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Letter, K. S. Thimayya, the Chairman of NNRC, to the Commander in Chief, United Nations Command

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Summary:

K.S.Thimayya, the Chairman of Neutral Nations Repatriation Commission, requests United Nations Command assistance to implement the repatriation agreement.

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NNRC Letter of January 2, 1954

To the Commander-in-Chief, United Nations Command

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 PWs 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 custodian 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.

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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
Lt. Gen.
Chairman, NNRC

MEMORANDUM BY THE CHAIRMAN, NNRC

The 90 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 90 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 90 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 91st day after the date the prisoners of war were taken into custody. The United Nations Command has held to this position and declinesto 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 of the draft armistice agreement..."

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(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 30 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 30 day 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 30 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; and

(II) Considerations of logistic support. The continuance of custody is necessary

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1. If explanations are to continue;

2. If the process of repatriation is to be carried out; and

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 materialised. 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 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 materialised.

(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

2 January 1954