

GENERAL
ASSEMBLYASSEMBLEE
GENERALEA/AC.21/SR.13
20 January 1948

ENGLISH ONLY

SUMMARY RECORD OF THE THIRTEENTH MEETING
OF THE UNITED NATIONS PALESTINE COMMISSION

Lake Success, New York

Tuesday, 20 January 1948, at 11.00 a.m.

Present:

Chairman: Mr. LISICKY (Czechoslovakia)

Members: Mr. Medina (Bolivia)
Mr. Federspiel (Denmark)
Mr. Morgan (Panama)
Mr. Roxas (Observer for Mr. Francisco) (Philippines)

Secretariat:

Mr. Bunche (Secretary)

Draft Resolution Submitted by the Member of the Philippines
(Document A/AC.21/5)

Mr. ROXAS (Philippines) informed the Commission that Mr. Francisco, in whose place Mr. Roxas was attending as Observer, had asked him to inform the Commission that he wished to place on the Agenda, for the near future, the draft resolution which he had submitted on 14 January 1948.

It was agreed that Mr. Roxas would contact Mr. Francisco to learn whether it would be possible for the latter to attend the morning meeting of the following day, and that, if this was possible, the resolution in question would be taken up at that time.

Consideration of Working Paper on "Relations Between the Commission and the Security Council" (Document A/AC.21/W.12)

With reference to Paragraph 6 of the above working paper, the opinion was expressed that it raised a tactical question as to whether the Commission should seek instructions from the Security Council or whether it should seek guidance only. In this connection, some doubt was expressed as to the Commission's legal position, as well as to the line to be drawn between asking the Security Council to elaborate the Assembly's recommendations and asking it to amend them.

/THE CHAIRMAN

THE CHAIRMAN pointed out that the Commission must not deviate from the provisions of the General Assembly Resolution and that it was doubtful that even the Security Council might do so. Such deviation was within the competence of the authors of the Resolution only. The Commission could not do more than supplement or elaborate the recommendations, and that only in one sense, namely, in the direction of the recommendations, by way of supplying details which were not provided, and not so as to change in any way the general scheme provided in the recommendations.

It was agreed that the Commission should be careful not to raise in the Security Council the formal question as to the extent of its competence in the matter, not even in a purely theoretical manner.

THE SECRETARY observed that the Secretariat had noted what might appear to be some ambiguity about the role of the Security Council as indicated in the phrase in paragraph 4, Section B of Part I, reading, "for such action as the Security Council may deem appropriate."

It was pointed out that the provision of the General Assembly Resolution quoted in Paragraph 1(b) of the working paper might have the effect of narrowing the usual functions of the Security Council inasmuch as it left the Security Council to decide only whether the situation in Palestine at a given time was a threat to peace and did not specify that the Council might decide how to deal with such a situation.

THE CHAIRMAN noted that the resolution which had been submitted by Mr. Francisco (Philippines) touched upon the question of the functions of the Security Council in relation to the Commission and that its discussion would afford the Commission further opportunity to clarify this issue.

With reference to Paragraph 7 of the working paper, THE CHAIRMAN noted that this touched upon the important question of the possible conflict between the authority of the Security Council and that of the Commission, and that it was only paragraph 14, Section B of Part I of the Resolution which created the possibility of such a conflict.

The question was raised as to whether the Commission should present suggestions to the Security Council or whether it should limit itself to explaining various situations as the Commission sees them without proposing any concrete suggestions. One view was that the Commission should make concrete suggestions.

Another view was that the matter was more complex than that. In presenting facts to the Security Council, as the Commission had to do, it would be giving the latter some indication of its own views. The Commission, it was suggested, should explain the situation as occasion arises in order to assist the Security Council in making suggestions to the Commission.

/The chief problem

The chief problem would arise in the case where only two obvious solutions presented themselves - that of enforcement or that of non-enforcement; in such a case the Commission would have to decide whether or not to point out to the Council the possible consequences of each of the two alternatives.

As a functional rather than a policy-making body, the Commission should, according to this view, limit itself to presenting facts as it saw them and to drawing the Security Council's attention to the points on which decision had to be taken by the Security Council, without making concrete proposals regarding such decisions.

It could do this by pointing out that a given question was outside the Commission's competence and that the General Assembly had foreseen in its Resolution that the Security Council would take action on any such question.

THE CHAIRMAN thought it might be desirable for the Commission to maintain flexibility in the matter and not bind itself to any rigid rule. It would be against the interest of the Commission, in his opinion, to start out by seeking the guidance of the Council. Without doubt the Council had a supervisory role to play in relation to the Commission, but it was not for the Commission to insist upon receiving guidance and doing so might well lead to the Commission's reducing itself to the status of an executive organ of the Council, and minimizing its chances of success in its work. In other words, the Commission should keep its independence within the framework of the Assembly's Resolution.

It was agreed that the Legal Adviser would be asked to prepare a memorandum giving the Commission his opinion on the Commission's and Security Council's respective competences and respective powers.

With reference to Paragraph 9 of the working paper, the question was raised as to whether the Commission could truly consider that it had done everything possible to establish a Provisional Council of Government in the Arab State. It was agreed that this deduction could be made, and that as of the present moment there was no evidence that such a Council would be set up by 1 April, and should so inform the Security Council in its first report.

With respect to the drafting of that portion of the Report to the Council which would deal with this subject, the SECRETARY pointed out that an initial assumption might have to be made that the Commission would be resisted in setting up a Provisional Council of Government in the Arab State. The basis for such an assumption would then have to be given. At the present stage there were two bases, namely, the current unofficial

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reports on the situation in Palestine; and the communication which had been received from the Arab Higher Committee. The latter, he noted, was only partially representative of the Arab community in Palestine.

Further basis for the assumption could possibly be obtained, he added, by putting the question to the Mandatory Power as to whether they considered it possible that the Provisional Council of Government in the Arab State could be set up by 1 April. Finally, the likelihood of such an event could be ascertained if the Commission went to Palestine and itself gauged the extent of the resistance to the setting up of the Arab Provisional Council of Government.

An observation was made that, by all accounts, judging by the views which had been previously elicited from Mr. Shertok as well as by the reports in the press of the preparations made by some of the Arab States to invade Palestine, no co-operation from the Arabs with respect to the setting up of the Provisional Council of Government in the Arab State by 1 April could be hoped for, and that it was therefore the Commission's duty, after itself endeavouring in vain to enlist Arab co-operation, to report the facts of the case to the Security Council.

THE CHAIRMAN noted that this presupposed an investigation of the situation on the spot, inasmuch as there was no other means of contacting the general Arab population of Palestine.

An opinion was expressed that an on-the-spot investigation would imply the taking of measures by the Security Council with a view to assuring the safety of the investigators.

THE CHAIRMAN pointed out that pending the termination of the Mandate, it was the Mandatory Power alone which was responsible for the maintenance of law and order in Palestine.

THE SECRETARY suggested that the Commission might wish to follow a middle course, whereby it would point out to the Security Council that on the basis of the information available at the present stage it would not be possible to fully implement the General Assembly Resolution by 1 April, and that the Security Council should, therefore, immediately consider the measures required to provide the forces necessary to implement it with a view to anticipating the Commission's future needs; meanwhile the Commission would continue to do everything possible to carry out the Resolution. He stressed that in following this course, the Commission would not be divesting itself of its responsibilities in the matter.

Some doubt was expressed as to whether the Security Council could take action merely on receipt of a regular report from the Commission.

/THE CHAIRMAN

THE CHAIRMAN pointed out that whether it could take action or not would depend on the contents of the report.

With respect to putting the question to the Mandatory Power as to its opinion on the likelihood that any co-operation could be secured from the Arabs respecting the setting up of a Provisional Council of Government in the Arab State, it was agreed that this question should not be put in writing but rather by a direct verbal enquiry.

With reference to Paragraph 10 of the working paper, THE CHAIRMAN thought that some elucidation on the question it contained might be expected from the Mandatory Power in view of the questions that would be put to them by the Commission. Pending the receipt of answers to such questions it was not, in his opinion, worthwhile examining the conflicting provisions on the matter in the Assembly Resolution.

In response to an opinion expressed that the Security Council should be asked for its interpretation of that aspect of the Resolution, the CHAIRMAN stated that he, personally, thought a better course would be to first obtain whatever elucidation the Mandatory Power would give, then to arrive at the Commission's own interpretation, and only if no interpretation could be agreed upon by the Commission to approach the Security Council on the subject.

One view held with respect to the reservations which the Mandatory Power had made during the General Assembly session was that, inasmuch as no veto power existed in the Assembly, the Resolution which had been adopted had automatically abolished such reservations.

THE CHAIRMAN pointed out, however, that a resolution of the General Assembly had the force of a recommendation only and was not legally binding, and that the Mandatory Power had made many reservations regarding the Assembly's recommendations.

In response to an inquiry as to whether the reply of the Mandatory Power would be received before the submission of the first Report to the Security Council, the CHAIRMAN replied that possibly it would be received in time, but if it was not, the reply would be made the subject of an extraordinary report to the Council.

With reference to paragraph 10, it was agreed that, in addition to the Commission or any Member of the United Nations, the Secretary-General could bring to the attention of the Security Council any circumstances that might require the Security Council's intervention.

With reference to paragraph 13 of the working paper, the two following questions were raised: firstly, under what circumstances should the Commission consider that a threat to the peace existed and that it was in

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order for it to so report to the Council, and, secondly, whether the avowed policy of the Mandatory Power whereby its troops could not be used to enforce the Assembly's recommendations and following the termination of the Mandate would be used only to maintain law and order and protect themselves was likely to create a situation requiring the intervention of the Security Council.

THE SECRETARY suggested that the Commission might wish to give some consideration, particularly with respect to reporting to the Security Council, to the circumstances under which an attempt was allegedly made to invade Palestine by forces based in a neighbouring country.

THE CHAIRMAN observed that only the Mandatory Power could be claimed for failure to protect Palestine pending the termination of the Mandate, since it was solely responsible for Palestine until then. However, he wished to hear the views of the Members as to whether in the event of such failure on the part of the Mandatory Power the Commission could take any action.

It was agreed that it would at all times be the Commission's duty to notify the Security Council of any foreseeable developments which threatened peace and security in Palestine, and that until the Council was seized of such matters, they were a responsibility of the Commission.

The meeting rose at 1.25 p.m.
