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ORIGINAL: ENGLISH

Analysis of paragraph 11
of the General Assembly's Resolution
of 11 December 1948*

(Working paper prepared by the Secretariat)

PART ONE

The General Principle

"The General Assembly. . . resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date. . .".

The following are points of the above principle which might have to be discussed in a mixed Arab-Israeli committee on refugees:

1. Who are the refugees?

During the debate preceding the adoption of this text, the United Kingdom delegation, which had sponsored the draft resolution, stated in reply to a question that the term "refugees" referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine.

That the General Assembly accepted this interpretation becomes almost certain if it is considered that the word "Arab", which had preceded the word "refugees" in the first two texts of the United Kingdom draft resolution (see Annex), was omitted in the final text which was approved by the Assembly. Reference to the Mediator's report, which equally mentioned the Arab refugees specifically, was also struck out of the final text of the resolution. (However,

* The question of compensation is not included in this study.

during the debate in the First Committee, most of the discussion on refugees centered exclusively around the "Arab" refugees).

According to the above interpretation the term "refugees" applies to all persons, Arabs, Jews and others who have been displaced from their homes in Palestine. This would include Arabs in Israel who have been shifted from their normal places of residence. It would also include Jews who had their homes in Arab Palestine, such as the inhabitants of the Jewish quarter of the Old City. It would not include Arabs who have lost their lands but not their houses, such as the inhabitants of Tulkarm.

The above interpretation has not been specifically disputed by the parties directly concerned.

2. What does the term "those wishing to return" imply?

From the debates in the First Committee it emerges that by the above term the General Assembly intended to confer upon the refugees as individuals the right of exercising a free choice as to their future. The choice was between repatriation and compensation for damages suffered, on the one hand, or no return and compensation for all property left behind, on the other.

The Arab States upheld this interpretation.

Israel disputed this right of the refugees and stated its position as being that the refugee question was not simply one of individual rights but one affecting the fate of countries and peoples and that the desirability of achieving demographic homogeneity in order to avoid minority problems was the principle which should govern the process of repatriation.

During the Lausanne meetings the Arab States proposed, first, the immediate return of all Arab refugees to territory under Israeli control. Later they proposed the repatriation of refugees originating from territory outside the Jewish state of the Partition Plan but actually under Israeli control. Finally, they put forward the idea of territorial compensation for refugees.

Israel, on the other hand, proposed that it should annex the Gaza strip and grant Israeli citizenship to its inhabitants, including the refugees. When this

proposal had been rejected it offered to accept the return of 80,000 refugees. The Government of Israel, however, has reserved its position in connection with this last offer.

There is a corollary implication to the term "those wishing to return" namely, the right of the refugees to choose not to return (see 2nd Progress Report). In this connection Syria and Jordan have expressed their readiness to resettle those refugees not wishing to return to Israel.

As regards the actual exercise of the right of the refugees to choose, it is evident that the use of the word "wishing" implies free choice. Such choice would have to be made in full knowledge of the alternative conditions involved both on the physical and the political plan as was indicated by the Commission in its Second Progress Report.

3. What is the meaning of the term "to their homes"?

There is no doubt that in using this term the General Assembly meant the home of each refugee, i.e., his house or lodging and not his homeland. This is indicated by the fact that two amendments using the term "the areas from which they have come" were rejected. Furthermore, by implication it would appear that if the refugees not returning are to be compensated for their property, those returning would reoccupy their homes and be compensated only for losses and damages. In this connection the United Kingdom delegate stated in the First Committee that "the terms of paragraph 11 of the United Kingdom draft resolution would apply to all refugees, and the Arabs who had previously been living in the New City of Jerusalem would be entitled either to return to their homes or to obtain compensation for their losses".

The Arab States and the representatives of the Arab refugees have endorsed this interpretation and have even requested the Commission to take action with a view to preventing the deterioration of Arab property in Israel pending the return of the refugees. The Arabs have also linked this right with the political guarantees to be given to the Arab minority in Israel, guarantees which were to be supervised by the United Nations; in support of their position the Arabs have referred to the Declaration of Human Rights.

The Israelis, on the other hand, have disputed this interpretation of the term "to their homes" and have maintained that it means homeland. They have reserved the right to resettle any returning refugees in places other than their original homes and according to Government plans.

The method seems to have been put into effect as regards certain elements of the Arabs actually resident in Israel.

4. What are the implications of the term "and live at peace with their neighbours"?

At first sight it would appear that this phrase was intended to place a limiting condition upon the return of the refugees, i.e., an obligation on the part of the returning refugees and a right on the part of the authorities in whose territory the refugees would be reestablishing themselves. On further examination, however, it becomes evident that the reverse is also true. This latter aspect is examined in paragraph 5 below. As regards the former, the General Assembly's intention seems to have been mainly directed towards preventing the creation of a potential fifth column in Israel and it was specifically mentioned in the debate of the First Committee that the returning refugees would be unarmed. Pursuing this line of argument further it would seem that the returning refugees would be obligated to give in advance assurances of their intention to live at peace once they had returned. Conversely, the authority to whose territory the refugees would be returning would have the right to require such assurances, which might either take the form of a written undertaking by the refugees or a reservation by the authority of the right to exercise severe sanctions against those violating the above condition. Furthermore, the authority in question might reserve the right to exercise its veto on the return of any refugee whose past action, it considered, indicated that he was not peace loving. Non participation in the Palestine war might be taken as the criterion of future intentions and the onus of proof of innocence might be placed on the refugee wishing to return. Neither the Arabs nor the Israelis have made their position entirely clear on this point.

5. What are the implications of the term "Should be permitted to do so"?

To what does this injunction refer? and to whom is it directed?

As regards the former it applies in the first place to the return of those refugees who wish to do so; in the second place it applies to the wish of those refugees to live at peace with their neighbours; thirdly and indirectly it applies to the right of the refugees to express their wishes; and finally, by implication, to the right of the refugees to choose not to return.

In general the injunction "to permit" is of course addressed to the Governments and authorities concerned, as is the whole of the General Assembly's resolution, except where other Governments or organs are specifically mentioned.

In connection with the return of the refugees, it must be assumed that the injunction is addressed primarily to the Governments into whose territory the refugees will enter; secondarily to the Governments in whose territory the refugees actually find themselves; in the third place to the Governments through whose territory the refugees might have to pass in the course of their return; and finally to any organ or person who might wish to hinder the return of the refugees. In connection with the right of the refugees to live at peace with their neighbours, the injunction is addressed to the Government in whose territory the refugees will be settling and impose an obligation on this Government to ensure the peace of the returning refugees and protect them from any elements seeking to disturb that peace.

In connection with the right of the refugees to express their wishes, the injunction applies mainly to the Government in whose territory the refugees actually reside and impose on this Government the obligation of not influencing or in any way hindering the exercise of free choice by the refugees.

In connection with the right of the refugees to choose not to be repatriated the injunction applies to all the Governments concerned by implication only.

6. What is the meaning of the term "at the earliest practicable date"?

In the original United Kingdom draft resolution the word "possible" was used instead of the word "practicable". An amendment was proposed by Guatemala

(see Annex) to add the phrase "after the proclamation of peace between the contending parties in Palestine, including the Arab States...."

This amendment was opposed by the United Kingdom representative, who stated that "the Committee must face the fact that it might be many years before a formal peace was established in Palestine. One of the possibilities, however, was that conditions of stability might be re-established in fact without any agreement on the terms of a formal peace and his delegation considered that as soon as such reasonable stability had been restored in Palestine, the problem of the return of those unfortunate people should be given urgent consideration".

The representative of Israel declared the following:

"The Committee should demand that the Arabs assume a responsible attitude and not prolong the war. The facts had been taken into consideration by the representative of the United Kingdom when he said that measures to remedy the situation should be taken as soon as possible after stable conditions had been established. Mr. Eban believed that some such qualifying phrase might be inserted in the resolution to emphasize to the parties that the consequences of war could only be settled at the end of the war".

The United States delegate stated that:

"His delegation could not accept the proclamation of peace as a prerequisite for the return of refugees and hoped that the Assembly would not make this a condition. It was recognized that the bulk of the refugees could only return in peaceful circumstances. However, they need not wait for the proclamation of peace before beginning. These unfortunate people should not be made pawns in the negotiations for a final settlement".

In accordance with the remarks of the representative of Israel, Mr. Beeley proposed replacing the word "possible" in the second sub-paragraph by the word "practicable".

The above Guatemalan amendment was rejected by 37 votes to 7 with 5 abstentions.

Paragraph 11 of the United Kingdom draft resolution, as amended orally by the representative of the United Kingdom was adopted by 29 votes to 6 with 13 abstentions.

From the above it would appear that the clear intention of the Assembly was not to make the repatriation of the refugees conditional upon the establishment of a formal peace. In deference to the Israeli arguments the Assembly agreed that the refugees should be allowed to return "when stable conditions had been established."

It would appear indisputable^{ut} that such conditions were established by the signing of the four Armistice Agreements.

PART II

The Obligation of the Conciliation Commission

"The General Assembly instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees"

Since the question of compensation is not dealt with in this paper and the relief, resettlement and rehabilitation aspects of the problem have been undertaken by the United Nations Relief and Works Agency, it remains to examine the Commission's duties as regards repatriation.

The Oxford dictionary defines the verb "to facilitate" as follows: make easy, promote, help forward, (action or result).

This definition would seem to imply secondary or auxiliary, rather than primary or initiatory, action, i.e. that the matter to be facilitated must already be in motion before it can be helped forward or its progress made easy.

In the particular question of repatriation it might be considered that the original impulse was given by the General Assembly when it enunciated the right of the refugees to be repatriated and resolved that they should be permitted to do so.

Since it is not in the Conciliation Commission's power to permit or indeed to hinder the actual repatriation of the refugees, it must be assumed that it was not among those to whom this positive injunction was addressed. On the other hand, since the refugees cannot return unless they receive permission it might be considered that the Commission's task begins with facilitating the granting of such permission. Nothing in the instructions given to the Commission states that in this undertaking it is obligated to comply to the letter with the terms of the preceding subparagraph of paragraph 11, e.g., that it is compelled to facilitate the granting of permission to return for all refugees wishing to do so. Even in this initial stage the auxiliary nature of the Commission's duties would seem to apply.

If acceptance by Israel of the return of the refugees seems most likely to be secured by negotiations it is not primarily the Commission's task to undertake such negotiations. On the contrary it would appear that the Commission's duty should be restricted to facilitating these negotiations between the parties directly concerned.

In this role the Commission can be of great assistance to the parties in reaching agreements, by submitting to them proposals or plans prepared in consultation with the appropriate organizations.

The above in no way implies that the Commission would disregard its duty of safeguarding the principle laid down by the resolution or of reporting its violation.

After the principle of repatriation has been accepted the Commission can offer its services to assist the parties in the implementation of the actual measures agreed upon.

Finally, the Commission can endorse the agreements arrived at and supervise their application.

The above appears to have been the General Assembly's intention in avoiding the use of a stronger term such as "to assure the repatriation" Furthermore in the debate preceding the adoption of the resolution of 11 December 1948 it was implied that the Commission should have no executive functions or powers of arbitration. From the attached Annex showing the evolution of paragraph 11 it will be seen that the original United Kingdom draft remained unchanged until the end as regards the term "facilitate", in spite of two amendments specifically intended to alter the Commission's functions in this respect.

The first of these amendments was put forward by Australia and was intended to limit the Commission's duties to consultations with certain organs and agencies of the United Nations for the purpose of working out plans for repatriation.

The second amendment, submitted by Guatemala, proposed the insertion of the phrase "to use its good offices" between the words "Commission" and "to facilitate".

Both these amendments were rejected.

During the debate on the Australian amendment the United Kingdom representative stated that his delegation's wording was stronger and more precise.

In connection with the Guatemalan amendment and in reply to an appeal by New Zealand that the term "to use its good offices" be included, the United Kingdom representative made the following statement: The insertion of the words "to use its good offices" might introduce some confusion, for this phrase was generally used in relation to negotiations between opposing parties and might cause the Commission to feel that its task in so far as this problem was concerned was limited to such action. (It should be noted that the problem referred to was that of compensation).

Expressing his views on the same point the Australian representative stated that the Commission should not be entrusted with functions it would be unable to carry out. According to the United Kingdom draft, the Commission should "facilitate the repatriation, resettlement, etc." This implied taking positive steps and it did not seem that the Commission would be in a position to do so. The terminology of the Guatemalan amendment would be better in this passage. Mr. Hood recalled the Australian amendments which related to this point and which referred to consultations with appropriate organs of the United Nations. He believed that such a provision should be included here.

The United Kingdom representative also considered that reliance should be placed on the Conciliation Commission, in consultation with the Director of the UNRPR, to interpret properly the words "at the earliest possible date" in the United Kingdom draft resolution.

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ANNEX

EVOLUTION OF PARAGRAPH 11
OF GENERAL ASSEMBLY RESOLUTION

11 December 1948

REFUGEES

UNITED KINGDOM

Endorses the principle stated in part one, section V, paragraph 7 * of the Mediator's report and resolves that the Arab refugees should be permitted to return to their homes at the earliest possible date and that adequate compensation should be paid for the property of those choosing not to return and for the property which has been lost as a result of pillage, confiscation or of destruction; and instructs the Conciliation Commission to facilitate the repatriation, resettlement, and economic and social rehabilitation of the Arab refugees and the payment of compensation, and to enter into contact with the Director of United Nations Relief for Palestine Refugees;

UNITED STATES AND COLOMBIA

Resolves that the Arab refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest possible date and that adequate compensation should be paid for the property of those choosing not to return; and instructs the Conciliation Commission to

* "Various acts of looting, pillage and brigandage of great extent as well as cases of wanton destruction of villages have been frequently reported by reliable sources. Without a doubt, the responsibility for the restitution of private property to its owners and the payment of compensation for property destroyed without reason falls upon the provisional Government of Israel independently of the reparations which this Government must claim from the Arab States."

facilitate the repatriation, resettlement, and economic and social rehabilitation of the Arab refugees and the payment of compensation;

GUATEMALA

Resolves that the Arab refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest possible date after the proclamation of peace between the contending parties in Palestine, including the Arab States, and that adequate compensation should be paid for the property of those choosing not to return; and to instruct the Conciliation Commission to use its good offices to facilitate the repatriation, resettlement and economic and social rehabilitation of the Arab refugees and the payment of compensation;

AUSTRALIA

To call into consultations all those organs and agencies of the United Nations which may assist in working out plans both for the resettlement of Palestinian refugees and displaced persons and for their repatriation where feasible in the areas from which they have come;

POLAND

To call into consultation all those organs and agencies of the United Nations which may assist in working out plans both for the resettlement of Palestinian refugees and displaced persons and for their repatriation where feasible in the areas from which they have come;

RESOLVES that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to the property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

INSTRUCTS the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees, and through him, with the appropriate organs and agencies of the United Nations.

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