

GENERAL
ASSEMBLYASSEMBLEE
GENERALE

ENGLISH ONLY

UNITED NATIONS PALESTINE COMMISSION

Considerations Affecting Certain of the Provisions of the General Assembly Resolution on the "Future Government of Palestine": Relations Between the Commission and the Security Council.

(Working Paper Prepared by the Secretariat)

1. The provisions of the Assembly resolution and Plan for the future government of Palestine contain the following passages referring directly to the Security Council:

"THE GENERAL ASSEMBLY ...

"REQUESTS that

(a) The Security Council take the necessary measures as provided for in the Plan for its implementation;

(b) The Security Council consider if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution;

Part I. B. STEPS PREPARATORY TO INDEPENDENCE

"4. ... If by 1 April 1948 a Provisional Council of Government cannot be selected for either of the States, or, if selected, cannot carry out its functions, the Commission shall communicate that fact to the Security Council for such action with respect to that State

RECEIVED

/as the Security

as the Security Council may deem proper, and to the Secretary-General for communication to the Members of the United Nations.

" ...

"14. The Commission shall be guided in its activities by the recommendations of the General Assembly and by such instructions as the Security Council may consider necessary to issue.

The measures taken by the Commission, within the recommendations of the General Assembly, shall become immediately effective unless the Commission has previously received contrary instructions from the Security Council.

The Commission shall render periodic monthly progress reports, or more frequently if desirable, to the Security Council.

"15. The Commission shall make its final report to the next regular session of the General Assembly and to the Security Council simultaneously."

2. The implementation provisions of the Assembly resolution and the Plan were the result of a compromise between proposals of the Soviet and United States representatives in the Working Group on Implementation of Sub-Committee I of the Ad Hoc Committee on the Palestinian Question. The discussions envisaged that the Assembly would recommend the provisions of the Partition Plan and the Security Council would see to it that the Plan was implemented in accordance with the Assembly's recommendations.

3. The over-all task of the Security Council is to give guidance to the Commission as is set forth in paragraphs B.2 and B.14. The Commission is intended to be the supreme administering authority in Palestine during the transitional period, after the termination of the Mandate, and the Security Council's functions (apart from any question of international peace and security) are intended to be of a supervisory character.

4. The Commission can commence its work immediately under the authority of the Assembly's resolution without the necessity of formal approval of the Plan by the Security Council. The Commission is empowered to take the necessary steps to carry out the measures

/recommended in

recommended in the Assembly's Plan, and any action or decision taken by it becomes immediately effective unless it has previously received contrary instructions from the Security Council.

5. The discussions in the 222nd meeting of the Security Council on 9 December 1947 recognized that the Security Council would not have to take any decision to put the Plan into effect. The Secretary-General addressed a letter (document S/614) dated 2 December 1947 to the President of the Security Council regarding the resolution concerning the future government of Palestine adopted by the General Assembly (document A/516), and drew the attention of the Security Council to paragraphs (a), (b) and (c) of the operative part of the resolution. The Security Council adopted the provisional agenda containing the item referring to Palestine, and also adopted the following formula for inclusion 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."

6. If the Security Council issues any instructions for the guidance of the Commission, the latter would of course be bound by such instructions. Such instructions could elaborate or supplement the Assembly's recommendations; they may be either substantive or procedural, of a general nature or in connection with some specific matter.

7. It seems to follow from the second sentence of paragraph B.14 that the Security Council cannot ex post facto invalidate or annul any measure taken by the Commission within the Assembly's recommendations, unless the Security Council had previously issued contrary instructions. It would also appear that the Security Council could issue instructions in advance that would prohibit

the Commission taking certain measures even though such measures would otherwise have been valid as being within the Assembly's recommendations. A further question arises, however, as to the powers of the Security Council in case the Commission takes some measures which it believes is within the Assembly's recommendations but which the Security Council regards as being ultra vires. The Assembly's recommendations do not throw any light on such a possibility, nor was it raised in any of the discussions.

8. Although the Assembly's recommendations do not specifically deal with the point, it was intended by the Working Group on Implementation that the Commission could at any time ask the Security Council for advice or assistance. Such a request could be made either in one of the progress reports provided for in sub-paragraph 3 of paragraph B.14 or at any time the Commission may desire.

9. The second part of paragraph B.4 places the responsibility on the Commission to notify the Security Council if by 1 April 1948 a Provisional Council of Government cannot be selected for one of the proposed States or cannot carry out its functions. In such event there is no restriction on the Security Council's action with respect to that State.

10. One of the most difficult problems facing the Commission - one which might require Security Council intervention - is the question of the relationship between the Commission and the Mandatory Power, or between the Commission and British armed forces after the termination of the Mandate but prior to the completion of the evacuation. The United Kingdom has stated that, although it would not take part in implementing the Plan and its troops could not be used for enforcement, it would not obstruct or impede the implementation of the Plan, and it has invited the Commission to communicate with it to agree on arrangements for the co-ordination of the plans of the Commission with those of the Mandatory Power for withdrawal. During the discussions in the General Assembly, however, the United Kingdom made three reservations: (a) that before the termination of the Mandate, it would insist on retaining undivided control of Palestine, (b) that after the termination of the Mandate; it would hand over authority to the Commission only in those areas that were evacuated by British troops, as and when they were evacuated, (c) that in the zones in which British troops were still in occupation, it would retain limited control in order to maintain law and order, and would not permit any activity that might provoke disorder. In accordance with these reservations, the representative of the United Kingdom stated in the 28th meeting of the Ad Hoc Committee on 22 November 1947 that the "progressive transfer" of authority from the Mandatory Power to the Commission envisaged in paragraph B.13 would commence after the termination of the Mandate, and only in those areas which had been evacuated by British troops. Since the Mandatory Power would retain full /control of

control of all of Palestine prior to the termination of the Mandate, and could not share its responsibility with the Commission, he thought that the phrase "in areas from which it had not withdrawn its armed forces" should be deleted from paragraph B.12. In Sub-Committee I he had also pointed out, with respect to paragraph A.2 that, in the areas where British troops were still in occupation, the Commission would not be permitted to perform any function which might impair the maintenance of law and order. On 11 December 1947, in the House of Commons, Mr. Creech Jones stated that "the whole complex of governmental responsibilities must be relinquished by the Mandatory Government for the whole of Palestine on an appointed day".

11. In view of the reservations and of the apparently contradictory statements of the United Kingdom officials, it is possible that there may be a difference of opinion between the Mandatory Power and the Commission respecting the interpretation to be given to paragraphs A.2, B.12 and B.13. The Commission may therefore wish to request the Security Council to clarify the interpretation of those paragraphs or to issue detailed instructions elaborating their provisions.

12. With respect to paragraphs (b) and (c) of the operative part of the resolution, these two paragraphs were added primarily to strengthen the Plan of Partition, but do not in themselves add anything to the functions of the Security Council as provided for by the Charter, or of the Commission as provided for by the terms of the Assembly resolution. Either the Commission or any Member of the United Nations can bring to the attention of the Security Council any
/circumstances

circumstances that might require the Security Council's intervention.

13. If co-operation with the Assembly recommendations is forthcoming from the Mandatory Power, the Jews and the Arabs, then it is not likely that any action will be required under paragraphs (b) and (c). In view of announced Arab opposition to the Plan of partition however, a situation may well arise where, apart from the provisions of the second part of paragraph B.4, Part I of the Plan, action by the Security Council may become necessary. Such a contingency is the more likely in view of the United Kingdom statement that its troops could not be used to enforce the Assembly's recommendations against either the Jews or Arabs, and that they would maintain law and order only to protect themselves and hasten their withdrawal.

14. There have been press reports that the creation of an international police force to maintain order in Palestine is still under consideration by certain powers. The position of the United Kingdom Government in this respect has been defined by the Foreign Secretary. In reply to a question in the House of Commons on 12 December 1947 inquiring whether the United Kingdom would not take its share as one of the Members of the United Nations if the Security Council were to decide that collective enforcement action was necessary in respect of Palestine, Mr. Bevin stated :

"That is what the Hon. Member must understand. It is for the Security Council to lay down itself how they will find the forces and the form of the forces, but I cannot use British organised forces nor can I be a party at the present moment, with security forces as a whole not yet organized in the United Nations, to putting British forces under other commands. When the scheme is finally worked out of what this United Nations force is to be, what its command is to be, and what its obligations are to be, not only in Palestine but as part of the inter-

national set-up, then we will take our corner, but to put British forces under another command in this way in an isolated instance is a thing we are not prepared to do."

In the event that an international police force for Palestine is created, the Security Council will have to deal with the problem of the relations between the force and the Commission.