

RESTRICTED

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Analysis of paragraphs 4, 5 and 6 of the
General Assembly's Resolution of 11 December 1948

(Working paper prepared by the Secretariat)

1. The General Assembly...

"4) REQUESTS the Commission to begin its functions at once, with a view to the establishment of contact between the parties themselves and the Commission at the earliest possible date;

"5) CALLS UPON the Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council's Resolution of 16 November 1948 and to seek agreements by negotiations conducted either with the Conciliation Commission or directly with a view to the final settlement of all questions outstanding between them;

"6) INSTRUCTS the Conciliation Commission to take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them".

2. The call to extend the negotiations provided for in the Security Council's Resolution of 16 November 1948 would be of little present interest to the Commission were it not that it indicated both explicitly and implicitly the Council's and the Assembly's intention that the negotiations to be carried out under the auspices of the Commission were to lead to a permanent peace in Palestine. It should be pointed out, however, that the use in paragraph 5 of the more indefinite term "the final settlement of all questions outstanding between them" does not appear to have been accidental. The Assembly does not seem to have

wished to impose on the parties the obligation of reaching a formal agreement, considering it sufficient that normal conditions of stability should return to the Middle East. The following statement of the United Kingdom representative is of interest in this connection:

"A formal act of agreement was not the only way in which the principle of consent could find expression. In the present situation in Palestine, where high feelings had been aroused on both sides and direct relations between the leaders were precarious, if not impossible, the possibility should not be overlooked that a settlement might be arrived, based upon the passive acquiescence, rather than upon the active participation of the parties involved".

3. It should be noted that the questions to be settled were those outstanding between one government or authority and another and not those outstanding between Israel on the one hand and the Arab States on the other. The conclusion that the Assembly's intention should be interpreted thus is strengthened in retrospect by the separate character which the Armistice negotiations later assumed.
4. The instructions given to the Conciliation Commission in paragraphs 4 and 6 of the resolution can for the sake of convenience be considered as consisting of two stages: the establishment of contact with and between the parties; and the taking of steps to assist in the achievement of a final settlement. The first stage can be further sub-divided into two: the establishment of contact between the parties and the Commission and the establishment of contact between the parties themselves. Establishment of contact can of course be of various kinds. In the case of the Commission and the parties it must be direct, since there is no available intermediary, but it can either be personal or by correspondence. In the case of the parties themselves it can be established either directly or indirectly through the intermediary of the Commission.
5. As far as the Commission's contact with the parties was concerned no difficulty was encountered by the Commission in establishing direct official relations by personal contact with the various Governments and

their representatives upon the Commission's arrival in the Middle East.

6. As for the relations between the parties themselves, the Commission has thus far been able to establish only indirect contact between them through its own intermediary.* The Commission has been hampered in its efforts to bring the parties into direct touch with each other by the choice given to them in paragraph 5 of the resolution between direct and indirect negotiations.

Up to the present, the Commission has considered that it could best fulfil its mission of assisting the parties to achieve a final settlement of all questions outstanding between them by utilizing a procedure that was acceptable to the parties, rather than by trying to press for the inauguration of direct negotiations which had been refused by the Arab States.

7. The Commission has felt justified in utilizing this approach on the basis of paragraph 5 of the resolution which, in its opinion, offers the parties the following three alternatives:

- 1) Negotiations conducted directly ~~by~~ without the Commission;
- 2) Negotiations conducted directly with the participation of the Commission;
- 3) Negotiations conducted indirectly through the intermediary of the Commission.

The Commission has based its position on the following interpretation of the term "to seek agreement by negotiations conducted either with the Conciliation Commission or directly": the word "directly", since it follows as an alternative of negotiations conducted with the Commission is taken simply to mean without the Commission and consequently outside the framework of the Commission's terms of reference.

* Except for the Mixed Committee on Blocked Accounts which is composed of an Arab and an Israeli member under the chairmanship of a representative of the Conciliation Commission.

The first alternative, i.e., negotiations conducted with the Commission, has been taken to mean either "through the intermediary of" or "in the presence and with the assistance of" the Commission. On the basis of this interpretation, the Commission has been bound to admit that by accepting negotiations conducted exclusively "through the Commission" and not "in the presence and with the assistance of the Commission", one party could not be considered to have disregarded the invitation contained in paragraph 5.

The Commission has been reinforced in its conviction that the above is the true interpretation of the intention of the General Assembly by the explanatory statement made in the course of the final debate on the draft text of the resolution. On this occasion, the Canadian delegate, moving the substitution of 'with' for 'through' in paragraph 5, stated that this amendment "would give the Conciliation Commission greater flexibility in the work of consultation, conciliation and negotiation that lay before it". *

8. It must be pointed out that alternative interpretations of the above term can be held. The fact that the Assembly consciously struck out the word "through" and substituted another can be considered as excluding the alternative of indirect negotiations. On the other hand, the term "with the Commission" can be interpreted narrowly to mean the opposite of "directly", i.e., "indirectly with the Commission", thus excluding the possibility of direct negotiations under the auspices of the Commission.

* Since the word "through" would have had the effect of limiting the wide possibilities of action given to the Commission in paragraphs 4 and 6 to mere participation in indirect negotiations as an intermediary, the substitution of the word "with", for the purpose of giving the Commission greater flexibility in its task, is considered as having been made with the intention of enlarging the invitation addressed to the parties for the purpose of adding to the Commission's possible lines of action that of initiating direct negotiations conducted under its auspices.

*Amendment
29.7.50.*

Both these interpretations appear to the Commission to be foreign to the intention of the General Assembly, which sought to give the Commission the greatest possible latitude in the choice of method.

9. During the debate both in the first Committee and in the plenary session it was of course pointed out by various speakers, including the sponsors of the draft, that the Commission would have no way of forcing the parties to negotiate directly, other than by the authority of the General Assembly embodied in its recommendation. Should this recommendation not be accepted and the Commission fail to bring the parties together, it was envisaged that the Commission would report its failure to the Assembly. In this connection the representative of the United Kingdom described the Commission's proposed functions as follows:

- 1) It would bring the parties together;
- 2) It would initiate negotiations between them;
- 3) It would assist in promoting agreement by making suggestions and proposals;
- 4) It would report to the Assembly, and, in the event of failure, would recommend suitable action for the latter's consideration;
- 5) Its task would be one of conciliation only and it would not have any power to arbitrate.

10. As regards the instructions given to the Commission "to take steps to assist the Governments..." the following statement is interesting and self-explanatory:

- Mr. Pearson (Canada) (First Committee, 3 December 1948):

In his opinion the present wording was too negative and gave the impression that the Conciliation Commission must wait for its assistance to be requested. He suggested the insertion of the words "to take steps" after the word "Commission" and explained that this wording would give the Commission the right to take the initiative, although its action must of course remain within the limits of conciliation. (The proposed amendment was adopted).

11. The task entrusted to the Commission was interpreted as follows by Mr. Hector MacNeill, the United Kingdom representative (Plenary Session, 11 December 1948):

" The Conciliation Commission should be free to seek the consent of both Arab and Jews to some form of settlement by any means which might seem to the Commissioners appropriate and practical. The fact that his delegation did not wish to narrow down the principle of consent by limiting the Commission to the facilitation of a direct agreement between the parties did not, of course, imply that it wished to give any powers of compulsion to the Commission. The Commission would not be able to arbitrate but would be dependent upon the goodwill of the parties and the results which it might achieve would be based at least upon the passive co-operation of the parties concerned. In the view of the United Kingdom Government, however, the Commission should be free to use all the powers of persuasion at its disposal and to assist the leaders on both sides to arrive at practical results, without necessarily passing through formal procedures which it might be impossible for them to contemplate, much less to put into practice, in present circumstances.

" Indeed, he would suggest that one of the functions of the Conciliation Commission should be to prevent whichever party was inferior in military strength from being driven into direct negotiations under duress. In such circumstances, it would surely be the duty of the Commissioners to interpose the influence of the United Nations, with the object of establishing a settlement reflecting, not the immediate and perhaps temporary balance of military strength in the area, but rather the more lasting interests of the people concerned.

" The United Kingdom Government would welcome and encourage any hope which might appear of direct negotiations conducted under the auspices of the Conciliation Commission. It could not, of course, any more than any other Member of the United Nations, countenance any attempt to force either party into such negotiations against its will. That would be ineffective and, much worse, it would be unjust. It was the earnest hope of the United Kingdom that, whether or not direct contact between Arab and Jewish leaders could be established and maintained, the Conciliation Commission would succeed in obtaining their consent or acquiescence to a reasonable settlement which would contribute, not only to the restoration of normal life in Palestine, but also to the stability and progress of the entire Middle East".