January, regardless of their physical location.

52. As his last action prior to the actual release of prisoners, General Thimayya dispatched one other letter on 18 January¹² pointing out that he intended to release prisoners beginning on 20 January, but that any unilateral action by either party in regard to change of status or disposition of these prisoners would not, in the view of the NNRC, be in conformity with the Terms of Reference. In a brief reply¹³ CINCUNC reminded General Thimayya that his views and intentions had already been clearly stated on 16 January and remained unchanged. The UNC would be prepared to process and dispose of prisoners released by the NNRC 20 January or following the termination of custody on 23 January, but in either case the UNC would honour its obligation to treat prisoners at 230001 January as fully entitled to their freedom as civilians.

XII. Release of prisoners from NNRC custody

53. The first Chinese crossed the Demilitarized Zone to freedom about 0900, 20 January. They were followed shortly thereafter by the first of the Koreans. Each group was met by representatives of the UNC, the Republic of Korea and the Government of the Republic of China. They had been moved from their compounds one by one, about 20 yards apart, and checked by Indian guards against a roster. This provided an excellent opportunity for any who desired to return to the Communists to do so. Each was told by the Indians that he could move south to the UNC if he wished. Only about 100 took advantage of the last opportunity to elect repatriation—bringing the number who asked to move north during the entire period of NNRC custody to a total of 628 or about 3 per cent of all prisoners delivered to the NNRC by the UNC. In a smooth and efficient operation, the last of about 22,000 Koreans and Chinese cleared the Demilitarized Zone shortly after midnight, 20 January. By mid-afternoon, 21 January, about 14,000 Chinese were embarked for Formosa, and almost 7,600

Koreans were on their way to previously constructed reception centres in central Korea.

54. During the release period, the Communists contented themselves with loud propaganda attacks over their radio. On the night of 19 January, they made loud-speaker appeals, threats and demands from a point along the Military Demarcation Line close to the perimeter of the Southern Camp. Some statements warned prisoners they were facing imprisonment and death if they moved south. Other charges of coercion were levelled directly at CFI troops. However, the Communist efforts had no effect.

XIII. The situation on 22-23 January

55. After the turnover was completed, CINCUNC addressed a letter of appreciation to the Chairman, NNRC, "for the humane, efficient and expeditious manner" in which Korean and Chinese personnel were transferred to the UNC and said the CFI had "earned the respect and admiration" of his command for "outstanding performance".¹⁴

56. Shortly after midnight, 22 January, CINCUNC publicly confirmed the restoration to civilian status of the Korean and Chinese formerly held as prisoners by the NNRC. After reviewing the action of the Chairman, NNRC, in releasing these personnel to territory under UNC control, CINCUNC stated, "all prisoners who have not chosen to be repatriated are entitled, now that the 120-day period for their custody by the NNRC has expired, to their freedom as civilians and to have this freedom respected by all concerned. The UNC considers that these former prisoners now have civilian status. As of 0001 hours on 23 January 1954, they became free men".¹⁵

57. In a second statement on 23 January, commenting on the effects which the release of thousands of anti-Communist soldiers would have throughout the world, CINCUNC said, ". . . From this day on, all soldiers of every Communist army may know of a certainty that they may seek and find sanctuary in the free world . . ."

58. In the Northern Camp, conditions were far different. The CFI had made a strong appeal to the Communists to accept some 21 Americans, 1 Briton and about 325 Koreans who had refused to return to UNC control. The Communists rejected this appeal. Consistent with the Terms of Reference, the CFI removed their guards from the North Camp at midnight, 22 January. The ex-prisoners were left alone, their future indefinite. In a conference at NNRC headquarters, 23 January, General Thimayya rejected North Korean General Lee Sang Cho's demand that the CFI resume custody of pro-Communist prisoners. The Communists finally accepted these persons a few days later.

XIV. Former prisoners of war accused of having committed crimes while in the custody of the NNRC

59. With the transfer of the prisoners of war on September 24, 1953, to the NNRC, the UNC ceased to have any authority or control over them and the prisoners became the responsibility of the NNRC. When on January 20, 1954, the NNRC, instead of carrying out its obligation to retain custody of the prisoners of war until midnight January 22, purported to return them to the UNC, it kept in custody seventeen prisoners accused of murder. The NNRC also kept in custody one person said

¹⁰*Ibid.*, letter No. 13.

¹¹*Ibid.*, letter No. 14.

¹²*Ibid.*, letter No. 15.

¹³*Ibid.*, letter No. 16.

¹⁴*Ibid.*, letter No. 20.

¹⁵See Enclosure L.

to be a material witness, but at the same time it returned 449 persons allegedly necessary as witnesses in trials of the accused which were then said to be in process.

60. In returning the alleged witnesses, General Thimayya, in his capacity as Executive Agent of the NNRC, sought to impose the condition that they should be retained in custody by the UNC to be available for the trials of the accused. The UNC accepted these persons but under the terms of the Armistice Agreement it could not agree to the condition that they should not be released. The position of the UNC in this matter had been made clear to the NNRC well in advance of the release of the prisoners of war from NNRC custody, as noted above. In facilitating the transfer of the prisoners, including the alleged witnesses, to the countries of their choice, the UNC simply gave effect to their right to freedom as civilians on January 23, 1954.

61. The alleged crimes occurred while the accused were in the custody and under the control of the NNRC and the CFI. The UNC made every effort to co-operate with the NNRC, including the provision of defence counsel for the accused at the express request of that body. It should be noted that, in doing so, the UNC in no way defended the accused.

62. Seven of the accused were Chinese prisoners. In their case, the Communist Command refused to comply with the request of the NNRC to provide witnesses for their trial. The witnesses were prisoners of war who had been repatriated to Communist control. The UNC was informed on December 28, 1953, that, as a consequence, the trial of these seven Chinese had been rescinded.

63. The other ten accused were Koreans and the 449 alleged witnesses released by the CFI on January 20 were presumably required as defence witnesses in their trial. On February 10, the UNC was notified that the Military Court convened by the Commanding General of the CFI to try the accused had been dissolved February 8. On February 18, the seventeen accused plus one witness who had been held with them were turned over to the UNC. The Chinese were promptly transported to Formosa and the Koreans were turned over to authorities of the Republic of Korea together with records of the trials and other documentation made available by the CFI.

64. Whether the accused can be tried by the Chinese Government and the Government of the Republic of Korea for crimes alleged to have been committed while under the custody of the NNRC is a question for those governments to determine in accordance with their domestic laws. In transmitting to those governments the records made available by the CFI, the UNC stated: ". . . the files and recommendations as forwarded by the NNRC are turned over to you in order that you may be in a position to take all steps which you may find proper under the applicable laws justly to resolve these cases".

65. Enclosure H contains a chronology of the principal events relating to this problem and a more complete statement of the position of the UNC.

XV. POW's who desired to go to neutral nations

66. Paragraph 11 of the Agreement on Prisoners of war states in part ". . . according to the application of each individual, those who chose to go to neutral nations shall be assisted by the Neutral Nations Repatriation Commission and the Red Cross Society of India. This operation shall be completed within thirty (30) days, and upon its completion, the Neutral Nations Repatriation Commission shall immediately cease its functions and declare its dissolution". It was thus intended that

assistance by the NNRC to these persons should terminate on February 21.

67. The Chairman of the NNRC on 30 January 1954 informed the Commanding General of I Corps that approximately 64 POW's then held by the CFI had expressed a desire to enter the U.S.; that he had explained to them that the U.S. was not a neutral nation and that under paragraph 11 of the Terms of Reference entry into the U.S. was not contemplated; and that the POW's stated that they did not desire to go to the ROK or to Formosa. He further informed the Commanding General of I Corps that he had told the prisoners that unless they selected a neutral nation as distinct from a belligerent, he would be forced to take them to India and request disposition be arranged on a governmental level or return them to UNC control for disposition. The prisoners then agreed to go to one of the neutral United Nations and requested that a general officer from the UNC inform them that they would be sent to one of the United Nations other than the Republic of Korea or the Government of the Republic of China. The Chairmen of the NNRC then asked whether the UNC would agree to so inform the prisoners.

68. The UNC subsequently responded that, while it remained fully willing to assist the NNRC and the Indian Red Cross in the period prior to the dissolution of the NNRC on 21 February, it wished to point out that under paragraph 11 of the Terms of Reference no responsibility in this regard had been given the UNC. Consequently, the UNC was not in a position to guarantee what the governments of neutral nations would do if approached by the NNRC or the Indian Red Cross on the problem of disposition of these prisoners. Thus, if by 21 February the NNRC and the Indian Red Cross had not completed the necessary arrangements by placing these prisoners in neutral nations of their choice, it would appear appropriate for the Indian Red Cross to continue its assistance until final disposition was effected. Since it would be impractical for the Indian Red Cross and the persons involved to remain in the Demilitarized Zone, the most practical solution appeared to be to move these persons to a suitable location in India where they could more easily be accommodated and handled pending a final disposition.

69. On 4 February the UNC was informed by the Chairman of the NNRC that two former prisoners of South Korean origin and 86 former prisoners of North Korean and Chinese origin (74 Koreans and 12 Chinese) who had expressed a desire to go to neutral nations, had agreed to accompany the first contingent of the CFI sailing for India from Inchon on February 8.

On the same day, fifteen former prisoners of North Korean origin who initially had expressed a desire to go to neutral nations but later had reversed this decision were returned to the UNC control. The UNC was further informed on 4 February by the Chairman of the NNRC that in the event any of the remaining persons changed their minds and also desired to be returned to the UNC before embarking for India, the UNC would be notified accordingly.

70. It is the understanding of the UNC that the Communists continued to refuse as late as 6 February to permit the two South Koreans then in the Northern CFI camp to enter the Southern CFI camp for the purpose of accompanying the CFI contingent to India. These two former prisoners, however, were apparently released and sailed together with the other former POW's who desired to go to neutral nations with the first CFI contingent which departed from Inchon.

71. It was the understanding of the UNC that except for contact with Sweden and Switzerland through the representatives of those nations on the NNRC no approach was made by the NNRC to neutral nations concerning the disposition of those POW's desiring to go to neutral countries.

72. The 88 former POW's (76 Koreans and 12 Chinese) landed with the CFI contingent in Madras on February 21 where they are now being accorded protection by the Government of India. The Secretary-General of the United Nations has been requested by the Government of India to ascertain which neutral countries are willing to receive them.

XVI. Return movement of CFI and dissolution of NNRC

73. On 18 February the NNRC adopted, over the protest of the Czech and Polish members, a resolution declaring the NNRC's "dissolution at 2400 hours on 21st February 1954". The NNRC issued a Final Report on its activities. Again the Swiss and Swedish members were unable to concur and their dissents are recorded in footnotes and in a separate statement of conclusions.

74. In planning for the departure of the CFI, CINCUNC had offered to provide necessary shipping from UNC sources. After several conferences on the subject General Thimayya informed CINCUNC that the GOI would provide water lift for both troops and equip-

ment. By 23 February all personnel of the Indian component of NNRC and CFI had left Korea.

75. On February 19, President Eisenhower transmitted the following personal message to Prime Minister Nehru:

"Dear Mr. Prime Minister:

"Now that the mission of Indian troops is drawing to a close in Korea, I want to express to you my appreciation and that of my countrymen for the performance of the Indian Custodial Forces.

"No military unit in recent years has undertaken a more delicate and demanding peacetime mission than that faced by the Indian forces in Korea. The vast majority of prisoners placed in their charge had from months of imprisonment and uncertainty become highly nervous and volatile. The confidence inspired by the exemplary tact, fairness and firmness shown by the Indian officers and men led by their two able commanders, Lieutenant General Thimayya and Major General Thorat did much to alleviate the fears and doubts of these prisoners. The performance of these officers and their troops was fully in keeping with the high reputation of the Indian Army. They deserve the highest commendation.

"With best wishes,

Sincerely,
Dwight D. EISENHOWER"

ENCLOSURE A

CHRONOLOGY

Background briefing, conferences with NNRC personnel

1. References: Paragraphs 1 and 2, Terms of Reference, state that NNRC shall be composed of representatives from Sweden, Switzerland, Poland, Czechoslovakia and India, whose representative is designated Chairman and Executive Agent.

2. 7 August 1953

First meeting of UNC with GOI party headed by R. K. Nehru. Discussion included:

(a) Details of logistic support for NNRC and CFI.

(b) Complete explanation of POW situation including UNC position on Terms of Reference, history of anti-Communist POW's, UNC efforts to convince them to return during screening, their fear about movement to Demilitarized Zone, physical and mental coercion by Communists, their apprehensions about individual interviews and identification, and their distrust of Poles and Czechs.

(c) Steps taken by UNC to reduce possibilities of violence, prior orientation on Terms of Reference, obligations of NNRC to prevent force or coercion, particularly India guaranteeing freedom of choice and absolute

and sincere desire of UNC to assist NNRC and CFI in performance of their mission.

3. (a) 9 August. Advance GOI party proceeded to Korea. Discussions with UNCMAC, included a detailed résumé of current POW problems.

(b) 14 August. GOI party returned to Tokyo.

(c) 15 August. R. K. Nehru again met with C/S and POW views were again reviewed with him.

4. 4 September. General Thorat approached UNC with proposal to distribute his personal statement to non-repatriates of both sides assuring them of fair and impartial treatment by CFI. UNC transmitted message to UNCMAC for delivery to the Communists and distributed it in UNC camps by radio and leaflet (with Thorat signature and photograph).

5. 8 September. A party headed by General Thimayya, Mr. Daeniker (Swiss) and Mr. Stenstrom (Swede) with key assistants met at CINCUNC headquarters prior to departure to Korea for convening of NNRC. Current situation was discussed and difficulties with Chinese and Korean anti-Communist POW's re-emphasized.

ENCLOSURE B

CHRONOLOGY

Movement of anti-Communist POW's to Demilitarized Zone; turnover to CFI and problem of observers at this operation

1. Reference: Paragraph 4, Terms of Reference, requires that all POW's who have not "exercised their right of repatriation", be delivered to NNRC control within 60 days after the effective date of the Armistice.

2. 8 September 1953. Move from Cheju-do began peacefully with prisoners in good spirits.

3. 10 September. The first group arrived at the reception point in the Demilitarized Zone and, as soon as the prisoners saw Communist observers and interpreters (who had been allowed entrance by the NNRC) violence erupted. Prisoners cursed and threw stones at Communist personnel. This continued for the next few days. CFI asked that deliveries be reduced from previously agreed 3,000 per day.

4. 12 September

(a) Alarmed over possibility of breakdown in processing and of not being able to complete delivery by 25 September as required by the Terms of Reference, the C/S, UNC dispatched a letter to General Thimayya in which he reviewed the incidents, pointed out the UNC position that delivery of prisoners was a mechanical operation between UNC and CFI, and commented that it would be of decided advantage to the Indian forces if observers were not present during reception operations.

(b) CG KCOMZ also delivered a letter to General Thimayya in which he too reviewed the causes of incidents, pointed out the danger of prisoners' losing faith in CFI troops and possibility of not being able to complete delivery. He recommended that Communists be banned immediately from further presence and participation at UN transfer of POWs to CFI.

(c) In message to CINCUNC, CG KCOMZ went over difficulties of delivery in great detail and emphasized that he, personally, had made several approaches to Thimayya, including separate visit the day prior to start of delivery, in which he made strong recommendations that no Communists be permitted in reception area.

(d) Apparently convinced that some change should be made, General Thimayya, in a letter reviewed progress of 10 and 11 September deliveries and informed the UNC that the NNRC requested the two commands to agree not to send observers while prisoners were being taken into custody by the NNRC.

5. 14 September. UNCREG agreed and also recommended prohibiting not only observers, but all other personnel from the other side during the delivery periods. (This recommendation was based on difficulty experienced in identifying from among Communist personnel those who were observers, Press, drivers, etc.).

6. (Note: The developments of the next few days did little to limit the number of actual observers. The CFI policy changed several times; first, UNC was told only five members would be present, and then, only ten Press members from each side. The Communists used all of

their people, including drivers, as observers. In any case, the CFI kept the Communists sufficiently far away so they were out of stone-throwing range and, after UNC had negotiated a new delivery schedule with CFI, it was able to complete the shipment of the last Koreans and Chinese by 24 September.)

ENCLOSURE C

CHRONOLOGY

UNC positions with respect to establishment of Rules of Procedure for Explanations

1. *Reference.* Paragraph 8d, Terms of Reference, states the "additional provisions governing the explanation work shall be prescribed by the Neutral Nations Repatriation Commission . . ."

2. *19 September 1953.* The UNC received from the NNRC a request for views which could be considered in enabling the Commission to formulate the necessary provisions and technical details regarding the work of explanations and interviews (see Enclosure I, letter No. 1).

3. *21 September.* In reply, the UNC pointed out that its position is based on the interests of the POW's regardless of national interests and conflicting ideologies. The governing principle is contained in paragraph 3 of the Terms of Reference, which unequivocally states that force or coercion cannot be used. Specific points presented included the right to answer questions or remain silent, the right to refuse to submit to explanations without reprisal and the specific provision that a prisoner need not indicate a choice orally, in writing, or through his own actions (see Enclosure I, letter No. 2).

4. *29 September.* The Rules of Procedure were published (Enclosure J).

5. *2 October.* After careful review by the UNC, a formal protest regarding these rules and procedures was lodged with the NNRC. The UNC desired it be fully understood that, while it would participate in explanations and interviews, it reserved the right to make protests on separate and selective phases when, in its opinion, such action is justified. Primary objections centred on forcing a prisoner to attend explanations, regardless of his desires. Note was taken too that almost all of the proposals submitted by the Communists to the NNRC and announced over Communist press and radio were reflected in the Rules published by the NNRC (see Enclosure I, letter No. 3).

6. *7 October.* The NNRC took cognizance of the UNC protest and assured UNC of its appreciation and understanding, both of the Terms of Reference and the spirit animating them. It was claimed that the suggestions made by both sides had been considered, and that the Commission had come to its own independent decision. The assertion was made that the NNRC did not understand why we believed the spirit of the Rules contravened that part of the Terms of Reference which outlawed force and coercion.

7. (Since UNC's position had been made clear, no further amplification was considered necessary.)

(Following items pertain to developments based on implementation of Rules of Procedure.)

8. *14 October.* UNC understands that at the time

Rules of Procedure were announced to prisoners, prisoners demonstrated by throwing stones at the loudspeakers and made so much noise Rules of Procedure could not be heard.

9. *15 October.* Communist explanations to Chinese POW's commenced. CFI had to make a "show of force" before first prisoners would proceed to explanation points. Ten POW's asked to be repatriated.

10. *16 October.* (a) UNCREG dispatched a letter to NNRC regarding certain points concerning the conduct of explanations. CG UNCREG pointed out he considered the violations mentioned to be largely mechanical in nature and due primarily to inexperience in first day's operations. Nevertheless, he indicated that the net result was limiting freedom of choice of individual prisoners and requested NNRC consider and correct these irregularities.

(b) Communists requested Koreans for explanations today. Korean POW's refused to leave their compounds. No explanations conducted.

11. *17 October.* Explanations were conducted for Chinese POW's. One anti-Communist Chinese prisoner of war was subjected to almost three hours of interrogations by Communist explainers. CG UNCREG, taking position that this was flagrant violation of prisoner's freedom of choice, dispatched letter of protest to NNRC (see Enclosure I, letter No. 7). Prisoners were abusive to explainers and many refused to listen to explanations. Nine POW's asked to be repatriated.

12. *18 October.* No explanations conducted.

13. *19 October.* No explanations conducted.

14. *20 October.* No explanations conducted.

15. *21 October.* No explanations conducted. One US prisoner in the Northern CFI Camp requested repatriation.

16. *22 October.* No explanations conducted.

17. *23 October.* No explanations conducted.

18. *24 October.* No explanations conducted. One South Korean prisoner from Northern CFI Camp requested repatriation.

19. *25 October.* No explanations conducted.

20. *26 October.* No explanations conducted. One South Korean prisoner from Northern CFI Camp requested repatriation. Total from Northern CFI Camp requesting repatriation to date: 1 US; 2 South Korean. Total from Southern CFI Camp requesting repatriation to date: 58 Korean; 101 Chinese.

21. *27 October.* No explanations conducted.

22. *28 October.* No explanations conducted.

23. 29 October. No explanations conducted.
24. 30 October. No explanations conducted.
25. 31 October. Explanations conducted for Korean POW's. 21 asked to be repatriated. Total from Southern CFI Camp repatriated to date: 79 Korean; 101 Chinese.
26. 1 November. No explanations conducted.
27. 2 November. No explanations conducted.
28. 3 November. Explanations conducted for Korean POW's. NNRC permitted Communists to make broadcasts for one hour to POW's in explanation holding areas. 19 POW's requested repatriation.
29. 4 November. Explanations conducted for Chinese POW's. CFI reported that only 206 POW's were exposed to individual explanations, of whom only 2 asked to be repatriated. UNCREG reported "smooth approach" by Communist explainers is gone.
30. 5 November. Explanations were conducted for Chinese POW's. Only 136 POW's received individual explanations. Average time for explanations: one hour and 20 minutes, with several extending to three hours. Only 2 POW's asked to be repatriated. Communists indicated they desired to conduct explanations for Korean POW's 6 November.
31. 6 November. At 0330 hours NNRC informed UNCREG that explanations would be conducted for Chinese POW's instead of Korean as originally reported. CFI failed to produce the prisoners, and at 1230 hours NNRC announced that explanations for the day were cancelled.
32. 7 November. No explanations conducted.
33. 8 November. No explanations conducted.
34. 9 November. No explanations conducted.
35. 10 November. No explanations conducted. General Thimayya, in Press conference, expressed opinion that explanations as they have been conducted in the past are "permanently stymied," hinted that he would propose that NNRC and CFI complete operation of determining POW desires with respect to repatriation by another procedure.
36. 11 November. No explanations conducted.
37. 12 November. No explanations conducted.
38. 13 November. No explanations conducted.
39. 14 November. No explanations conducted.
40. 15 November. No explanations conducted. NNRC notified UNCREG that explanations for Korean POW's would be conducted on 16 November by Communists. One South Korean from Northern CFI Camp reportedly requested repatriation.
41. 16 November. (a) Explanations were conducted for Korean POW's.
- (b) Communists did not broadcast to POW's before explanations. There were six POW's requesting repatriation.
- (c) At 1000 hours, Communists requested that NNRC produce Chinese POW's for explanations 17 November.
- (d) At 2230 hours, Communists requested that NNRC produce remainder of Koreans from the group who had not received explanations 16 November (Compound G53).
- (e) Family of four (including two small children) requested return to UNC control from Northern CFI Camp.
42. 17 November. (a) 0200 hours. Communists reiterated demand to talk to Koreans from Compound G53.
- (b) 0320 hours. NNRC cancelled explanations for the day.
43. 18 November. No explanations conducted.
44. 19 November. No explanations conducted.
45. 20 November. No explanations conducted.
46. 21 November. (a) No explanations conducted.
- (b) UNCREG reported to CINCUNC outline plan for conduct of explanations to UNC non-repatriate POW's.
- (c) In reply to an 11 November query by UNCREG as to whether NNRC would permit 15 explainers (5 US, 5 UK, 5 ROK) to operate in Northern CFI Camp, NNRC ruled that maximum of 5 would be permitted.
47. 22 November. (a) No explanations conducted.
- (b) Total requesting repatriation from Southern CFI Camp to date: 116 Korean and 150 Chinese, all of whom have been returned to Communist control.
48. 23 November. (a) No explanations conducted.
- (b) General Thimayya expressed hope that when UNC started explanations, all POW's belonging to ROK, UK and US could be explained to in one day.
- (c) Request made to NNRC that UNC be authorized, "at the earliest practicable date the use of five each Korean, US and British explainers . . ."
49. 24 November. No explanations conducted.
50. 25 November. No explanations conducted.
51. 26 November. No explanations conducted.
52. 27 November. No explanations conducted.
53. 28 November. (a) No explanations conducted.
- (b) CINCUNC approved UNCREG explanation plans.
54. 29 November. No explanations conducted.
55. 30 November. (a) No explanations conducted.
- (b) Total requesting repatriation to date from Northern CFI Camp: 6 Koreans and 1 US.
- (c) Total requesting repatriation to date from Southern CFI Camp: 116 Koreans and 152 Chinese.
56. 1 December. (a) No explanations conducted.
- (b) NNRC ruled that UNC explainers would be limited to five at any one time.
57. 2 December. (a) UNC commenced explanations to non-repatriate Korean POW's. Thirty were interviewed; none requested repatriation. Explanations were reported as "orderly throughout the day".
- (b) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
58. 3 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
- (b) UNC conducted explanations for 30 non-repatriate Korean POW's. None requested repatriation.
59. 4 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
- (b) Explanations for 30 non-repatriate Koreans in Northern CFI Camp were terminated by noon. None requested repatriation. POW's attempted unsuccessfully to prolong explanations. ROKs requested 40 POW's for tomorrow's explanations.
60. 5 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
- (b) Explanations for 40 Koreans in Northern CFI Camp were conducted. None requested repatriation.

61. 6 December. No explanations conducted.
62. 7 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
(b) Explanations were conducted for 30 Koreans in Northern CFI Camp. Attempts were made by the POW's to impede explanations. None requested repatriation.
63. 8 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
(b) Explanations were conducted for 30 Koreans in Northern CFI Camp. None requested repatriation.
64. 9 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
(b) Explanations were conducted for 30 Koreans in Northern CFI Camp. None requested repatriation.
(c) Total requesting repatriation to date from Southern CFI Camp: 123 Koreans and 157 Chinese.
65. 10 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp.
(b) Explanations were conducted for 30 Koreans in Northern CFI Camp. POW's employed "sitdown strike" technique. Many were carried from tents by Indian guards after explanations. None requested repatriation.
(c) General Thimayya indicated possibility that Communists may resume explanations in Southern CFI Camp in the near future.
66. 11 December. (a) No explanations were conducted for anti-Communist POW's in Southern CFI Camp. Communists requested NNRC for permission to resume explanations 12 December to 250 Koreans. POW's refused to attend explanations. NNRC announced at 1630 hours no explanations would be conducted in Southern CFI Camp on 12 December.
(b) In Northern CFI Camp explanations were conducted for only 5 Koreans who employed "the usual delaying tactics". The other 25 who were scheduled to receive explanations refused to attend. Explanations for day were terminated at 1100 hours.
(c) UNCREG requested 30 Koreans for explanations in Northern CFI Camp on 12 December.
(d) To date 73 Korean, 22 American and one British POW's have not received explanations.
67. 12 December. (a) No explanations conducted.
(b) UNCREG requested 6 American POW's for explanations 14 December.
68. 13 December. (a) No explanations conducted.
(b) American POW's stated they would not attend explanations scheduled for 14 December.
69. 14 December. No explanations conducted.
70. 15 December. No explanations conducted.
71. 16 December. (a) No explanations conducted.
(b) One Korean from Northern CFI Camp requested repatriation. To date, a total of 1 US and 7 Korean POW's have requested return to UNC control.
(c) To date, a total of 129 Koreans and 163 Chinese from the Southern CFI Camp have requested return to Communist control.
72. 17 December. No explanations conducted.
73. 18 December. (a) No explanations conducted.
(b) UNC requested NNRC to deliver to US non-repatriates statement of "Free Choice Principle" (see Enclosure K).
74. 19 December. No explanations conducted.
75. 20 December. No explanations conducted.
76. 21 December. (a) Explanations were conducted for 250 Chinese anti-Communist POW's in Southern CFI Camp. 33 requested repatriation.
(b) No explanations were conducted in Northern CFI Camp for UNC non-repatriates.
77. 22 December. (a) Explanations were conducted for 243 Chinese anti-Communist POW's in Southern CFI Camp. 23 requested repatriation.
(b) No explanations were conducted in Northern CFI Camp for UNC non-repatriates.
78. 23 December. (a) Explanations in Southern CFI Camp were conducted for 250 Chinese and 41 Korean POW's. There were 11 Chinese and one Korean POW's who requested repatriation.
(b) Loudspeaker broadcasts to US, UK and ROK POW's in the Northern CFI Camp were made, inasmuch as these POW's refused to attend explanations. None requested repatriation.
(c) Today is last day for explanations. Total requesting repatriation from Southern CFI Camp to date: 134 Koreans and 235 Chinese.
79. 31 December. 127 Chinese and 3 Korean POW's requested repatriation during headcount and roster check conducted by CFI.
80. 1 January 1954. (a) 1 US non-repatriate POW requested repatriation.
(b) Total requesting repatriation to date from Southern CFI Camp: 137 Koreans and 362 Chinese.
(c) Total requesting repatriation to date from Northern CFI Camp: 2 US and 7 Koreans.
81. 7 January. (a) 1 Chinese requested repatriation on 31 December and was returned to Communists same date. Not previously reported.
(b) Total requesting repatriation from Southern Camp to date: 137 Koreans and 363 Chinese.
82. 12 January. (a) 3 Chinese and 1 Korean requested repatriation.
(b) Total requesting repatriation to date from Southern Camp: 138 Koreans and 366 Chinese.
83. 13 January. 1 Chinese and 1 Korean requested repatriation.
84. 18 January. (a) 1 Chinese and 2 Koreans requested repatriation and were returned to Communists.
(b) Total requesting repatriation to date from Southern Camp: 141 Koreans and 368 Chinese.
85. 20 January. During turnback of POW's to UNC 38 Chinese and 20 Koreans requested repatriation and were returned to Communists.
86. 21 January. 34 Chinese and 23 Koreans requested repatriation and were returned to Communists.
87. 22 January. (a) 3 Koreans who had previously requested entry into a neutral country requested repatriation and were returned to the Communists along with one other who had been awaiting validation.
(b) Total from Southern Camp who requested repatriation: 188 Koreans and 440 Chinese.

CHRONOLOGY

UNC observers at NNRC meetings, validations of POW requests
for repatriation and over-all NNRC and CFI operations1. *References*

(a) Last sentence, paragraph 1, Terms of Reference, states: "Representatives of both sides shall be permitted to observe the operations of the Repatriation Commission and its subordinate bodies to include explanations and interviews."

(b) Paragraph 8c, Terms of Reference, states: "All explanations and interviews shall be conducted in the presence of a representative of each member nation of the Neutral Nations Repatriation Commission and a representative from the detaining side."

2. *16 September 1953.* CG UNCREG submitted request to observe the meetings of the NNRC.

3. *20 September.* NNRC secretariat letter, signed by Mr. P. N. Haksar, refused 16 September, UNCREG request to observe NNRC meetings since they are not "operations of the commission within the meaning of Article 1, paragraph 1, of the Terms of Reference."

4. *28 September.* UNCREG dispatched brief letter to NNRC requesting time and place of future validation proceedings so that the UNC could send "observing representatives . . . to witness this important operation of NNRC."

5. *1 October.* UNCREG by letter to NNRC referred to its 28 September request to observe validations and further requested that UNC representatives be permitted to observe "over-all operations of the camp; to note such matters as the food, clothing, recreation, medical care, religious services, disciplinary control and amenities so far as these matters affect the prisoners".

6. *2 October.* NNRC replied to UNCREG request to observe validations; referred to an earlier decision on 10 September and stated the NNRC was "unable to accede to the request . . ."

7. *5 October.* (a) Letter from NNRC to UNCREG:

(1) Reaffirmed 2 October NNRC decision not to allow UNC observers to witness validation proceedings.

(2) Indicated that the UNC request to conduct over-all observations of operations pertaining to administration of the prisoners was not favorably considered, particularly since the UN Command could not be deemed "a protecting power within the meaning of the Geneva Convention."

(b). General Clark in a personal letter to General Thimayya protested the earlier decision of the NNRC not to permit UNC observers to attend validation proceedings.

8. *7 October.* General Thimayya in his reply to General Clark's letter of 5 October, reiterated, that UNC observers could not be permitted to attend validation proceedings, but reminded the C-in-C that observers are permitted at the time prisoners "are" finally handed over for repatriation."

9. *13 October.* During meeting at NNRC Headquarters during which details pertaining to the start of explanations were discussed, UNCREG representatives were informed that "no general observation from either side would be permitted, thus limiting observation to the specific observers authorized to be present in each explaining tent."

10. *16 October.* UNCREG dispatched another request for authority to observe the operations of the CFI in so far as they pertain to the administration of POW's.

11. *16 October.* UNCREG dispatched letter to NNRC indicating that Communists had made arrangements for 240 of their personnel to enter southern half of the DZ to participate in explanations. Actual count indicated 356 Communists entered the area. NNRC was requested therefore to take action necessary to correct the discrepancies between actual forecasts and actual numbers of Communists it desired to enter the area.

12. *22 October.* NNRC replied to UNCREG protest and indicated that there may have been perhaps some misunderstanding on the total number of people entering the area in view of the fact that certain individuals (Communists) returned to their own area "for lunch or other business". The NNRC further indicated that the matter was considered settled. UNCREG, in forwarding the NNRC reply to UNC stated that the headcount taken by UNC Military Police still did not jibe with count reported by the NNRC.

13. *23 October.* NNRC replied to C-in-C's request of 16 October for authority to observe the operations of the CFI in so far as they pertain to the administration of prisoners of war. The NNRC indicated in its letter that careful consideration had been given to the various points raised by the UNC but stated that it was "unable to accept this argument . . ." Their reply also contained the statement that it is still "the Commission's view that the detailed day to day administration of the camps cannot be deemed to be an operation of the Commission" and therefore the UNC could not be granted authority to send observers as requested. The NNRC took this occasion to assure the UNC that it will discharge its obligations both under the Geneva Convention and under the Terms of Reference "with a high sense of duty".

14. *11 November.* Indian PIO announced that CFI had discovered small radio in rations destined for Southern CFI Camp.

15. *19 November.* C-in-C received a letter from Gen. Thimayya concerning the discovery of a radio receiver in rations furnished by UNC to CFI. (see Enclosure I, letter No. 8).

16. *19 November.* (a) Reply from Gen. Harrison to Gen. Thimayya stated: "I can assure you that such activity was completely contrary to UNC policies . . ." and indicated no UNC agency involved (see Enclosure I, letter No. 9).

(b) Also, UNCREG was directed to dispatch memo to NNRC on this same subject. This memo emphasized that the UNC "is prepared to initiate such additional control procedures as may be found practicable after consultation with CFI".

17. *20 November.* UNCREG received text of NNRC announcement that seven Chinese POW's would be tried for murder. (Note: For analysis entire problem POW accused of murder see Enclosure H.)

18. *23 November.* NNRC indicated the seven POW's accused of murder had requested that the UNC provide a lawyer for their defence. Trial to commence 11 December 53.

19. 25 November. Mr. Allan R. Morrison, "a civilian lawyer with many years' practice in China", was obtained to serve as defence counsel for the seven POW's.

20. 27 November. Mr. Morrison reported to UNCREG and NNRC for duty as defence counsel.

21. 12 December. Trial of the seven POW's accused of murder, originally scheduled to start this date, was postponed due to Communist objection to defence counsel provided by UNC and their refusal to make necessary witnesses available.

22. 13 December. NNRC informed UNCREG that 4 Korean corpses had been "thrown out" of compound of "E" enclosure, Southern CFI Camp. NNRC initiated investigation. Indian PIO reported 17 accused and 21 witnesses have been segregated.

23. 17 December. UNCREG received text of NNRC statement announcing that 18 Korean POW's would be tried for murder. Also, NNRC indicated that these POW's had requested services of defence counsel consisting of lawyers nominated by India, UNC, and Republic of Korea.

24. 19 December. C-in-C nominated Mr. Allan R. Morrison to act as member of defence counsel for 18 Korean POW's. Also, UNCREG was instructed to ask ROK Gen. Park to transmit request for Republic of Korea lawyer to his government.

25. 22 December. Chairman of NNRC notified that two Korean civilian lawyers were nominated as Associate Counsel.

26. 28 December. NNRC convening order for court martial of 7 Chinese POW's accused of murder was rescinded by NNRC because of Communist refusal to produce prosecution witnesses. Charges against Korean POW's have been revised.

27. 9 January 1954. Communication received from Republic of Korea Foreign Minister PYUN points out Republic of Korea opposition to the trial of prisoners of war by the CFI. Republic of Korea bases its opposition on the fact that the CFI is not a detaining power and does not have the right under the Geneva Convention to try prisoners.

28. 17 January. In a reply to Foreign Minister Pyun, UNC pointed out that while the NNRC was not considered a detaining power, it had a responsibility similar to that of a detaining power, and that the Indian court did have the right to try the accused.

29. 19 January. (a) NNRC staff officer notified UNCREG that trial of accused POW's would continue after release of prisoners and that they intended to hold all witnesses involved in addition to the accused.

(b) Letter received from NNRC furnishing the

names of 449 witnesses scheduled to be released on the 20th and requesting that they be held and made available in the trial of 3 Korean POW's, now in progress (see Enclosure I, letter No. 17).

30. 20 January. Gen. Hull informed Gen. Thimayya that the 449 requested witnesses will not be in UNC custody but will be in civilian status. Also pointed out that criminal jurisdiction of either the NNRC or CFI ends at 230001 January and that accused should be turned over to UNC along with an up to date record of trial for such disposition as the UNC deemed appropriate (see Enclosure I, letter No. 18).

31. 22 January. Letter received from NNRC informing UNCREG that the trial of accused prisoners already commenced would continue and that proceedings in case of other accused would start. A request was made to make available witness required to carry out trials (see Enclosure I, letter No. 19).

32. 27 January. Gen. Thimayya informed UNC that majority of NNRC did not accept UNC position that POW's must be released to civilian status and requested that UNC make available witnesses (see Enclosure I, letter No. 21).

33. 30 January. UNC informed Gen. Thimayya that, for reasons previously stated, persons in question have proceeded to countries of their choice and thus UNC not in position to make them available. UNC reiterated offer to receive accused with records and recommendations for prompt turnover to governments concerned (see Enclosure I, letter No. 22).

34. 1 February. Gen. Thimayya repeated majority view of NNRC and again requested witnesses be made available (see Enclosure I, letter No. 23).

35. 3 February. UNC reaffirmed its position and again offered to receive accused and forward NNRC recommendations to governments concerned (see Enclosure I, letter No. 24).

36. 16 February. Gen. Thimayya protested UNC position and indicated he would transfer accused along with relevant recommendations on 18 February (see Enclosure I, letter No. 25).

37. 18 February. UNC received from CFI the 17 accused and one witness together with relevant documents and recommendations.

38. 19 February. In turning over 17 accused and one witness to the governments concerned UNC stated "... the files and recommendations as forwarded by the NNRC are turned over to you in order that you may be in a position to take all steps which you may find proper under the applicable laws justly to resolve these cases" (see Enclosure H, paragraph 8g).

ENCLOSURE E

CHRONOLOGY

Construction of facilities in Demilitarized Zone for explanations

1. (a) Paragraph 8, Terms of Reference, states that "the nations to which the prisoners of war belong shall have freedom and facilities to send representatives to the locations where such prisoners of war are in custody" to make explanations.

(b) Rule 18 on Explanations, as published by NNRC,

states that "The sites for explanations and interviews, whether to individuals or to groups, shall be so constructed as to ensure that the work of explanations and interviews be free from any interference or obstruction".¹

¹See Enclosure J.

2. 12 September. CFI gave UNC Engineer, informally, pencil drawing of explainers enclosure they desired UNC to construct and indicated area where it was to be placed on ground.

3. 14 September. UNC Engineer gave General Thorat completed engineer drawing of enclosure. General Thorat approved plan and directed one of his staff officers so to indicate his approval in writing, which was done on the drawing. Visit to field was made to ensure that exact location was that which was desired by CFI.

4. 15-22 September. Explanation enclosure as requested by Indians constructed.

5. 27 September. Chairman NNRC sent letter to CG UNCREG stating that additional enclosure was necessary in vicinity of the enclosure completed 22 September. Work was started *that same evening* to clear area for more construction to be placed 200 feet north of existing enclosure.

6. 28 September. (a) 1030 hours. UNC Engineer representative was informed that neither CFI nor NNRC would approve location of new enclosure.

(b) 1330 hours. UNC representative conferred with CFI on ground, CFI pointed out selection by NNRC for new construction; also, requested minor modifications in existing enclosures.

(c) 1415 hours. UNC Engineer was informed that C-in-C had considered and approved CFI request; Engineer troops immediately were moved from site where they were then working to site selected by CFI.

(d) 2030 hours. UNCREG notified UNC Engineer that NNRC was preparing *new plan* for enclosures and that CFI representative had stated that *second* location of new enclosure was *unsuitable* and *old* enclosures also would have to be moved. UNC representative immediately contacted NNRC representative to obtain concrete information on objections to *both* enclosure areas. UNC representative was told that General Thimayya on the morning of 29 September would render decision on matter of location.

7. 29 September. General Thimayya accompanied by his assistants and UNC representatives looked over possible sites, eventually settled on one to which UNC did not object and which was acceptable to General Thimayya. Tentative site was selected; General Thimayya informed UNC that final decision by NNRC would be announced by 1330. As of 2400 hours, no word had been received from NNRC as to their decision as physical layout of new enclosure although NNRC had apparently concurred in selection of new site.

8. 30 September. NNRC sent UNCREG letter requesting new enclosures be constructed in accordance with their plan of 28 September and that existing enclosure be modified to conform to new plan. NNRC also requested completion date of new construction.

9. 1 October. Two Indian representatives indicated separately to UNC representatives entirely different site from those previously considered at which they desired to have extensive explaining area constructed. To comply with this request would have required about one week of mine clearing plus about 3 weeks of actual construction time. Estimated cost \$90,000. Indian representative stated requirement would be confirmed in writing after further meeting of NNRC.

10. 2 October. UNCREG received letter from NNRC giving their impression of events, listed additional explanation facilities to be constructed and requested reply by 3 October as to time it would take to meet this requirement.

11. 3 October. UNCREG informed NNRC by letter that:

(a) Their proposal involved construction of 3 new explaining areas one of which was for only temporary use and would be abandoned when the other two were completed. The present area, which had been requested by CFI would also be abandoned.

(b) Estimates on new construction are seven days for temporary area, 20 days for first permanent area and 30 days for second permanent area, completion time being computed from the date on which construction is approved.

12. 6 October. UNCREG received from NNRC a "firm demand" for the construction as soon as possible of the explaining areas referred to in paragraph 10, above. The letter which forwarded this "demand" also said the Communists were prepared to complete the permanent construction in 4 days if the UNC could not. Reconnaissance of new area made by UNC Engineer officer.

13. 7 October. UNCREG replied to NNRC, reiterating forecast indicated in UNCREG letter of 3 October concerning forecast of time requirements to construct additional facilities called for. UNC Engineers start construction.

14. 8 October. NNRC dispatched letter to UNCREG indicating:

(a) Forecasts on construction time were considered too great.

(b) Repeated assurances from the Communists that they could do the job in 4 days.

(c) Requested reply by 1000 hours, 9 October, as to whether UNC could do the construction by 14 October or, "alternatively permit the KPA and CPV Commands to carry out work in accordance with their offer".

15. 9 October. UNCREG replied to NNRC; refused the Communist offer; stated temporary explanation facilities could be completed by 11 October, with permanent sites to be completed as soon as possible.

16. 10 October. NNRC informed UNCREG by letter that:

(a) Commission was pleased with promise to complete temporary facilities by 11 October.

(b) If UNC could complete permanent facilities by 14 October, the Communists should be permitted to carry out the work as indicated in the NNRC letter to UNCREG of 8 October.

17. 11 October. CG Eighth Army discussed the matter with General Thimayya and during the conversation, informed him that permanent facilities would be completed by 21 October. (Temporary facilities were completed, as promised, on this date.) This estimate was confirmed in writing to NNRC by General Taylor.

18. 12 October. NNRC addressed letter to UNCREG, enclosed copy of General Taylor's letter confirming 21 October as date on which permanent facilities will be completed, and requested, nevertheless, that permanent facilities be completed by 14 October. NNRC said this request was made because UNC was able to complete temporary facilities so quickly.

19. 13 October. (a) UNCREG acknowledged NNRC letter of 12 October, stated that maximum effort being made to complete explanation area.

(b) Follow-up letter by UNCREG to NNRC refers to previous letter (subparagraph a, above) and states the UNC construction engineer has advised that "the

permanent construction will be complete at midnight tonight".

(c) At evening meeting at Headquarters NNRC, staff officers from UNCREG were informed that NNRC was planning to start explanations at 0800 hours, 15 October. NNRC offered and UNCREG accepted opportunity to inspect Northern CFI Camp (where UNC non-repatriates are held) on 14 October.

20. 5 November. General Thimayya made "urgent appeal" for UNC to construct an additional POW's holding compound in Southern CFI Camp. Difficulty was created by Communists by their stalling tactics during explanations (see Tab C) which created problem for CFI in keeping segregated overnight those POW's

(from any one compound) who had received explanations and those who had not.

21. 6 November. (a) UNC authorized construction of the additional compound as "matter of high priority".

(b) UNCREG reported that NNRC had not finally determined whether to have the compound constructed.

22. 10 November. AFFE directed Eighth Army to accomplish construction.

23. 12 November. Eighth Army reported to AFFE that construction site for the new compound had been selected, materials assembled, but that no action was being taken pending NNRC decision.

NOTE: NNRC never requested construction of this compound.

ENCLOSURE F

CHRONOLOGY

Rosters of anti-Communist POW's

1. (NOTE: In previous meetings with the GOI and CFI representatives, UNC had spelled out clearly the fears which prisoners had of being identified, not only because of the danger of themselves, but primarily because of their fear of reprisals against their families.)

2. 12 September. (a) UNCREG received an informal request from an NNRC staff officer for two additional copies of shipping rosters in view of the decision of the NNRC to provide Czech and Polish members of the NNRC with a copy.

(b) In a letter to the NNRC, UNCREG pointed out that the prisoners "have repeatedly expressed fears of reprisals against their families and friends should their identities become known" and that the only reason for having rosters at all is purely administrative for the use of the custodial forces only. It was requested that distribution of such information be limited to the CF.

3. 13 September. The NNRC reply indicated that the

decision had been made on 11 September that all members of the NNRC were entitled to ask for copies of any document available to their secretariat, but that the question would be placed before the NNRC on 14 September.

4. 14 September. UNCREG renewed its request that distribution be limited to the CFI only.

5. 16 September. The NNRC and UNCREG exchanged further views on the rosters without positive results.

6. (NOTE: The UNC does not know if rosters were made available to the Poles and Czechs. However, in General Thimayya's first Press conference, a statement attributed to him indicated they had.)

7. 12 November. KCOMZ reported that in addition to shipping rosters (name, internment number, rank), one copy DA Form 19-2 for each prisoner was provided CFI.

ENCLOSURE G

CHRONOLOGY

Personal communications between C-in-C and the chairman, NNRC

(NOTE: Because of their bearing on UNC relations with the NNRC, a separate chronology on correspondence signed personally by CINCUNC follows.)

1. 5 October. Prior to his departure from FEC, General Clark dispatched a letter to General Thimayya, which reviewed the history of the anti-Communist prisoners and made the following points:

(a) The UNC cannot condone abrogation or compromise of the principle of freedom of choice.

(b) Any allegation that prisoners were misinformed by the UNC of the provisions of the Terms of Reference is at variance with the facts.

(c) The assertion that the UNC led these prisoners

to believe they would be released at the end of 90 days from custody is an error.

(d) Prisoners were not told they could go to Formosa, but it is well known that the majority have expressed a desire to do so.

(e) The UNC will not agree to an extension of the explanation period beyond 23 December.

(f) Refusal to permit observers of the UNC to witness the validation of requests of prisoners for repatriation is most surprising and disappointing. This is an operation of the Commission to which the UNC and the Press should be admitted.

(g) It appears decisions and activities of the NNRC

have been predicted upon the assumption that prisoners actually desire repatriation rather than freedom of choice.

(h) If the NNRC doubts the prisoners' attitude, it is recommended that, under the provisions of paragraph 9, Terms of Reference, they ask the prisoners themselves to state their views (see Enclosure I, letter No. 4).

2. 7 October. General Thimayya replied to General Clark's letter of 5 October. In his letter, the Chairman of the NNRC included the following points:

(a) The NNRC has made no assumption that anti-Communist POW's "actually desire repatriation".

(b) POW's would not meet with the NNRC to express their views on repatriation.

(c) NNRC noted UNC refusal to extend the termination date for explanations.

(d) Reiterated that UNC observers could not attend validation proceedings.

(e) NNRC is fully aware of its responsibilities (see Enclosure I, letter No. 5).

3. 10 October. General Hull, upon assumption of command as C-in-C, dispatched a personal letter to General Thimayya. This letter included the following:

(a) Statement that General Hull fully concurred in General Clark's letter of 5 October.

(b) C-in-C's adherence to basic UNC policy which was already announced.

(c) Expression of appreciation for the difficult task confronting General Thimayya (see Enclosure I, letter No. 6).

4. 28 December. NNRC delivered to UNC interim report prepared by Indians, Poles and Czechs, and minority report by Swedes and Swiss, with request UNC give "earnest consideration to the problem of disposition of prisoners of war in a manner consistent with the fundamental objectives embodied in the Terms of Reference."

5. 3 January. CINCUNC received text of NNRC communication of 2 January classified "Secret" in which following questions were posed:

(a) Whether the UN Command considers continuance of explanations possible.

(b) Whether the Political Conference is likely to meet as contemplated in paragraph 11 of the Terms of Reference.

(c) Whether the UN Command will enter into negotiations with the KPA/CPV on the problem of non-repatriate POW's.

(d) Whether UN Command will agree to the continuance of present custodial duties of CFI.

Enclosed also was copy of memorandum by Chairman, NNRC, which discussed NNRC views on explanations, Political Conference, custody, and dissolution of NNRC (see Enclosure I, letter No. 10).

6. 4 January. After analysis of Interim Reports, CINCUNC sent a letter to General Thimayya stressing:

(a) No UNC agents in Southern Camp.

(b) Responsibility of Communists for failure of explanations.

(c) Support of principle of no force.

(d) UNC stand on POW's timetable mandatory in Terms of Reference.

(e) POW's change to civilian status 230001 January and subsequent release not dependent on Political Conference (see Enclosure I, letter No. 11).

7. 6 January. CINCUNC replied to NNRC letter of 2 January as follows:

(a) UNC cannot in view of the Terms of Reference consider a reopening or continuance of explanations to POW's.

(b) CINCUNC could not speak authoritatively on convening of Political Conference, but in view of attitudes of Communists at preliminary talks its convening appeared unlikely.

(c) Political conference has no determining relationship to POW's in NNRC custody.

(d) Paragraph 11 of the Terms of Reference constitutes agreement between two sides, and the UNC can see no justification for entering into further discussions.

(e) After 21 February, NNRC will be dissolved and presence of CFI in Demilitarized Zone not required.

(f) Commission has express responsibility to release POW's to civilian status 230001 January.

(g) Within these limitations, UNC fully prepared to assist Commission until its dissolution (see Enclosure I, letter No. 12).

8. 8 January. UNC notified NNRC that text of Thimayya letter of 2 January and CINCUNC reply were being released to Press, since Communists had disregarded secret classification and released their exchange of correspondence on 7 January.

9. 14 January. Letter received from General Thimayya giving NNRC views on disposition of POW's as follows:

(a) There are a large number of POW's who have not received explanations.

(b) Question of disposition has to be referred to the Political Conference.

(c) Causes and factors of failure are not the responsibility of NNRC or CFI.

(d) Further implementation of said procedures is possible only upon agreement of two sides.

(e) The firm position of UNC on questions in 2 January letter was noted and it was observed that this position indicates UNC is unable to agree to procedures which will allow for further implementation of Terms of Reference.

(f) The KPA/CPV holds exactly opposite views to the UNC.

(g) Therefore NNRC states its position as follows:

(1) Political Conference is integral part of paragraph 11 of Terms of Reference.

(2) Further discussions between two sides not precluded.

(3) Not the express responsibility of NNRC to release POW's to civilian status since procedures leading to this action not completed.

(4) Cannot continue custody past 23 January owing to lack of agreement between two sides.

(h) Therefore, General Thimayya as Executive Agent of the NNRC restoration of custody beginning 200900 1 January.

(i) Further, states any unilateral action taken subsequently will not be in accordance with the said Terms of Reference (see Enclosure I, letter No. 13).

10. 16 January. CINCUNC replied to above letter as follows:

(a) Position stated in 6 January letter will not be changed.

(b) POW's were turned over to NNRC in good faith that the Terms of Reference would be fulfilled.

¹See Official Records of the General Assembly, Eighth Session, Supplement No. 18, Interim Report, Letter of Transmittal.

(c) Failure to complete explanations was due to adamant refusal of KPA/CPV to continue except under conditions of their choosing.

(d) UN efforts to convene Political Conference thwarted by Communists.

(e) UNC agreed to Terms of Reference only because it provided against forced repatriation, prevented either party from frustrating basic purpose of avoiding indefinite captivity for POW's, and insured final release to civilian status after 120 days of NNRC custody.

(f) NNRC has "solemn obligation to release POW's at 230001 January".

(g) UNC cannot accept custody in accordance NNRC conditions, but in view of NNRC intention to release POW's unilaterally 20 January, UNC for humanitarian reasons must arrange for their accommodation and disposition. This will in no way affect POW's becoming civilians at 230001 January regardless of their location (see Enclosure I, letter No. 14).

11. 18 January. General Thimayya answers CINCUNC's letter in order "to clarify the request (to accept POW's) and the reasons which have impelled me to

make this request". Letter repeats NNRC position concerning inability to change status of POW's or to retain custody without agreement of two commands; emphasizes no intention to alter status of POW's by proposed return to former detaining sides (see Enclosure I, letter No. 15).

12. 19 January. In reply UNC reiterated position taken in its letter of 16 January (see Enclosure I, letter No. 16).

13. 22 January. In a personal letter to General Thimayya, CINCUNC wrote: "On behalf of the UNC, I desire to express my appreciation to you, to the NNRC, and to the CFI, for the humane, efficient, and expeditious manner in which anti-Communist Korean and Chinese personnel were transferred on 20-21 January. The CFI, including officers and all other ranks, has earned the respect and admiration of my Command for its outstanding performance while exercising custody over these personnel. The well conceived CFI plan for the orderly return of these personnel, and the close and willing cooperation of the CFI with the carefully scheduled UNC processing, are especially worthy of commendation" (see Enclosure I, letter No. 20).

ENCLOSURE H

Former prisoners of war accused of having committed crimes while in the custody of the NNRC

1. On February 18, the CFI turned back to the United Nations Command seventeen former prisoners of war accused of having committed crimes of violence, together with one former prisoner of war held as a material witness. The alleged crimes occurred while the accused were in the custody and under the control of the NNRC, and the Custodial Force, India. Consequently, the United Nations Command has no direct knowledge of the circumstances and events relating to the commission of the crimes or of the measures taken by the NNRC and the CFI to arraign the accused and bring them to trial.

2. According to the information available to the United Nations Command, the accused consist of two groups allegedly involved in separate crimes, and the Military Court, convened by the CFI to try them, instituted at least two separate proceedings before it was dissolved. Seven of the accused are Chinese nationals, whose trial for the alleged murder of a fellow prisoner was never completed by the Military Court because the Communist Command refused to make available the necessary witnesses. These alleged witnesses had been repatriated to the Communist Command and were then under its control. In this case, the only assistance requested by the CFI of the United Nations Command was the furnishing of a Chinese-speaking defence counsel at the request of the accused. This request was approved by the NNRC. The United Nations Command made available for this purpose Mr. Allen R. Morrison, a civilian lawyer, who reported for duty to the NNRC on 27 November 1953, five days after the receipt of the request from the NNRC. On 28 December 1953, the United Nations Command was informed that the convening order for the trial of the seven accused had been rescinded because of the refusal of the Communist Command to produce witnesses for the prosecution. The Unified Command has not been informed of any repre-

sentations having recently been made by the custodial authorities to the Communist Command with regard to these alleged witnesses.

3. On 13 December 1953, the United Nations Command was informed by the NNRC that the corpses of four Korean prisoners had been thrown out of one of the compounds. On 17 December, an NNRC statement indicated that eighteen (*sic*) Korean prisoners were to be tried for murder, and on the same date the United Nations Command was informed by the NNRC that the accused had requested the services of defence counsel to be nominated by the Government of India and the Republic of Korea and by the United Nations Command. On 19 December, the United Nations Command nominated Mr. Allen R. Morrison to serve as counsel. The NNRC was informed on 22 December that the Republic of Korea had nominated two civilian lawyers for this purpose.

4. The United Nations Command, in complying promptly with the requests of the custodial authorities to make available the services of a private defence counsel in these cases, in no way defended the accused.

5. Although the United Nations Command learned on 28 December that the charges against the Korean prisoners were being revised, no further communication concerning these cases was received until 19 January 1954, when the United Nations Command received a letter from an NNRC staff officer indicating that among the prisoners to be released from CFI custody on 20 January there were 449 who were considered to be material defence witnesses in the trial of three (*sic*) Korean prisoners which, it was stated, was then in progress. The letter requested that "... arrangements for the availability of the prisoners may please be insured by you in case their attendance is required by the Military Court until conclusion of its proceedings".¹

¹See Enclosure I, letter No. 17.

6. Meanwhile, in various public statements and in letters to the NNRC, the United Nations Command had stated explicitly that *all* prisoners whom the CFI proposed to turn back on 20 January 1954 would be given their freedom as civilians on 23 January and turned over to the countries of their choice in accordance with the provisions of the prisoner-of-war agreement. With specific reference to the 449 alleged witnesses, the United Nations Command, on 20 January, informed the CFI that the "persons concerned will not be considered as in the custody of the United Nations Command and will revert to civilian status". Nevertheless the alleged witnesses were released from CFI custody along with other prisoners.

7. In reply to further requests to make available the alleged witnesses, the United Nations Command, in a letter dated 30 January, reiterated its point of view and indicated that it could not make them available since they had been released to civilian status and were not in United Nations Command custody. The letter concluded by stating "We share with you the desire to ensure the administration of justice whenever indicated. We reiterate our offer to receive the persons concerned, together with such records and recommendations as you may wish to make, for prompt turnover to the governments concerned".¹ On 10 February, the United Nations Command was notified that the Military Court convened by the Commanding General of the CFI to try the accused had been dissolved on 8 February. On 16 February, the United Nations Command was notified that all the accused would be turned over to it by the CFI on 18 February. In his letter, General Thimayya expressed his disagreement with the position taken by the United Nations Command and the hope that the guilty would not escape unpunished. The seventeen accused and one witness were received by the United Nations Command on the eighteenth and, by the next day, the Chinese were on their way to Formosa and the Koreans had been turned over to the Republic of Korea. The United Nations Command also turned over to these governments the records and other documents made available by the CFI.

8. The legal basis for the position taken by the United Nations Command follows:

(a) With the repatriation of those prisoners who so desired and the transfer of all others to the custody of the NNRC on 24 September 1953, for disposition in accordance with the Armistice Agreement, the United Nations Command ceased to have any authority or control over them. The prisoners transferred to the NNRC became the responsibility of that body. Through its Executive Agent, the Representative of the Government of India, and the CFI, the NNRC thereupon became charged with the custody, control and protection of the prisoners of war under paragraphs 3 and 7 of the prisoner-of-war annex to the Armistice Agreement. In the exercise of these responsibilities, the CFI had authority to punish violations of discipline. Presumably, by analogy to chapter III of the Geneva Convention and Articles 121 and 119 thereof, these responsibilities included authority to bring to trial prisoners accused of crimes of violence against other prisoners. The CFI does not appear to have proceeded expeditiously in bringing these persons to trial although it continued to detain them.

(b) Under paragraph 11 of the prisoner-of-war agreement, the NNRC was obligated to declare the re-

¹See Enclosure I, letter No. 22.

lief to civilian status of all prisoners remaining in its custody at the end of 120 days from the time it assumed control over them (i.e., 23 January). On 20 January, however, the NNRC, instead of preparing to carry out this obligation, purported to return to the United Nations Command all but the seventeen accused and those desiring to go to neutral nations. In so doing, the Indian representative, in his capacity as Executive Agent, sought to impose on the United Nations Command the condition that the prisoners should not be released. While the seventeen accused were retained, the prisoners said to be necessary as witnesses in any trials of the accused were released from CFI custody.

(c) The United Nations Command could not agree that any of the prisoners transferred by the NNRC should be detained. The position of the United Nations Command in this matter had been made clear to the NNRC in advance. Since hostilities had ceased, and since the Armistice Agreement provided that these prisoners should be released to civilian status after a specified period (22 January) the United Nations Command had no authority under the Agreement and the Geneva Convention to detain any of them, including any alleged to be necessary witnesses in possible trials of other persons over whom the United Nations Command had no authority. It is relevant to note the Geneva Convention, while it provides for detaining prisoners against whom criminal proceedings are pending after the end of hostilities (Article 119), makes no reference to detaining any as witnesses. On 23 January, therefore, the United Nations Command recognized that, pursuant to the Armistice Agreement, the prisoner-of-war status of the persons in question was terminated. The United Nations Command facilitated the transfer of these persons to the countries of their choice.

(d) These persons are now under the jurisdiction of the governments of their choice and are no longer in a prisoner-of-war status. The United Nations Command has neither the authority nor the capability to make them available as witnesses in any trial of the accused Koreans.

(e) Nor could the United Nations Command itself proceed against the accused, even if this were not rendered futile by the unavailability of the witnesses. The duty of investigation and trial was vested in the NNRC. The failure of the NNRC to discharge its responsibility in this respect provides no basis for the assumption of this responsibility by the United Nations Command. It would not be consistent with the protection afforded by the Geneva Convention for the United Nations Command to begin the process of investigation and trial after the release of the prisoners has become due, in territory removed from the scene of the alleged crimes and in circumstances where the accused could not be assured necessary defence witnesses. Indeed, there appears to be no lawful authority for the United Nations to conduct trials for crimes allegedly committed by persons not then under United Nations Command control and jurisdiction.

(f) Whether the accused can be tried by the Chinese Government and the Government of the Republic of Korea for crimes alleged to have been committed while under the custody of the NNRC is a question for those Governments to determine in accordance with their domestic laws.

(g) At the time the accused were turned over to those Governments, the United Nations Command presented the following memoranda:

1. Under the Terms of Reference to the Armistice Agreement signed on 27 July 1953 at Panmunjom, Korea, the NNRC has returned to the Unified Command certain Korean civilians, formerly members of the Communist forces, who were previously prisoners of war as a result of capture by the Unified Command.

2. As these former prisoners of war refused repatriation to Communist control, the mentioned Terms of Reference provide for their relief from prisoner of war status to civilian status on 23 January 1954.

3. The referenced displaced civilians had been detained and charged by the CFI with certain alleged crimes. Since the NNRC has ceased its functions in Korea before completing the jurisdictional proceedings involved in these cases, and since the accused have chosen to go to your jurisdiction, the files and recommendations as forwarded by the NNRC are turned over to you in order that you may be in a position to take all steps which you may find proper under the applicable laws justly to resolve these cases.

4. Therefore, the undersigned representative of the Unified Command has delivered these ten Korean civilians with one former prisoner of war, now a Korean displaced civilian, who had been detained by the NNRC as a witness, together with above related documents, to the representative of the Republic of Korea, and the latter, in accord with the mentioned Terms of Reference, hereby acknowledges receipt thereof as civilians. *Done* at Seoul, Korea, on the nineteenth day of February 1954. *Signed*, for the Republic of Korea: Park Yung Joon, Brigadier General, Chief, Republic of Korea Explanation Group. *Signed*, for Unified Command: J. W. Bowen, Colonel, GS, Deputy Chief of Staff for Administration, Army Eight.

1. Under the Terms of Reference to the Armistice Agreement signed on 27 July 1953 at Panmunjom, Korea, the NNRC has returned to the Unified Command certain Chinese civilians, formerly members of the Communist forces, who were previously prisoners of war as a result of capture by the Unified Command.

2. As these former prisoners of war refused repatriation to Communist control, the mentioned Terms of Reference provide for their relief from prisoner of war status to civilian status on 23 January 1954.

3. The referenced displaced civilians had been detained and charged by the CFI with certain alleged crimes. Since the NNRC has ceased its functions in Korea before completing the jurisdictional proceedings involved in these cases, and since the accused have chosen to go to your jurisdiction, the files and recommendations as forwarded by the NNRC are turned over to you in order that you may be in a position to take all steps which you may find proper under the applicable laws justly to resolve these cases.

4. Therefore, the undersigned representative of the Unified Command has delivered these seven Chinese civilians, together with above related documents, to the representative in Korea of the National Government of the Republic of China, and the latter, in accord with the mentioned Terms of Reference, hereby acknowledges the receipt thereof as civilians. *Done* at Seoul, Korea, on the nineteenth day of February 1954. *Signed*, for National Government of the Republic of China: Yang Hsiao-Fang, Major General, Chinese Army, MA, Chinese Embassy, Republic of China. *Signed*, for Unified Command: J. W. Bowen, Colonel, GS, Deputy Chief of Staff for Administration, Army Eight.

ENCLOSURE I

Texts of important correspondence between UNC and NNRC [Letters Nos. 1 to 25 included]

1. LETTER DATED 18 SEPTEMBER 1953 FROM THE CHAIRMAN, NNRC, TO THE UNC (REQUESTING UNC VIEWS AS TO THE RULES OF PROCEDURE)

The Neutral Nations Repatriation Commission would be grateful to have such information as you may be in a position to give to enable the Commission to formulate the necessary provisions and technical details regarding the work of explanation and interviews in accordance with article 8 of the Terms of Reference.

The Commission of course is the final authority for formulating such rules consistent with the Terms of Reference.

(*Signed*) K. S. THIMAYYA,
Chairman,

Neutral Nations Repatriation Commission

2. LETTER DATED 21 SEPTEMBER 1953 FROM THE UNC TO THE CHAIRMAN, NNRC (GIVING THE UNC VIEWS AS TO WHAT SHOULD GO INTO THE RULES OF PROCEDURE)

Your letter of 18 September 1953 concerning procedure during explanations has been received. In presenting the views of the United Nations Command, I

should preface my remarks by stating that the UNC position is based on the interest of the prisoners of war who, above all national interests and conflicting ideologies, are the real and final proof of the principle of non-forced repatriation for which the Korean conflict was prolonged for so many months. This applies to the prisoners of war formerly held by both sides.

The governing principle to be considered in formulation of all Rules of Procedure for conduct of explanations is unequivocally stated in paragraph 3 of the Terms of Reference, to wit: "No force or threat of force shall be used against the prisoners of war specified in paragraph 1 above to prevent or effect their repatriation, and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner for any purpose whatsoever . . ."

The following procedural points are presented for your consideration:

(a) Each explanation shall be conducted in the presence of a representative of the detaining side, as provided for in paragraph 8(c) of the Terms of Reference, and a representative of each side to observe, as provided in paragraph 1 of the Terms of Reference.

(b) Explanations might best be conducted with groups of prisoners of war of each nationality involved, but several explanations should not be conducted simultaneously in the presence of only one NNRC body.

(c) During explanations, the rights of the prisoners of war shall be respected without reservation, including their right to answer, question, or remain silent. The explanation must be limited to expositions and must exclude inquisitions. Interrogation, including requests for names, homes or social status of prisoners are entirely without the province of the explainers.

(d) Representatives from the former detaining side, present at the explanations, shall have the right to intercede on the behalf of the prisoners in order to protect their rights and ensure that no intimidation, coercion, or indignities, in whatever guise, are perpetrated.

(e) Explanations may take place in a specific explanation area or within the compounds or areas in which the prisoners of war are housed.

(f) Prisoners of war, individually or collectively, may refuse to submit themselves to explanations, without reprisal.

In view of the intransigent attitude displayed toward the communist observers, press and interpreters by the Chinese and Korean prisoners of war who have stated that they would forcibly resist return to communist control, it is not improbable that they will maintain the same attitude toward the communist explainers, nor is it improbable that the prisoners of war of the other side, when they are placed in custody of the CFI, will adopt the same attitude toward the non-communist observers, press, interpreters and explainers. In such an atmosphere, it is probable that some or all of the prisoners of war of both sides may refuse to leave their compounds or other places of detention to hear the explanations. If such a situation eventuates, it will be necessary to conduct explanations to the prisoners of war who are willing to listen to explanations in their compounds or other places of detention.

Press stories attributed to members of the NNRC and the CFI have indicated that some consideration is being given by the NNRC to a plan which would require prisoners of war, on leaving the explanation area, to make their exit, one way or the other, in a manner that would indicate that they have made a decision regarding repatriation and that such a decision was made as a result of the explanation.

It is our considered opinion that such a procedure is unfair to the prisoner of war, since he has already, after months of deliberation, made his choice as between return to his original side and remaining with the other side. If, under the impact of the explanation, and in the bewilderment of the moment, the prisoner of war is forced to reaffirm his decision through the physical act of passing through a certain exit, then such a requirement is contrary to the letter and spirit of the agreement.

The Terms of Reference do not require a prisoner of war to indicate a choice unless he desires to exercise his right of repatriation. Paragraph 9 states that prisoners of war "shall have freedom and facilities to make representations and communications . . ." to the Neutral Nations Repatriation Commission and its subordinate bodies. Paragraph 10 states that any prisoner ". . . who, while in the custody of the Neutral Nations Repatriation Commission, decides to exercise the right of repatriation shall make an application requesting repatriation to a body consisting of a representative of each member nation of the Neutral Nations Repatriation Commission".

Thus, a prisoner of war, while in the custody of the NNRC, may, at any time, of his own free will and without influence, apply to the NNRC or its subordinate bodies on any matter concerning his status or welfare, including the right of repatriation. A prisoner of war who does not desire to exercise his right of repatriation is under no compulsion to indicate his decision to the NNRC or any of its subordinate bodies, either through oral or written statements or through his own actions.

If a prisoner of war does not apply, of his own volition, for return to the control of the other side during the ninety-day period of explanations, he, as an individual, is never a subject of consideration by either the NNRC or its subordinate bodies as regards repatriation. His case is one which becomes a matter of consideration as outlined in paragraph 11 of the Terms of Reference.

Any attempt to force a prisoner of war to indicate his choice either for or against repatriation constitutes a violation of paragraph 3 of the Terms of Reference.

(Signed) A. L. HAMBLEN,
Brigadier General, USA,
Commanding

3. LETTER DATED 2 OCTOBER 1953 FROM THE UNC TO THE CHAIRMAN, NNRC (PROTESTING THE RULES OF PROCEDURE GOVERNING EXPLANATIONS AND INTERVIEWS)

I have been instructed to inform you that the United Nations Command hereby lodges a formal protest with the Neutral Nations Repatriation Commission regarding the Rules and Procedures announced by the Commission for explanations and interviews of prisoners of war in your custody. The United Nations Command further desires it be fully understood, that while we will participate in such explanations and interviews, we reserve the right to make protests on separate and collective phases of the procedures when in our opinion such action is justified.

A careful review of the Rules of Procedure as announced by the Commission leads only to the conviction that the intent thereof can be interpreted in no other way except as specific encouragement for the prisoners of war to seek repatriation rather than to permit them, fully and voluntarily, to exercise that free choice of disposition which is the very foundation of the Terms of Reference.

The United Nations Command is fully aware that the NNRC, using paragraph 24 of the Terms of Reference, bases its power of decision on the latitude allowed it by that document. We are also aware that the Rules of Procedure which you have announced include almost all of the proposals submitted by the communists to the NNRC as announced in their press and radio. On the other hand, practically none of the recommendations made by the United Nations Command, which were developed in exact accord with not only the letter but, more important, the spirit of the Terms of Reference, have been adopted by the Commission.

The UNC again invites your attention to paragraph 3 of the Terms of Reference which states unequivocally "no force or threat of force shall be used against the prisoners of war . . . to prevent or effect their repatriation, and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner for any purpose whatsoever . . ." Paragraph 8(d) of the Terms of Reference is likewise specific on this point when it states "additional provisions governing the explanation work shall be prescribed by the NNRC and

will be designed to employ the principles enumerated in paragraph 3 above . . ."

The Rules of Procedure governing Explanations and Interviews which you have announced are clearly in contravention of the specific paragraphs quoted above, since they depend upon forcing the prisoner of war, regardless of his desires or rights under the Terms of Reference, to submit to procedures involving coercion if not force.

The United Nations Command considers that the Rules of Procedure, as publicly announced by your Commission, should be made available in their entirety to those persons most vitally affected by them—the prisoners of war under your control. Failure to keep the prisoners of war fully informed as to the rules under which their whole future will be determined cannot be reconciled with democratic procedures and inevitably will lead to increased fears and apprehensions on the part of the prisoners.

We feel that the sincerity of the United Nations Command in its desire to assist the NNRC in the honest fulfillment of its mission has been amply demonstrated. We reiterate the sincerity of our desire to follow a reasonable course which is in keeping with the spirit of the agreement signed by both sides. However, it cannot condone any action which contravenes the basic principle of freedom of choice which is the very foundation upon which this agreement is built.

(Signed) A. L. HAMBLEN,
Brigadier General, USA,
Commanding

4. LETTER DATED 5 OCTOBER 1953 FROM GENERAL MARK W. CLARK, USA, TO THE CHAIRMAN, NNRC

In view of the differences that have arisen as to the meaning and application of the Terms of Reference for the Neutral Nations Repatriation Commission, and in view of their vital importance to the entire world, I consider it desirable to set forth briefly the background of that document.

After April 1952, there remained one unresolved issue in the armistice negotiations which was not resolved until June 1953, when agreement was reached on the Terms of Reference. The issue, simply stated, was: "Would the United Nations Command agree to use physical force to return to community control those captured personnel who clearly demonstrated they would physically resist repatriation?" The communists insisted that all captured personnel must be returned regardless of their individual desires. During most of the time that this issue was in dispute, the United Nations Command had in its custody about 83,000 North Korean and Chinese prisoners of war who, of their own free will, indicated that they would not physically resist return to communist control. These prisoners we did return in good faith as soon as it became possible to do so. The remaining prisoners refused to be returned to communist control. Because of its regard for their human rights, the United Nations Command insisted that they, as individuals, be allowed to express their own will without coercion of any kind. They were free, at any time while in our custody, to change their decision regarding repatriation. A few of them did, in fact, subsequently ask for repatriation, and they were included with those who were returned.

Although these anti-communist prisoners had very clearly manifested their violent opposition to repatriation, the United Nations Command, in the interests of achieving an honorable armistice and bringing to a halt

the bloodshed in Korea, agreed to a proposal by which each side would be permitted to conduct explanations without force or coercion to prisoners of the other side who had signified they did not wish to exercise their right of repatriation. It was in connexion with this agreement that the NNRC was established.

As I review the progress of about three weeks of activity of the NNRC, I do not fail to appreciate the administrative difficulties encountered in the organization of any such body. However, I am impelled, as Commander-in-Chief of the United Nations Command, to present our views on certain aspects of proceedings to date.

Certainly, the United Nations Command has, from the outset, sought in every way to fulfil its obligations to the Commission and to the Custodial Force, India. It will continue to meet its present and future commitments. On the other hand, the United Nations Command is deeply and directly concerned that the NNRC will also fulfil the obligations imposed upon it by the Armistice Agreement and the Terms of Reference, and will adhere scrupulously to the humanitarian intent of those documents. Having continued, at heavy cost, the conflict in Korea for more than a year while our negotiators at Panmunjom were striving to achieve an honorable armistice which would uphold the principle of freedom of choice as to their future by the prisoners of war of both sides, the United Nations Command cannot now condone any abrogation or compromise of this principle. Nor can it condone the use of force or coercion, either overt or implied, in connexion with this principle, while these prisoners are under the control of the NNRC.

Your position that prisoners were misinformed by the United Nations Command of the provisions of the Terms of Reference is completely at variance with the facts. As you and the Commander, CFI, have previously been informed, the provisions of this document were given in their entirety to all the prisoners in United Nations Command custody. In our opinion, the plain words of the Terms of Reference need little interpretation. Where an interpretation had to be made, or when such was requested by the prisoners, it was based on the fundamental principle of freedom of choice, without duress or coercion. Allegations of misinterpretation by the United Nations Command are unwarranted and undeserved.

Any assertion that the United Nations Command has led anti-communist prisoners of war to believe they would be released at the end of ninety days' custody is in error. As a matter of fact, the prisoners were shown graphically, in chart form, a chronology of events pertaining to them while in NNRC custody, which unmistakably provided for a maximum period of 120 days as prisoners of war, after which they would revert immediately to civilian status and, thirty days thence, the NNRC would be dissolved.

I understand you have objected to an informational leaflet on India previously distributed by the United Nations Command to the prisoners of war solely because it did not discuss exact duties of the NNRC under the Terms of Reference. You will recall that, at the express request of the head of the Indian Red Cross, the United Nations Command agreed to send to the NNRC camps, for the use of the prisoners, all informational and educational materials on hand at its United Nations Command prisoner-of-war camps. These included not only informational leaflets, but text books, materials and athletic and recreational equipment. At no time was it indicated that the material requested should be related to the

mission and functions of the NNRC. You are aware that, because of the deep distrust of the NNRC and the CFI on the part of the prisoners, we found it necessary to undertake positive measures to encourage them to share our faith and trust in the integrity and impartiality of India. Only through such a programme were we able to secure the co-operation of the prisoners in the move to the Demilitarized Zone and in placing themselves in your custody without violence and bloodshed.

Also in error is the statement that prisoners were told by the United Nations Command they would go to Formosa. All prisoners were informed that, under the Terms of Reference, those who refused repatriation would be free to make application to go to a neutral country or to a country of their choice. Certainly you are aware that the anti-communist Chinese have indicated a strong and natural desire to go to Formosa. It is public knowledge that the President of the Republic of China has invited to Formosa those Chinese anti-communists who desire to come. Similarly, the President of the Republic of Korea has extended his welcome to those anti-communist Koreans who wish to live in his nation.

Furthermore, I am sure you agree that there is nothing in the Terms of Reference which prevents those prisoners who refuse repatriation from going to Formosa or the Republic of Korea after termination of the period of custody by the NNRC. Paragraph 11 of that document states in part that 120 days after the NNRC takes custody of the prisoners, they shall revert from prisoner-of-war status to civilian status. Therefore, at that time they are no longer prisoners, nor are they subject to the custody or to the control of the NNRC. They are free to go where they choose. This same paragraph also states that those who choose to go to neutral nations shall be assisted by the NNRC and the Red Cross of India. This assistance by the NNRC and the Red Cross of India is available only for a period of thirty days, or 150 days from the date upon which the NNRC assumed custody. Thereafter, the NNRC is dissolved. Obviously, these free men, formerly prisoners, who do not request assistance from the NNRC and Red Cross of India will not remain in the Demilitarized Zone. Having rejected repatriation, they must make their way to a country of their choice. The obvious and natural choice of these men is Formosa for the Chinese and the Republic of Korea for the Koreans.

It is important to note here that paragraph 11 was proposed by the communists. When, on 4 June 1953, armistice negotiators were discussing this paragraph, the United Nations Command asked this question: "Does your proposal indicate that all such prisoners would have to go to some neutral State or would Koreans, for example, be allowed to remain in Korea?" The record indicates that the communists interposed no objection to this interpretation.

It is difficult to accept the assertion that a statement recently distributed to the prisoners in your custody is a "perfectly correct interpretation" of the Terms of Reference. Our objections to both its tone and intent have already been made known to you. While you now assert that the original text represented the Commission's unanimous views, there appears to be considerable confusion as to the translation given to the prisoners. Specifically, a press statement attributed to you personally, indicates that the statement distributed to Chinese anti-communist prisoners was an earlier version of a draft not approved by the Commission.

I desire to reiterate that the explanation period, which apparently has been a matter of considerable discussion

by the Commission, in no way can extend beyond 23 December, or ninety days from 24 September, the date on which the NNRC assumed full custody. This is not subject to interpretation by the Commission, is clearly stipulated in the Terms of Reference, and has been covered so thoroughly in previous correspondence with you that I feel the subject needs no further discussion.

Your refusal to permit observers of the United Nations Command to witness the validation of requests of prisoners for repatriation is both surprising and disappointing. It is difficult to reconcile such a position with the provisions of the Terms of Reference, which very clearly permit our representatives to observe the operations of the Commission, to include, but certainly not restricted to, explanations and interviews. The NNRC ruled that the transfer of prisoners from the United Nations Command to the custody of the CFI was an operation of the Commission and, accordingly, communist representatives had the right to observe such operation. Certainly, the final act of determining a prisoner's destiny by the validation of his application for repatriation is a most important operation of the Commission and its subordinate bodies. The same principle must apply; therefore, validations properly should be witnessed by the representatives of the United Nations Command: it would be most desirable that the press also be present. Paragraph 1 of the Terms of Reference can have no other interpretation and constitutes full authority for such observation.

In summary, it appears that the decisions and activities of the Commission to date have been predicated upon the assumption that the prisoners in your custody actually desire repatriation. This is especially difficult to understand in view of the strong opposition Korean and Chinese anti-communist prisoners have demonstrated, individually and collectively, even to the physical presence of communist representatives. It would seem that the Commission has not taken full cognizance of the fact that the Korean and Chinese prisoners made their choice many months ago and that, in the absence of force or coercion, the vast majority will adhere to their decision. If there exists any real doubt as to the attitude of the prisoners, I strongly recommend that advantage be taken of the provisions of paragraph 9 of the Terms of Reference and that prisoners be encouraged to state their views directly to the NNRC and its subordinate bodies on the situation as they see it. This should provide conclusive evidence of their personal feelings and desires.

While, under the Armistice Agreement and the Terms of Reference, the United Nations Command will continue to fulfil its commitments to the NNRC, this Command is confident that the NNRC will, under your direction, fulfil its solemn obligations with strict integrity and complete impartiality, the governing consideration being the welfare of the prisoners of war and their freedom of choice as to ultimate disposition.

(Signed) MARK W. CLARK,
General, USA,
Commander-in-Chief

5. LETTER DATED 7 OCTOBER 1953 FROM THE CHAIRMAN, NNRC, TO GENERAL MARK W. CLARK, USA (REPLYING TO LETTER OF 5 OCTOBER 1953)

1. I am desired by the Commission to acknowledge receipt of your letter dated 5 October in which you have been good enough to present your views on certain aspects of the activities of the NNRC. Although the Commission is not unaware of the chequered course of negotiations leading to the drawing up of the Terms of Ref-

erence for the NNRC, the Commission is grateful to you for recapitulating the background.

2. Your letter brings into relief the difference in approach to the problem by the United Nations Command and the NNRC which appears to be somewhat fundamental. You have stated that "it appears that the decisions and activities of the Commission to date have been predicated upon the assumption that the prisoners in your custody actually desire repatriation". The Commission has made no such assumption. On the other hand, the Commission is not prepared to accept as an established fact "that the Korean and Chinese prisoners made their choice many months ago and that, in the absence of force or coercion, the vast majority will adhere to their decision". That certainly has been the stand taken by the United Nations Command. The contention of the Command of the Korean People's Army and Chinese People's Volunteers on the other hand has been that these prisoners have had no opportunity to express their free will because of the existence of well-organized groups in the camps who are alleged to have terrorized the prisoners of war who wished to be repatriated. The Commission is not prepared to work on either of these assumptions. The Commission has kept an open mind and is most anxious to secure for the prisoners of war complete freedom of choice without duress and coercion. Assuming that the "vast majority will adhere to their decisions", how can the Commission discover the small minority who may change their decisions? It is precisely with this object in view that both the commands agree to provide for "explanation" in the terms of the agreement. This is a mandatory provision and the Commission must, under the Terms of Reference, provide necessary freedom and facilities to the explainers. While the Commission is bound to protect prisoners of war from all force or threats of force, it is equally their obligation to see that they perform the legitimate functions which the Terms of Reference enjoin.

3. It may be that many prisoners of war will not want to be repatriated. However, so far some 110 prisoners of war have asked for repatriation which proves that at least some of the prisoners of war do wish to be repatriated. What is even more significant is the fact that not one of the prisoners of war dares openly, in their camps, to ask for repatriation. They had to do so surreptitiously or at the risk of death or injury from fellow prisoners or at the risk of being shot on the fence by armed guards. The abnormal manner in which the repatriate prisoners have had to express their wish, naturally raises the suspicion that all prisoners of war are not free agents. Under these conditions, you will, I hope, appreciate why the Commission cannot take "Full cognizance of the fact that the Korean and Chinese prisoners made their choice many months ago and that, in the absence of force or coercion, the vast majority will adhere to their decision". The Commission will certainly ensure that there would be no force or coercion at the time of explanations, but it is unable to satisfy itself that prisoners of war are not being subjected to force or threats of force by some fellow prisoners.

4. You have suggested that the prisoners of war should be encouraged to state their views directly to the NNRC or their subordinate bodies so that all doubts as to the real attitude of the prisoners could be set at rest. In the course of my talks with the leaders of the prisoners of war, I did inquire if they would agree to appear before the NNRC and express their views. Even this they were not prepared to agree to. Obviously, the leaders either do not trust the NNRC or they are afraid that once a

prisoner of war is permitted to be left alone, he might change his mind and decide for repatriation. This means of finding out the attitude of the prisoner of war, as suggested by you, is not, therefore, open to us.

5. You are certainly entitled to expect that the NNRC will fulfil the obligations imposed upon it by the Armistice Agreement and the Terms of Reference and will adhere scrupulously to the humanitarian intent of those documents. The Commission maintains that it has done so and that consistent with its responsibilities under the Terms of Reference, it has so far done nothing which may be deemed to have condoned or compromised the principle of freedom of choice by the prisoners of war as to their future.

6. The Commission notes the measures taken by the United Nations Command to inform the prisoners of war of the provisions of the Terms of Reference. It appears, however, that the prisoners of war had not understood these provisions properly. This would be clear from the following examples. Lieutenant General W. K. Harrison, in his letter to me dated 12 September, had stated that the prisoners of war had been informed by the United Nations Command that no observers should be present when the Custodial Force, India, took them into custody. It was the unanimous view of the Commission that this interpretation was not correct. The prisoners of war also said that, in accordance with the Terms of Reference, they need not attend the explanations and that they would automatically be released at the end of ninety days, although the correct position is that they will have to remain in custody till the Political Conference settles the question of their disposition. In these circumstances, the Commission thought it necessary to remove such misapprehensions by distributing a leaflet explaining the provisions of the Terms of Reference. I admit that when I received General Hamblen's letter I thought that the original draft which had been later amended by the Commission, might, through inadvertence, have been translated into Chinese and I said so in a casual conversation with a press representative. I also told him that I had given this statement again to the translators of the Commission for scrutiny and a report for which I was still waiting. The press correspondent, however, did not choose to report the entire conversation. On receipt of the translators' report, I was satisfied that there was no such mistake and that the Chinese version was a faithful translation of the English text as finally adopted by the Commission.

7. I confess I did not understand the purpose of issuing the informational leaflet on India. From what you have said in your letter, I now fully appreciate the object and the need for issuing such a leaflet.

8. The Commission notes that the United Nations Command is unable to agree to extend the period beyond that laid down in the Terms of Reference. The Commission nowhere suggested that this is a matter for interpretation by the Commission. They are fully aware that any such extension is only possible if the two Commands agree but, having regard to the delay in providing facilities for explanation, the Commission felt that they should ask the two Commands to agree to such an extension.

9. The question of permitting observers to witness the validation was carefully considered by the Commission. Although it is possible that the questioning of the prisoners of war might be considered as an operation of the NNRC, the validation was definitely not an operation. For practical reasons it was obviously not possible to separate the two functions. The Commission could not, therefore, agree to permit observers being present at

validations. I would, however, like to point out that just as observers were allowed at the time of taking over custody of the prisoners of war by the CFI, the Commission has also permitted observers being present when prisoners of war are finally handed over for repatriation.

10. The Commission has full confidence that the United Nations Command will continue to fulfil their commitments and it can assure the United Nations Command that it is fully conscious of the responsibilities it has undertaken and that it will continue to discharge its obligations with complete integrity and strict impartiality and with a full understanding of what is involved, bearing in mind the history of the prisoner-of-war issue.

(Signed) K. S. THIMAYYA,
Chairman

6. LETTER DATED 10 OCTOBER 1953 FROM THE UNC TO THE CHAIRMAN, NNRC.

In assuming command of the UNC, I feel it in order at the very beginning of my service in the Far East, to state briefly yet clearly my over-all policy with respect to our mutual responsibilities in this grave and complicated situation. I saw and subscribed fully to the letter which General Clark dispatched to you on 5 October. I believe it will prove of material aid to you if, as the new UNC Commander, I not only reassert my adherence to present basic UNC policy but also inform you of my comprehension of your vast problems and of my determination to support you and help you whenever and however possible.

First, then, it is proper that I reaffirm the strong stand of this headquarters in insisting upon full and continuing execution of the spirit and the intent of the Terms of Reference which define the responsibilities and the sphere of activities of the Neutral Nations Repatriation Commission. The firm policies of my government demand of me every practical step in guarding the rights of the thousands of POW's now under the custody of the troops of your country, rights which carry a definite guarantee to these prisoners of a voluntary freedom of choice. This freedom of choice without coercion or duress of any sort or degree is the heart and soul of the principles which impelled UN action in Korea in the first place. It illustrates the very foundational rights of free men of free nations; it mirrors the worth and the dignity of the individual citizen in such nations, as President Eisenhower has often so aptly stated.

In the defense of this principle and of these primary rights, there can be no compromise. None was ever contemplated in the Armistice Agreement or in its Terms of Reference for the NNRC. Hence I feel you fully understand and appreciate the unalterable position the UNC has taken in this critical period, and the undeviating stand I must maintain, personally and through my UNC Repatriation Group under Brigadier General Archelaus L. Hamblen.

It is equally important, after having frankly reaffirmed the basic UNC position, to say that I am deeply aware of the extremely difficult situation you are facing. With no precedent to follow, and with conflicting interests and highly sensitive problems constantly before you, it is realized by both my government and myself that you need and are entitled to the patient, sympathetic understanding of all concerned, in order to accomplish your mission effectively. Therefore I wish to reassure you of my understanding and continuous support. I take note of your illustrious career as a soldier and leader, and also that of Major General Thorat. I am therefore reassured of the favourable outcome of these complicated undertakings.

Let me say, in closing, that while I cannot but expect full adherence to the spirit and the letter of the Terms of Reference, yet at the same time I can say in all sincerity and with the frankness permitted one soldier to another, that the UNC has faith in your honest, capable, experienced leadership. I have every hope and confidence that your handling of the prisoners of war will be concluded in a way which will inspire universal pride in your achievement, and at the same time will contribute to our joint efforts in effecting an honorable and lasting peace.

(Signed) J. E. HULL,
General, USA,
Commanding Chief, UNC

7. LETTER DATED 17 OCTOBER FROM THE UNC TO THE CHAIRMAN, NNRC (concerning lengthy interrogation of POW)

1. I am obliged to call to your attention the circumstances surrounding the POW's interview at explaining point 15 which occurred on the afternoon of 17 October 1953. I am certain that you are at least partially familiar with the incident, since it was only through your personal intervention that the interview was finally terminated. At this particular interview, Capt. Churaya was chairman, Lt. Col. Reutersward was the Swedish delegate and Lt. Geissshusler, the Swiss delegate.

2. I am in possession of a report of investigation conducted on this particular incident. Pertinent extracts are appended.

3. This incident involves intimidation and coercion of a POW by Communist explainers. It is the most flagrant violation of the principle of freedom from coercion that has come to my attention. It is imperative that this practice be terminated in future explanations conducted by the NNRC. Sincerely,

(Signed) A. L. HAMBLEN

Extract from report of investigation enclosed with above letter

1. At approximately 1505, 17 October, an anti-Communist POW was brought into tent 15, site A, for interview. Upon entering the tent he was definitely hostile toward the Communist explainers. He did not desire to sit near the Communists but two Indian guards forced him into a chair. Rather than face the explainers he turned his back toward them. One of the three Communist explainers opened the interview substantially as follows:

"We are representatives of the Peoples Government. We are here to cheer you and to welcome you back. I understand how you may have made mistakes in the past but those were all minor mistakes and are no concern of ours. The Peoples Government is generous. The Peoples Government will forget your previous mistakes. We guarantee that you will be safe if you go home. As a matter of fact this is the only way that you can be united again with your family."

At this point the prisoner made an antagonistic movement toward the explainers but was restrained by the Indian guards. The POW attempted to leave the tent via the non-repatriation exit. He was restrained by the guards. The POW kept shouting: "I want to go Taiwan. I want to go to Taiwan." The POW was forcibly returned to the chair by the guards and at the direction of the chairman was forced to sit down again.

2. The explainer continued with his explanation substantially as follows:

"Don't worry. I understand that you are tattooed but that doesn't make any difference. When you go back we can remove that in a harmless way. Don't be afraid

if you have been incarcerated all these years. Even the leader of the officers battalion, Li Ching Chuan, has come back. (Name) has come back. (Name) has come back."

3. At this point the POW again attempted to terminate the interview by leaving through the non-repatriation exit shouting:

"I want to go Taiwan. I want to go to Taiwan." He was again forcibly detained by the Indian guards and forced to sit before the explainers. Another explainer continued substantially as follows:

"There is no use in your returning to Taiwan. We are going to liberate Taiwan. You know now how corrupt the Nationalist Government is. Don't believe anything that the Kuomintang agents have said."

4. Another explainer continued substantially as follows:

"Just a moment ago one comrade went out the door (no POW had sought repatriation through that door as implied by the explainer). If you go out that door our vehicles are waiting there for you. We will send you back to Kaesong before nightfall. The repatriation tent is only a short distance away from here. Your comrades (name) and (name) are already there. We too will see you there."

5. An explainer continued in substance:

"Try to think. Is your barbed wire enclosure miserable? Just speak up and say that you want to go home. You will be repatriated forever. You will never again be behind a barbed wire enclosure."

6. At this point all four of the explainers pointed to the repatriation door and said:

"Go! Go out the door! Go! It is only a short way from here to the door. Go out the door! This is the way, this is the way! Don't hesitate any more! Go ahead, go ahead!" The POW tried to break away again but was again restrained by the guards. The POW shouted "I don't want to go back! I want to go to Taiwan." His shouting to this effect was repeated time and time again. However, the POW was again brought back to his chair and forced to sit facing the explainers.

7. Another of the explainers continued with the interview substantially as follows:

"Don't you believe us? We have more than 100 representatives here. Look at them." (Points to the exit where numerous Communists are crowding about the door.)

8. The explainer continued: "Look at all the NNRC members. They will protect you. The guards especially will protect you. They are your friends. These two guards will take you out so you will arrive safely."

9. The POW again shouted: "I want to go to Taiwan! I don't want to go back! I don't want to go back!" The POW pointed toward the non-repatriation door from which he desired to exit. He realized at this time that any further struggle in an attempt to get out that door had become fruitless. The POW was tired and discouraged. The chairman directed that the POW again face the explainers. One of the explainers held out a printed document and continued substantially as follows: "This is a message from the supreme commanders Prang and Kim Il Sung. This message guarantees that you will go back safely."

10. The Indian chairman at this point asked the explainer to display the document to the NNRC Committee. The UNC representative requested permission to see the document. The Czech and Polish members of the NNRC Committee objected to the UNC members reading the document, their objection was sustained.

11. In the confusion the document was returned to the Communist explainer who continued substantially as follows: "Just take a look at the message. Perhaps you cannot read. I will read it to you."

12. At this point the POW again attempted to leave the tent through the non-repatriation exit and again he was forcibly restrained by the guards and again forced to face the explainers.

13. The explainer again offered the prisoner the document saying: "Take this, go out this door."

14. All the explainers stood up at this point and, with threatening gestures toward the prisoner, shouted: "Go out there! Go out that door!" There were numerous Communists outside the door. Again the POW tried to break away. Again he was restrained. An explainer continued to the effect: "It doesn't matter if you don't take the document. Just go out that door."

15. The POW was exhausted. He sat in the chair and held his head. The explainer continued: "If you are worried tell us."

16. Then the explainer shouted: "Tell us, *tell us, tell us, tell us!* If you have no worry go out. Go ahead!"

17. Many Communists surrounded the tent. The chairman waved them away. The Swedish delegate had the guards clear the Communists from the area surrounding the tent. At this point a new Communist explainer arrived to make a total of five Communist explainers in the tent. The Committee chairman directed the new explainer to leave the tent. The new explainer replied substantially as follows: "I belong to this team. I have been here all the time. From now on I am going to work in this tent. I will not leave."

18. The Swiss and Swedish delegates strongly objected to the presence of the new explainer.

19. The new explainer faced the NNRC Committee and shouted. "The Swedish Colonel is full of bullshit!"

20. The new explainer yelled at the POW: "Don't be afraid. I am here. Nobody dares to touch you."

21. At this point the committee chairman left the tent to seek advice. Prior to leaving he directed that no one speak during his absence. As soon as he was gone, all five explainers in a chorus shouted at the POW: "Follow us! Nobody dares to touch you! Don't be afraid!"

22. The Swedish delegate attempted to stop the commotion and declared a violation of the Rules of Procedure. The committee chairman returned to the tent and ruled that the new explainer would stay. This ruling compounds the confusion in the tent. The Swedish and Swiss delegates objected. The UNC observer and representative objected. Their objections were all overruled. The UNC observer and representative protested and left the tent.

23. The new explainer continued the interview substantially as follows: "Look at the two UNC representatives. They have deserted you. They have left you here alone. If you walk out of here you will be back with your comrades. You will see your mother. You will see your brother."

24. At this point the POW was completely fatigued. He held his head in his hands and groaned. The Communist interpreter jumped to his feet and addressed the chairman: "This POW said he wants repatriation."

25. All of the Communists came out from behind their desks and said in effect: "This way. Go this way. Come out here and you will be safe. Go! Go ahead!"

26. There was strife and confusion as the POW attempted to resist the pressure being placed upon him.

The prisoner was completely confused and under the pressure being applied, he attempted to get out any door, even the repatriation door. However, the chairman had the guard stop the POW because the chairman had not explained to the prisoner the meaning of the two exits. By this time a great crowd of Communists had gathered outside the tent. General Thimayya appeared. The session was in turmoil. General Thimayya restored order in the tent. The UNC observer returned to the tent. The chairman asked the Communist interpreter to read the last part of the statement which gives the POW a choice of repatriation or non-repatriation. The Communist interpreter was obviously biased in his translation, a fact which General Thimayya recognized. General Thimayya directed that everyone leave the tent. The Communists were reluctant to leave. The Czech delegate insisted that the POW be allowed to repatriate. The Swedish delegate suggested that the prisoner be segregated and allowed to rest. General Thimayya proposed a 2-day rest for the prisoner. The committee chairman concurred and the POW went out the non-repatriation door with General Thimayya. At this point the Communists swarmed after the prisoner in a crowd and attempted to grab him. The Indian guards restrained the Communists and succeeded in getting the POW outside. When the POW was safely outside, the Communists insisted that the prisoner desired to make a statement.

27. General Thimayya had the prisoner returned to the tent. General Thimayya's interpreter addressed the prisoner substantially as follows: "Do you desire repatriation or not?"

28. The POW, who by this time was completely confused, replied substantially as follows: "I try to go out there (indicating the non-repatriation door) and I am stopped. I try to go out there (indicating the repatriation door) and I am stopped."

29. General Thimayya then took the POW out the non-repatriation door.

8. LETTER DATED 12 NOVEMBER 1953 FROM THE CHAIRMAN, NNRC, TO GENERAL W. K. HARRISON, UNC

You remember when you came to see me last you asked me whether I had any instances to indicate UN's complicity with POW's. I told you then that apart from those which I had already reported, I had no further complaints. You had then suggested that I should let you know if there were any instances in future.

On 7 November 1953 the CFI discovered a pocket radio receiving set in a drum of dry yeast issued from the UN warehouse to the POW's in CFI area. We have therefore had to lodge a formal protest to General Hamblen in this regard on 11 November 1953.

I am sure you will understand that this sort of thing causes me much embarrassment and gives further cause to certain parties for attack on the UN. I shall therefore be very grateful if steps could be taken to ensure that your boys do not get mixed up with such activities.

A message was also thrown from a POW's compound towards the quarters of the Korean nurses in 64th Field Hospital area. This raises a grave suspicion and in fact links up with accusations made by the other side that personnel of the UN hospital are used as agencies and links between the UN and the POW's. Though we have no positive proof of this, I think it will be a good idea if you give strict orders to the CO 64th Field Hospital to make quite sure that these nurses keep clear of such activities.

(Signed) General THIMAYYA

9. LETTER DATED 19 NOVEMBER 1953 FROM GENERAL W. K. HARRISON, UNC, TO THE CHAIRMAN, NNRC (replying to letter of 12 November 1953)

I am grateful to you for your letter of 12 November regarding your observations on the discovery of a contraband radio receiver and what appear to be covert activities in the hospital area. Immediately after receipt of Mr. Haksar's letter in which the circumstances surrounding the radio set were set forth, we launched an investigation. It was with real chagrin that we found the facts substantially as had been set forth. I can assure you that such activity was completely contrary to UNC policies, that General Hamblen had no knowledge of this particular incident, and that General Hull, personally, has taken the strongest action to prevent recurrence of this or any similar unauthorized activities by personnel under our control.

Prior to the receipt of your letter, we also looked into the possibility of any other clandestine activity which might be attempted. I have been able to determine that no UNC agency has established, or is attempting to establish, an intelligence outlet from either the Northern or Southern CFI camp. As a matter of fact, I find that we have very little information available to us of day-to-day operations of the prisoners, other than that reported by our authorized observers and liaison personnel. Particularly, we have no control over unauthorized activity that you say may be taking place within the hospital. In this connexion, specific instructions are being issued to the CO, 64th Field Hospital, to cooperate with the CFI in any way possible to reduce the possibility of undercover operations if such is actually taking place.

I assure you, General, that I fully appreciate the extremely sensitive situation which is now facing you and the CFI. We are absolutely sincere in our desire to refrain from any action which is contrary to the spirit or the letter of the Terms of Reference or which may, in any way, handicap the legitimate operations of your Commission. We are convinced that you and the CFI will fulfil your obligations to the prisoners in your custody with fairness and impartiality and want you to feel, in turn, that we are fully willing to cooperate and assist you within the limitation of the Terms of Reference.

(Signed) General HARRISON

10. LETTER DATED 2 JANUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE COMMANDER-IN-CHIEF, UNC

1. The Neutral Nations Repatriation Commission desires me to inform the United Nations Command that the Commission has been able to implement, only to a limited extent, the procedure in respect of the repatriation of POW's as contemplated and provided in its terms of reference and established under the rules formulated thereunder by the Commission.

2. The NNRC has to come to a decision, as expeditiously as possible, in the next few days about the further steps it should or may take in the discharge of its responsibilities. The NNRC has, in particular, to arrive at a decision in respect of the status and tasks of the Custodial Force, India, and the status and disposition of prisoners of war.

3. In the report it has communicated to the two Commands, the NNRC has already set out the facts and circumstances which have existed, and for the most part continue to exist and surround the endeavors of the Commission and the CFI in the discharge of their responsibilities in respect of the implementation of the repatriation agreement.

4. A memorandum prepared by me as the Chairman of the NNRC, and annexed hereto, is set out for your information and study of the position in regard to the more important problems with which the NNRC and the CFI are confronted.

5. The NNRC requests the United Nations Command to assist the NNRC in coming to a considerate, just and correct decision in regard to the following questions:

(a) Whether the United Nations Command considers continuance of explanations possible;

(b) Whether the Political Conference is likely to meet as contemplated in paragraph 11 of the Terms of Reference;

(c) Whether the United Nations Command will forthwith enter into negotiations with the Korean Peoples Army and Chinese Peoples Volunteers Command to establish procedures for the consideration of the problem of non-repatriated prisoners and consequential matters in view of the failure of the Political Conference to meet hitherto;

(d) Whether the United Nations Command will agree to the continuance of present custodial duties of the CFI pending agreement on the disposition of the prisoners of war.

6. The NNRC requests that these answers may be communicated to it without delay in the course of the next three or four days to enable it to come to decisions in time and with the knowledge of your considered views on the relevant issues. The NNRC would be grateful for a reply by 6 January.

7. The NNRC seeks to assure the United Nations Command that in making this request it is prompted and persuaded by the earnest desire to implement the repatriation agreement and to discharge its responsibilities fully and correctly. An identical communication has been addressed to the Korean Peoples Army and Chinese Peoples Volunteers Command.

(Signed) K. S. THIMAYYA,
*Lieutenant General,
Chairman, NNRC*

ANNEX

MEMORANDUM BY THE CHAIRMAN, NNRC

The ninety day period having ended, the Commission finds itself in the following position:

1. Explanations

(a) Explanations have not been completed. An overwhelming majority of prisoners of war have not even been through explanation procedure.

(b) Extension of the period of explanations which the Commission considered legitimate and necessary was not acceptable to the United Nations Command.

(c) Requests for such extensions have been made during and after the ninety day period by the Korean Peoples Army and Chinese Peoples Volunteers Command.

(d) The opinion of the majority of the Commission is still that explanations should be continued.

(e) The wording in paragraph 11 of the Terms of Reference, however, is that 'at the expiration of ninety days after the transfer of the custody of the prisoners of war to the NNRC access of representatives to captured personnel as provided for in paragraph 8 above shall terminate . . .' The literal interpretation of these words may well be that the explanation period terminates on the ninety-first day after the date the prisoners of war were taken into custody. The United Nations Command has held to this position and declines to alter it. Continuance of explanations is possible only if the two Commands agree.

2. Political Conference

(a) The referring of the question of the future of the non-repatriated prisoners to the Political Conference is mandatory. The terms of paragraph 11 in this regard are ". . . the question of the disposition of the prisoners of war who have not exercised their right to be repatriated shall be submitted to the Political Conference recommended to be convened in paragraph 60, Draft Armistice Agreement . . ."

(b) The failure of the Political Conference to meet is a matter for which the Commission bears no responsibility, and, indeed, the Commission has no power or capacity to bring about such a conference or to substitute any other machinery or arrangement in its place.

(c) The Commission has the duty and the right to refer this matter to the two Commands and request them to state their position in regard to the following:

(i) Whether and when the Political Conference will meet within the relevant period;

(ii) In the event of the failure of the Political Conference to meet within the relevant period, to come to an agreement between themselves in respect of the further procedure in regard to disposition of prisoners of war and to inform the Commission expeditiously.

3. Custody

(a) The custody of the prisoners of war by the CFI is, as contemplated in paragraph 11, to be terminated on the 121st day but is not so stated expressly. The said paragraph 11 after stating that the Political Conference shall endeavor to settle the issue of non-repatriates "within thirty days", goes on to state, "during which period the NNRC shall continue to retain custody of the prisoners of war". There is nothing here in the terms about custody coming to an end but only that custody shall obtain in the thirty days period. No other interpretation or views in respect of this matter would have had to be considered now if the repatriation arrangements had been carried out according to the plan in paragraph 11 and the issue of non-repatriates had been placed before the Political Conference.

(b) The United Nations Command has, however, stated and reaffirmed that custody shall cease on that day while the Korean Peoples Army and Chinese Peoples Volunteers Command takes a different view.

(c) Paragraph 11 of the Terms of Reference assigns to the CFI certain functions during the 120 days and other functions for the next thirty days. This can mean that custodial functions terminate at the end of 120 days. It can also mean that functions other than or in addition to custodial functions remain. The CFI must, however, remain on location till the 151st day and consequently have some authority.

(d) Irrespective of any interpretations, the factual aspect of the matter, however, is that the CFI cannot maintain custody or even remain in the territory without agreement of both Commands, for the following reasons:

(i) That the CFI is dependent on peaceful conditions being guaranteed by the two sides;

(ii) Considerations of logistic support.

The continuance of custody is necessary:

(1) If explanations are to continue;

(2) If the process of repatriation is to be carried out;

(3) If prisoners remain in the locations whatever their status.

(e) The period of custody is related to the disposal of the question of non-repatriated prisoners of war in the Political Conference which has not materialized. It therefore calls for reconsideration and review by both sides.

(f) The CFI, which bears the responsibility for custodial duties, undertook the task at the request of and in accordance with agreement between the two Commands.

(g) India accepted the task to further the purposes of the Armistice Agreement and to enable the repatriation procedure to be effected.

(h) Since the conditions on the basis of which the CFI entered on its duties would not otherwise obtain, continuance of custodial duties by the CFI is possible only if the two sides agree to it.

4. *Dissolution of the NNRC*

(a) The NNRC has to cease to function and declare its dissolution at the end of the 150th day. The relevant provision in paragraph 11 of the Terms of Reference implies this, but such a declaration is at the same time related to previous stages following from the Political Conference which has not materialized.

(b) The continuance of the Commission after the 150th day is also possible only as a result of agreement between the two Commands. The NNRC therefore can only refer this problem also to the two Commands for consideration and agreement between them.

(Signed) K. S. THIMAYYA

11. LETTER DATED 3 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC (*commenting on the two reports transmitted by the NNRC, 28 December 1953*)

I have read carefully the interim report concurred in by the Indian, Czechoslovakian and Polish delegations and the interim report prepared and signed by the Swedish and Swiss delegations. I have also read the accompanying communications indicating the manner in which failure to agree to a single point developed. Of the two reports, I find that prepared by the Swedish and Swiss delegations much more objective, factual and indicative of the operations of the Neutral Nations Repatriation Commission.

In view of the fact that the ninety-day period for expiations has now terminated, and because the issues during this phase of Neutral Nations Repatriation Commission operations have been so clearly identified by both reports, I see little positive value to be gained by expressing detailed opinions on such issue. However, in order to clarify unmistakably the position of the United Nations Command on what I consider to be certain key elements, I am constrained to submit once more a reiteration of certain salient points:

(a) The United Nations Command categorically denies any implication that we have attempted, in any way, to exercise control to the slightest degree over prisoners in the Southern Camp by the introduction of *agents provocateurs*, or that we have attempted to maintain any type of covert intelligence network.

(b) The allegation that prisoners alone in the Southern Camp were responsible for the failure to complete explanations I find totally unacceptable. Although the United Nations Command had no permanent representation in either the Neutral Nations Repatriation Commission or Custodial Force, India, it appears clearly obvious from reports received from our duly authorized liaison observation and explainer personnel, as well as from official statements of the Neutral Nations Repatriation Commission itself, that the primary causes of failure were due to:

(1) The severe disappointment of the representatives of the Korean People's Army and the Chinese People's Volunteers at their inability to secure more than a nominal percentage of returnees from groups receiving explanations.

(2) The delaying tactics adopted by the Korean People's Army and Chinese People's Volunteers including:

a. Unreasonable and changing demands for facilities.

b. Refusal to accept reasonable numbers of willing prisoners for explanations during each day.

c. Refusal of the Korean People's Army and Chinese People's Volunteers to utilize available explaining time unless the Neutral Nations Repatriation Commission and Custodial Force, India, conformed to all their demands,

which included the use of force and other impracticable actions.

(c) The United Nations Command, on the other hand, supports fully the strong stand taken by the Indian, Swedish and Swiss delegations prohibiting the use of force against defenceless prisoners.

(d) The Terms of Reference plainly specify that explanations would be terminated as of 23 December 1953. We therefore cannot accept any alternate proposal which may be made by any other agency on this point, just as we shall not accept any other proposal which amends the date 22 January, the last day upon which prisoners in Neutral Nations Repatriation Commission custody can be denied their freedom.

(e) The termination date of custody, 22 January 1954, 120 days after the Neutral Nations Repatriation Commission originally assumed custody, is fixed and does not depend on the holding of any political conference, the holding of which was, by terms of the Armistice Agreement, to be recommended to their respective governments by the commanders of each side in the Korean conflict.

With specific reference to that part of your letter of 28 December 1953 (forwarding the aforementioned reports which discusses the action to be taken by the Neutral Nations Repatriation Commission now that the explanation period has ended and no political conference is in session, I believe the foregoing views are sufficiently clear to serve as a basis for a sound and logical course of action. As of 230001 January 1954, prisoners now in custody of the Neutral Nations Repatriation Commission, having then become entitled to civilian status are free to move to destinations of their choice. For those who wish to be assisted by the United Nations Command, I suggest that they be moved south in orderly, manageable groups and according to a phased schedule, so that they may be received at a mutually agreed upon location along the southern boundary of the Demilitarized Zone. The United Nations Command is fully prepared to receive them and aid them to move to destinations of their choice to settle into peaceful civilian pursuits.

For those who may apply to go to neutral nations, the United Nations Command (as previously outlined to you) stands ready to assist the Neutral Nations Repatriation Commission in care and disposition during the period 22 January-21 February. Whether we can continue assistance after 21 February will depend upon the situation then prevailing; I can, however, assure you of our co-operation in so far as practicable in my capacity as a military commander.

J. E. HULL,
General, USA,
Commander-in-Chief

12. LETTER DATED 6 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC (*replying to letter of 2 January 1954*)

Reference is made to your letter of 2 January 1954 in which you request the UNC to assist the NNRC in reaching decisions on questions enumerated therein and to which you have attached a copy of a memorandum approved by a majority of the Commission. It is my feeling that the position of the UNC on each of the issues has been clearly stated in previous correspondence with you, particularly in my letter of January 3 commenting on interim reports made by certain members of the Commission relative to NNRC operations. However, in order to remove any possibility of doubt or misunderstanding

of UNC views, I now reiterate the firm position of this command on the question posed in your letter:

(a) The UNC cannot, in view of the express provisions of the Terms of Reference, consider under any circumstances a reopening or continuance of explanations to UNC in NNRC custody.

(b) As a military commander, I am not in position to speak authoritatively on the convening of the Political Conference. However, the attitude of representatives of the North Korean and Chinese governments during the preliminary talks recessed recently at Panmunjom has made it extremely improbable that a political conference will be in session prior to January 22.

(c) The convening of a political conference was, under terms of the Armistice Agreement, only a recommendation of the commanders of both sides to their respective governments, and has no determining relationship to the question of POW's in NNRC custody. Moreover, UNC can see no justification for entering into any discussion with any agency to consider further the disposition of prisoners, since paragraph 11 of the Terms of Reference constitutes agreement between the two sides settling the question. This was clearly indicated in armistice negotiations which resulted in the Terms of Reference for the NNRC. The plain intent of that paragraph is to prevent either party to the agreement from frustrating the basic purpose of avoiding indefinite captivity simply by refusing to appear at a conference or to agree to any alternative disposition at a conference.

(d) Under the Terms of Reference, the responsibility of Custodial Force, India for holding POW's in custody ceases as of 12:01 A.M. Jan. 23, 1954. As of that time, there remains the express responsibility for the Commission to release prisoners to civilian status and within the ensuing thirty-day period to assist those who choose to go to neutral nations. The UNC recognizes that, under the Terms of Reference, there is authority for an appropriate number of Indian troops to remain in the Demilitarized Zone to assist in carrying out its remaining functions and responsibilities. As you have already been informed, we are prepared to receive and assist all ex-prisoners who move south of the Demilitarized Zone. After February 21, the NNRC will be dissolved and the presence of Indian troops in the Demilitarized Zone will no longer be authorized or required.

Within the limitations expressed above, the United Nations Command stands, as always fully prepared to assist the Commission until the time of its dissolution.

Since you have classified your communication as SECRET, the UNC will not release either its text or the contents of this letter to the Press without prior notification to the Commission. However, in view of the steadily mounting interest and speculation in the world Press, and because there appears to be no valid reason for withholding this correspondence from the public, I recommend strongly that such publication be delayed no longer.

(Signed) J. E. HULL
General, USA
Commander-in-Chief

13. LETTER DATED 14 JANUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE UNC

I have the honour to refer to the Commission's letter No. NNRC/REP/1 dated 2 January 1954 and your reply dated 6 January 1954.

1. As mentioned in the Commission's letter dated 2 January 1954, the NNRC has been able, hitherto, to

implement, only to a limited extent, the procedures set out in the Terms of Reference.

2. The unrepatriated prisoners in the custody of the Commission include a number of POW's who have declined to exercise their right of repatriation. There are also a much larger number who have not been able to avail themselves of the procedures laid down in the Terms of Reference and the Rules made thereunder in regard to the exercise, by the POW's, of their right of repatriation.

3. The question of the disposition of POW's who have not exercised their right to repatriation has to be referred by the NNRC to the Political Conference. Although such reference is mandatory, it has not eventuated as the said Political Conference has not materialized. Further, the explanation procedures to which all prisoners are entitled under the Terms of Reference and which are enjoined on the Commission have been carried out only in respect of a small proportion of the total of the POW's in custody.

4. These and other failures in respect of the implementation of the Terms of Reference are due to causes and factors which have not originated with the NNRC and the Custodial Force, India, and for which they bear no responsibility.

5. Further or fuller implementation by the Commission of the procedures and of the purposes of the Terms of Reference as from the date of 24 December 1953 was possible only by agreement between or with the two Commands in respect of extension of the periods of explanation and custody and with regard to such alternate or extended procedures as may have become necessary by the failure of the Political Conference to materialize.

6. The NNRC has repeatedly made suggestions and requests to the two Commands in respect of these matters. The facts of the situation confronting the NNRC were, finally, set out at length in its letter and annexed memorandum of 2 January.

7. In particular, the Commission posed four questions on matters which are basic to any fuller implementation of the Repatriation Agreement by the NNRC and requested your answers in respect of them.

8. The NNRC has been favoured with your replies to each of these questions. Your answers seek "to remove any possibility of doubt or misunderstanding of UNC views" and have reiterated "the firm position" of the UNC.

9. The NNRC notes that the firm position of the UNC in respect of each of the four matters is:

(a) That continuance of explanations is not possible;

(b) That in the opinion of the UNC it is "extremely improbable that a political conference will be in session prior to 22 January";

(c) That the UNC sees no justification for entering into any discussion to consider the disposition of unrepatriated POW's;

(d) That the competence of the CFI for holding POW's in custody ceases on 23 January 1954 at 0001 hours.

10. The above answer setting out the firm position of the UNC place it beyond doubt that the UNC is unable to agree to the establishment of conditions or procedure which are basic to and without which the NNRC cannot seek to implement further procedures and purposes of the Terms of Reference.

11. The NNRC has, therefore, to make its decision in the light of the existing situation and its own appre-

ciation of the terms and purposes of the Terms of Reference and the responsibilities and obligations arising therefrom.

12. It is also noted that, in your reply of 6 January 1954, you have further set out the views of the UNC

(a) That the Political Conference has "no determining relationship to the questions of POW's in NNRC custody";

(b) That paragraph 11 of the Terms of Reference preclude your entering into any discussion to consider further the disposition of the POW's;

(c) That the position as set out in (b) above "was clearly indicated in the armistice negotiations which resulted in the Terms of Reference for the NNRC";

(d) That it is "the express responsibility of the Commission to release prisoners to civilian status" on 23 January 1954 at 0001 hours.

13. The NNRC has received from the KPA and CPV Command its answers. It insists:

(a) That the explanation period should be extended and explanations resumed;

(b) That the problem of the unrepatriated prisoners should be referred to the Political Conference;

(c) That the NNRC and CFI should continue to exercise "their legitimate functions".

14. The NNRC considers it necessary to state its own position, based on the Terms of Reference and its purposes, and its appreciation of the same in regard to aforesaid affirmations set out in paragraph 12 herein:

(i) The NNRC is unable to agree that the Political Conference has no determining relationship to the question of the POW's as stated in your reply. The view of the Commission is that the Political Conference is an integral part of the pattern and procedures laid down in paragraph 11. The elimination or the non-emergence of an integral part of the pattern cannot be regarded as inconsequential or having little or no effect on the rest of the procedures or on the decisions in regard to the status and disposition of the POW's that it is the duty of the NNRC to make.

(ii) The NNRC is unable to agree that the terms of paragraph 11 preclude further discussion on matters relevant to the purposes of the agreement between the two Commands. The NNRC has on various occasions sought agreements with either or both Commands and has not regarded such discussion with or between the Commands for the implementation of the Terms of Reference and its purposes as being precluded. It will also be recalled that the temporary agreement Annexure 2 of the Armistice Agreement, is dated 27 July 1953 after the signature of the Terms of Reference, Annexure 1, on 8 June 1953.

(iii) The NNRC was not party to the armistice negotiations and has no knowledge of the indications made by the parties to each other during the negotiations to which you refer in your reply.

(iv) The NNRC is unable to agree that it has the express responsibility to release prisoners to civilian status. The Terms of Reference do not provide for such release. They, however, provided that the Commission shall "declare relief from the POW status to civilian status" subsequent to the implementation of certain procedures prescribed in the Terms of Reference. These procedures, however, have not been implemented, and, in consequence, the NNRC is rendered lacking in capacity even to "declare" such "relief".

15. The NNRC has given deep and anxious consideration to the problem of the status and disposition of the POW's in its custody in the situation confronting it and come to the following decisions:

(1) The NNRC has no competence to release POW's; such an eventuality is not provided for, or contemplated by the Terms of Reference;

(2) The final disposition of POW's which alone would include release is not assigned to the NNRC by the Terms of Reference;

(3) The NNRC has no competence at present to "declare" "relief" from POW status of the prisoners in its custody as the procedures prescribed, preceding such declaration, have not been implemented.

(4) The NNRC has not been enabled to continue custody beyond 23 January 1954 or to perform any functions to further the implementation of the Terms of Reference owing to lack of agreement between the Commands concerned.

16. In the light of the above decisions, I, as Chairman and Executive Agent of the Commission, and having the custody of the POW's have come to the conclusion that the only correct and lawful and peaceful course open is to restore the prisoners to the custody of the former and respective detaining sides immediately prior to 23 January 1954.

17. I, therefore, propose to request you to accept the restoration of custody as on 20 January 1954 at 0900 hours and hope that this will be completed as speedily as possible.

18. Restoration of custody will take place on the border of the southern sector of the Demilitarized Zone and the CFI perimeter and the POW's be accepted on your side of the border according to established procedures in regard to the transfer of POW's.

19. I, as Chairman and Executive Agent of the Commission, desire to state in the clearest manner that in restoring the POW's to the custody of former detaining sides, I am doing so because I can neither retain custody of POW's nor further implement the Terms of Reference nor release them. I am not doing so to establish any alteration in their status or to effect the final disposition of POW's.

20. Further, the Commission, in pursuance of its function and authority to interpret the Terms of Reference, is of the view that the alteration of the status of POW's, either by declaration of civilian status or disposition in any other manner, requires the implementation of the procedures of explanation and Political Conference to precede it; such procedures being pursued to their legitimate termination as prescribed in the aforesaid Terms, unless the two Commands agree on alternative procedures or courses of action in regard to status and disposition of POW's. Any unilateral action by any party concerned will not be in conformity with the said Terms of Reference.

21. In adopting this course the Commission is persuaded by its earnest desire to further the purposes of the Armistice Agreement, to conform to lawful and impartial procedures within the context of the existing situation, to avoid possible outbreaks of violence and to act in conformity with the purpose and spirit of the Geneva Convention relating to the Treatment of Prisoners of War.

22. I venture to express the confident hope that the respective Commands will be persuaded by the same desires in the further steps each of them will take in

relation to the status and disposition of the POW's who will soon be restored to their custody.

23. I am grateful to the UNC for the renewal of its assurance that it is prepared to assist the Commission until the time of its dissolution and desire to assure it that it has endeavoured to discharge its obligations with objectivity and to the best of its abilities. I shall be grateful for your reply to this by 16 January 1954.

(Signed) K. S. THIMAYYA
Lieutenant General
Chairman NNRC

14. LETTER DATED 16 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC (REPLYING TO LETTER OF 14 JANUARY 1954)

I have read your letter of 14 January in which you propose to request the United Nations Command to accept the restoration of custody, beginning at 0900 hours, 20 January, of those prisoners of war given over to the Neutral Nations Repatriation Commission by this Command.

In my communication to you of 6 January, the position of the United Nations Command was stated clearly. That position has not and will not be changed, since it is founded on both the spirit and the letter of the Terms of Reference which embody the factors of humanity and justice for the prisoners themselves and the recognition of their unalienable right of freedom of choice.

It is recognized that communist intransigence made it impossible for the Neutral Nations Repatriation Commission fully to accomplish its mission under its agreed Terms of Reference. The United Nations Command, in good faith, turned over the prisoners of war in its custody to the Neutral Nations Repatriation Commission, with confidence that each prisoner would be given full opportunity to hear explanations and to make freely and without coercion his own choice as to his future. The United Nations Command made an earnest effort to explain their rights to repatriation to the prisoners it turned over to custody of the Neutral Nations Repatriation Commission. The United Nations Command also sought to assist the Neutral Nations Repatriation Commission in conducting explanations to prisoners of war formerly detained by the United Nations Command. Failure to complete explanations to more than a minority of prisoners of war formerly detained by the United Nations Command can only be attributed to the stubborn refusal of the Korean People's Army and Chinese People's Volunteers to continue explanations except under conditions of their own choosing, which conditions required the use of physical force against the prisoners of war. Such use of force is contrary to the Terms of Reference, the Geneva Convention and the universally accepted concepts of human decency and rights. The United Nations Command supports and commends the Neutral Nations Repatriation Commission and the Custodial Force, India, in their refusal to use force illegally against prisoners of war.

The United Nations side has made every effort to convene the Political Conference recommended in paragraph 60, Armistice Agreement, and referenced in paragraph 11, Terms of Reference, Neutral Nations Repatriation Commission, which was to consider within the specified period of thirty days the disposition of prisoners of war. These efforts have been thwarted by the other side. However, as I made clear in my letter of 6 January, the plain intent of paragraph 11 of the terms of Reference is to prevent either party to the agreement from frustrating

the basic purpose of avoiding indefinite captivity for the prisoners.

For the United Nations Command now to agree to further and indefinitely prolonged captivity of these prisoners of war would negate the very principle of human rights for which so many men of this Command have fought and died. Such unjust and unworthy action is intolerable to any free people, and is obviously unthinkable. The United Nations Command agreed to the Terms of Reference for the Neutral Nations Repatriation Commission only because they included a prohibition against enforced repatriation, and made clear provisions for the final release of prisoners of war to civilian status 120 days after being placed in the custody of the Neutral Nations Repatriation Commission.

I reiterate the unalterable conviction of the United Nations Command that the Neutral Nations Repatriation Commission has a solemn obligation to fulfill its responsibilities and release to civilian status at 230001 January all prisoners of war who have refused repatriation. Failure of the Neutral Nations Repatriation Commission to fulfil this obligation would be a deliberate avoidance of an important element of the Terms of Reference and the United Nations Command could not concur in an action constituting default by the Neutral Nations Repatriation Commission.

The United Nations Command cannot accept custody of these prisoners of war in accordance with the terms of your proposal. However, in view of your stated intention to release unilaterally the prisoners of war starting 20 January, the United Nations Command must necessarily be prepared to arrange for their accommodation and disposition. In processing these personnel, after they leave the Demilitarized Zone, it must be clearly understood that we do so out of regard for humanitarian consideration and in order to insure the prisoners the fullest possible continued enjoyment of the benefits the agreement was designed to assure to them. The United Nations Command, in accordance with the agreement on prisoners of war, will honour its obligation to treat them as fully entitled to their freedom as civilians on 23 January. You are already aware of the detailed plans for processing which have been made by the United Nations Command. The return to the United Nations Command of personnel prior to 230001 January can only be regarded as a failure by the Neutral Nations Repatriation Commission fully to discharge its duties, but this failure will in no way, it must be emphasized, affect the right of prisoners of war to become civilians at that time regardless of their physical location.

Accordingly, I have instructed the Commanding General, Eighth US Army, to adjust his present plans to permit handling and processing of personnel beginning 20 January. He will, as a matter of priority, make the necessary arrangements with you.

(Signed) J. E. HULL
General, USA
Commander-in-Chief

15. LETTER 18 JANUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE COMMANDER-IN-CHIEF, UNC

I have the honour to refer to your letter of January 16. In paragraph 7 of this letter you have said that in view of my "stated intention to release POW's unilaterally starting January 20, the UN Command must necessarily be prepared to arrange for their accommodation and disposition." I feel that the request made in my letter of January 14 has been misunderstood by you. I am taking

this opportunity to clarify the request and the reasons which have impelled me to make this request.

In my letter of January 14, I have pointed out that the NNRC has come to the decision that it has no competence, in existing circumstances, either to release POW's, or to declare relief from POW to civilian status, or to continue custody beyond January 23. In view of this decision, I, as Chairman and Executive Agent and having custody of POW's, have come to the conclusion that the only correct, lawful and peaceful course open is to restore POW's to the custody of the former detaining sides immediately prior to January 23. I am, therefore, requesting each detaining side to accept restoration of custody as from January 20 at 0900 hours.

I have stated in my letter that I am making this request as Chairman and Executive Agent as I can neither retain custody of POW's, nor further implement the Terms of Reference nor release the POW's. I have made it clear that it is not my intention to establish any alteration in the status of the POW's or to effect their final disposition.

I have also stated in my letter that the NNRC, in pursuance of its functions and authority to interpret the Terms of Reference, is of the view that alteration of the status of POW's either by declaration of civilian status or disposition in any other manner requires prior implementation of the procedures of explanation and Political Conference, unless the two Commands agree on some alternative procedures or courses of action in regard to status and disposition. I have pointed out that in NNRC's view any unilateral action by either party concerned in regard to change of status or disposition will not be in conformity with the said Terms of Reference.

In requesting you to accept restoration of custody as from January 20, I venture again to express the confident hope that any further steps which might be taken by the two Commands in relation to status and disposition of POW's who will soon be restored to their custody will be inspired by an earnest desire to further the purposes of the Armistice Agreement.

(Signed) K. S. THIMAYYA
Lieutenant General
Chairman, NNRC

16. LETTER DATED 19 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC

With reference to your letter of 18 January, the views and intentions of the UNC were clearly stated in my letter to you of 16 January and remain unchanged.

The UNC will be prepared to process and dispose of the prisoners of war now in custody of the NNRC whether they leave the Demilitarized Zone on 20 January or immediately following the termination of NNRC custodial authority at 230001 January. In either case at 230001 January, the UNC in accordance with the agreement on prisoners of war will honour its obligation to treat them as fully entitled to their freedom as civilians.

You may be assured that the UNC, having negotiated the Armistice Agreement and Terms of Reference, is fully cognizant of the purpose and spirit of these documents and is deeply imbued with the most sincere desire to insure that their provisions are carried out. It is precisely for this reason we have so firmly maintained the position set forth in my letter of 16 January.

(Signed) J. E. HULL
General, USA
Commander-in-Chief

17. LETTER DATED 19 JANUARY 1954 FROM THE CHIEF OF STAFF OF THE CHAIRMAN, NNRC, TO THE UNC No. 125/36/NNRC, Chairman, NNRC, dated 19 January 1954

To Brigadier General A. L. Hamblen, UNCREG

Subject: Military Court. "Please refer to your letter No. 250.44 RGCG dated 22 December 1953

The POW's whose particulars are given in the attached list and who are to be handed over to you on 20 January 1954 are material defence witnesses in the trial of the 3 Korean POW's which is now in progress.

It is requested that arrangements for the availability of the POW's may please be ensured by you in case their attendance is required by the Military Court until conclusion of its proceedings."

(Signed) B. M. KAUL
Brigadier, Chief of Staff

Note: Enclosure contains names of 449 witnesses.

18. LETTER DATED 20 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC

Reference is made to letter number 125/36/NNRC, Headquarters, Chairman, NNRC, 19 January 1954. Although we have as yet received no official information from the NNRC on this subject, it appears that you have some intention of continuing with the trial of the Korean personnel past 23001 January.

Such action would be indeed surprising since it appears clear that, quite independently of the issue of the civilian status of the prisoners as of 230001 January, the criminal jurisdiction of either the NNRC or the CFI over the POW's terminates then absolutely. The CFI jurisdiction to try prisoners for offences committed while in its custody is founded entirely upon the existence of authority for such custody. When that authority terminates it follows inevitably that, since no other than the custodial relation has ever existed between either the NNRC or the CFI and the prisoners, no foundation for criminal jurisdiction remains, nor can a residual or continued right to exercise former jurisdiction be assumed after the authority itself has been withdrawn.

The Terms of Reference make no exception which would permit the NNRC or CFI to retain by force subsequent to 230001 January, any of the persons transferred as POW's to their custody, whether accused, convicted, or merely witnesses, of alleged crimes. While the UNC is fully sympathetic with the unquestioned motives of the NNRC in wishing to insure the prompt administration of justice to possible offenders, the Terms of Reference cannot be interpreted to warrant continuation of custody past 23 January.

Accordingly, the UNC is firmly convinced, and must insist vigorously, that the NNRC-CFI has no legal recourse other than to release the Korean suspects concerned not later than 230001 January. The UNC suggests that, at this time, the record of trial to date, together with any other data and recommendations be turned over to the UNC for such further action as may be appropriate.

With specific reference to the witnesses listed in the enclosure to your letter cited above, you are advised that personnel concerned will not be considered as in the custody of the UNC and will revert to civilian status.

(Signed) General HAMBLEN

19. LETTER DATED 22 JANUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE UNC No. 125/36/NNRC, Hq., NNRC, 22 January 1954, to Brigadier General Hamblen, UNCREG
Please refer to your letter No. 250.44 RGCG dated 20 Jan. 1954.

On 2 Jan. 1954, when custody of the POW's in the Songjang-Ne camp was transferred to the UNC, the following POW's, against whom criminal proceedings on charges of murder were either pending or actually commenced, were detained by the NNRC in accordance with Art. 119 of the Geneva Convention. This intention was implicit in letter No. 125/36/NNRC dated 19 January 1954 addressed to you by the Chief of Staff of the Chairman:

Chinese (accused in the alleged murder case of a POW in compound D-28, who was reported to be missing on the night of 5/6 October 1953.)

- (1) 711365 Pvt. Wu Pao Shan
- (2) 701640 Pvt. Chang You Wang
- (3) 718122 Pvt. Cheng Fu Sheng, *alias* Hu Sheng
- (4) 702200 Pvt. Chang Chih Chung
- (5) 709939 Pvt. Hsiumg Tse Chang
- (6) 710673 Sgt. Hsi Wen, *alias* Shin Yun
- (7) 704986 Pvt. Tseng Shih Chung.

North Korean (Accused in the alleged murder of four POW's of compound E-38 on 12 December 1953.)

- (1) 30829 Pvt. Jeon Do Kuk
- (2) 53855 Pvt. Kim Hak Joon
- (3) 306028 Civ. Hong Woo Sid
- (4) 20537 Pvt. Lee Kyung Chil
- (5) 101417 Sgt. Pak Jang Soo
- (6) 151232 Pvt. Jang Byeong Ki
- (7) 04326 Civ. Jo Kyoo Chol
- (8) 6207 Pvt. Kim Chong Yul
- (9) *North Korean* (accused in the alleged murder of 39393 Pvt. Bal Ka Chan) 27841 Pvt. Song Chol Ho of 'F'.

(10) *North Korean* (accused in the alleged murder of 303323 Pvt. O. Chang Hwan.) 31483 Pvt. Choi Dong Hak of G-53.

It is, therefore, proposed to continue with the trial already commenced and to start proceedings in case of other accused against whom *prima facie* case has been established. I am, therefore, to require you to make available witnesses for the purpose of carrying on the aforesaid trial or trials and co-operate with the Commission in ensuring prompt administration of justice.

(Signed) P. N. HAKSAR
Counsellor

20. LETTER DATED 22 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC

On behalf of the UNC, I desire to express my appreciation to you, to the NNRC, and to the CFI, for the humane, efficient and expeditious manner in which anti-communist Korean and Chinese personnel were transferred on 20-21 January. The CFI, including officers and all other ranks, has earned the respect and admiration of my Command for its outstanding performance while exercising custody over these personnel. The well conceived CFI plan for the orderly return of these personnel, and the close and willing cooperation of the CFI with the carefully scheduled UNC processing, are especially worthy of commendation.

(Signed) General HULL

21. LETTER DATED 27 JANUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE UNC

No. 125/36/NNRC, Chairman NNRC, 27 January 1954, to Brigadier General A. L. Hamblen UNCREG.

1. Please refer to the letters addressed to you by my Chief of Staff Brigadier B. M. Kaul, and Counsellor, P. N. Haksar, on 19 and 22 January 1954 respectively. While awaiting your reply to the latter, I must reiterate the views of the NNRC on various matters connected with the crimes committed by the prisoners while in the custody of the Commission.

2. As you are already aware, the majority of the Commission does not accept the assertions made by the UNC that the POW must be released to civilian status. Consequently, arguments based on such assertions seeking to secure the release of prisoners charged with murder are unacceptable to the Commission.

3. It will no doubt be appreciated that so long as the NNRC exists, it has a right and a duty to enforce its laws and regulations and in particular to give effect to the humanitarian provisions of the Geneva Convention. To punish those who have committed crimes is one such humanitarian provision embodied in article 119 of the said convention. The NNRC does not understand the distinction which you seek to draw between custodial functions and detaining functions. I must point out that the NNRC cannot be deemed to be in a worse position than any detaining power in any respect.

4. The NNRC cannot be a party to the release of any prisoners against whom a *prima facie* case of murder has been established. Such a release would amount to total denial of justice. The NNRC cannot help in creating such a precedent fraught with serious consequences.

5. Your request contained in paragraph 4 your No. AO 350. 44 RGCG, dated 20 January 1954 is not understood. If the contention of the UN is that the prisoners who are charged with crimes of murders be released to a civilian status, then there can be no meaning in turning over to it the records of the trial and investigations for further action.

6. I must also point out, on behalf of the Commission that the counsel appointed to defend the accused absented themselves from the Court on 23 January 1954, without any prior notification to it.

7. To accept your view about the competence of the NNRC after 22 January, it is regrettable that having such a view you did not see your way to co-operate in the holding of the Court on 20 and 21 January.

8. It is impossible for the NNRC to abdicate its responsibilities and it must, therefore, seek the cooperation of the UNC in the interest of justice. It would, therefore, be a matter of regret to the Commission should such cooperation be denied. The Commission, therefore, earnestly hopes that, on reconsideration of the matter, the UNC would be able to cooperate by sending the witnesses and permitting the defence counsel to appear before the Court.

(Signed) General THIMAYYA

22. LETTER DATED 30 JANUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC

Unclassified

Reference is made to letter No. 125/36/NNRC, Hq. NNRC, 22 January 1954, and letter No. 125/36/NNRC, Chairman NNRC, 27 January 1954.

The general position of the UNC with respect to all those former prisoners who chose not to be repatriated and who were returned on January 20 to the UNC was

clearly stated in my letters to you of January 16 and 19, 1954. The UNC could not for the reasons therein stated agree with the qualifications expressed by you in connection with your release of the prisoners of war. Therefore this command has fully respected the right of these prisoners of war to freedom on January 23 and has permitted them to proceed to countries of their choice. It follows that this command is not in a position to supply the witnesses mentioned in your letter.

1. We share with you the desire to ensure the administration of Justice wherever indicated. We reiterate our offer to receive the persons concerned together with such records and recommendations as you may wish to make, for prompt turnover to the governments concerned.

2. Communication will be released to the Press immediately after receipt by NNRC.

(Signed) General HAMBLEN

23. LETTER DATED 1 FEBRUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE UNC

1. Please refer to your letter number 383.6 RGCG dated 30 January 1954.

2. As I have already pointed out in my letter of 27 January, the majority view of the Commission is that prisoners restored to the custody of the former detaining side cannot be released to civilian status in the absence of agreement between the two sides. They should remain in the custody of the former detaining side.

3. I have also pointed out that so long as the Commission remains in existence it has the right and the duty to enforce its laws and regulations and, in particular, to give effect to the humanitarian provisions of the Geneva Convention. The trial and punishment of those who have committed crimes is one such provision embodied in Article 119 of the said convention. This responsibility rests in the Commission as long as it is in existence.

4. The Commission, therefore, hopes that on further consideration you will be able to cooperate by sending witnesses and permitting defence counsel to appear before the Court. The Commission is anxious to complete these trials before the date of its dissolution. If the prisoners cited by the defence as witnesses have been released, arrangements could still be made for their production before the court. As these prisoners were handed over to the UN Command's custody and as responsibility for producing these prisoners rests with the UN Command, I request that early arrangements for producing them may be made.

(Signed) General THIMAYYA

24. LETTER DATED 3 FEBRUARY 1954 FROM THE UNC TO THE CHAIRMAN, NNRC

Reference is made to your letter number 125/36/NNRC, Chairman, NNRC, 1 February 1954.

In view of previous clear statements of UNC regarding the subject of your letter, I am doubtful that repetition of our position is necessary to you in reaching a solution to your problem.

As stated previously, and in the interest of justice, we are prepared to receive the individuals being held by NNRC for trial for alleged crimes and to turn them over to the governments concerned, with such records and recommendations as you may desire.

(Signed) General HAMBLEN

25. LETTER DATED 16 FEBRUARY 1954 FROM THE CHAIRMAN, NNRC, TO THE UNC

1. I have given serious and anxious consideration to your letter of 3 February. The premises on which your arguments are based oblige me to reaffirm my own position and that of the Commission in regard to the seventeen POW's against whom charges of murder have been preferred.

2. As the UNC is aware, it is beyond dispute that murders were committed. Paragraphs 92 and 93 of the interim report of the Commission and paragraphs 8, 11 and 13 of the separate report by the Swedish and Swiss members testified to these facts. Furthermore, investigations conducted by the Commission have clearly established a *prima facie* case of murder against the accused.

3. In these circumstances, the Commission was under an obligation to ensure that due process of law would take its course and the ends of justice be met with. This point of view was founded on the specific provisions of the Geneva Convention, on Indian military law adopted by the Commission with the knowledge and approval of your Command and on broad principles of natural justice.

4. When the Commission authorized me to address your Command in a letter dated 27 January regarding your cooperation in observing the principles of justice, it had every reason to hope that such cooperation would be extended by you. Subsequently, a further letter on this subject was sent by me to you on 1 February. Your response has gravely distressed us. Any dispositions of the prisoner without completing due process of law would be tantamount to condoning alleged crimes.

5. As Chairman and Executive Agent of the Commission and as India's representative on the Commission, I must register my protest against your Command's refusal to cooperate in upholding the principles of justice.

6. As the life of the Commission is about to expire and as it has not been enabled to carry out the trials of the accused prisoners, it must perforce and under protest acquiesce in the position taken up by your Command. I must at the same time continue to entertain the hope that, in the interest of justice, your command will not take any steps which may have the effect of frustrating justice and enable the guilty to escape unpunished. I must also state that the responsibility for this rests on the UNC and not on any other authorities.

7. It is in these circumstances that I am accordingly transferring the seventeen POW's to your custody on 18 February at 1000 hours, along with the relevant records.

(Signed) K. S. THIMAYYA,
Lieutenant General,
Chairman, NNRC.

ENCLOSURE J

NNRC Rules of Procedure governing Explanations and Interviews

I. General provisions

1. Any act of force or threat of force to prevent or to effect repatriation of prisoners of war is prohibited.

2. No prisoner of war shall commit an act of violence against another prisoner of war.

3. Any action infringing upon the rights of prisoners

of war under the Terms of Reference of the Commission is prohibited.

4. Any acts of prisoners of war which have the effect of derogating from or obstructing the authority of the Commission to exercise its legitimate functions and responsibilities are prohibited.

5. Any act on the part of prisoners of war impeding the work of explanations and interviews is prohibited.

6. As soon as the custody of prisoners of war has been assumed by the NNRC, through the CFI, the Commission shall ensure that the prisoners of war are acquainted with the provisions contained in the preceding paragraphs 1 to 5.

7. Explanations and interviews can be given to groups of or individual prisoners of war as requested by the explaining representative of the nation to which the prisoners of war belong. Every one of the prisoners of war shall attend the explanations and interviews.

8. Several explanations and interviews to the same group of prisoners of war or the same individual prisoner are permissible within the time prescribed in article 8 of the Terms of Reference of the Commission.

9. Prisoners may apply for repatriation at any time and at any place. The NNRC shall ensure that every prisoner of war has an opportunity to do so without interference.

10. At the time of the explanation, there shall be present the NNRC or its subordinate body, along with one representative each of the two sides to observe the operation and one representative of the detaining side.

11. A sufficient number of subordinate bodies not exceeding thirty-five, composed of one representative from each member nation on the NNRC, shall be established to attend all the work of explanations and interviews and to determine the validity of applications for repatriation.

12. The explaining representative shall have the right to distribute to the prisoners of war written explanations in accordance with the provision of article 8 of the Terms of Reference, having duly been examined by the Commission or its subordinate body.

13. At no time during the explanations and interviews shall the observers of either side be permitted to interfere with the work of explanation, their sole function being to observe.

14. The representative of the detaining side shall not participate in the work of explanation or interfere with it in any way. He may, however, bring to the notice of the Chairman of the NNRC or its subordinate body, at the end of each explanatory session, any matter which may be construed as violating the Terms of Reference.

15. In the process of explanations and interviews, interpretation to NNRC representative present shall, without obstructing the work of explanations and interviews, be concurrent and shall not interrupt the explanation and interview work.

16. The explaining representatives may ask the prisoner of war any relevant questions provided the latter is warned of his right that he need not answer the questions if he thinks or the NNRC or its subordinate body thinks that the answer to the questions may be used to threaten or coerce him directly or indirectly.

17. If, in the opinion of a member of a subordinate body in charge of the supervision of explanations, an explainer infringes upon the Terms of Reference or the present rules, or also in any case of disturbance or any major incident, the session shall be immediately suspended; the subordinate body will then without delay examine the situation brought about by such an incident and state the conditions under which the session shall be resumed and/or report the case to the Commission.

II. Arrangements and facilities

18. The sites for explanations and interviews, whether to individuals or to groups, shall be so constructed as to ensure that the work of explanations and interviews be free from any interference or obstruction.

19. Facilities shall also be provided for the conduct of the work of explanations and interviews to sick, wounded and injured prisoners of war.

20. Prisoners who have applied for repatriation, those who have been given explanation in accordance with paragraph 7 above but have not submitted their applications for repatriation and those who have neither been given explanation nor applied for repatriation shall be kept separated in custody.

21. Each enclosure for the conduct of individual or group explanations shall have two exits to be used separately by the prisoners of war; one for those who apply to repatriation and the other for those who do not.

22. The work of explanation shall be carried out each day of the week, except Sundays, from 0800 hours to 1700 hours with a lunch interval of one hour.

23. The explaining representatives of the nations to which the POW's belong shall forward to the secretariat of the NNRC plans one day in advance from day to day regarding the method of explaining work. They should reach the secretariat not later than 1000 hours on the day previous to the date on which the plan is to be put into operation.

ENCLOSURE K

UNC statement of "free choice principle" in explanations

(The following is the text of a letter delivered by the Commanding General UNCREG to the NNRC on 19 December 1953 for delivery to American non-repatriates)

The United Nations and the United States are thoroughly committed to the principle of individual freedom of choice in regard to the question of repatriation. Indeed, the U.S. persisted throughout the Armistice negotiations in guaranteeing the right of the individual pris-

oner of war to decide whether he desired to be repatriated to his native land or to establish his residence in a neutral country. The United Nations and the United States continue to subscribe to this great principle. The privilege you here enjoy to voluntarily seek repatriation or to voluntarily reject it, is the fruit of this persistent effort on the part of the United States to insure this freedom during the Armistice negotiations. It is not our purpose to dictate your decision or unduly persuade you. But as

a citizen of the United States, our country has a responsibility to you which it desires to discharge. You have served in the forces of the United States and experienced capture at the hands of the opposing forces. We are mainly concerned that you be secured in your right to make a free and intelligently informed choice with reference to your future. If you should decided not to return to the United States, you will have made a most fateful decision, one which would change radically the whole course of your life. The decision for you is most critical and irrevocable and because of this we would wish to be certain that you are fully aware of the consequences and of the considerations which you ought to keep in mind if you would be certain that the decision is a really free, intelligent, and informed one; that you are fully aware of the conditions under which you have arrived at your present state of mind and the influences which have been brought to bear in affecting that decision. We do not know what your individual experiences may have been, what indignities or privations, if any, you may have experienced. To lose one's freedom and to be forcibly detained is suffering enough. Whatever your experiences may have been, your government desires to discharge its responsibility to you, your parents, your neighbours, and your fellow Americans by making certain that your final decision is the one you really desire, that it is without duress or coercion and that you, with full information and an open mind, see your decision as the preferable one, that one best for you, for your loved ones, for your future, and for all that you hold dear.

In this connection, it becomes important to make certain that your decision has been freely and voluntarily arrived at; that it is an informed decision; that it is one which reflects a sifting and weighing of all the facts; that it is realistic with a view to the future; and that it gives appropriate consideration to one's past associations and values, preserving those which deserve to be preserved and which might otherwise be lost.

It is in the spirit of such careful examination of the conditions which have led to your present state of mind, that the present explanation period under neutral custody has been eventually agreed upon. Here in the neutral zone you are presumed to be free of unilateral, one-sided influences. Here you are free to examine your past experiences, what you have been led to believe and know. Here you can insist upon a full and complete presentation of anything that is controversial. You would be doing yourself a disservice if you did not here examine both sides of disputed questions, as each side itself sees them, and then freely decide for yourself what you want to accept and what you want to reject. We in America believe in the free expression of ideas. Let each side speak up in composition with the other and then let the individual choose for himself that which he thinks best or preferable. An observing, cautious, and truly thoughtful man, who like yourselves stands in neutral custody, free of the pressure from either side; free to reflect upon the methods and techniques of persuasion to which he has been exposed, is in the unusual position of deciding for himself whether his decision has been freely arrived at, whether he has chosen the best of the alternatives open to him. So we suggest you make the most of your period of residence in the neutral zone. Here and now you can give the time and thought to your future which such a fateful decision deserves. If you do anything less than this your mistake will be at your own door, your future, if it becomes dark and unrewarding, will have been of your own making. An open mind at this point in your lives may be the difference between what your inner self

truly wants and deserves and the tragedy of a misguided future.

There is only one thing we ask of you. It is not to decide as we might decide but to make certain that the basis of your decision is one worthy of you. We ask that you make the most of your opportunity to freely choose, and that your choice be an informed, thoughtful one which has seriously examined all the conditions and possibilities for you and your future. If this point is made clear to you we shall have discharged our responsibility to you, your loved ones, and to your fellow Americans.

We feel deeply that you have a right to know the pre-conditions, what is absolutely necessary, for a self-respecting decision. We feel deeply that you should here and now re-examine your recent past experiences. Evaluate them with a view to discovering how they have entered into your present state of mind. If you do this, you will have honoured the principle of freedom of choice whatever your final decision may be.

We should like to indicate a few of the matters which a genuine exercise of independent freedom of choice require. We do not desire to discuss with you how freedom of choice may have been damaged or withheld in any individual case. However, you and your fellow prisoners of war have been placed in neutral custody so as to remove each of you from those conditions under which even the suspicion of one-sided prejudice or coercion can be removed. Oft times an individual is not aware of the artful, clever devices which have been employed to rob a man of his independence of judgment. This may take the obvious form of physical force or the threat of force, but even more devilish is that subtle form of coercion which through suggestion, false innuendo and even outright lies, robs a man of his capacity to make the judgment which is truly in his own interest. We repeat, we do not refer to what lay behind the curtain of the POW's camps as they may have affected any single individual, but we would be delinquent in our responsibility if we did not list those conditions which we know have impaired and jeopardized freedom of decision and which may well have applied in your own case.

First it should be underlined that a free choice cannot be made under force, under coercion or duress. The use of physical punishment or the threat of reprisal eliminates the possibility of voluntary choice. By the same token, the subtle forms of psychological mastery, the calculated use of rewards and punishments, the demoralizing scrutiny of one's own comrades who have defected—these and other artful forms of seduction destroy genuine free choice and make the very words a mockery. But there and now you are free to remember your history, your experiences in the POW's camps, and once again examine the question of repatriation without the freedom destroying influence of intimidation of forceful methods.

You must recall whether they have entered into your experience. How did fear or pressure enter into your thinking? Here and now under neutral custody examine your decision carefully and feel certain that it is not coloured by fear of punishment, for here you are now truly beyond the reach of either side. Here the opportunity exists for making your own decision of your own free will. Here you can examine the possible results of going in either direction and not be influenced by the way the matter has been put to you by your captors.

But a free choice must not only be a choice free of coercion or duress, a free choice is always a choice between alternatives, between one or another object or country

or type of government. Has the matter presented to you as a true choice between alternatives? To present merely one rosy-hued, highly-colored alternative is to hide the real issue. What are the differences, what are the prospects of one choice as against the other? Those are necessary questions if you are to make a truly free, informed, and intelligent choice. It is not a choice; as we say in America, "to buy a pig in a poke", to buy something without knowing what we are getting. To have only one side presented to the exclusion of the other is to deny one the very basis of choice. If there has been an adequate presentation of the choices before you, here and now there exists for you the opportunity to demand the necessary information so that you may truly decide down which pathway of life you wish to travel. But, by all means insist in knowing all the very important information about either pathway, either alternative, either choice. If this has escaped you or been denied you, now is the time to seek it out. You can use your stay in the neutral zone to make certain that you have adequately examined the alternative.

Furthermore, freedom of choice depends upon freedom of information. It depends upon sufficient and correct information. Without adequate information how can one know which side to choose? We, of course, cannot know the sources of your information. We do not know how much you individually received and, most important of all, we do not know whether it is slanted to serve the purposes of one side or even whether it is factual and true. But of this we can be almost certain: information which comes exclusively from one side is in danger of being colored by the purposes of the side which supplies it.

What kind of information did you receive from the prison camp libraries, who prepared it, and how free were you to receive information which had been prepared by the other side? The principle of freedom of information requires that information meet the tests of public examination. Will it stand up when confronted by the other side? If your libraries in the POW camps, if your pamphlets and books and radio programs were all prepared by one side, you must ask yourself—how good was it? Was it true?

Here and now is the time to confront propaganda with facts. Assemble the information from both sides. Give yourself an opportunity to confront what you have read and heard at the hands of your captors by the information from the other side. If you do not do this you will have deprived yourself of your right to free choice.

One-sided information means no choice. It means there has been no opportunity to test the truth of what has been presented. For in any controversy truth only emerges when there is open competition. Some say that all facts are slanted. Perhaps you have been led to believe this to be true. But if it were true, which it is not, it would still be important and necessary for the intelligent man who seeks to make an independent, free choice to have information from both sides so he can deal with the way the facts have been slanted. Then and then alone he can really decide for himself. Here in the neutral zone you can seek out the whole story. You can seek and get correct information, not unilateral, one-sided propaganda.

Here you can free yourself of twisted and distorted stories, rumors, and myths which are spread to serve the purposes of one side against the other. This is your big opportunity to seek out the facts, and to be as certain as a man can be that they are not biased and one-

sided. After you have done this and only after you have done it, you can exercise freedom of choice, the freedom of choice of a confident, self-respecting individual.

Another problem to which I would direct your attention is your past friendships, and family attachments and neighborly associations. It is not for us to encourage your affection for them. If you have a love for them you will honor them. If you have no regard for family ties that is your privilege. But we would remind you that a choice between returning to your country and not returning should seriously evaluate these relationships. If they mean anything to you at all, it should be remembered that you cannot have your cake and eat it too. Whatever promise for the future that has been held out must necessarily be placed against the possible complete and irrevocable loss of family ties and neighborly associations. If you would salvage these, you must here and now balance the scales and decide whether they are worth forsaking. A free and intelligent choice will not casually or brazenly disregard such important matters. Here in the neutral zone you have an opportunity to assess their importance.

In studying the prospects of repatriation or non-repatriation, you must surely have given some thought to the future. It is not unlikely that glowing promises of future opportunities and possibilities have been painted for you. We cannot know how realistic these promises may be, but one thing is certain: a thoughtful man, one not being taken in by sly words and seductive phrases will examine these promises to determine whether they are capable of being realized and whether they will last.

Each one of us knows better than anyone else whether we are out out to play the role someone else points for us. Have you been given promises and assurances which do not square with what you know about yourself? Are they promises of the kind of a future you would wish for yourself and for how long into the future are they guaranteed? Now is the time to seriously consider that there is nothing more humiliating than to discover that one has been a tool, used for someone's questionable purposes and then later tossed aside like an old shoe. Be certain in your own mind that you are not just grist for the propaganda mill. Here and now you can thoughtfully determine how much of the future charted for you in a strange land is a fairy tale that will fade with the years.

In these troublesome times many of us are concerned with how we can improve and extend human welfare, but we must not forget that nowhere has there been developed a perfect society. No society is without its problems. The real test of the worth of a country or a government are the methods used in trying to solve its human problems. It is the great lesson of human history that care should be taken to use only those methods to solve social problems and gain specific freedoms for all, which at the same time do not destroy the basis of the other freedoms. What would it avail us to work for human freedom if the methods we employ are destructive of those freedoms?

We are certain that there are some among you who may be troubled by a strong sense of public duty, and are concerned with how economic and social questions can best be solved. In this connection the thoughtful, dedicated person will necessarily ask himself, where can I best serve society and help in the solution of these problems? Can I best serve society among my own people or in a strange land? There are certain to be some aspects of social life which have troubled every individual and his

may be seeking a satisfactory answer, but we must be certain that these concerns have not been enormously exaggerated. We must be certain that they have not been blown up to such size as to overshadow other matters of equal and perhaps even greater importance.

Here and now the opportunity exists to re-examine these matters and the various solutions which may have been advanced for dealing with them. If one's choice as to repatriation or non-repatriation is based upon a view of social problems and how they may be addressed, it is of the utmost importance that in your minds those problems have not been exaggerated to obscure other values and considerations. Here and now the opportunity is afforded to re-examine these problems and the various suggested solutions. The intelligent man will make certain that his choice as to repatriation has not been prejudiced by a twisted and distorted analysis of such problems and that information as to what is being done about such problems has not been withheld or even misrepresented.

But most important one must be certain that a crucial and irrevocable decision such as repatriation or non-repatriation has been made on the merits of the case and not as a result of methods and techniques which have masked the realities.

Free choice exists only if the individual is fully aware of the techniques of education, persuasion, and indoctrination which have been used in bringing the individual to his final decision. To put it differently, one can reach a decision because of the artfulness or persuasive devices of the teacher rather than on the merits of the arguments themselves. A free choice requires that the individual see behind the methods of persuasion so that he may decide for himself.

We know full well what subtle methods of interrogation and indoctrination have been employed within the POW camps and your attention should be directed toward the need for distinguishing between the methods used to promote ideas, and the ideas themselves. Here and now the opportunity exists to review your experiences, what has happened to you, to recall to memory how your captors went about introducing their ideas and their teachings. If you do this you can separate the wheat from the chaff, the issues from all the sly and devious methods of presentation. A free and independent choice requires that you examine these methods of indoctrination. We would be negligent in our responsibility if we did not point out that your choice as between repatriation or non-repatriation should be based on the facts rather than on clever, subtle, misleading or devilishly persuasive methods.

What we have said may have raised questions in your minds. We are here to answer them if it is humanly possible to do so. Please be free to avail yourself of this chance now and on other occasions as you may be inclined to ask for information, to call for clarification and to ask any personal questions concerning which we may be helpful. In conclusion, I should like once more to command to your attention the all-important, necessary conditions for an independent free choice and judgment. If you will take the time here and now during your stay in the neutral zone to ask yourself these questions, you will have occasion to take confidence and personal pride in your final decision.

May I repeat:

First: Examine your decision to insure that it has been made free of coercion and duress.

Second: A really free choice is a choice between alternatives. Make certain that the alternative choices have been adequately presented.

Third: A really free choice requires adequate information and not just one-sided propaganda or distortion of the facts to serve one side against the other.

Fourth: A reasonable decision requires a thoughtful evaluation of family ties. If these mean anything at all, it should be remembered that these, like cake, cannot be had and eaten too. You cannot forsake family ties and have them too.

Fifth: If there have been promises of future rewards and possibilities these must be carefully evaluated. Are they consistent with your talents and interests? Do the promises and assurances square with what you know about yourself and are they guaranteed?

Sixth: If you are prompted by a sense of public service and a desire to serve mankind, can you do this best among your own people or is it preferable that you attempt to solve the social problems which concern you in some foreign land?

Seventh: And finally, it is of the utmost importance that you be fully aware of the techniques of education, persuasion, and indoctrination which may have been employed in bringing you to your decision. This is of basic importance, so that you can feel certain that your final decision is based squarely on the merits of the case and that you have not been misled by sly and clever methods.

If you will take heed of these suggestions, we can rest your case with you for we in America believe in the principle of free choice. It only remains for you to make the choice—a really free and independent one.

ENCLOSURE L

General Hull's statement of January 23, 1954, confirming release of prisoners to civilian status

By action of the Chairman of the NNRC those anti-Communist POW's who did not choose to be repatriated or to remain in NNRC custody for assistance in going to neutral nations were released to territory under UNC control.

The action of releasing these POW's without declaring their civilian status cannot, under the agreement on POW's, lawfully result in the inhumanity of continued indefinite imprisonment for thousands of Koreans and Chinese.

The UNC has repeatedly stated that it would fully respect the rights of the POW's as set forth in the Terms of Reference of the NNRC annexed to the Armistice Agreement. The Terms of Reference were developed in

solemn agreement between the opposing sides in the Korean conflict. They were intended, and must be given effect, as a guarantee against indefinite captivity. Accordingly, all prisoners who have not chosen to be repatriated are entitled, now that the 120-day period for their custody by the NNRC has expired, to their freedom as civilians and to have this freedom respected by all concerned. The UNC considers that these former prisoners now have civilian status. As of 0001 hours Korean time on 23 January 1954 they became free men.

J. E. HULL,
General, USA,
Commander-in-Chief