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Functions of Mediation under the Resolution
of the General Assembly of 11 December 1948
(Working paper prepared by the Secretariat)

I. Terminology

For the settlement of international disputes different procedures may be followed when direct negotiations fail. A third party may offer its good offices which, generally speaking, will consist of various kinds of action tending to call forward negotiations between the parties. In consequence of such action the third party may offer its mediation and actually conduct negotiations between the parties on the basis of proposals it has submitted to them for their acceptance or rejection.* A dispute may also in accordance with treaty provisions be submitted to conciliation by a Commission of persons whose task generally will be to elucidate the facts, to hear the parties and to endeavour to bring them together. In some cases it will be provided that the Commission shall make a final report containing certain proposals or suggestions for the settlement of the dispute, which proposals or suggestions, however, have no binding force. Finally a dispute may in certain cases be submitted to arbitration or judicial settlement, whereby either an umpire or an international court makes a binding decision of the dispute.

II. The Hague Convention of 18 October 1907 for
the Pacific Settlement of International Disputes

Good offices and mediation are provided for in the Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes. The contracting parties are obliged

* This distinction between good offices and mediation is, however, more of a theoretical than practical character. Diplomatic practice and many treaties make no sharp distinction between the two procedures.

to have recourse, as far as circumstances allow, to good offices or mediation of one or more friendly powers (Art.2). The exercise of the right of a third power to offer good offices or mediation can never be regarded by either of the parties as an unfriendly act (Art.3, Par 2). The role of the mediator is described as "reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance" (Art.4), and it is emphasized that good offices and mediation "have exclusively an advisory character and never binding force" (Art.6).

III. Functions and Powers of the U. N. Mediator in Palestine.

In resolution 186 (S-2) adopted by the General Assembly on 14 May 1948 the functions of the Mediator were defined as follows :

- "(a) To use his good offices with the local and community authorities in Palestine to :
 - (i) Arrange for the operation of common services necessary to the safety and well-being of the population of Palestine ;
 - (ii) Assure the protection of the Holy Places, religious buildings and sites in Palestine ;
 - (iii) Promote a peaceful adjustment of the future situation in Palestine ;
- (b) To cooperate with the Truce Commission for Palestine appointed by the Security Council in its resolution of 23 April 1948 ;"

On the question how the Mediator interpreted these terms of reference, attention should be called to the following passage found on page 8 of his report :

".... The resolution of the General Assembly of 14 May empowered the Mediator to use his good offices to 'promote a peaceful adjustment of the future situation of Palestine'. The indispensable condition for the attainment of this objective would be to find some common framework of reference within which the parties would be willing to accept further mediation. In

accepted international usage the employment of "good offices" involves offering friendly suggestions to facilitate adjustment of a controversy between conflicting parties; Mediation is a consequence of the tender of good offices, and the primary task of the Mediator is to initiate proposals calculated to harmonize conflicting interests and claims. In the very nature of the case, therefore, the Mediator must strive to encourage compromise rather than strict adherence to legal principles. As indicated in Article 4 of Part II of the Hague Convention on the Pacific Settlement of International Disputes, 'the part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen....' It is equally true that the Mediator can achieve success only by achieving voluntary agreement between the parties. His decisions have no binding effect and his suggestions or proposals may be rejected at will by the parties"...

IV. The Resolution of the General Assembly of 11 December 1948.

The General Assembly, by its resolution of 11 December 1948, envisaged that the Conciliation Commission might exercise two categories of functions which had already been given to the Mediator. These functions are described in Part 2(a) and (c) of the resolution reading as follows :

"2. ESTABLISHES a Conciliation Commission consisting of three States, Members of the United Nations, which shall have the following functions :

(a) To assume, insofar as it considers necessary in existing circumstances, the functions given to the United Nations' Mediator on Palestine by the resolution of the General Assembly of 14 May 1948 ;

(c) To undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine or to the United Nations Truce

Commission by resolutions of the Security Council ; upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated ;"

With respect to the latter category of functions it will be recalled that the Security Council, by the resolution adopted on 11 August 1949, decided that all functions assigned to the Acting Mediator had been discharged and that he was, therefore, relieved of any further responsibility under Security Council resolutions.

For the correct understanding of the first category of functions, it is believed useful briefly to review the legislative history of sub-paragraph 2(a) of the resolution of the General Assembly of 11 December 1948.

V. Paragraph 2(a) of the Resolution of the General Assembly of 11 December 1948.

Paragraph 2(a) of the resolution of the General Assembly which provides for mediation by the Conciliation Commission originated in the first revision of the draft resolution submitted by the United Kingdom to the First Committee of the General Assembly (document A/AC.1/394/Rev. 1). Paragraph 3(a) of this document provided that a Conciliation Commission should be established and have, inter alia, the following functions :

- (a) to assume the functions given to the United Nations Mediator in Palestine by the resolution of the General Assembly of 14 May 1948 *

During the debates in the First Committee, the representative of the Provisional Government of Israel expressed the opposition of his Government to paragraph 3 of the United Kingdom text saying that the functions of the Mediator were

* See above under III.

either obsolete or covered by other parts of the draft resolution and that there was contradiction between the various parts of the resolution. The representative of Australia stated likewise that in his view, the assumption of the Mediator's functions by the Commission was an unnecessary complication, as many of those functions were now obsolete.

In reply the representative of the United Kingdom stated that it was not in fact contradictory to provide that the Conciliation Commission could seek a direct solution after entering into consultation with the Governments concerned, and that, moreover, that Commission could act as mediator. It was wise to assign the Conciliation Commission extensive powers in the event that the parties should fail to reach an agreement by such negotiations. Regarding the wording of paragraph 3(a) of the United Kingdom draft resolution, it would be reasonable to trust the Conciliation Commission to show the necessary judgment when assuming the functions of the Mediator. He therefore submitted an amendment making it clear that the Conciliation Commission would assume these functions "insofar as it considers necessary in existing circumstances".

When the vote was taken, sub-paragraph 3(a) of the United Kingdom draft resolution, with the addition proposed by the representative of United Kingdom, was adopted 26 votes to 15, with 11 abstentions.

VI. Conclusions

From what has been developed above, three conclusions can be drawn. In the first place, it would seem that paragraph 2(a) of the resolution of the General Assembly presents a sufficiently clear legal basis for mediation within the powers of mediation given to the Mediator by the resolution of the General Assembly of 14 May 1948. In the second place, it follows directly from the text of the paragraph that the Commission itself may take the initiative in such action without having to await any formal request from one or both of the parties. In the third place, it appears possible to discard the argument that the functions of the Mediator under the resolution of 14 May 1948 now are obsolete, such argument having already been advanced and rejected by the decision of the General Assembly.