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Briefing for members of the Diplomatic Corps

How should the United Nations tackle the 2013 Report of the Hammarskjöld Commission?

Earlier this year, United Nations Secretary-General Ban Ki-moon said it was his duty to ask the General Assembly to put on its agenda the issue of the death of second Secretary-General Dag Hammarskjöld. ‘The unparalleled service and sacrifice of Dag Hammarskjöld and his legacy within the United Nations and beyond,’ he asserted, ‘compels us to seek the whole truth of the circumstances leading to his tragic death and that of the members of the party accompanying him.’

Ban Ki-moon made this statement after studying a report released in 2013 by the Hammarskjöld Commission – four retired jurists of the highest calibre and repute from different countries, working as a voluntary body, wholly free of any national or financial interests. They had examined the available evidence and concluded that the matter justifies further and fuller investigation. <http://www.Hammarskjöld.commission.org/report/>

What is the background to Ban Ki-moon’s decision?

This document offers a short briefing for the diplomatic community, to facilitate advice to Governments and UN-based colleagues.

Flying on a UN mission to try to bring peace to the Congo, Dag Hammarskjöld’s plane crashed near Ndola airport in the British protectorate of Northern Rhodesia (now Zambia) on the night of 17-18 September 1961. All but one of the passengers and the Swedish crew were killed. The tragedy sent shock waves round the globe. The crash occurred eight months after the assassination of Patrice Lumumba, the first democratically-elected Prime Minister of the Congo, and in the context of a conflict in which UN troops from 30 nations were serving as a peacekeeping force in the Congo.

Questions were asked as details of the crash emerged. A number of local witnesses said they had seen a smaller plane near Ndola attack a larger one that night; there was one survivor, Harold Julien, who spoke of ‘sparks in the sky’ and said the plane ‘blew up’. The late Knut Hammarskjöld, Dag’s nephew, who went to Ndola immediately after the crash, suspected foul play.

Three inquiries into the cause of the crash were conducted in 1961-62: two Rhodesian inquiries and one by the United Nations. The first Rhodesian inquiry was unable to determine a specific cause; and the second Rhodesian inquiry identified pilot error as the cause of the crash, on the basis of an elimination of other suggested causes. The UN inquiry delivered an open verdict, saying it was unable to rule out sabotage or attack; this prompted the General Assembly to pass resolution 1759 (XVII) of 26 October 1962, which requires the Secretary-General to inform the General Assembly of 'any new evidence which may come to his attention'.

It has emerged that a mass of evidence relating to the crash and to Hammarskjöld's death was concealed. The inquiries were conducted under particular circumstances, created by the reality of British colonial society in central and southern Africa. Among many of the whites of Northern and Southern Rhodesia, perceptions of what happened that night were influenced by their fear of African nationalism and their distrust of the UN, because of its efforts to help bring about majority rule and democracy.

In the early 1990s Ambassador Bengt Rösiö was asked by the Swedish Foreign Ministry to investigate Hammarskjöld's death. His report in 1993 concluded that the pilot made an error in judgement regarding altitude. In 2012, however, following the release of photographs of Hammarskjöld after death, he cast doubt on this conclusion.

<http://www.aftonbladet.se/nyheter/article15451687.ab>

In the 53 years since the crash, a number of public figures, UN officials, historians and others have put a range of evidence and analysis into the public domain. In 2011, a University of London historian Susan Williams published *Who Killed Hammarskjöld?*, arguing the case for a fresh inquiry. Knut Hammarskjöld backed her case:

<http://www.theguardian.com/world/2011/sep/16/dag-Hammarskjöld-call-for-new-inquiry>

This triggered an initiative by Lord Lea of Crondall to set up a new inquiry in accordance with UN Resolution 1759 (XVII); he was joined among others by Professor KG Hammar, former Archbishop of the Church of Sweden, HE Chief Emeka Anyaoku, the former Commonwealth Secretary-General; and Lord Marks of Henley-on-Thames QC. A major donation was given by the renowned Swedish novelist Henning Mankell.

An independent body of distinguished senior jurists was set up, known as the Hammarskjöld Commission:

- *The Rt. Hon. Sir Stephen Sedley of the UK (Chair), a former Lord Justice of Appeal*
- *Ambassador Hans Corell of Sweden, former UN Under-Secretary-General for Legal Affairs*
- *Justice Richard Goldstone of South Africa, a former judge of the Constitutional Court of South Africa and Chief Prosecutor of the UN International Criminal Tribunals*
- *Justice Wilhelmina Thomassen of The Netherlands, a former judge of the European Court of Human Rights and of the Supreme Court of The Netherlands.*

The Commission's remit was to determine, on the basis of the evidence available, whether there was a case for re-opening the UN Inquiry of 1961-62, under the terms set out in UN Resolution 1759 (XVII) of 26 October 1962: <http://www.Hammarskjöld.commission.org/background/>

The Commissioners worked *pro bono* and were assisted gratis by many experts and organisations. They reviewed a range of evidence and uncovered new material; Sir Stephen and Justice Goldstone went to Zambia to interview key informants.

On 9 September 2013, the Commission concluded its work and released a report. It asked, ‘does significant new evidence about Dag Hammarskjöld’s death exist?’ and gave a clear answer – ‘Undoubtedly it does’. ‘There is persuasive evidence,’ argued the report, ‘that the aircraft was subjected to some form of attack or threat as it circled to land at Ndola.’ It recommended the UN conduct a further investigation, with a particular focus on the declassification of intercept records held by the US National Security Agency (NSA) – ‘confirming or refuting, from intercept records, the evidence indicating that the descent of the Secretary-General’s plane was brought about by some form of attack or threat. Such records appear, on the evidence currently available, to be held, if anywhere, in the United States.’

The Commission made a Freedom of Information (FOI) request to the National Security Agency for such intercept records, which was refused. The Commission then appealed, but this was denied on grounds of exemption from the FOI Act (although there are specific examples of previously released intercept documents from the 1950s and 1960s:

<https://nsarchive.wordpress.com/2014/07/16/nsa-refuses-to-release-documents-on-mysterious-death-of-un-secretary-general-over-50-years-ago/>).

The Hammarskjöld Commission’s report was presented to the UN in September 2013 and Secretary-General Ban Ki-moon said he would ‘closely study the findings’.

His response was affirmative. It was his assessment that the documentation presented by the Hammarskjöld Commission included new evidence. In February 2014, Ban Ki-moon asked the General Assembly to put the Commission’s report on its agenda:

http://www.un.org/ga/search/view_doc.asp?symbol=A/68/232

In March, he called on Member States ‘to declassify any relevant records in their possession’. It is possible that relevant records may be held by the USA, UK, Sweden, Belgium, South Africa and possibly others. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/68/800

Ban Ki-moon set out to the General Assembly three options for a further inquiry:

“given the possibility that the new evidence already in the possession of the Secretary-General may lead to a conclusive finding about the current theories of the causes of the crash of the former Secretary-General’s plane, the General Assembly may wish to consider the following options:

- (a) To establish an independent panel of experts, including forensic and ballistics experts, to examine the new evidence, to assess its probative value and to make recommendations to the General Assembly;*
- (b) To reopen the 1961-1962 Inquiry; or*
- (c) To establish a new inquiry.”*

In the view of the Hammarskjöld Commission, it would be a mistake for the UN to take up option 1, which would cover ground already covered. They advocate a new or reopened UN inquiry, to focus on where they have advised the key probably lies - the NSA's records.

UNA Westminster organised this Briefing for diplomats in London, the base of both the Hammarskjöld Commission and its commissioning Trust so that, if requested, they can report to their governments and UN-based colleagues with confidence. We invited diplomats from states whose troops served with ONUC in 1961 and those whose troops are serving with MONUSCO today; members of the UN Security Council; those African States which have attained independence since 1961, many involved in some way with the aftermath of the Congo crisis; and selected others. We believe all are responsible for respecting the invitation left open by their predecessors through UN General Assembly Resolution 1759 (XVII) of 26 October 1962.