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VIEWS OF THE ARAB AND ISRAELI DELEGATIONS CONCERNING
THE RIGHTS OF MINORITIES IN ISRAEL

(Working paper prepared by the Secretariat)

1. The following note is a summary of the attitude of the Arab delegations and of the delegation of Israel to the question of the protection of the rights of the Arab minority in Israel. Both parties recognise the necessity of safeguarding such rights and agree substantially in their definition of the rights to be protected; but whereas the Arab delegations are chiefly concerned with immediate and temporary steps to protect the rights of returning refugees, the Israeli delegation contends that its Government has already provided stable and effective guarantees in its official declarations and in the provisions of the draft constitution of the State of Israel concerning both fundamental human rights for all its citizens and the safeguarding of specific rights of minorities within its borders.

Since both parties to the Palestine conflict have recently invoked the minority provisions of the Plan of Partition of 1947, those provisions are set forth below in full. The representative of Israel, addressing the ad hoc Political Committee, pointed to their incorporation in the provisional constitution of the State of Israel; the Arab delegations in Lausanne drew the attention of the Conciliation Commission to certain provisions as examples of the rights for which they wished guarantees to be furnished.

I. Provisions of the Plan for Partition with Economic Union
(Resolution of the General Assembly, 29 November 1947)

2. The Plan for partition with economic union adopted by the General Assembly on 29 November 1947* provided in considerable detail for the safeguarding of minority rights. The Plan envisaged a large Arab minority in the Jewish State; but the provisions were so drafted as to be applicable equally to the Arab and Jewish States and, with certain minor modifications, to the internationalised City of Jerusalem.

* A/519, page 131

3. Three sections of the Assembly's resolution of 29 November 1947 dealt with minority rights:

a) The Plan provided that the constitutions of the two States were to include inter alia a provision

"guaranteeing to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association" (Part I.B.10.d of Plan).

b) The Plan required the provisional Governments of the Arab and Jewish States, before the independence of the States was established, to make a Declaration to the United Nations. Chapters 1 and 2 of this Declaration dealing respectively with Holy Places, religious buildings and sites and with religious and minority rights, were to be embodied in the constitutions of the two States and recognised as fundamental laws of the States with which no law, regulation or official action could interfere. Chapter 2 (Religious and minority rights) contained the following stipulations:

1. Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be ensured to all.

2. No discrimination of any kind shall be made between the inhabitants on the ground of race, religion, language or sex.

3. All persons within the jurisdiction of the State shall be entitled to equal protection of the laws.

4. The family law and personal status of the various minorities and their religious interests, including endowments, shall be respected.

5. Except as may be required for the maintenance of public order and good government, no measure shall be taken to obstruct or interfere with the enterprise of religious or charitable bodies of all faiths or to discriminate against any representative or member of these bodies on the ground of his religion or nationality.

6. The State shall ensure adequate primary and secondary education for the Arab and Jewish minority respectively, in its own language and its cultural traditions. The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the State may impose, shall not be denied or impaired. Foreign educational establishments shall continue their activity on the basis of their existing rights.

7. No restriction shall be imposed on the free use by any citizen of the State of any language in private intercourse, in commerce, in religion, in the press or in publication of any kind, or at public meetings.*

8. No expropriation of land owned by an Arab in the Jewish State (by a Jew in the Arab State)** shall be allowed except for public purposes. In all cases of expropriation full compensation as fixed by the Supreme Court shall be paid previous to dispossession (Part I.C., Chapter 2)."

c) The plan stipulated that the inhabitants of the City of Jerusalem should enjoy certain freedoms, which were to be incorporated into the detailed Statute to be drawn up by the Trusteeship Council. The first point provided that :

"Subject only to the requirements of public order and morals the inhabitants of the City shall be ensured the enjoyment of human rights and fundamental freedoms, including freedom of conscience, religion and worship, language, education, speech and press, assembly and association and petition" (Part III. C.12).

The remaining points were identical with points 2 to 7 quoted above with reference to the Arab and Jewish States.

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II. Attitude of Israel

4. On 11 April the Conciliation Commission addressed a memorandum to the delegation of Israel*** setting forth certain preliminary measures which in the Commission's view might be taken by the Government of Israel, without prejudicing its own interests, for the purpose of creating an atmosphere favourable to the success of the Lausanne meetings. Point 3 of this memorandum suggested that the Government of Israel should issue a declaration to the effect that it respected the rights of minorities within its borders and that it intended to punish anyone infringing those rights.

* The following stipulation shall be added to the Declaration concerning the Jewish State: "In the Jewish State adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts and in the administration".

** In the Declaration concerning the Arab State, the words "by an Arab in the Jewish State" should be replaced by the words "by a Jew in the Arab State".

*** IS/9

5. Replying to the memorandum on 2 May, Dr. Eytan reminded the Commission that during its meeting with Mr. Ben Gurion on 7 April 1949, the latter had "stated emphatically that the Government of Israel fully respected the rights of minorities within its borders and would punish anyone infringing these rights."* The Israeli reply was conveyed to the Arab delegations in a memorandum dated 16 May.**

6. The point was further stressed by the delegation of Israel when it replied to the nine-point memorandum from the Arab delegations (AR/8). The standpoint of the Government of Israel, as conveyed to the Arab delegations in a Memorandum dated July 2 from the General Committee,*** was that all Arabs resident in Israel, and the refugees whose return to Israel was authorized, enjoyed full personal security equally with all other residents of the country. Freedom of movement was restricted only insofar as national security considerations required. Moreover, any Arab having acquired or acquiring Israeli citizenship was equal before the law and enjoyed the same civil and political rights and the same treatment in law and in fact as other Israeli citizens, except for such security measures as arose from the present state of emergency.

The Israeli reply also pointed out that throughout Israel freedom of worship and respect for churches and mosques were guaranteed and liberty of worship and profession assured to members of all faiths.

7. In addition to these declarations to the Commission, Israel's attitude to the rights of minorities within its borders has been made clear to the Security Council and the General Assembly on several occasions.

a) Proclamation of establishment of Jewish State

On May 15th 1948, a cablegram**** was addressed to the Secretary General of the United Nations by the Foreign Secretary of the Provisional Government of Israel announcing that the National Council had met the previous day and proclaimed the establishment of a Jewish State in Palestine. The proclamation had included a statement to the effect that the new State would promote the development of the country for the benefit of all its inhabitants, that it would uphold "full social and political equality of all citizens without

* IS/11

** AR/7

*** Com.Gen./7

**** IS/747

distinction of race, of creed or sex", that it would guarantee full freedom of conscience, worship, education, culture and language, and that it would dedicate itself to the principles of the United Nations Charter. The cablegram ended with an application for the admission of Israel to the United Nations. The declaration was subsequently promulgated as law in the Official Gazette of Israel.

b) Declaration accompanying Israel's application for admission to the United Nations of 29 November 1948

Israel renewed its application for membership on 29 November 1948, on which occasion it submitted to the Secretary-General a formal declaration stating that it :

"unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a member of the United Nations".*

c) Provisional Constitution of the State of Israel

The provisional constitution adopted by the Constituent Assembly on 24 February 1949 contains a number of provisions concerning minorities. In his explanatory statement, the author of the draft constitution, Dr. Leo Kohn, points out that in drafting the constitution he has closely adhered to the directives concerning a constitution for the Jewish State given in the General Assembly's resolution of 29 November 1947, except in so far as they had been superseded by subsequent developments. The resolution had prescribed the insertion in the constitution of a number of guarantees of fundamental rights for the benefit of the Arabs.

It will be noted that in particular Articles 4, 5, 15, 25 and 70 quoted below either closely follow the wording or give effect to the provisions of the relevant paragraphs of Chapter 2 of the Declaration.

The following articles of the Provisional Constitution are concerned with minority rights :

Article 4 (1) All persons within the jurisdiction of the State of Israel shall be entitled in equal measure to the protection of the law. No discrimination of any kind shall be made by the State between the inhabitants on the grounds of race, religion, language or sex.

* S/1093. The promotion of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, is defined as one of the purposes of the United Nations in Articles 1 (3) and 55 (c) of the Charter.

-- (2) All citizens of the State shall enjoy equal civic and political rights. No citizen shall be at a disadvantage as a candidate for public office or employment or in the matter of promotion, on account of his race, religion, language or sex.

Article 5 The official language of the State of Israel is Hebrew. Adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the courts, and before the executive and administrative authorities.

Article 15 (1) Freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, shall be ensured to all.

-- (4) The Sabbath and the Jewish Holy Days shall be days of rest and spiritual elevation and shall be recognised as such in the laws of the country. The Holy Days of other religious denominations shall equally be recognised as legal days of rest for the members of such denominations.

Article 17 All citizens of the State of Israel shall have the right to assemble peaceably without arms and to form associations, subject to such regulative provisions as may be enacted from time to time by the Chamber of Deputies. Such enactments shall contain no discrimination on grounds of race, religion, language or political belief

Article 25 (1) The State shall provide adequate facilities for primary and secondary education to be given to Jews and Arabs in their own language and cultural traditions.

-- (2) The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the State may impose, shall not be denied or impaired.

Article 70 This article provides, inter alia, for the establishment of religious courts of the Jewish, Moslem and Christian communities exercising jurisdiction in matters of personal status and of religious foundations and endowments.

d) Programme of the present Israeli Government

Point (3) of the programme of the Government of Israel, which was ratified by the Constituent Assembly on 8 March 1949

and on which the present Government secured a mandate to govern, states that one of the bases of the foreign policy of Israel shall be :

"Support for all measures which strengthen peace, guarantee the rights of man, and enhance the authority and effectiveness of the United Nations".

The Government's programme was brought to the attention of the General Assembly on two occasions : by Mr. Eban, when addressing the ad hoc Political Committee on 9 May 1949 (A/AC.24/SR.51), and by Mr. Sharett when making a statement to the General Assembly at its plenary meeting on 11 May 1949, after Israel's admission (A.PV. 207).

e) Statement by Mr. Eban to the ad hoc Political Committee, 5 May 1949 *

Mr. Eban, representative of Israel at the United Nations, told the ad hoc Political Committee on 5 May that he was authorised to make the following statement :

"The Government of Israel reaffirms its obligations to protect the persons and property of all communities living within its borders. It will discountenance any discrimination or interference with the rights and liberties of individuals or groups forming such minorities. The Government of Israel looks forward to the restoration of peaceful conditions which might enable relaxation of any restrictions on the liberty of persons or property".

f) Statement by Mr. Sharett to the General Assembly, 11 May 1949 **

During Mr. Sharett's declaration to the General Assembly on 11 May after Israel's admission to the United Nations, he stated that the Government of Israel was determined to do all that it could :

"to raise the standard of life of the common man, without distinction of race or creed, to ensure equal rights to all ... to ensure full religious freedom and add its proof that true democracy can be as fully operative for the common weal in Asia as in any other part of the world."

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* A/AC.24/SR.45

** A/PV.207

III. Attitude of the Arab States

8. The delegations of the Arab States have hitherto approached the question of minority rights primarily from the point of view of urgent measures to be taken to protect the rights and interests of returning refugees. In their nine-point memorandum of 18 May* on immediate steps to be taken in the interests of the refugees, they demanded :

"the assurance to refugees recreating their homes of the guarantees necessary to their security and peace and to their liberty, in conformity with the principles of human rights, and to this end to take all necessary measures of an international character."

The memorandum also called for the assurance of freedom of worship.

9. A further memorandum addressed to the Conciliation Commission on 21 May** proposed that refugees from areas now under Israeli control but defined as Arab areas by the Partition decision of November 1947, and refugees from Jerusalem, should be allowed to return to their homes forthwith. The memorandum urged that in order to ensure to the returning refugees personal safety and the free exercise of their rights during such time as the Israeli troops and authorities continued in occupation of these areas, the Conciliation Commission should examine and put into effect on behalf of the United Nations "the necessary international guarantees."

10. The phrase "necessary international guarantees" was clarified at a meeting between the General Committee and the Arab delegations on 2 June***. Mr. Hamade, representative of Lebanon, explained that the Arab States had in mind in the first place an undertaking to be given by the Israeli authorities to the effect that they would respect the Declaration of Human Rights of 11 December 1948 in relation to returning refugees; and in the second place, the appointment of United Nations observers under the aegis of the Commission, to supervise the carrying out of such an undertaking. Both measures were to be regarded as transitional; their objective was to provide temporary protection for the rights of refugees returning to Israel. It was necessary that they should be

* AR/8

** AR/11

*** Com.Gen/SR.11

applied within the framework of the United Nations, not within that of a peace treaty. The question of the permanent rights of Arabs in Israel and of guarantees therefore was a matter to be defined when the final settlement was discussed.

11. In further explanation, the Lebanese representative stated that the rights for which protection was sought would include, for example, Points 4, 6, 7 and 8 of Chapter 2 of the Declaration incorporated in the Partition Plan, dealing respectively with family law, personal status and religious interests; education; language; and expropriation of land. It was not considered that the safeguards provided in the Provisional Constitution of Israel* were sufficient guarantees, at any rate during the initial period. Temporary United Nations control was essential.

12. As regards the proposed United Nations observers, the Arab delegations suggested that they should be appointed by the United Nations and that their functions would be to a certain extent similar to those of United Nations Truce Observers, their field of action being to ensure that the returning refugees had in effect the guarantees necessary to their security, peace and liberty, in conformity with the principles of human rights.

* The Provisional Constitution of Israel incorporated Points 4, 6 and 7 of Chapter 2 of the Declaration.