

UNITED NATIONS PALESTINE COMMISSION

LEGISLATIVE POWER:

THE QUESTION OF THE CONTINUITY OF LAWS

(Working Paper prepared by the Secretariat)

I. Under Part I.B.2 of Resolution No. 181 (II) of the General Assembly, the administration of Palestine shall be turned over to the Commission.

That it is not only the executive but also the legislative power which is conferred upon the Commission is made clear in the second paragraph of Part I.B.2 which reads as follows:

"In the discharge of this administrative responsibility the Commission shall have authority to issue necessary regulations and take other measures as required".

Thus in the interval between termination of the Mandate and independence of the two States on the one side, and establishment of the Special International Regime of the City of Jerusalem on the other side, the Commission shall have all the powers of government within the whole territory of Palestine.

II. Unlike other international instruments,* the Resolution does not

- * 1. Article 116 of the Constitution of the Free State of Danzig: "All laws and decrees which are valid in the territory of the Free City of Danzig at the time of the coming into operation of this Constitution shall remain in force in so far as they are not suspended by this Constitution or by legislation."
2. Article 10 of the Instrument for the Provisional Regime of the Free Territory of Trieste: "Existing laws and regulations shall remain valid unless and until revoked or suspended by the Governor."
3. Article 23 of the Constitution of the Government of the Saar Basin.
4. Article 42 of Draft Statute of the City of Jerusalem (T.118): "All legislation in force in Palestine on the day preceding the entry into force of this Statute, in so far as it is applicable to the City on that day and is not inconsistent with the provisions of this Statute, shall continue to apply to the City, with such modifications as may be required by reason of the setting up of the City in accordance with this Statute, until such time as it may be amended or revoked by other legislation of the City."

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expressly provide for the continuity of the legislation in force at the time of termination of the Mandate. This omission, however, does not affect the validity of the existing legislation. Not only does the almost universal practice of states in such cases regard the old municipal law, private and public, as valid until formally changed, but it is also the reasonable interpretation of the Resolution itself that the legislation in force would remain unaffected until repealed or modified by the Commission's "regulations".

It will be for the Commission itself, therefore, to determine how far it will be necessary for it to exercise the legislative power, and whether in each case a new law or a repeal or a modification of existing law is necessitated. This will be a practical question as well as a question of policy.

III. As a general rule, all legislation in force should be left untouched, insofar as it is applicable and consistent with the provisions of the General Assembly's Resolution.

Thus private law (family law, law of succession, law of obligations, law of property) should obviously remain as at present. The same would apply to some parts of public law (criminal law, industrial law), while other parts (administrative law, revenue law) may require some adjustment of a procedural if not of a substantive character. Emergency legislation enacted by the Mandatory Power in view of a certain situation may have to be immediately repealed or modified, as well as legislation relating to immigration and transfer of land.

It is obvious that new legislation enacted by the Commission will primarily deal with questions relating to the implementation of the Plan of Partition.

IV. On assuming its governmental functions, the Commission should define its policy by issuing a Proclamation to the peoples of Palestine. This Proclamation, which would be published in the Official Gazette, should make clear inter alia that:

- (a) All laws and regulations shall remain in force unless and until repealed or amended by the regulations issued by the Commission.
- (b) Regulations of the Commission shall not enter into force before their publication in the Official Gazette of the Commission. The publication shall be made in English, Arabic and Hebrew.
- (c) All inhabitants of Palestine shall enjoy equal rights and the same treatment and security in law as well as in fact.
- (d) Private rights acquired under existing law are to be respected.

/V. The Commission

V. The Commission shall exercise the legislative power by the issue of "regulations". These regulations might take the following form:

REGULATION No.

THE UNITED NATIONS PALESTINE COMMISSION,

by virtue of the powers conferred upon it by Resolution
No. 181 (II) of the General Assembly of the United Nations,
ORDAINS (or ENACTS, or PROVIDES, or DECREES):

VI. The resolution provides for a progressive transfer of authority from the Commission to the Provisional Councils of Government, in the period between the termination of the Mandate and the establishment of the State's independence (Part B.4, 5, 6 and 13). It is not clearly defined in the resolution whether "progressive" refers to territory only or whether it also refers to functions. That is, whether in each transfer of territory all or some of the powers of government should be transferred to the Provisional Councils of Government by the Commission. It is clear, however, that:

- (a) the Commission shall have primary responsibility during all the period until independence and the establishment of the City of Jerusalem, for the whole territory of Palestine; and
- (b) it is left to the Commission to decide the speed of the transfer of authority.

It is, therefore, to be assumed that if the Councils of Government are to act "under the Commission" or "under the general direction of the Commission", unlimited legislative power should be the last to be transferred.

Until untrammelled legislative power is transferred to the Councils, a procedure should be established by which the Councils would be empowered to propose legislation which would enter into force only after having been assented to and promulgated by the Commission. The relationship thus established between the Councils and the Commission would be very similar to that between a Government and a Head of State having the right to veto legislation. It is understood, however, that pending the time when unlimited legislative power in all matters will be transferred to the Councils, the Councils may be authorized by a specific delegation of powers from the Commission to enact, in certain specified matters, legislation which will immediately come into force. The Councils may also be authorized to issue executive decrees with or without the approval of the Commission, as the Commission may deem advisable.

VII. The advance secretariat party should be instructed to study, in collaboration with the Services of the Government of Palestine, the question as to which laws and regulations should be adjusted immediately when the Commission assumes governmental powers in Palestine.