

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

RESTRICTED
AR/56
4 October 1951
ORIGINAL : ENGLISH

Memorandum of the Conciliation Commission for Palestine
addressed to the Delegations of Egypt, Jordan,
Lebanon and Syria

1. The Conciliation Commission for Palestine desires to make certain comments on questions raised during the meeting held between the Commission and the delegations of Egypt, Jordan, Lebanon and Syria on 25 September 1951 concerning the Commission's structure and mediatory functions and the principles underlying its mediatory proposals.
2. The Commission is a body composed of three sovereign States, under instruction by the General Assembly to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them. The Commission as a body functions under instructions from the General Assembly. The representatives of the three States receive their instructions from their respective Governments.
3. In a meeting between the Conciliation Commission and the Arab delegations held in New York on 14 November 1949, Mr. de Boisanger (France) stated in this connection that "the Commission was clearly defined in the resolution as composed

of three States Members of the United Nations; their representatives could not act in their own capacity. Action was taken by the Governments, not in their own name, but in the name of the United Nations and in the interests of the international community".

4. Mostafa Bey (Egypt) then affirmed that "no misunderstanding existed as regards the nature and obligations of the Commission".

5. One of the functions given to the Commission by the General Assembly is to assume, insofar as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine. Another function of the Commission is to carry out the specific directives given to it by the General Assembly resolutions of 11 December 1948 and of 14 December 1950.

6. The Commission has considered it necessary under existing circumstances to assume the functions of the Mediator. In that rôle it has prepared a pattern of proposals intended to assist the parties in the achievement of a final settlement of the questions outstanding between them.

7. The view that the Commission should take this step has been repeatedly expressed by members of the Arab delegations. For example, Fawzi Pasha Mulki, delegate of Jordan, stated at a meeting with the Commission in New York on 22 October 1949 that "concerning the future procedure of the Commission and its method of work, the Commission must consider the present stand of the Arab delegations as their final one, beyond which they could not go until the Commission itself presented suggestions or proposals".

8. In preparing its pattern of proposals, the Commission has kept in mind its other function, namely, to carry out the specific directives given to it by the General Assembly resolutions of 11 December 1948 and of 14 December 1950.

9. The specific instructions thus given to the Commission, as far as they concern the present conference, are the following:

- (a) to take steps to assist the governments and authorities concerned to achieve a final settlement of all questions outstanding between them;
- (b) to seek arrangements among the governments and authorities concerned which will facilitate the economic development of the area, including arrangements for access to ports and airfields and the use of transportation and communications facilities;
- (c) to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.

10. The functions of the Commission, therefore, are: to assist, to seek arrangements, and to facilitate - by the machinery of conciliation or mediation. It is not the function of the Commission to impose solutions recommended by the Assembly to the parties. The General Assembly makes recommendations to the parties (for example, the recommendation to permit the return of refugees) and it gives instructions to its subsidiary bodies (for example, to facilitate that return if and when the party concerned accepts that recommendation).

11. The Commission, particularly in its mediatory rôle, has not only the right but the duty to make realistic give-and-take

proposals on all outstanding questions - those which have been the subject of specific General Assembly recommendations as well as those which have not.

12. It is clearly impossible to facilitate any procedure unless at least some measure of agreement on that procedure exists between the parties. To bring about that required measure of agreement is the purpose of the present meetings and of the pattern of proposals submitted to the parties for their consideration. Every point included in this comprehensive pattern of proposals lies within the framework of the resolutions of the General Assembly. That does not mean, however, that the Commission, in its mediatory rôle, is bound to demand strict adherence to every legal principle set forth in a General Assembly resolution.

13. This view was expressed by the late United Nations Mediator on Palestine, Count Bernadotte, in his Progress Report to the General Assembly in 1948: "In the very nature of the case, the Mediator must strive to encourage compromise rather than strict adherence to legal principles". This insistence that the Mediator's efforts must not be restricted by legal principles was also voiced by Dr. Bunche in the course of the Third General Assembly. In submitting the Mediator's Progress Report to the Assembly, Dr. Bunche stated that "Count Bernadotte had, quite correctly, held that it was not for him to pass judgment on the validity and justice of decisions previously taken by the community of nations. However, the Mediator had not felt himself bound, under his terms of reference, by all the detailed provisions of the resolution 181 (I) of 29 November 1947 (Partition resolution)".

14. These views of the Mediator and the Acting Mediator were not challenged in the General Assembly. On the contrary, some of the delegates expressed the view that mediation should keep entirely aloof from General Assembly resolutions bearing on the issue under mediation. The delegate of Syria, for example, Faris el Khoury, stated in the Third Session of the General Assembly that "it should not be forgotten that the General Assembly was neither a world government nor a court of justice, nor a legislative power; it therefore had no right to impose its recommendations or decisions such as the partition resolution". In the same session, the delegate of the Arab Higher Committee, Ahmad Shukairi, expressed the view that "genuine mediation should have held itself aloof from the partition resolution of the General Assembly".

15. In drawing up the comprehensive pattern of proposals which it submitted to the parties, the Commission has not held itself aloof from the relevant resolutions of the General Assembly. On the contrary, it has carefully designed the proposals as a means by which the spirit of these resolutions can be implemented in the best interests of all concerned: the Arab States, the State of Israel, the refugees and the world community.
