

UNITED NATIONS PALESTINE COMMISSION

Considerations Affecting Certain of the Provisions of the
General Assembly Resolution on the "Future Government of
Palestine": Relations Between the Mandatory Power and the
Commission

(Working Paper Prepared by the Secretariat)

1. Practically the entire Assembly Resolution and Plan involves the relationship between the Mandatory Power and the Commission. The following provisions, however, are of most direct concern:

"The General Assembly

".....

"RECOMMENDS to the United Kingdom, as Mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the Plan of Partition with Economic Union set out below;

".....

"A.1. The Mandate for Palestine shall terminate as soon as possible but in any case not later than 1 August 1948.

"A.2. The armed forces of the Mandatory Power shall be progressively withdrawn from Palestine, the withdrawal to be completed as soon as possible but in any case not later than 1 August 1948.

"The Mandatory Power shall advise the Commission, as far in advance as possible, of its intention to terminate the Mandate and to evacuate each area.

"The Mandatory Power shall use its best endeavours to ensure that an area situated in the territory of the Jewish State, including a seaport and hinterland adequate to provide facilities for a substantial immigration, shall be evacuated at the earliest possible date and in any event not later than 1 February 1948.

"A.4. The period between the adoption by the General Assembly of its recommendation on the question of Palestine and the establishment

of the independence of the Arab and Jewish States shall be a transitional period.

"B.2. The administration of Palestine shall, as the Mandatory Power withdraws its armed forces, be progressively turned over to the Commission, which shall act in conformity with the recommendations of the General Assembly, under the guidance of the Security Council. The Mandatory Power shall to the fullest possible extent co-ordinate its plan for withdrawal with the plans of the Commission to take over and administer areas which have been evacuated.

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

"The Mandatory Power shall not take any action to prevent, obstruct or delay the implementation by the Commission of the measures recommended by the General Assembly.

"B.12. During the period between the adoption of the recommendations on the question of Palestine by the General Assembly and the termination of the Mandate, the Mandatory Power in Palestine shall maintain full responsibility for administration in areas from which it has not withdrawn its armed forces. The Commission shall assist the Mandatory Power in the carrying out of these functions. Similarly the Mandatory Power shall co-operate with the Commission in the execution of its functions.

"B.13. With a view to ensuring that there shall be continuity in the functioning of administrative services and that, on the withdrawal of the armed forces of the Mandatory Power, the whole administration shall be in the charge of the Provisional Councils and the Joint Economic Board, respectively, acting under the Commission, 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.

....."

Paragraphs A.1 and A.2 have been discussed in Working Paper A/AC.21/W.2 and some of the other specific problems will be dealt with under their respective headings in subsequent papers.

2. The United Kingdom has made the following statements with respect to the acceptance of the Assembly's Resolution:

(a) Sir Alexander Cadogan stated in the Ad Hoc Committee on 20 November 1947 that his Government "would not wish to .../impe"

impede the implementation of a recommendation approved by the General Assembly".

(b) Sir Alexander Cadogan stated in the General Assembly on 26 November 1947 that his Government "will naturally not obstruct the carrying out of any decision which the General Assembly may take" and "will loyally accept it in so far as its terms do not conflict with the conditions laid down in the Colonial Secretary's speech of 26 September 1947 and in subsequent statements made by my delegation."

(c) Sir Alexander Cadogan stated in the General Assembly after the adoption of the resolution on 29 November 1947, "I have therefore been instructed to express the hope that the United Nations Commission will get into communication with His Majesty's Government in the United Kingdom in order that arrangements may be agreed for the arrival of the Commission in Palestine and for the co-ordination of its plan with those of the Mandatory Power for the withdrawal of British administration and British military forces."

(d) Mr. Creech Jones, in a speech in the House of Commons on 11 December 1947, confirmed the statements of Sir Alexander Cadogan, and added, "The decision of the Assembly is regarded by His Majesty's Government as the decision of a court of international opinion. This is not a grudging acceptance...."

(e) Mr. Favin stated in the House of Commons on 12 December 1947, "I am not going, and His Majesty's Government are not going, to oppose the United Nations decision. The decision has been taken..... We have no intention of opposing that decision, but we cannot ourselves undertake, either individually or collectively in association with others, to impose that

decision by force..... May it be possible to implement it.

If it is, and if my colleagues or I can render any assistance,

with advice, with help, with our officials, with our

administrative ability, with our historical knowledge, to

smooth out the transition, to try to prevent the divisions

from being widened - in other words to do anything possible

to promote concord, friendship and amity between these

peoples - we shall do it."

(f) Both Mr. Creech Jones and Mr. Bevin stated they desired an

"orderly transfer" of powers with a minimum of chaos and

disorder.

3. The conditions, subject to which the United Kingdom accepted the Assembly's decision are as follows:

(a) As Mr. Bevin stated (paragraph 2(e) above), British troops

could not, either individually or in association with others,

be used to enforce the decision.

(b) Mr. Creech Jones stated on 11 December 1947, "It will be

appreciated that the mandatory responsibility for government

in Palestine cannot be relinquished piece-meal. The whole

complex of governmental responsibilities must be relinquished

by the Mandatory Government for the whole of Palestine on an

appointed day..... I would repeat that, in our view,

undivided control is essential until the Mandate is

relinquished." Mr. Bevin stated, "We cannot have two

administrations at one time." Mr. Martin stated in the Ad

Hoc Committee on 22 November 1947, "..... the Palestine

Government would hand over its authority - in the words of

Sir Alexander Cadogan which were used the other day - 'when

the time came to hand over authority'. Sir Alexander was

/asked

asked, subsequently, what he meant by 'when the time came', and he said it meant 'when and as we evacuate territory'.....

In other words, the authority of the Mandatory Power continues unimpaired until the Mandate is terminated and, then, it is reduced stage by stage, applying only to a limited extent in those areas under military occupation. Progressive transfer, in the sense in which it is used in these articles, would, in our view, begin after termination of the Mandate....

this transfer only takes place under this plan in the areas from which the forces of the Mandatory Power have been withdrawn. That is, in our understanding, the only areas where such a transfer could take place."

(There would appear to be some conflict between the statement of Mr. Creech Jones that on the termination of the Mandate "the whole complex of governmental responsibilities for the whole of Palestine" would be relinquished, and the statement of Mr. Martin that the authority of the Mandatory Power would be reduced stage by stage, and the progressive transfer begin, only after the termination of the Mandate.)

(c) Mr. Creech Jones stated, "Once the Mandate has been terminated our troops remaining in Palestine will be responsible only for maintaining order in those areas in which they are still in occupation, with the limited object of ensuring that their final withdrawal is not impeded, and that it should be completed in the shortest possible time."

Mr. Bevin stated, "The task of the Army and the others at the end, when the Mandate is handed over, will be to protect themselves in the withdrawal."

Sir Alexander Cadogan stated in Sub-Committee I on 13 December 1947, "... we should put no obstruction in the way of these

new authorities entering upon their functions in those areas which we evacuated, as and when we evacuated them. We did not contemplate that they would come into being and function in the areas in which we were still in military occupation." (In view of Sir Alexander Cadogan's and Mr. Martin's remarks, it is not clear whether British troops would exercise only military authority, or also some civil administrative authority, in the areas from which they had not yet withdrawn.)

4. Mr. Bevin or Mr. Creech Jones in their statements mentioned a number of matters on which the United Kingdom intended to carry on negotiations with the Commission:

- (a) The plan for British withdrawal.
- (b) The termination of the Mandate (not later than 15 May 1948).
- (c) Immigration matters (evacuation of a seaport by 1 February 1948; evacuation of Jewish illegal immigrants from Cyprus).
- (d) Economic questions, including the finances of the country, its commitments and liabilities, the position of the assets, the service of the public debt, the responsibilities to the services, questions of the sterling area, currency, trade, etc.
- (e) British interest, including the interests of British nationals and important public works.
- (f) Arrangements for the custody and evacuation of British stores after 1 August 1948.
- (g) Arrangements regarding the City of Jerusalem.

5. The relations between the Mandatory Power and the Commission may be conveniently dealt with under the following headings:

- (A) The period before the arrival of the Commission in Palestine.
- (B) The period between the arrival of the Commission and the termination of the Mandate.

(C) The period between the termination of the Mandate and the final evacuation of British forces;

(D) The period between the evacuation of British forces and the date of independence;

(A) The Period before the Arrival of the Commission in Palestine

6. Mr. Creech Jones stated in the House of Commons on 11 December 1947:

"As His Majesty's Government have made it clear that they cannot take part in the implementation of the United Nations plan, it will be undesirable for the Commission to arrive in Palestine until a short period before the termination of the Mandate. For reasons of administrative efficiency, responsibility and security, this overlap period should be comparatively brief. But much preliminary work can be done by the Commission outside Palestine before then, as I shall explain. The period till then is not long, if the Commission is to acquaint itself with the problems it has to tackle, and to make suitable arrangements for the assumption of its responsibilities in Palestine."

7. There is no doubt that the Commission can do a great deal of preliminary work outside Palestine. Besides "acquainting itself with the problems it has to tackle", the Commission may consider it advisable to undertake the following, in New York or in London:

(a) Prepare a detailed plan and timetable of its procedure, functions and responsibilities.

(b) Commence negotiations with the Mandatory Power respecting the details of the latter's plan of withdrawal, including the possibility of evacuation of a seaport by 1 February 1948.

(c) Commence discussions with representatives of the Jewish Agency for Palestine and if possible the Arab Higher Committee (or any other responsible Arab authorities available) on matters relating to the establishment of Provisional Councils of Government and administrative organs of government; recruitment of armed militia; immigration and land regulations.

(d) Explore the question of its relationship with the Security Council.

(c) Consideration of the Commission's preparatory role with regard to the International Regime for the City of Jerusalem, and security measures in that City.

(f) Commence discussions with the Mandatory Power, the representatives of the Jewish Agency, and if possible the Arab Higher Committee (or any other responsible Arab authorities available) regarding the establishment of the Economic Union and the drafting of the Undertaking provided for in Part I, Section D.

8. The Commission will have to decide if several of the above measures could be taken to better advantage inside of Palestine. In any case, it seems that for the most effective fulfillment of its duties, the Commission will need to complete in Palestine itself, before the termination of the Mandate, the following three preliminary tasks: (a) a detailed study of the administrative machine and its 30 departments, (b) a similar study of security requirements, and the machinery for maintaining law and order, (c) the enlistment of personnel and constitution of bodies and organs necessary to carry on the functions of government on the termination of the Mandate.

(B) The Period between the Arrival of the Commission and the Termination of the Mandate

9. During this period the Mandatory Government has announced that it would retain undivided control of Palestine. Under paragraphs B.2 and B.12, however, the Assembly's Plan recommends that in areas from which British armed forces have been withdrawn, the administration of Palestine shall be progressively turned over to the Commission, and that the Mandatory Power should retain full responsibility for administration in the areas still occupied by its armed forces.

Mr. Martin drew attention to this formal conflict both in Sub-Committee I and in the Ad Hoc Committee on Palestine. The conflict may be

resolved when the Commission and the Mandatory Power study the best means of co-ordinating their plans, account being taken of the situation existing in Palestine.

10. With respect to the last two sentences of paragraph B.12, Mr. Martin stated in the Ad Hoc Committee on 22 November 1947:

"The first sentence reads: 'The Commission shall assist the Mandatory Power in the carrying out of these functions.' I would remind the Committee that, as we made clear, we must insist on undivided control of any area for which we continue to hold responsibility, that is, the whole of Palestine until the termination of the Mandate, and that is a responsibility we cannot share, so that as far as these words could be taken as meaning that in any way the Commission would share in the administration of the government or in the responsibility for the administration, we must reserve our position."

"The last sentence of this paragraph reads: 'Similarly, the Mandatory Power shall co-operate with the Commission in the execution of its functions.' I need hardly say that if the United Nations should decide to appoint a commission and give it this task in Palestine, the Mandatory Government would be bound to assist it, but the form which that assistance could take would always have to be subject to the overriding responsibility for law and order. The Commission could not, under cover of the protection of the forces of the Mandatory Power, perform functions which in any way impaired law and order."

Through negotiations with the Mandatory Power, the Commission, also in this respect, may be able to find a working arrangement which would allow it to take, prior to the termination of the Mandate, various preparatory measures for implementing the Assembly's Plan.

11. During this period the same considerations which apply to responsibility for civil administration will also apply with respect to the maintenance of law and order. It is a matter of vital importance, however, that the Commission be permitted to take preparatory steps leading to the establishment by the Provisional Councils of Government of the armed militias. Since the Mandatory Power has stated that it desires a smooth and orderly transfer of powers to the Commission, it may be prepared to co-operate with the Commission in this regard.

/12. With respect

12. With respect to the details of civil administration, the Commission may wish to undertake inter alia the preparatory tasks outlined in paragraph 8 above. According to paragraph B.13 of the Assembly plan the guiding principle in the transfer of power is "to ensure continuity in the functioning of administrative services."

It follows from the statements made by Mr. Bevin in the House of Commons that the Mandatory Power accepts this principle. The Commission may wish to negotiate with the Mandatory Government to agree to such changes of personnel and administration in Government departments prior to the termination of the Mandate, as will enable the smooth working of those departments thereafter. These changes, in the light of the Assembly's recommendation, could take the following forms:

(a) Replacement of the key British personnel which will be withdrawn from Palestine by Arab and Jewish personnel in central Government departments, and arrangements for the

retention of various British experts.

(b) The Provisional Councils of Government will not only have to be in existence by 1 April 1948, but will also have to be supported by administrative staffs competent to service the

whole machinery of central administration. In this

connection it may be convenient to classify Government Departments into three categories:

(i) Those departments in which Jewish and Arab interests are already separated and administered autonomously, for example, health, education, immigration, social services, industry,

and broadcasting. For the most part the men who administer these interests for the Jews are not

the same as those who organized them for the Arabs.
It seems, therefore, that it would require no intricate

processes to partition these departments to suit the

recommendations for partition. In the case of Jewish

departments, fusion may be advisable between Jewish

sections of Government Departments and the corresponding

departments administered by the Jewish Agency and

Vaad Leumi, such as Jewish education, which at present

is covered by the activities of the Jewish Agency and

Vaad Leumi supplemented by certain supervisory services
supplied by the Government.

(ii) Departments in which Arab and Jewish interests are
managed jointly so that separation into two departments

is a task of some complexity (for instance, finance

and legal department). In each of these departments

it may be necessary for the Commission to separate

gradually its functions before transfer to the Jewish

and Arab Provisional Councils.

(iii) Departments which are maintained jointly at present

and which will continue to be maintained jointly under

the Economic Board, for example, customs, railways,

communications, economic development. Here little more

seems to be required than a direct act of transfer of

departments from the Mandatory Government to the

Commission, which can re-transfer the departments to

the Joint Economic Board.

(c) The frontiers of the 16 administrative sub-districts of Palestine

do not fit in with the frontier demarcation of the Partition Plan,

and new groupings will have to be made within the frontiers

of each State. This work could be prepared in advance by the

/Commission

Commission so that the new administrative demarcation could

be put into effect on the date of termination of the Mandate.

(C) The Period between the Termination of the Mandate and the Final Evacuation of British Forces

13. As was pointed out in paragraph 3 above, there is apparently need of a further elucidation of the final intentions of the Mandatory Power concerning the transfer of its powers to the Commission. However, according to the latest official British statements the termination of the Mandate would take place on an appointed day, not later than 15 May 1948. As has been stated in Working Paper A/AC.21/W.2, it seems that in one day the Mandatory Power intends to pass from a state of full responsibility for the control of Palestine to a state of complete non-responsibility (except for areas still occupied). Conversely, the Commission would pass at the same time from a state of non-responsibility to a state of full responsibility (except for areas still occupied). The Mandatory Power has stated that it would not transfer any of its powers or responsibilities to the Provisional Councils or other local bodies, but would hand them over to the Commission. There is nothing in the Assembly's Plan to prevent the Commission immediately transferring authority to the Provisional Councils. In fact, since the Commission will hardly be in a position to carry on the administration itself, having neither the personnel nor other facilities (to collect taxes or pay wages, for example), it may appear advisable that this be done, if circumstances permit.

14. Sir Alexander Cadogan stated in Sub-Committee I on 20 November 1947, that after the Mandate was terminated, the British would be present in non-evacuated areas, not as the Mandatory Power, but as an army of occupation, and would administer those areas as an occupation zone under military law. The United Kingdom would give the Commission advance notice of its proposed evacuation of the

various areas, and on evacuation would hand over to the Commission. The situation might not be strictly legal, and looked "untidy" on paper, but it might work very well in practice. The Mandatory Power could not give full authority to the Commission on the termination of the Mandate, as it would entail a division of authority in a given area between the Commission and the British military authorities.

Mr. Martin stated also in Sub-Committee I, on 20 and 21 November 1947, that, in maintaining law and order in the areas where they remained in occupation, the military authorities must have "the last word". If the military authorities considered it might disturb law and order, they would not permit any delimitation of boundaries, nor the operation of the Provisional Councils nor the entry of the Commission in those areas. It thus might be impossible to complete the frontier demarcation until after the final British withdrawal. While he had no exact information on the withdrawal plans, he thought that the military zones or areas would not necessarily have to be understood in the technical sense, but would constitute only the actual areas that were in the physical occupation of the troops.

It will be noted that Mr. Creech Jones stated on 11 December 1947, that on the termination of the Mandate political officers would be left behind to co-operate with British troops until their departure.

It appears, therefore, that the relationship between the Commission and the British military authorities might usefully be clarified in the course of the negotiations between the Commission and the Mandatory Power.

15. With respect to the City of Jerusalem, Mr. Creech Jones stated that after the termination of the Mandate, the United Nations would be responsible for the safety of the City and its Holy Places, thus implying that British troops would have been evacuated (see Working Paper

A/AC.21/W.2, paragraph 5 (f)). During the period which will precede the establishment of the Special International Regime, appropriate measures will have to be taken to ensure essential services and the maintenance of law and order in the City and its Holy Places. An efficient administration and an adequate police must be maintained. The Commission may therefore wish to consider this question at an early date.

(D) The Period between the Final Evacuation of British Forces and the Date of Independence

16. During this period the Commission and, under its direction, the Provisional Councils of Government, will have full responsibility for all functions of Government for all of Palestine.

Mr. Creech Jones stated on 11 December 1947 that, after the final evacuation of British troops, "it may be desirable for political officers to be attached to the various government authorities set up, in order to assist British interests".