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GENERAL

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LETTER DATED 14 JUNE 1950 FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE
GOVERNMENT OF ISRAEL TO THE SECRETARY-GENERAL CONCERNING A CLAIM
FOR DAMAGED CAUSED TO THE UNITED NATIONS BY THE ASSASSINATION
OF COUNT FOLKE BERNADOTTE AND A REPLY THERETO FROM THE
SECRETARY-GENERAL

Hakirya, 14 June 1950

I have the honour to refer to your letter IEG.60/21/02, dated
21 April 1950, in which you submitted to the Government of Israel a claim for
the damage caused to the United Nations by the assassination of Counte Folke
Bernadotte, United Nations Mediator in Palestine.

It is noted that in bringing forward this claim you reserve all the rights
of the United Nations with respect to the death of Colonel André Sérot,
United Nations Observer from France, who was killed during the same assault.

It is further noted that you are submitting this claim under the authority
conferred by resolution 365 (IV) adopted by the General Assembly of the
United Nations on 1 December 1949. That resolution, in its second operative
paragraph, "authorizes the Secretary-General to take the steps and to negotiate
in each particular case the agreements necessary to reconcile action by the
United Nations with such rights as may be possessed by the State of which the
victim is a national". Though you do not mention any steps which may have been
taken by you to reconcile action by the United Nations with such rights as may
be possessed by Sweden, it is assumed that the rule of law reaffirmed by the
International Court of Justice in its Advisory Opinion of 11 April 1949, to
the effect that the defendant State can not be "compelled to pay the reparation
due in respect of the damage twice over", was taken into account in the
advancement of the United Nations claim so that the Government of Israel need
not anticipate any further demands for reparation in respect of the damage
caused by the assassination of Count Folke Bernadotte.

After summarizing the facts of the murder, your letter indicates the legal
grounds upon which, in your view, the responsibility of the Government of
Israel rests. These legal grounds fall into two distinct categories: those
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based upon general rules of international law, and those based upon specific obligations imposed by the Security Council. The Government of Israel does not, at this stage, desire to enter into a controversy either as to the substantive content of such rules, or as to the extent of their application in the circumstances. The two main elements of fact on which the legal argument rests, are, in the first place, failure on the part of the Provisional Government to discharge a liability said to lie upon it to provide an armed escort for Count Bernadotte and his party when they were in Israeli territory; and, secondly, your conclusion that the Government did not take all the measures required by international law, and by a Security Council resolution, to bring the culprits to justice. The Memorandum by the Chief Prosecutor of the Realm of Sweden (S/1474) is cited in part support for your conclusions.

Immediately upon receipt of that Memorandum, the Government of Israel appointed a Committee consisting of a Judge of the Israeli Supreme Court as Chairman, the Attorney General of the Government of Israel and the Director General of the Ministry for Foreign Affairs, as members, to investigate the contents of the Swedish Chief Prosecutor's Findings and to advise the Government as to its further course of action. This Committee having completed its work, the Government of Israel is now able to give a considered reply to Your Excellency's letter.

In his Findings, the Swedish Chief Prosecutor lists a series of omissions which in his view contributed to the tragedy and to the failure to trace the perpetrators. Among these he stresses the neglect of the local Israel authorities in failing to provide an armed escort for Count Bernadotte during his last journey through the Israel-controlled sections of Jerusalem. The Committee appointed by the Government of Israel gave the most careful consideration to these remarks and reached the conclusion that this view of the Swedish Chief Prosecutor was not justified, in the light of what appeared to be a consistent attitude adopted by the Mediator and the United Nations Observers in this regard. The Government has reconsidered the matter following the Report of its own Committee. It desires to record its opinion that neither the Provisional Government itself nor its representatives in Jerusalem failed in their duty by not seeing to the provision of an armed escort. However, it does feel that the reasons which led the Swedish Chief Prosecutor to his contrary conclusion may contain more substance than was at one time thought to be the case.

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It is clear that the Government would have done wiser had it been more precise in acquainting itself with the real desires and attitude of Count Bernadotte and not allowed the matter to rest on inferences, however strong, which led to the belief that an armed escort was not desired in view of his special position as United Nations Mediator.

The Findings of the Swedish Chief Prosecutor contain serious criticism of the manner in which the civil police conducted their inquiry into the murder. The Government of Israel accepts the conclusion reached by its Committee that, from a technical police point of view, the Swedish Chief Prosecutor was correct in establishing the following gaps and omissions in the police inquiry:

1. Failure to take immediate steps for the apprehension of the criminals;
2. Failure immediately to cordon off the scene of the crime;
3. Delay in carrying out a thorough examination of the scene of the crime;
4. Failure to examine the leading vehicle of the Mediator's convoy; and delay in carrying out complete examination of the Mediator's own vehicle.
5. Failure to collect evidence from four members of Count Bernadotte's party;
6. Failure to take steps to examine the weapons taken from the "Stern Group" bases in Jerusalem, and ineffectual examination of the cartridge cases found;
7. Inactivity regarding the apprehension of the jeep used by the assailants, and failure to make any attempt (with the help of eye-witnesses) to identify it from among the vehicles taken in the "Stern Group" bases in Jerusalem;
8. Failure to hold an identification parade.

These shortcomings fall into three classes. The first, items one to five, contains those relating to the initial steps which should have been taken in the hours immediately following the assassination. Nothing could be found adequately to justify these shortcomings. The second category comprises certain cases of neglect, for example the delay in examining the Mediator's car, which did not in fact influence the final results of the inquiry. The third category consists

/of failures

of failures which were occasioned by elements for which the police investigators were not responsible. As to these which were the most important reasons for the fact that the criminals were not brought to justice, detailed examination has disclosed that fundamentally the failure to trace the assailants is attributable to an absence of clear understanding and a conflict of competence between the civil police on the one hand, and the army, which was carrying out parallel activities on the other. Two sets of inquiries were actually carried out without effective co-ordination between them. The inability of any of the investigating agencies to hold identification parades was due to the most unsatisfactory, indeed chaotic, conditions existing in the military prisons in which the "Stern Group" detainees were held.

The tragic events of 17 September 1948 took place barely four months after Israel emerged as an independent State from the chaos which prevailed in Palestine during the closing phase of the Mandatory regime, and two months after the "second" truce came into effect on 18 July. At the time, the State was only just beginning to feel its way along the paths of normality. Beset by enemies on every side, the Provisional Government had not yet succeeded in restoring firm administrative order, particularly in Jerusalem, where, in spite of the nominal truce, hostilities of varying intensity continued until the late autumn. Under these circumstances, and in view particularly of inadequate communications and of a lack of established administrative precedent and practice, the detection of the murderers of Count Bernadotte was bound to present exceptional - and as the event proved, insuperable - difficulties.

For reasons of internal security the Government of Israel is not able to make public a full report on the results of the army's activities which have proceeded uninterruptedly since the date of the murder and are in progress still. It is, however, well known that it is not a main function of the army to assemble evidence of a kind which would sustain a conviction in a court of law, and its inquiries are not conducted with this primarily in view. Nevertheless, the material in possession of the army has been re-examined to see if it is of a character suitable to form a basis, either of a criminal prosecution, or for further inquiries by the civil police. The Government has, however, no alternative but to accept the advice tendered by its Committee to the effect that, while this material casts suspicion on certain persons, it is, as it stands, of such a character as to be inadmissible in a court of law, and inadequate as a basis for further action by the civil police.

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The organizational deficiencies and inexperience existing at the time explain - but do not justify - the shortcomings and omissions to which reference has been made. Essentially it was these which, in the first critical forty-eight hours, when the majority of those responsible for the national security were preoccupied with the destruction of the terrorist groups in the tacit assumption that the success of this operation would itself uncover the criminals, led to serious misunderstandings concerning the respective duties of the several bodies charged by the Government with differing functions in the matter. The activities of the army, and these particular organizational difficulties, were not previously brought to the notice of the Swedish Government, and the Government of Israel believes that re-examination of the matter will now show it in a new light.

While the Government of Israel would not wish to include anything polemical in this Note, it would, in view of what has been said about the army's activities, be failing in its duty to itself, and to the memory of Count Bernadotte, were it not to reject the suggestion put forward by the Swedish Chief Prosecutor to the effect that there may have been causes to deter it from pursuing the inquiry with all the necessary vigour. The Committee, indeed, has made it clear that the Prime Minister of Israel and the Government as a whole have consistently evinced the keenest concern for the apprehension of the murderers.

Having regard to all the circumstances, the Government of Israel has decided, without admitting the validity of all the legal contentions put forward on behalf of the United Nations, to take the action which you requested in your letter. You will find enclosed a remittance of United States \$54,628.00 as reparation for the monetary damage borne by the United Nations in connexion with the death of Count Bernadotte.

The Representative of Israel has already expressed to the President of the Security Council the Government's profound sense of abhorrence at this brutal murder of a servant of the United Nations who initiated the beneficent process of mediation and conciliation which, a few months later, was to show such impressive results. The Government once again expresses to the United Nations its most sincere regret that this dastardly assassination took place on Israeli territory, and that despite all its efforts the criminals have gone undetected. These facts are deeply deplored. This indeed would be the case had the murdered person been any honourable stranger visiting the country. How much

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the more is this so when the victim was a highly distinguished citizen of the world engaged upon the exalted mission with which he had been charged by the United Nations, the highest international authority. The Government of Israel wishes to make it clear that the full sense and meaning of the assassination and its aftermath weigh heavily on its mind.

The Government has carefully considered whether any practical results are likely to emerge from a reopening of the police inquiry, having regard to what has already been said of the evidence now in its possession. The Government is forced to the conclusion that nothing fresh is likely to emerge from a re-examination of the crime, carried out on the basis of the existing material, both that on the police file and that assembled by the army. This does not, however, imply that the Government regards the case as closed, but that the course of further investigation will depend on the nature and value of any fresh evidence that may come to light.

The Government has further considered whether it should not take disciplinary action against persons in its service whose doings at the time of the investigation have given rise to criticism. The Government had no difficulty in deciding that it could not permit individuals to be made scapegoats for failings the reasons for which were to be found elsewhere than in their personal culpability. Ultimately, responsibility for what happened, and for the organizational deficiencies which have since come to light, is the Government's, and the Government will bear its responsibility before history. In this context it is not irrelevant that, apart from the fact that one of the principal police officers directly connected with the investigation has been dismissed from the service, the police force itself has, since September 1948, been completely reconstructed. Then the force was an untried body which had hardly adapted itself to the new conditions created by the independence of Israel. Its Jerusalem detachment was in particularly poor and inchoate shape. The situation today is entirely different. In these circumstances, and having regard for the many changes that have come about since 1948, the Government has reached the conclusion that there is no further action which it would be justified in taking today against persons directly concerned at that time.

The Government of Israel has taken note of your information about the decision of the Countess Bernadotte not to present a claim for pecuniary redress with regard to the damage suffered by her on account of the death of

/Count Bernadotte.

Count Bernadotte. It takes this opportunity of recording its appreciation of her attitude and noble bearing since the tragedy took place.

The Government of Israel expresses the hope that this unhappy incident, which has marred the history of the State of Israel and has cast its shadow over relations between Israel and the United Nations, can now be brought to a close. The Jewish people has every cause to be grateful to Count Bernadotte for his manifold activities during the Second World War on behalf of the victims of Nazi persecution. Israel, too, can recall with gratitude his sincere efforts to restore peace to the Holy Land. Differences of opinion which may have existed over the best means to do this will not lose him his honoured place in history. The good work which he did in his lifetime, and his great personal contribution towards making the United Nations an effective instrument for the maintenance of international peace, are his lasting memorial.

In requesting you to be so good as to bring this letter to the notice of the Security Council, I avail myself of this opportunity of reaffirming to Your Excellency the assurances of my highest esteem.

(Signed)

M. Sharett

Minister for Foreign Affairs

/REPLY

REPLY DATED 22 JUNE 1950 FROM THE SECRETARY-GENERAL TO THE MINISTER
FOR FOREIGN AFFAIRS OF THE GOVERNMENT OF ISRAEL

Lake Success, 22 June 1950

I have the honour to refer to your letter of 14 June 1950 relating to the claim for damage caused to the United Nations by the assassination of Count Folke Bernadotte, United Nations Mediator in Palestine, as submitted by me to the Government of Israel by letter of 21 April 1950.

I note that the Government of Israel has decided to take the following action in response to the request made in my letter:

1. The Government of Israel has remitted \$54,628.00 as reparation for the monetary damage borne by the United Nations in connexion with the death of Count Bernadotte.
2. The Government of Israel expresses to the United Nations "its most sincere regret that this dastardly assassination took place on Israeli territory, and that despite all its efforts the criminals have gone undetected".
3. The Government of Israel has conducted an inquiry, on the circumstances of the assassination and the failure to bring the perpetrators to justice, through a committee consisting of a Judge of the Israeli Supreme Court, the Attorney-General of the Government of Israel and the Director-General of the Ministry of Foreign Affairs. You state that your Government is forced to the conclusion that "nothing fresh is likely to emerge from a re-examination of the crime, carried out on the basis of the existing material, both that on the police file and that assembled by the army. This does not, however, imply that the Government regards the case as closed, but that the course of further investigation will depend upon the nature and value of any fresh evidence that may come to light."

It is a matter of deep regret to me that the efforts so far made by the Government of Israel have not resulted in the apprehension and trial of the perpetrators of the crime. I am gratified that the Government does not regard the case as closed and I express the hope that further investigation will be pursued so as to uncover fresh evidence and that the result of such further investigations will be communicated by your Government to the United Nations.

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While all the circumstances of the crime have not yet been determined, I consider that the payment of the indemnity, the expression of regret by the Government of Israel and the report of the steps taken to date constitute substantial compliance with the claim submitted in my letter of 21 April 1950.

I desire to express by appreciation for the prompt and candid fashion in which your Government has responded to this claim. I am also appreciative of the tribute which you paid to the late Count Bernadotte. The United Nations will always remember that he laid down his life in the service of the greatest cause of all time, the maintenance of international peace.

In accordance with your request, I am submitting your letter, as well as this reply, to the Security Council.

(Signed)

Trygve Lie
Secretary-General
