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UNITED NATIONS PALESTINE COMMISSION

RELATIONS BETWEEN THE UNITED NATIONS COMMISSION AND THE SECURITY COUNCIL

(Working Paper Prepared by the Secretariat)

This paper has been prepared in accordance with the request made by the Commission at its thirteenth meeting, and is made available to the Members for their information.

A. DELIMITATION OF POWERS OF PALESTINE COMMISSION
AND SECURITY COUNCIL

I. Status of the Palestine Commission with Regard to the Security Council

1. The Palestine Commission is a subsidiary body of the General Assembly created by it in accordance with Article 22 of the Charter. Normally, such a body would be dependent upon the General Assembly only. However, for reasons of convenience and practicability, the General Assembly itself placed it under the guidance of the Security Council. The main reasons for this arrangement seem to have been the following:

(a) The Security Council is functioning continuously and therefore, should the case arise, would be in a position to guide the Commission at any time.

(b) The Security Council is the organ of the United Nations provided by the Charter for taking action with regard to the maintenance of international peace and security.

2. The following conclusions may be drawn from an analysis of the relations between the Security Council and the Commission, as indicated in the General Assembly's Plan (paragraphs (a), (b), (c) of operative part of preamble and Part I.B - 2, 4, 14 and 15 of Resolution).

3. There can be no doubt whatsoever that the Assembly's intention was that the Commission should have primary responsibility and full powers in whatever concerns the implementation of the Plan of Partition. These powers however, great as they are, are not completely unrestricted.

4. In performing its manifold duties, the Commission:

(a) should act in conformity with the recommendations of the General Assembly; it should be guided in its activities by the recommendations of the General Assembly.

Taking now into consideration that the Plan could not provide for every eventuality, and that in many cases it lays only general lines and guiding principles, it becomes apparent that the Commission has a great latitude of action, as far as it keeps within the framework of the Plan. It is therefore understood that the Commission has all powers inherent in the functions within the competence expressly assigned to it.

(b) It should act under the guidance of the Security Council; it should be guided by such instructions as the Security Council may consider necessary to issue.

Guidance means supervision, direction and control. In the present case, however, it is obvious that "guidance" was intended to have a flexible character. In fact, the Resolution leaves a very wide margin of discretion both to the Commission and the Security Council as to the extent of their mutual relationship. The Security Council may, or may not, consider necessary to issue instructions to the Commission on its own initiative.

The Commission may ask for guidance, but it does not need authorization from the Security Council in order to take action.

5. The Commission must render periodic monthly progress reports or more frequently if desirable, to the Security Council. It is clearly within the powers of the Security Council to require such reports more frequently than monthly. The purpose of these reports is obviously to keep the Security Council informed on the progress of the implementation, in order that it be able to issue instructions, should it consider it necessary. It would appear clear that, if the collaboration in the implementation of the Plan between Security Council and Commission is to have any effect, the Security Council should examine and discuss these reports.

6. If the Security Council issues any instructions for the guidance of the Commission, the latter would be bound to carry them out, unless it has already taken measures within the recommendations of the General Assembly before receiving contrary instructions from the Security Council.

II. Powers of the Security Council

1. While the Commission has primary responsibility for the implementation of the Plan and is intended to be the supreme administrative and legislative authority in Palestine in the period between the termination of the Mandate and independence, the Security Council has been given certain powers of a supervisory character over it. Such supervision may not have a regular character.

2. The Security Council was requested by the Resolution to take the necessary measures as provided in the Plan for its implementation. It was also requested to take measures connected with its functions as the Executive Organ of the United Nations, if circumstances require.

3. The Plan specifies that the Security Council may:

(a) issue instructions to the Palestine Commission as it may consider necessary;

(b) take such action as it may deem proper with respect to that state for which a provisional council of government cannot be selected by 1 April 1948, or if selected, cannot carry out its functions.

4. In connection with (b) above, the Security Council is free to take any action that it deems proper. In connection with (a) however, the powers of the Security Council have some limitation:

The Security Council may not issue instructions altering the essence of the Plan of Partition. Its instructions should always aim at the implementation of this Plan. This would follow from the fact, that the scope of the Security Council's collaboration was limited in the General Assembly's request to taking the necessary measures, whatever they may be, for the implementation of the Plan, as provided in the Plan. It is obvious that the General Assembly, having arrived at a certain Plan, wished the Security Council to assist in the smooth functioning and implementation of that concrete Plan.

5. Except for the above limitation, it is suggested that the Security Council, on its own motion or at the request of the Commission, may issue any instructions it considers necessary. These instructions may be either substantive or procedural in character, of a general nature, or connected with some specific matter. They may elaborate or supplement the Plan. They may add, clarify, adjust or replace a detail which would prove to be unworkable. They may also deal with a completely new question, not foreseen by the General Assembly. They may cover not only the functions expressly specified in the Recommendations but also those implied.

B. WHETHER THE SECURITY COUNCIL HAS THE POWER TO ACCEPT THE RESPONSIBILITIES ASSIGNED TO IT BY THE GENERAL ASSEMBLY

1. The Security Council has not yet accepted the responsibilities assigned to it by the Resolution of the General Assembly.

The Secretary-General, in a letter dated 2 December 1947 (document S/614), drew the attention of the Security Council to paragraphs (a), (b) and (c) of the operative part of the Resolution.

The Security Council, at its 222nd meeting on 9 December 1947, after a lengthy discussion, adopted the following formula for insertion in the minutes of the meeting:

"THE SECURITY COUNCIL received the letter from the Secretary-General enclosing the Resolution of the General Assembly regarding the future government of Palestine, and being seized of the question, decided to postpone discussion."

During the discussion, it was made clear that the official receipt of the letter of the Secretary-General enclosing the Resolution did not imply acceptance of the responsibilities under the Resolution. The phrase "being seized of the question" was interpreted by the President of the Security Council to mean that "the matter remain on the agenda, available for discussion at the request of any member or members at any time."* (*See Annex I, on points raised during the meeting).

2. The functions and powers of the Security Council are dealt with in Chapters V, VI, VII, VIII and XII of the Charter.

The basic principle governing the role of the Security Council is to be found in Article 24 of the Charter, paragraphs 1 and 2 of which read as follows:

"In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf.

"In discharging these duties, the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII."

There is no doubt that among the functions and powers, as laid down in the Charter, there is nothing specifically defining that the Security Council may accept responsibilities such as those assigned to it by the Assembly's Resolution. It does not follow, however, that the Security Council has not been conferred sufficient power to assume new responsibilities, not specifically defined in the Charter.

3. In the case of the Free Territory of Trieste, which presents some similar aspects to the present case, the Security Council answered the question in the affirmative. (Official Records of the 89th and 91st meeting of the Security Council).

Under the Peace Treaty with Italy, various responsibilities were assigned to the Security Council with regard to the Free Territory of Trieste, and as a result, the Council of Foreign Ministers requested the Security Council to adopt the three instruments relating to the administration of the Free Territory and to accept the responsibilities devolving upon it under the same instruments.

During the discussion in the Security Council, a legal objection was raised by the Australian representative* (*Security Council Official Records, 89th meeting, page 5.) whether the Security Council has the power to accept new responsibilities and further, whether it had the power to assume functions having no direct connection with the maintenance of international peace and security.

4. At the 91st meeting of the Security Council, a statement of the Secretary-General was read regarding the legal issues raised by the representative of Australia. According to the statement, the words of Article 24 "primary responsibility for the maintenance of international peace and security" coupled with the phrase "acts on their behalf" constitute a grant of power sufficiently wide to enable the Security Council to approve the documents in question and to assume responsibilities arising therefrom. Furthermore, the statement pointed out that the records of the San Francisco Conference demonstrate that the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII. In particular, it invited attention to the discussion at the 14th meeting of Committee III/1 at San Francisco (document 597 Committee III/1/30) wherein it was clearly recognized by all the representatives that the Security Council was not restricted to the specific powers set forth in Chapters VI, VII, VIII and XII. The discussion concerned a proposed amendment to limit the obligation of members to accept decisions of the Council solely to those decisions made under the specific powers. In the discussion, all the delegations which spoke, including both proponents and opponents of the amendment, recognized that the authority of the Council was not restricted to such specific powers. It was recognized in this discussion that the responsibility to maintain peace and security carried with it a power to discharge the responsibility, subject only to the purposes and principles of the Charter.

5. In the ensuing vote, the Security Council, by a vote of ten in favour (including Syria), Australia abstaining, recorded its approval of the three instruments regarding the administration of the Free Territory and formally accepted the responsibilities devolving upon it under the same.

6. Thus, although there is nothing in the Charter which would specifically authorize the Security Council to take charge of the direct administration of any territory, the Security Council broadly interpreted its general powers under Article 24 of the Charter and undertook the supervision of the administration of the Free Territory of Trieste. By its decision, it recognized the principle that it has sufficient power, under the terms of Article 24 of the Charter, to assume new responsibilities, on condition that they relate directly or even indirectly to the maintenance of international peace and security, and that in discharging these duties, the Security Council acts in accordance with the purposes and principles of the United Nations (Article 1 and 2 of the Charter).

In the light of the Trieste precedent, it may be assumed that the Security Council has the power to accept the responsibilities that the General Assembly requested it to accept with regard to Palestine.

7. In that connection, the Security Council may take into consideration:

(a) that Palestine is a territory which has been for many years under international administration, the future integrity and independence of which is a matter of international concern. Internal disorders in Palestine might lead to international friction and might endanger peace;

(b) that the General Assembly, by more than two-thirds majority, concluded that the present situation is one which is likely to impair the general welfare and friendly relations among nations, and that any attempt to alter by force the settlement envisaged by its Resolution constitutes a threat to the peace, breach of the peace, or act of aggression;

(c) it may be anticipated that the situation in Palestine will undoubtedly deteriorate further if adequate armed forces do not take possession of Palestine on the withdrawal of the Mandatory. Any deterioration, involving also the existence of the City of Jerusalem - territory under Special International Regime - may eventually endanger the maintenance of international peace and security.

8. It is suggested that such considerations as the above, bring the Palestine question within the scope of Article 24 of the Charter, as interpreted in the case of Trieste, and that the Security Council has the power required to accept the responsibilities assigned to it by the General Assembly. It is submitted that if the Security Council deemed that it was within its competence to accept responsibilities for the carrying out of certain provisions of a treaty negotiated and concluded outside of the United Nations, it is still more appropriate that it should accept responsibilities for the implementation of a plan adopted by the General Assembly.

C. THE QUESTION OF AN INTERNATIONAL ARMED FORCE FOR PALESTINE

I. Need for an International Police Force

1. After the termination of the Mandate, the British Armies will gradually relinquish the duty of keeping order and ensuring security in Palestine. It results from the statement of policy of the Mandatory Power that on the termination of the Mandate the militias envisaged in the Plan will not have been formed. There may be only inadequate Arab and Jewish police forces and militias in a more or less embryonic stage, clandestinely organized and insufficiently trained and disciplined.

2. The problem therefore arises as to how public order and security are to be kept in Palestine immediately after the termination of the Mandate and in the following months prior to the proper functioning of militias in the two States and the creation of an effective foreign force, to assist in the maintenance of law and order in the City of Jerusalem.

3. It is obvious, in view of the present situation in Palestine, that order and security are necessary not only for the implementation of the Plan but also generally for avoiding anarchy and chaos and for minimizing bloodshed and to prevent breach of international peace. Given the above facts, the need for creating an international armed force to assume this duty immediately after the termination of the Mandate seems to be imperative.

4. It should therefore be examined:

- (a) Whether the Commission can enlist and employ an armed force, and
- (b) Under what conditions the Security Council may provide an international armed force.

II. Whether the Commission can Enlist and Employ an Armed Force

1. Besides provisions relating to the Arab and Jewish Militias and the foreign police force for the City of Jerusalem, the Plan contains no specific recommendations for the raising of an armed force, neither for the maintenance of order and security in Palestine nor to effect its implementation.

2. It would appear that the General Assembly based its Plan in a general manner on the idea that any problem relating to the maintenance of international peace and security could be dealt with by the Security Council, while problems relating to the maintenance of internal peace and security in Palestine would be handled by the armed militias as regards the two proposed States and by police forces (including the special foreign police force) in the City of Jerusalem.

3. However, the fact remains that according to the Plan "...there shall be a progressive transfer, from the Mandatory Power to the Commission, of responsibility for all the functions of government, including that of maintaining law and order in the areas from which the forces of the Mandatory Power have been withdrawn".*

4. Apart from the fact that it would seem impossible for such a force to be created and ready to operate in time, any decision of the Commission to recruit it itself might have such implications and consequences that it could hardly take such a decision without asking in the first place for the "guidance" of the Security Council. At most the Commission could only decide itself that a few policemen will be attached to it for its own security.

III. Under what Conditions the Security Council may Employ an International Armed Force

1. The Security Council might employ an international armed force in the Palestine case, either in virtue of Article 42 of the Charter or in accordance with the Resolution of the General Assembly.

(a) Application of Article 42 of the Charter

2. In order to use military force in application of Article 42 of the Charter, the Security Council should first determine the existence in Palestine of a threat to the peace, a breach of the peace, or an act of aggression. Should it determine so, it would have full power under Article 42 to use armed forces as may be necessary to maintain or restore international peace and security in Palestine.

3. Whether a threat to the peace, a breach of the peace, or an act of aggression exists is primarily a question of fact left by the Charter to the unrestricted judgment of the Security Council.

4. In this connection, it is to be pointed out that paragraph (b) of the operative part of the Resolution of the General Assembly, requesting the Security Council to determine as a threat to the peace, breach of the peace or act of aggression any attempt to alter by force the settlement envisaged, may have a persuasive rather than a binding effect. It is a recommendation of the General Assembly and has no obligatory character whatsoever insofar as the Security Council is concerned.

5. It is obvious that, in order to be in a position to determine, the Security Council should previously investigate the situation in Palestine, in the light of existing evidence. The investigation of the situation may be undertaken by the Security Council on its own initiative, or following a request made by the Palestine Commission acting in accordance with the Resolution of the General Assembly, or a formal request made by any Member of the United Nations in accordance with Article 35 of the Charter, or following action by the Secretary-General under the terms of Article 99.

6. In reviewing the case, the Security Council would have to consider whether a threat to the peace, a breach of the peace, or an act of aggression may occur within or outside of the borders of the Palestinian territory. This question is within the discretion of the Security Council. It is, however, interesting to note that the General Assembly in its Resolution, considered that the situation in Palestine itself may constitute a threat to the peace (paragraph (b) of operative part of preamble). Furthermore, it is to be noted that the General Assembly considered as a challenge to the peace any attempt to alter by force the settlement envisaged by the Resolution (paragraph (c) of the operative part of the preamble of the Resolution). "Any" would include the notion that such a challenge to the peace may come from any quarters even from the inhabitants of Palestine themselves. It is clear that the construction given by the General Assembly was that a challenge to the peace may take place not only through action against the territory of Palestine, but even action inside the territory of Palestine, even without outside assistance; not only by action against the territorial integrity of Palestine but also against the settlement envisaged by the Resolution.

7. Article 42 by itself does not specify from where the armed force must come. Under the terms of Article 42, all Members of the United Nations have undertaken to make available to the Security Council armed forces, on its call and in accordance with a special agreement or agreements. These agreements, by the terms of Article 43, shall be subject to ratification by the signatory States in accordance with their respective constitutional processes.

8. It will be for the Security Council to determine, in accordance with Article 48 of the Charter, the Members of the United Nations which should make available to the Security Council armed forces.

9. The international armed force placed at the disposal of the Security Council, will remain under the direction of the Security Council assisted by the Military Staff Committee (Article 46).

(b) By Virtue of the Resolution in Conjunction with Article 24 of the Charter

The Resolution did not specifically provide for use by the Security Council of an armed police force, although it suggested that such a force might be used by it, while carrying out its functions under the Charter.

The General Assembly, however, had requested the Security Council, inter alia, to take the necessary measures as provided for in the Plan for its implementation.

It may be argued that, with regard to certain dispositions of the Plan, enforcement measures were, if not provided for, at least implied. Thus, if the establishment of the special International Regime of the City of Jerusalem would require an international police force, the use of such a force may be considered as implied in the Plan, especially if the existence of the City of Jerusalem, requiring free communications, would necessitate such an action. It is of some significance that the Plan envisages a special international police force "...to assist in the maintenance of internal law and order and especially for the protection of Holy Places and religious buildings and sites in the City". Such a force is to be recruited by the Governor.

Another instance would be the case that a Provisional Council of Government cannot be selected for either of the States or, if selected, cannot carry out its functions. In this connection, the Security Council has been given full powers of action.

In either case, the Security Council might consider that the lack of an armed force may endanger the maintenance of international peace and security.

It may be argued further that what, in fact, the General Assembly had in mind was that the Security Council - the organ of the United Nations empowered to take action - should assist the Commission in its task, by all means at its disposal.

In a general manner, it may be conceived that the Security Council might consider that outside the Resolution of the General Assembly, outside the specific powers conferred upon it by the Charter, it has a duty inherent in Article 24 of the Charter, especially, as interpreted in the Trieste case, to assist substantively in the implementation of a Plan considered by more than a two-thirds majority of the General Assembly as conducive to general welfare or friendly relations among nations.

It is obvious that the Security Council would base its action on such grounds only after previously having reached the conclusion that no threat to the peace, breach of the peace or act of aggression had occurred. An international armed force set up on this basis would not be one in the sense of Chapter VII of the Charter. It would have the character of an international police force for the maintenance of law and order in a territory for which the international society is still responsible.

ANNEX I

POINTS RAISED AT THE 222ND MEETING OF THE SECURITY COUNCIL

When the Security Council received the letter from the Secretary-General enclosing the Resolution of the General Assembly, the representative of Syria raised the following points.

After having stressed that the Security Council "has to determine to what extent it can accept or apply such a request or recommendation," he pointed out that the implementation of the Resolution adopted by the General Assembly was assigned to the Security Council and that all responsibility was placed upon it in that respect, through the commission of five which was nominated for that purpose by the President of the General Assembly. "The Security Council," he said, "is requested to act according to the instructions or information received from that commission of five. As long as that commission has no foundation or no justification in the Charter, this matter ought to be studied by the Security Council. The commission of five is to be sent to Palestine and vested with authority to promulgate laws and regulations, to command armies, to control the economy of the country and to nominate governments and control them. The Security Council should determine on what basis that commission is being sent to Palestine and whether the Council itself is bound to take into account information supplied by that commission and to enforce or implement the instructions of the commission. The present situation is that there is no trusteeship agreement and that the members of the commission have not even been selected. This scheme was not even ratified by their governments according to constitutional processes. There is no convention or anything of that sort. I think that such an off-hand procedure requires a certain amount of discussion in the Security Council before taking note, or immediately after taking note, or simultaneously with taking note, of this Resolution.

"For this purpose, I think that it would be appropriate that a special meeting of the Security Council be convoked in order to have a full debate on these matters and have the views of the members clearly understood after studying this situation, and to know the extent to which such a Resolution would lead to peace and security in the Near East. Such a Resolution is very important, and the Security Council is the organ which is charged with responsibility in this matter. Enforcement is in the hands only of the Security Council. The General Assembly cannot exercise any governmental authority in any country directly. It may do that through the trusteeship system or through the mandatory or through the Security Council by enforcement of action for the maintenance of international peace and security. But in this case there is no trusteeship agreement and the General Assembly is not a world government which can dictate orders, partition countries or impose constitutions, rules, regulations and treaties on people without their consent. This is a matter which should be considered very thoroughly and carefully in the Security Council before taking note of the Resolution, as I said, or soon after."

On the points raised by the Syrian representative, the Chairman made the following remarks: "It is to be noted that the Resolution of the General Assembly comes to the Security Council in the form of a recommendation and a request. It is therefore of course entirely proper for the Security Council to discuss, when the time comes, the method of implementing and putting into effect the request. I should imagine that such a discussion would imply a consideration of a good many of the points which the representative of Syria has in mind. There would, however, be obvious limitations to the scope and subject of the debate in the Security Council which I am not prepared as yet to indicate. Nonetheless, there would remain a large area of discussion...."

During the meeting it was made known that the Governments of Lebanon and Egypt had requested, in pursuance of Article 31 of the Charter, to be allowed to participate in the Council's discussion of what they described in their letters as the question or the problem of Palestine. These requests were left for consideration at an appropriate time in the future.

It is evident that the Security Council, before taking any further action connected with the General Assembly's Plan will have to consider whether it has the power to accept the responsibilities assigned to it by the General Assembly. It is to be anticipated that an attempt will then be made to reopen the whole question of Palestine.

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