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Committee on Trusteeships, 1946.

The Jewish Agency for Palestine

MEMORANDUM

March 22, 1946

To: Mr. Lipsky
Dr. ✓ Silver
FROM: Dr. Wise
XXXX Mr. Epstein

FROM: Meyer W. Weisgal

The enclosed letter, addressed to the UnderSecretary of State, Colonial Office, dated March 14, 1946, was received today with a covering note from Linton to the effect that Mr. Fraser, the Chairman of the Committee on Trusteeships, should be seen and presented with all the arguments in line with this letter.

I am not quite sure whether Mr. Fraser is a member of the Security Council and whether he will attend the forthcoming meetings in New York, beginning March 21.

In any event it seems to me that the American members of the Trusteeship Commission should be approached on this matter. If Goldmann were here, this - of course - would have been his task. In his absence I should like to have instructions from the members of the Executive what action should be taken.

14th March, 1946

JL/RSt

The Under Secretary of State
Colonial Office
Downing Street, S.W.1.

CONFIDENTIAL

Sir,

I am directed by the Executive of the Jewish Agency for Palestine to refer to their letter of the 22nd January, addressed to the Foreign Office on the subject of Transjordan, a copy of which was sent to the Colonial Office at the time. Since that letter was written, the Emir Abdullah has come to London at the invitation of His Majesty's Government, and the Executive understand from press reports that discussions are proceeding regarding the future of Transjordan. The Executive desire, therefore, as mentioned in their letter of 22nd January, to make further representations on this subject.

2. Transjordan is part of the mandated territory of Palestine. It is described in the Mandate simply as "the territories lying between the Jordan and the eastern boundary of Palestine". When the Council of the League of Nations agreed, in 1922, to the British proposals with regard to Article 25 of the Palestine Mandate, the British representative (Lord Balfour) gave an assurance that those proposals "only aimed at maintaining in the area to the East of the Jordan the general regime of the Mandate for Palestine". (Minutes of the 21st Session of the Council, League of Nations Journal, November 1922, p. 1188).

3. Article 25 of the Mandate provides that "in the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the Mandatory shall be entitled, with the consent of the Council of the League of Nations, to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of Articles 15, 16 and 18". The British proposals referred to in the preceding paragraph were to the effect that the provisions of the Mandate relating to the Jewish National Home should not apply to Transjordan. Article 25 authorized the postponement or withholding of the application to Transjordan of the provisions of the Mandate relating to the Jewish National Home, but did not authorize their annulment in relation to Transjordan so long as the Mandate was in force. This view is fortified by the French text of Article 25, which uses the words "de retarder ou suspendre". The Mandate for Palestine is still in force, and the Secretary of State for Foreign Affairs made it clear in his statement in the House of Commons on November 13th, 1945, that "His Majesty's Government cannot divest themselves of their duties and responsibilities under the Mandate while the Mandate continues".

4. A decision on the part of His Majesty's Government to sever Transjordan from the rest of the mandated territory and to establish it as a sovereign independent State is, in the

submission of the Executive, not in harmony with the duties and responsibilities accepted by His Majesty's Government under the Mandate. It would, apart from other considerations, be inconsistent with Article 5 of the Mandate, which provides that "the Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or placed under control of, the government of any foreign Power".

5. The Executive further submit that it is not competent for the Mandatory Power to put an end to the Mandate in relation to that part of the mandated territory which lies East of the Jordan. If the consent of the Council of the League of Nations was required by Article 25 of the Mandate for any proposal to postpone or withhold the application of Transjordan of particular provisions of the Mandate, it follows a fortiori that the Mandatory cannot be entitled to decide on his own account that the Mandate as a whole shall cease to apply to Transjordan. Article 8 of the Mandate, which speaks of "the expiration of the mandate", and Article 28 ("in the event of the termination of the mandate") are clearly framed on the assumption that there is one Mandate, capable of "expiration" or "Termination" as a whole, and not a Mandate divisible into two parts, relating respectively to the mandated territory east and west of the Jordan.

6. Article 80 of the Charter of the United Nations provides, in paragraph (1), that

"Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79 and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Charter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties."

The termination of the Mandate for Palestine in respect of Transjordan would if it is submitted, be inconsistent with the terms of the Mandate, which paragraph 1 of Article 80 of the Charter is clearly designed to keep in force, subject only to any alterations which may be sanctioned by such an agreement as is mentioned in that paragraph.

7. Article 80 (1) of the Charter is also designed to preserve, pending the conclusion of trusteeship agreements, "the rights whatsoever of any states of any peoples" (clearly including the Jewish people) in relation to mandated territories. Since the Mandatory Power is not authorized by the Mandate for Palestine to exclude Transjordan from the application of Article 2, but is authorized only to "postpone or withhold" its application to Transjordan, the Jewish people has a contingent interest in the retention of Transjordan within the scope of the Mandate. Since the termination of the Mandate in respect of Transjordan would extinguish that contingent interest, it would involve, contrary to Article 80 of the Charter, a derogation from the rights of the Jewish people.

8. In support of their representations against the proposed change in the status of Transjordan, the Executive beg leave to refer to the views expressed in the Fourth (Trusteeship) Committee of the General Assembly of the United Nations by Mr. Fraser, who had served as Chairman of the Trusteeship Committee at the San Francisco Conference:

"Certain territories might be ready for self-Government. In this event, there should be no hesitation about placing such territories under trusteeship and getting the support of the whole of the United Nations for a change in their status."

(Fourth Committee, Report of Second Meeting, page 4).

9. The Executive desire strongly to urge upon His Majesty's Government that any decisions which may be required with regard to the future of Transjordan should be made within the framework of a settlement embracing Palestine as a whole. They would further urge that that settlement should be such as to safeguard Jewish interests, and the interests of Western Palestine generally, in all matters of common concern to the territories on both sides of the Jordan, and to facilitate the regional planning without which the economic and social progress of both territories will be seriously retarded. It would, in particular, be highly unfortunate if, by the severance of Transjordan from Western Palestine, obstacles were raised to the development of the resources of the Jordan Valley, on which the execution of large-scale power and irrigation schemes for the entire area depends.

10. For the foregoing reasons the Executive venture most earnestly to request that no decision be now taken regarding the future of Transjordan, as distinct from the rest of the mandated territory of Palestine, and that the issue be deferred until it can be brought within the scope of a larger settlement. A radical alteration in the status of Transjordan is clearly a matter that "may affect the establishment of the Jewish National Home and the interests of the Jewish population in Palestine", and the Executive trust, therefore, that before any commitments are made or any further statement is issued in regard to the future of Transjordan, they may be given an opportunity of placing their views before His Majesty's Government on any proposals which may be in contemplation.

I am, Sir,
Your obedient Servant, /s/ J. Linton
Political Secy.