

The Jewish Case Against the Palestine White Paper

DOCUMENTS SUBMITTED TO THE
PERMANENT MANDATES COMMISSION
OF THE LEAGUE OF NATIONS.

- I. *Dr. Chaim Weizmann's Letter*
- II. *Memorandum on the Legal
Aspects of the White Paper*

PUBLISHED BY THE JEWISH AGENCY FOR PALESTINE,
77 GREAT RUSSELL STREET, LONDON,, W.C.1.

JUNE, 1939.

THE AMERICAN JEWISH COMMITTEE

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Jewish agency for Palestine

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"The Balfour Declaration," said General Smuts in 1930, "has become the foundation of a great policy of international justice." For more than twenty years, the obligations undertaken by Great Britain in the Balfour Declaration, subsequently embodied in the international Mandate for Palestine, have been accepted by successive British Governments as a solemn trust; the object of that trust was the re-establishment of the Jewish people in their ancient homeland. These obligations, while acknowledged in words, are in fact repudiated by the White Paper of May, 1939. The true character and meaning of that White Paper, is analysed in the two Memoranda submitted by the Jewish Agency to the Permanent Mandates Commission of the League of Nations and reprinted in this pamphlet.

Dr. Weizmann's Letter to the Permanent Mandates Commission

His Excellency the High Commissioner for Palestine,
Government House, JERUSALEM.

31st May, 1939.

Your Excellency,

On behalf of the Jewish Agency for Palestine, I have the honour to address you on the subject of the Statement of Policy (Cmd. 6019) issued by His Majesty's Government on May 17th, 1939, and to request that the accompanying representations may be forwarded to the Permanent Mandates Commission for consideration at their next session in June, 1939.

2. The Executive of the Jewish Agency for Palestine, in a Statement published on May 17th, 1939, summed up the new policy of His Majesty's Government as "denying to the Jewish people the right to reconstitute their National Home in Palestine." This virtual repudiation of the promise contained in His Majesty's Government's historic declaration of November 1917 has caused profound dismay among Jews in Palestine and throughout the Diaspora. The need of the Jewish people for a Home was never more acute than today, and its denial at this time is particularly harsh. In their opposition to the new policy, the Jews are fortified by the support of many distinguished leaders of public opinion in various parts of the world, including Great Britain itself, to whom the new policy appears as a breach of faith. The promise made by His Majesty's Government to the Jewish people in 1917 was subsequently endorsed by all civilised nations, and forms the basis of the Mandate for Palestine conferred upon His Majesty's Government by the League of Nations; the Jews accordingly look to the League, in which ultimate control over Palestine is vested, to uphold their internationally recognised rights.

3. The policy laid down in the White Paper of May, 1939, proposes first, by permitting Jewish immigration after the lapse of five years only if the Arabs of Palestine acquiesce in it, to relegate the Jews in Palestine to the position of a permanent minority; secondly to prohibit Jewish settlement altogether in certain parts of Palestine, and to restrict it in other parts; thirdly, to terminate the Mandate and to convert Palestine into an independent State, thereby placing the Jewish National Home under the domination of the Arab majority. The White Paper in effect abrogates the recognition, expressed in the Balfour Declaration and the Mandate, of the special status of the Jewish people as a whole in relation to Palestine, and takes into account, as far as Jewish rights and interests are concerned, only those Jews already established in Palestine. Taken as a whole, the new policy is in direct contradiction to the whole trend and purpose of the Palestine Mandate. More particularly, it ignores the Preamble to the Mandate, and is in conflict with various specific injunctions contained in its Articles.

4. The Preamble to the Palestine Mandate bases the whole structure of the Mandatory régime which has been devised for Palestine on the Balfour Declaration. After quoting the Declaration in full, the Preamble continues:

“recognition has thereby been given to the historical connection of the Jewish people with Palestine, and to the grounds for reconstituting their national home in that country.”

It is submitted that every expression in this sentence is of material importance. The historical connection of the Jewish people with Palestine is accepted as the guiding principle of that country's destinies. That connection is obviously the possession of the entire Jewish people. In addition to this historical connection, other grounds are recognised for reconstituting the National Home in Palestine—a phrase which undoubtedly refers to the need and the will of Jews today to re-establish themselves as a people in Palestine. The National Home of the Jewish people in Palestine is a home which is to be “reconstituted”—a term implying a restoration of the Jews to the position occupied by them in the past. Paragraph 2 of the White Paper, which purports to enumerate the obligations of the Mandatory under the Mandate, takes no account of these basic principles; in the political system outlined in the White Paper, their vital import and far-reaching implications are wholly disregarded. The fundamental provision regarding the placing of the country “under such political, administrative and economic conditions as will secure the establishment of the Jewish National Home,” which is quoted in paragraph 2 of the White Paper, is, in the Mandate itself, accompanied by the words “as laid down in the Preamble.” It is precisely these words which establish the nexus between the practical measures to be taken for the promotion of the Jewish National Home, and the historic right upon which that Home is based. There is thus no reference to that nexus in the White Paper.

5. Other injunctions of the Mandate imposing positive obligations upon the Mandatory are likewise omitted from the summary in paragraph 2 of the White Paper—notably the recognition of the Hebrew language as an official language of the country, and the recognition of the Jewish Agency as a body representing the Jewish people, and authorised to advise and co-operate with the Government in all matters affecting the interests of the Jewish National Home. The latter omission accords with the whole trend of the new policy to whittle down the status of the Jewish people by limiting Jewish rights in regard to Palestine to those of the existing Jewish population of the country. The White Paper goes even further, for, while containing no provision whatsoever for consultation with the representatives of the Jewish people, it does provide that in determining the form of Palestine's future Government, parties are to be consulted who have, under the terms of the Mandate, no *locus standi* whatsoever in relation to that country—namely, representatives of the neighbouring Arab States. The consultation with the Jewish Agency enjoined by the Mandate is replaced by a one-sided consultation with the Arab States.

6. Approaching first the constitutional problem, His Majesty's Government find it necessary to declare (paragraph 4 of the White Paper) that “it is not part of their policy that Palestine should become a Jewish State.” They point out that “they would, indeed, regard it as contrary to their obligations to the Arabs under the

Mandate, as well as the assurances which have been given to the Arab people in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will." The Jewish Agency would here observe that their reading of the Mandate has not disclosed to them any such obligation to the Arabs, nor are they aware of any assurances given to the Arabs to this effect, and communicated at the time either to the Jewish Agency or to the League of Nations. On the other hand, it will be recalled that the Palestine Royal Commission after an exhaustive analysis of the subject, came to the conclusion that, when the Balfour Declaration was issued, "His Majesty's Government evidently realised that a Jewish State might in course of time be established, but it was not in a position to say that this would happen, still less to bring it about of its own motion." Even with regard to the White Paper of 1922, which the present Statement of Policy invokes in this connection, the Royal Commission said that "there is nothing in it to prohibit the ultimate establishment of a Jewish State," and added that Mr. Churchill, the author of the 1922 White Paper, had himself told the Commission in evidence "that no such prohibition was intended." But however this controversy with regard to past intentions be resolved, the material point for the future is that, having assured the Arabs that they will never be "made the subjects of a Jewish State against their will," His Majesty's Government proceed to formulate a policy which, in the event of its realisation, must have the effect of making the Jewish population of Palestine the subjects of an *Arab* State against *their* will. It is true that the White Paper throughout refers to the State which it is proposed to set up in Palestine as an "independent Palestine State," by which is meant "a State in which the two peoples of Palestine, Arabs and Jews, share authority in government in such a way that the essential interests of each are secured." But if a State in which the Arabs are assured for all time of a two-thirds majority, and the Jews condemned for all time to a one-third minority, need not be an Arab State, but can be so organised as to become a "Palestine State," then clearly a State with a Jewish majority could equally be so organised. Conversely, if His Majesty's Government are so concerned lest Palestine as a whole should become a Jewish State (which can only mean a State with a Jewish majority,—and possibly a bare majority at that), as to find it necessary to give the Arabs an explicit assurance against such an eventuality, on the White Paper's own showing they must admit that a State in which the Arabs will permanently outnumber the Jews by two to one may properly be regarded, for all practical purposes, as an Arab State. His Majesty's Government attempt to meet this difficulty by laying it down that the constitution of the future Palestine State shall include "adequate provision ... for the special position in Palestine of the Jewish National Home." But, whatever the provision thus devised, its observance in an independent State must, in the last resort, depend upon the will of the majority; it cannot in itself be a safeguard against the exercise of that will. Experience of minority guarantees has made abundantly clear the inadequacy of *any* constitutional safeguards where the majority in power chooses to disregard them.

7. Two grounds are given in the Statement of Policy (paragraph 8) for the grant, under these conditions, of independence to Palestine. The first is that the Mandatory is charged with securing "the development of self-governing institutions." The second is that it would be "contrary to the whole spirit of the Mandate system" if the population of Palestine remained "for ever under mandatory tutelage." With regard to the first of these grounds, it is significant that, from the historical point of view, the obligation to establish self-governing institutions was not inserted into Article 2 of the Mandate as a pledge to the Arabs, which should counterbalance the opening provision of the same Article enjoining the creation of such conditions as would secure the establishment of the Jewish National Home. On the contrary (as explained in the Jewish Agency's memorandum to the Palestine Royal Commission, where the subject is fully dealt with), far from being designed to lay down two conflicting, or mutually restrictive, provisions, the reference to self-governing institutions was inserted as a direct corollary of the provisions regarding the Jewish National Home. The original version of Article 2 suggested by the Zionist Organisation provided for the placing of Palestine under such conditions "as will secure the establishment there of the Jewish National Home, and ultimately render possible the creation of an autonomous commonwealth," etc. The framers of the Mandate modified the reference to an "autonomous commonwealth" by substituting that to "self-governing institutions." But even if Article 2 be construed strictly according to its actual terms, without reference to its history, it is important to realize, first, that since the article falls to be read as one consistent whole, the provision regarding self-governing institutions cannot be so construed as to invalidate the preceding provision concerning the Jewish National Home; and secondly, that all the article provides for is the development of self-governing institutions (in the plural) within Palestine, and not the conversion of Palestine into an independent State.

8. As to the second ground, exception must be taken to the facility with which the White Paper draws a specific conclusion as regards Palestine from "the whole spirit of the Mandate system." It cannot be sufficiently emphasised that the Palestine Mandate was intended to be, and was actually framed as, a Mandate *sui generis*. Its sister Mandates for Syria and Iraq had the avowed object of paving the way for the independence of those countries. They were not designed to serve any such unique purpose as the promotion, in the countries to which they applied, of a national home for the original population of those countries, long exiled, but now anxious to return. Thus, Article 1 of the draft Mandate for Mesopotamia (Iraq) provided for "the progressive development of Mesopotamia as an independent State." Similarly, Article 1 of the Mandate for Syria and the Lebanon requires measures to be framed "propres à faciliter le développement progressif de la Syrie et du Liban comme états indépendants." In contradistinction to these two documents, the Palestine Mandate contains no "independence clause." To urge this fundamental distinction is not to claim that the Palestine Mandate must continue for ever. Between its continuing for ever, and its termination at the end of ten years or so, there is a wide gulf. Nor must the termina-

tion of the Mandate necessarily assume the form indicated in the White Paper. According to the findings of the Royal Commission, "the primary purpose of the Mandate, as expressed in its Preamble and its Articles, is the establishment of the Jewish National Home." It is therefore reasonable to argue that the Palestine Mandate cannot properly be terminated until the Jewish National Home is firmly established, and that if an emergency arises calling for an early termination of the Mandate, it should be succeeded by such a régime as would secure the fulfilment of that purpose in the future. If the Jewish Agency be asked what, in its view, is the test as to whether the Jewish National Home has been established, its answer would be that the Jewish National Home can only be regarded as established when its growth and development can securely continue without the assistance of the Mandatory. This was, indeed, the approach of the Royal Commission to the problem of the termination of the Mandate, when it sought a solution along the lines of the establishment of two independent States. His Majesty's Government, in accepting the Royal Commission's recommendations, showed its understanding of the necessity for securing the fulfilment of the original purpose of the Balfour Declaration and the Mandate, and for providing for the further growth of the National Home, by indicating the following three advantages of the scheme from that point of view:

- (i) The Jewish National Home would be freed from the possibility of ever being subjected to Arab rule;
- (ii) The Jews would cease to lead a minority life;
- (iii) The Jewish National Home would become a Jewish State with full control over immigration.

The present scheme nullifies all these objectives. It subjects the Jewish National Home to Arab rule; it perpetuates the Jewish minority position; it places Jewish immigration at the mercy of the Arabs. In short, it envisages the termination of the Mandate by jettisoning its primary purpose.

9. As already indicated, the White Paper proposes (in Parts II and III) drastically to curtail the growth of the National Home in regard both to immigration and to settlement on the land. As to immigration, arbitrary limits are prescribed over a period of five years, and thereafter continuation of immigration is made dependent upon Arab goodwill, which is equivalent to decreeing its complete stoppage. The following reasons are advanced in justification of this fundamental departure from the theory and practice of the Palestine Mandate: first, with regard to the imposition of arbitrary limitations upon immigration, His Majesty's Government reject the contention "that the Mandate requires them, for all time and in all circumstances, to facilitate the immigration of Jews into Palestine subject only to considerations of the country's economic absorptive capacity;" secondly, with regard to the complete stoppage of immigration, His Majesty's Government assert that they do not find "anything in the Mandate or in subsequent statements of policy, to support the view that the establishment of a Jewish National Home in Palestine cannot be effected unless immigration is allowed to continue indefinitely."

10. To take the second assertion first, His Majesty's Government themselves, after quoting the obligation "to facilitate Jewish immigration under suitable conditions" proceed to state that "the extent to which Jewish immigration into Palestine is to be permitted is nowhere defined in the Mandate," and seek to justify the restriction, and even the stoppage, of Jewish immigration on this ground. But the absence of any limiting provision in the Mandate as to the extent to which Jewish immigration is to be permitted would appear to lead to just the opposite conclusion, namely that the Mandatory Government has no right to put an arbitrary end to Jewish immigration. The Preamble to the Mandate, in giving recognition to the historical connection of the Jewish people with Palestine, and the grounds for reconstituting there their National Home, clearly implies a recognition of the continuing right of the Jews to immigrate into Palestine. Article 6 of the Mandate enjoins upon the Mandatory the duty to facilitate this immigration "while ensuring that the rights and position of other sections of the population are not prejudiced." The latter proviso indicates the only consideration by which Jewish immigration into Palestine is to be limited under the Mandate. Subject to the observance of this condition, it remains the duty of the Mandatory to facilitate Jewish immigration so long as there are Jews who desire to enter, and so long as Palestine is in a position to absorb them. Whether this would result in Jewish immigration continuing indefinitely, it is impossible to say, and the question is in fact of no practical importance. What is of decisive importance, however, is the intention of His Majesty's Government to curtail Jewish immigration immediately, and to put an end to it altogether after a short period of years, when it is clear that the conditions of Jewish life outside make its continuance necessary, and the development of Palestine makes it possible.

11. The Jewish Agency submits that it is of the essence of the conception of the National Home that it should be a place to which Jews can come back, provided that objective considerations permit their return. A "National Home for the Jewish people" loses its meaning the moment that the entry of Jews is forbidden save with the permission of the Arabs. The test of the Jewish National Home must therefore be the effective possibility for any Jew who is able to settle in it without causing injury to others, to do so as a matter of right. The emphasis placed by the White Paper of 1922 on the fact that the Jews are in Palestine "as of right" obviously extends to their right of entry. This is fully recognised by the insistence in that White Paper that "for the fulfilment of this policy it is necessary that the Jewish community in Palestine should be able to increase its numbers by immigration." But the present Statement of Policy, while apparently admitting that the present Jews of Palestine are there as of right, proceeds immediately to deny the right of entry to Jews who are not yet there. It thereby undermines the basis of the right of the existing Jewish population, and shatters the whole conception of the Jewish National Home.

12. As to the contention of His Majesty's Government that they do not regard themselves as required by the Mandate in all circumstances and for all time to facilitate Jewish immigration, sub-

ject only to considerations of the country's economic absorptive capacity, it amounts to a denial of the logical conclusions flowing from a basic premise which has been accepted. The fixing of an arbitrary limit on Jewish immigration would derogate from the recognition of the historic right of the Jewish people in Palestine, which lies at the root of the Palestine Mandate. On the other hand, in facilitating Jewish immigration, the Mandatory has to see to it that the interests of other sections of the population do not suffer. The only immigration policy satisfying both these requirements is clearly a policy regulating immigration in accordance with the country's economic absorptive capacity. This gives the Jews a rational framework, free from arbitrary interference, for the exercise of their historic right, and ensures to them, for the purpose of absorbing further immigrants, the fruits of their efforts in extending the country's absorptive capacity. At the same time, it gives to the Arabs an absolute assurance that Jewish immigrants will not be allowed to establish themselves at their expense. In fact it gives this assurance to all the existing inhabitants of the country. These are the reasons why the economic absorptive capacity principle was laid down in 1922 by the Mandatory Government itself, endorsed by the Council of the League of Nations in 1930, and reaffirmed by His Majesty's Government in the Prime Minister's letter of February, 1931, and on subsequent occasions. When, in 1937, the Mandatory Government found it necessary to depart from this policy—according to its own explanation, for reasons connected with the carrying out of the partition scheme recommended by the Palestine Royal Commission—the Mandates Commission “drew attention to this departure from the principle sanctioned by the League of Nations that immigration is to be proportionate to the country's economic absorptive capacity.” It seems clear that this principle, and the negation of it, cannot both be correct interpretations of the immigration provisions of the Mandate. In effect, to tamper with the principle of economic absorptive capacity is to tamper with the position of the Jews in Palestine “as of right.”

13. Whatever construction may be put on the obligation to “facilitate Jewish immigration under suitable conditions,” it can by no means be reconciled with the grant of authority to the Arab population to decide whether Jewish immigration is to continue or not. The negation of the principle that the Jews are in Palestine “as of right,” involved even in the departure from the absorptive capacity principle, would thereby become absolute. When His Majesty's Government assumed control of Palestine as Mandatory, modern Jewish immigration into that country had been proceeding for about four decades. This immigration was in itself but the most recent link in the long chain of attempts made by Jews of all countries and in all generations to return to their ancestral home. His Majesty's Government gave express recognition to the historical processes at work when it issued the Balfour Declaration as a declaration “of sympathy with Jewish Zionist aspirations,” and when it drafted the Mandate and its Preamble. The Mandate was conferred upon His Majesty's Government on the understanding that they would facilitate Jewish immigration. By proclaiming their intention of bringing Jew-

ish immigration to an abrupt end, His Majesty's Government not only violate an express and vital injunction of the Mandate, but take a step contrary to the very essence of the Mandate as a whole. Instead of being in their hands the instrument whereby a process antecedent to the Mandate should be accelerated, it becomes a means of arresting that process altogether—as it were of turning back the wheel of history. Moreover, to arrest this process in deference to the will of the Arabs would mean to change the whole aspect of Palestine from a country in which the Jewish National Home is to be established into a country where the Arab majority is to rule supreme.

14. The Palestine Mandate can be searched in vain for anything remotely suggesting that such powers have been conferred upon His Majesty's Government. The voluminous interpretative literature to be found in His Majesty's Government's own statements of policy, and in the minutes and reports of the Permanent Mandates Commission, relating to the obligations contained in the Balfour Declaration and the Mandate towards the non-Jewish population of Palestine, does not contain the slightest suggestion that the Arab community of Palestine is to be assured of its majority position, let alone of a majority of specific dimensions. His Majesty's Government indeed admit that "to stop all further Jewish immigration into Palestine forthwith would be unjust to the Jewish National Home." They do not explain, however, why, in their view, a stoppage unjust today would become just at the end of five years, after the Jewish population has reached, according to their calculations, one-third of the total. His Majesty's Government further assert, without stating any reasons for the assertion, that "when the immigration over five years which is now contemplated has taken place, they will not be justified in facilitating, nor will they be under any obligation to facilitate, the further development of the Jewish National Home by immigration, regardless of the wishes of the Arab population." Why an obligation binding today will suddenly cease to be binding at the end of five years, and why the wishes of the Arab population, which can be disregarded today, must become the supreme arbiter at the end of the same period, again remains unexplained. Seeing that the Mandate is to continue, in accordance with the White Paper, at least for another five years after the proposed stoppage of Jewish immigration, it is not clear how, even on purely legal grounds, it is proposed to justify an arrangement by which one of the fundamental obligations imposed by the Mandate must remain inoperative during the life-time of the Mandate.

15. The practical reason given in paragraph 13 of the White Paper for this liquidation of mandatory obligations is that their continued operation would necessitate the use of force, to which His Majesty's Government object; they will relinquish rather than enforce mandatory obligations. But His Majesty's Government can hardly have overlooked the fact that this conclusion represents the triumph of force. In the light of the experience of the last three years, it must appear to the Arab terrorists as a premium on their campaign of violence, and to the Jews as a penalty on their self-restraint. Further, if the exercise of such force as may be indispensable for the discharge of mandatory obligations appears to His Majesty's Gov-

ernment to be so objectionable that those obligations have to be abandoned, they will no doubt be aware of the far-reaching implications of this attitude as regards their whole position in Palestine. As British authority is founded on the Mandate conferred upon and accepted by Great Britain on the basis of certain obligations, the repudiation of those obligations deprives British rule in Palestine of its moral justification. Even so, as continued British rule in Palestine is challenged by Arab leaders, it will involve the use of force. Force, has, moreover, been used to prevent Jews entering Palestine; it may have to be used on an even greater scale in the future if the policy outlined in the White Paper is to be carried out in full. If it is the case that the use of force is inescapable, whatever course His Majesty's Government propose to steer, the Jewish Agency would submit that it is the justice of the obligations undertaken and the injustice resulting from their abrogation, that should decide the issue, and the Agency cannot agree that what was just when the Balfour Declaration and the Mandate were issued, has become unjust today. Developments in the Jewish world, and in the Arab world since that time have both contributed only to enhance the justice of the Jewish cause, as was clearly realised by the Permanent Mandates Commission when they stated, in their Report for 1937:

"It should also be remembered that the collective sufferings of Jews and Arabs are not comparable, since vast spaces in the Near East, formerly the abode of numerous populations and the home of a brilliant civilisation, are open to the former, whereas the world is increasingly being closed to settlement by the latter."

16. The growth and development of the Jewish National Home depend not only upon numerical increase, but in equal measure upon the extension of its area of land, primarily land for agricultural settlement. Having provided in Part II for the numerical crystallisation of the Jewish National Home, the Statement of Policy proceeds, in Part III, to decree its territorial crystallisation. The High Commissioner for Palestine is to be given "general powers to prohibit and regulate transfers of land," these powers to date from the publication of the Statement of Policy. The exact nature and extent of these powers is not stated in the White Paper, but from the proposals made by His Majesty's Government to the Jewish Delegation at the end of the Palestine Conferences, to which the present Statement of Policy is supposed generally to adhere, it was learnt that the intention was completely to close parts of Palestine to Jewish settlement, and to subject it to severe restrictions in other parts. The Jewish Agency views with grave alarm the prospect of the application of such a policy. It would, in the first place, curtail the territorial scope of the Jewish National Home, which has already been cut down by the closing of Transjordan to Jewish settlement. Secondly, it would amount to a reversal of the obligation imposed upon the Mandatory by Article 6 of the Mandate to "encourage close settlement by Jews on the land," and would jeopardise the growth and economic stability of the National Home. Thirdly, it would necessitate the introduction into the legislation of Palestine of measures

based upon racial discrimination as between Jews and non-Jews, thus constituting an infringement of Article 15 of the Mandate, which provides that "no discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language." Fourthly, by denying to the Arabs legitimate opportunities of selling part of their land in order to invest the proceeds in the development of the remainder, and by withholding from Jewish development even areas of "uncultivable" land which may be included in the parts of the country where Jewish settlement is to be prohibited, it would seriously hamper the agricultural development of the country as a whole.

17. The Statement of Policy invokes the "reports of several expert commissions" as having indicated that "owing to the natural growth of the Arab population, and the steady sale in recent years of Arab land to Jews, there is now in certain areas no room for further transfers of Arab land, while in some other areas such transfers of land must be restricted if Arab cultivators are to maintain their standard of life, and a considerable landless Arab population is not soon to be created." Without accepting these conclusions, the Jewish Agency at the Palestine Conferences signified its readiness to discuss with His Majesty's Government, on their merits, the problems of the effect of Jewish colonisation upon the Arab peasant class, and the availability of land in various parts of Palestine for further Jewish settlement. No such discussion has, however, taken place. Nor has the Government so far acceded to the Jewish Agency's request that the data which served as the basis for the Government's far-reaching conclusions in the matter of land, should be communicated to it for examination and comment. The Jewish Agency would recall that the detailed official enquiry conducted into the question of "displaced Arabs" in 1932, with which the Jewish Agency was associated, completely disproved the thesis that Jewish settlement on the land has resulted in any considerable dispossession of the Arab farming population. In the circumstances, and in view of the whole trend of the Palestine Conferences, and the tenor of the present Statement of Policy, the Jewish Agency is forced to the conclusion that just as the drastic changes proposed in immigration policy were dictated—as has been freely admitted in the White Paper—by purely political considerations, so the proposal to relegate the Jews to a Pale of Settlement in the country of the National Home has a political, and not an economic object.

18. On behalf of the Jewish Agency for Palestine, I beg to lodge the strongest possible protest against the policy contained in the White Paper of May, 1939, and to express the hope that, constituting as it does a complete reversal of the original policy authorised by the League of Nations in the Palestine Mandate, it will not be endorsed by the competent organs of the League.

I have the honour to remain,

Your Excellency's obedient Servant,

CH. WEIZMANN

President,

Jewish Agency for Palestine.

77, Great Russell Street,
London, W.C.1.

Memorandum on the Legal Aspects of the White Paper

1. At the recent Palestine Conferences in London the Jewish and Arab Delegations respectively were invited to express their views on certain suggestions laid before them by His Majesty's Government. After the conclusion of the Conferences, consultations took place between His Majesty's Government and representatives of Arab interests, and His Majesty's Government have now announced their intentions in a White Paper,¹ which supersedes the Statement of Policy of July 1937² and substitutes proposals of an entirely different order. The object of this memorandum is to examine these proposals in the light of the Palestine Mandate, it being assumed that there will be no dissent from the proposition that the Mandatory Power, having been entrusted with the administration of Palestine on behalf of the League of Nations,³ is authorised to take such measures, and such measures only, as can be shown to be consistent with the Mandate according to its true intent and purpose. Since the Mandate incorporates the Balfour Declaration, the Declaration must also be taken into account. It is further assumed to be common ground that the Declaration and the Mandate must be fairly construed, without resort to sophistical glosses or verbal jugglery, in conformity with the principle that international engagements must be interpreted and carried out in good faith. His Majesty's Government have on many occasions made clear their determination (which could, indeed, be taken for granted) to discharge their mandatory obligations not only in the letter but in the spirit.

2. The question to be considered is whether the proposals now made are consistent with the terms upon which His Majesty's Government undertook to administer Palestine on behalf of the League. As between His Majesty's Government and the League, nothing can turn on any undertakings given by His Majesty's Government to third parties without the knowledge of the League and not disclosed to it before the Mandate was confirmed. This remark is relevant to the passage in the White Paper⁴ in which His Majesty's Government, after drawing attention to "their obligations to the Arabs under the Mandate," refer, in addition, to "assurances which have been given to the Arab people in the past," thus distinguishing those

¹ Cmd. 6019.

² Cmd. 5513.

³ See Preamble to Mandate: "Whereas His Britannic Majesty's Government has accepted the Mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions ..."

⁴ para. 4, page 4.

assurances from their mandatory obligations. Unless the Council of the League, in confirming the Mandate, can be shown to have been invited to take note of these assurances, it is not clear how they can be introduced into a discussion of the new proposals in relation to the terms on which His Majesty's Government were entrusted with the Mandate. It is, therefore, material to enquire what assurances are meant. They are not specified in the White Paper, and it is necessary to turn for enlightenment to the speech in which the White Paper was explained to the House of Commons by the Secretary of State for the Colonies. Having stated that promises touching Palestine were made by His Majesty's Government during the World War to the Arabs as well as to the Jews,⁵ Mr. MacDonald went on to make it clear that he was not speaking of the McMahon Correspondence, which was once more declared to have no application to Palestine, but of a message conveyed in January 1918 by Commander Hogarth, on behalf of His Majesty's Government, to the Sharif of Mecca.⁶ Since there is no suggestion in Mr. MacDonald's speech that there were any other assurances to the Arabs worth mentioning in this connection, it seems clear that in speaking in general terms of "the assurances which have been given to the Arab people in the past," the White Paper must in fact be referring to Commander Hogarth's message, which Mr. MacDonald summarised as follows:⁷

"He [Commander Hogarth] explained very frankly that His Majesty's Government looked with favour upon a return of Jews to Palestine, and that His Majesty's Government were determined that no obstacle should be put in the way of this return. But Commander Hogarth was instructed to say also, and he did say, that this would be allowed only in so far as it was compatible with the economic and political freedom of the existing population. He also added, on instructions, that the British Government were determined that no people in Palestine should be subject to another."

3. The construction now placed by His Majesty's Government upon the contents of the Hogarth Message may require to be borne in mind in interpreting the new proposals as they affect the Jews. But in considering whether these proposals are consistent with the terms on which His Majesty's Government were entrusted with the Mandate, the Hogarth Message, whatever construction His Majesty's Government may think fit to put upon it, can clearly not be invoked as embodying obligations towards the Arabs. Unlike the Balfour Declaration, to which His Majesty's Government were at pains to give immediate publicity throughout the world, the Hogarth Message played no part whatever in the international discussions regarding the future of Palestine which took place after the close of the War. It was not until the message was excavated after the lapse of twenty years that it first occurred to His Majesty's Government to mention

⁵ House of Commons, May 22nd, 1939, Official Report, Col. 1948.

⁶ *ib.* col. 1951. The text of the Hogarth Message is printed in Cmd. 5964, where the date is given as January 4th, 1918.

⁷ House of Commons, May 22nd, 1939, Col. 1951.

it in relation to the shaping of British policy in Palestine. Even now, His Majesty's Government seem themselves to be doubtful as to what significance is really to be attached to the message, for, in replying to a question on the subject in the course of the recent debate in the House of Commons, Sir Thomas Inskip, speaking for the Government, observed that "it [the Hogarth message] is not of sufficient importance for my Rt. Hon. Friend and myself to spend much time on it."⁸ How deep an impression was made by "this solemn pledge to the Arabs" upon the minds of the Arabs themselves, may be judged from the fact that not the slightest allusion is made to it by the Palestine Arab Delegation in presenting its case to His Majesty's Government in the lengthy communications reproduced in the White Paper of 1922.⁹ It seems clear that the Delegation had never heard of the Hogarth message. What is more important for the present purpose is that neither had the League of Nations ever heard of it. The League Council confirmed the Mandate without being given the slightest reason to suppose that His Majesty's Government considered themselves to be under obligations towards the Arabs other than and in excess of those contained either in the Mandate itself or in the authoritative Statement of British Policy in Palestine¹⁰ communicated to the League of Nations immediately before the Mandate was confirmed. Hence, for the purpose of determining whether the new proposals are consistent with the Mandate, the reference in the White Paper to the "assurances which have been given to the Arab people" (meaning, as would now appear, assurances given to them without the knowledge either of the Jews or of the League of Nations), as distinct from His Majesty's Government's "obligations to the Arabs under the Mandate," is either irrelevant or superfluous. If it is suggested that the "assurances" add something not contained in the "obligations," they can have no effect as between His Majesty's Government as Mandatory and the League as the body on whose behalf the Mandate is exercised. If this is not suggested, the position is the same as though the "assurances" had not been mentioned.

4. Before the new proposals are more closely approached, it will be convenient at this stage to draw attention to a passage in the White Paper which might, if left without comment, give rise to misunderstanding. In the opening sentences of Part I of the White Paper, which deals with constitutional questions, His Majesty's Government state that

"they do not wish to contest the view, which was expressed by the Royal Commission, that the Zionist leaders at the time of the issue of the Balfour Declaration, recognised that an ultimate Jewish State was not precluded by the terms of the Declaration."¹¹

By what can only be an oversight, the White Paper omits to make it clear that it was not only the Zionist leaders who, in the view of the

⁸ House of Commons, May 23rd, 1939, Official Report, Col. 2194.

⁹ Cmd. 1700.

¹⁰ See Cmd. 1708.

¹¹ Cmd. 6019, para. 4, page 3.

Royal Commission, "recognised" that a Jewish State was "not precluded." The reference in the White Paper is to a passage at pages 24-25 of the Peel Report.¹² The Royal Commission first quote Mr. Lloyd George, whose evidence is reproduced as follows:

"The idea was, and this was the interpretation put upon it at the time, that a Jewish State was not to be set up immediately by the Peace Treaty, without reference to the wishes of the majority of the inhabitants. On the other hand, it was contemplated that, when the time arrived for according representative institutions to Palestine, if the Jews had meanwhile responded to the opportunity afforded them by the idea of a national home and had become a definite majority of the inhabitants, then Palestine would thus become a Jewish commonwealth."

The Report then proceeds:—

"His Majesty's Government evidently realised that a Jewish State might in course of time be established, but it was not in a position to say that this would happen, still less to bring it about of its own motion. The Zionist leaders for their part recognised that an ultimate Jewish State was not precluded by the terms of the Declaration, and so it was understood elsewhere. 'I am persuaded,' said President Wilson on the 3rd March, 1919, 'that the Allied Nations, with the fullest concurrence of our own Government and people, are agreed that in Palestine shall be laid the foundations of a Jewish Commonwealth.'"

Then follow references to speeches or writings in the same strain by General Smuts, Lord Cecil, Lord Samuel and Mr. Winston Churchill. It will be seen that the authors of the White Paper have inadvertently omitted to notice that the reference in the Peel Report to the Zionist leaders is both preceded and followed by references to eminent British and other statesmen to whom substantially the same views are attributed. It may be added that, as to Lord Balfour himself, Lord Harlech,¹³ addressing the Permanent Mandates Commission as Accredited British Representative in 1937, stated that "the establishment of an independent sovereign Jewish State...certainly was the conception in Lord Balfour's mind—it was challenged by others at the time—and the Balfour Declaration was the reflection of that conception so far as it could then be carried."¹⁴

5. By what appears to be a similar oversight, the White Paper states¹⁵ that a passage which it quotes from the 1922 Statement of Policy "might be held" to imply that Palestine was not to be converted into a Jewish State, but omits to add that, referring to the definition of the Jewish National Home in the same Statement of Policy—a definition emphatically described in the White Paper¹⁶ as

¹² Cmd. 5479, Chapter II, paras. 20-21.

¹³ Then Mr. Ormsby-Gore.

¹⁴ XXXII P.M.C., page 180.

¹⁵ Para. 4, page 4.

¹⁶ Cmd. 6019, para. 6, page 4.

“authoritative and comprehensive”—the Royal Commission remarks¹⁷ that “there is nothing in it to prohibit the ultimate establishment of a Jewish State, and Mr. Churchill¹⁸ has told us in evidence that no such prohibition was intended.”

6. His Majesty's Government are at pains to make it clear that whatever may have been contemplated by Mr. Lloyd George or Lord Balfour in 1917 or by Mr. Churchill in 1922, they would regard themselves as unfaithful to their obligations towards the Arabs under the Mandate if they allowed Palestine to become a Jewish State. The emphasis with which they repudiate that conception suggests that they are under the impression that, if the Jewish State can once be got out of the way, the road is clear for their own proposals. This appears to involve a complete *non sequitur*. The same may be said of the contention that Palestine ought not to be kept “for ever under mandatory tutelage,” and the similar contention advanced with reference to immigration, that the Mandate cannot be supposed to require that Jewish immigration shall be “allowed to continue indefinitely.” It is not the case—and His Majesty's Government do not seriously attempt to show that it is—that either Jewish immigration must continue “indefinitely,” or it must be restricted for five years to an annual average of not more (and possibly less) than 15,000, and then, in effect, be brought to an end. It is not the case that, if Palestine is not to become a Jewish State either the Mandate must go on “for ever,” or an undivided Palestine must within ten years be made into an independent State with a guaranteed Arab majority of at least two to one. By selecting certain alternatives for rejection, His Majesty's Government do not make it superfluous to enquire whether their own policy is consistent with their mandatory obligations. That policy requires to be justified on its merits, and the test to be applied is whether it is calculated to give effect to the true intent and purpose of the Mandate which His Majesty's Government have undertaken to carry out both in the letter and the spirit. The Palestine Royal Commission affirms in its Report that “unquestionably the primary purpose of the Mandate, as expressed in its preamble and its Articles, is to promote the establishment of the Jewish National Home.”¹⁹ That preamble and those Articles were framed by the British Government itself. Unless the unanimous view of the Royal Commission is to be brushed aside, there can be no doubt as to the footing on which the Mandate was accepted by Great Britain. The question is, then, whether the proposals now made are consistent with the provisions of the Mandate, fairly construed in the light of their primary purpose as authoritatively defined.

7. It will be convenient to begin with the proposals relating to immigration, since the arbitrary restriction of Jewish immigration, and its subsequent suppression unless sanctioned by the Arabs, are indispensable preliminaries to the object ultimately in view, viz:—

¹⁷ Cmd. 5479, Chapter II, paras. 38-39, pp.32-33.

¹⁸ Mr. Churchill was Secretary of State for the Colonies at the time of the publication of the 1922 Statement of Policy.

¹⁹ Cmd. 5479, Chapter II, para. 42, page 39.

the creation of an independent State in which the Arabs will be permanently assured of preponderance. It may be observed in passing that, while the Arabs are intended to be guaranteed, in any event, a majority of two to one, the immigration restrictions are so devised that their preponderance may be still greater. On the one hand, there is no certainty that Jewish immigration will even be allowed to reach the prescribed maximum of 75,000 for the five years' period leading up to the coming into force of the Arab veto. As to 50,000 of the 75,000, admission will be granted or refused according to the economic absorptive capacity of the country at the time, as it may happen to be estimated by the High Commissioner, who is to be assisted in coming to a decision by Arab as well as Jewish representatives, and who will, moreover, be in a position to reduce the absorptive capacity by the exercise of his discretionary powers with regard to the acquisition of land. As to the 25,000 refugees, making up the balance of the 75,000, it will rest with the High Commissioner to decide, with the assistance of his advisers, who will include, as time goes on, an increasing proportion of Arabs, whether adequate maintenance can be considered to be ensured, it being only to the extent to which that question is answered in the affirmative that the refugees will be admissible. On the other hand, the *numerus clausus* to be enforced against Jews during the five years' period will have no application to Arabs, nor will there be anything to prevent Arabs from outside from being admitted to fill, in their entirety, whatever openings for immigrant labour may arise after Jewish immigration has become subject to Arab veto. It follows that the Arabs may well have, in the end, a preponderance considerably exceeding their guaranteed majority of two to one.

8. This being the effect of the proposals, the question to be answered is whether they can fairly be held to be consistent with the Mandate, due regard being had to its "primary purpose"²⁰ viz:— to promote the establishment of the Jewish National Home—to the Royal Commission's finding (from which His Majesty's Government has indicated no dissent) that "Jewish immigration is not merely sanctioned, but required, by solemn international agreements,"²¹ and to the British Government's assertion in 1922 that the immigration of Jews is among the "integral and indispensable factors in the execution of the charge laid upon the mandatory of establishing in Palestine a national home for the Jewish people;"²² it will be observed that it is not said that the stoppage of Jewish immigration is, or may become, an integral and indispensable factor in the charge laid upon the Mandatory of converting Palestine into a predominantly Arab independent State. In considering whether the present proposals can be reconciled with the Mandate, there are three distinct points to be discussed, viz:—

- (1) Discrimination against Jewish as distinct from other immigration; the restrictions described in paragraph 14 of the

²⁰ See Report of the Royal Commission, cited above, p.7.

²¹ Ibid. Chapter IV, para. 76, p.147.

²² Cmd. 1708, p.4.

White Paper being expressly stated to relate to *Jewish* immigration.²³

- (2) The arbitrary restriction of immigration during the five year period.
- (3) The emergence of an Arab veto at the close of that period.

9. Article 15 of the Mandate requires that no person shall be excluded from Palestine on the sole ground of his religious belief. It can never have occurred to the framers of the Mandate that a person might be sought to be excluded from Palestine on the sole ground that he was a Jew. Such, however, would be the effect of the present proposals in any case in which admission was refused to a Jew as such, on the ground that the Jewish quota was exhausted, or, after the five years' period, by reason of the Arab veto. Let it be supposed, for example, that after the close of the five years' period, an individual possessing ample means desires to settle in Palestine. The question will immediately arise whether he is a Jew. How that question is to be decided is not clear. It can plainly not be decided by reference to the applicant's religious belief, for if it depended upon his religious belief whether the Arab veto was applicable or not, it would be difficult to reconcile the proceedings with Article 15 of the Mandate, which requires that no person shall be excluded from Palestine on the sole ground of his religious belief. It will, therefore, be necessary to decide whether the applicant is to be classified as a Jew otherwise than by reference to his religious belief—a question on which the authorities administering the immigration laws (who may by this time be Arab authorities) will have the guidance of well-known contemporary precedents. If the applicant is held to be a Jew, his admission will only be permissible if it is found that "the Arabs" are "prepared to acquiesce." If, on the other hand, he is held not to be a Jew, the Arab veto will not affect him, and the ordinary regulations will apply. An immigration law which, both during and after the five years' period, will impose restrictions upon Jews as such may or may not be capable of being framed without violating the letter of the Mandate, but will, in any case, be clearly inconsistent with its spirit. Jewish immigration is singled out in Article 6 of the Mandate as the immigration to be facilitated. It is now proposed to be singled out as the immigration to be subjected to special restrictions, and eventually to an Arab veto, from which immigration of other types is apparently to be exempt.

10. The discrimination aggravates the offence and accentuates the indignity. But even if formal discrimination were avoided, the proposals, considered by reference to their real purpose and substantial effect, would remain irreconcilable either with the spirit or—on a fair construction—the letter of the Mandate. Reasons will be given in due course for the view, supported by high authority, that, if the Mandate be fairly construed in the light of all the relevant circumstances, the only principle on which immigration can properly

²³ Cmd. 6019, para. 14(1) and (3), pp.10-11.

be regulated will be found to be that of economic absorptive capacity, or, in other words, that immigrants ought to be admitted up to, though not beyond, the economic capacity of the country to absorb them. But the proposals now made go far beyond the repudiation of that principle. Not only is its application to be qualified during the next five years by the introduction of a fixed upper limit, but once that period has expired, it is to have no application at all, political and not economic considerations being thenceforth required to be treated as having decisive and exclusive weight. More than that, on the expiration of the five years' period, no further discretion is to be exercised by the Mandatory authorities, but it is thenceforth to be left to the Arab section of the population to decide for itself whether its "rights and position" would be "prejudiced" by further Jewish immigration, and, if so, to veto it. These arrangements are to take effect halfway through the ten years' period provisionally fixed by the White Paper for the continuance of the Mandate. The Mandate will, therefore, still be in force, and with it the provisions of Article 6. The question which arises is, then, whether such arrangements as have just been described can be said to represent a *bona fide* compliance with those provisions. In construing Article 6, due weight must be given to the distinction drawn in the terminology of the Mandate between the Mandatory and the Administration of Palestine—a distinction well brought out by Article 15, and further illustrated by other Articles, as for example, Article 11. The choice of words is not fortuitous. The scheme of the Mandate is to propound the main principles in terms of injunctions to the Mandatory, while assigning certain specific duties to the Administration of Palestine. The duty imposed upon the Administration by Article 6 must therefore be taken to be a duty imposed upon it for the purpose of enabling the Mandatory to carry out the main objects of the Mandate, as defined in Article 2, and further indicated in the Preamble. It is to be noted that the provisions of Article 6 do impose a duty. They do not merely authorise the Administration to permit immigration; they require the Administration to facilitate it. The duty is an active duty—it constitutes, as it was put by His Majesty's Government in 1931,²⁴ a "positive obligation," and such it remains so long as the Mandate is in force. In carrying out that obligation, the Administration is at the same time to ensure that the "rights and position" of "other sections of the population" are not prejudiced, but on no reasonable construction of Article 6, looking at it, as it must be looked at, in the light of the Mandate as a whole, can this be taken to authorise—much less require—the Administration to bring immigration to an end on the sole ground that "other sections of the population" are opposed to it. The duty thus imposed upon the Administration is not one which can properly be discharged by the announcement of a decision to take the orders of the Arabs as to the extent (if any) to which immigration is to be permitted after a fixed future date. To say that, the Mandate being *ex hypothesi* still in force,

²⁴ Mr. Ramsay MacDonald's letter to Dr. Weizmann, February 13, 1931, paragraph 7, printed in Hansard, February 13, 1931, Vol. 248, cols. 751-757.

this represents a *bona fide* compliance with the requirements of Article 6, giving full weight to its true intent and purpose, amounts to saying that there is no real difference between facilitating immigration and putting a stop to it. Much has been made in various statements of what has been described as the double undertaking contained in the Mandate—the two sets of obligations which, it is customary to emphasise, are of equal weight. It might have been thought that an example of what is meant is to be found in Article 6, which couples a positive obligation to the Jews with a qualifying proviso for the benefit of “other sections of the population.” If there is any substance in the doctrine of equal weight, it is not clear why it should be supposed that, once another five years have elapsed, Article 6 of the Mandate, which will still be in force, can be applied on the footing that the undertaking to the Jews need be given no weight at all.

11. The views expressed above are not without authoritative support. In a Statement of Policy on Palestine²⁵ published in 1930, the British Government then in office proposed restrictions on immigration which, though severe, fell far short of those foreshadowed in the recent White Paper. On that occasion, English lawyers of the highest eminence²⁶ expressed the considered opinion that those restrictions “clearly involve the prohibition—or, as the White Paper calls it, the ‘suspension’—of all that Jewish immigration and settlement which Article 6 of the Mandate expressly directs the Mandatory to facilitate and encourage.” Their conclusion was that “the White Paper²⁷ appears to us to involve a departure from the obligations of the Mandate.” If this was their view of the White Paper of 1930, it is not difficult to infer what their comments would have been if the proposals before them had been those now announced.

12. The contentions advanced by His Majesty’s Government in justification of their immigration policy²⁸ may at this point be considered in their bearing on the question of the Arab veto. After quoting Article 6 of the Mandate, His Majesty’s Government proceed to point out that “beyond this, the extent to which Jewish immigration into Palestine is to be permitted is nowhere defined in the Mandate.” But, general as are the terms in which Article 6 is expressed, on one point it is clear—Jewish immigration is to be “facilitated.” Because the scale on which Jewish immigrants are in practice to be introduced is not precisely indicated, it is clearly not arguable that, that being so, the Mandatory is under no obligation to admit any immigrants at all, and, far from facilitating Jewish immigration, is free to prohibit it. Next comes a reference to the test of economic absorptive capacity, on which the White Paper observes that “His Majesty’s Government do not read either the Statement of Policy of 1922 or the letter of 1931 as implying that the Mandate requires

²⁵ Cmd. 3692.

²⁶ See letter from Lord Hailsham and Sir John Simon, *The Times*, November 4, 1930.

²⁷ i.e. The White Paper of 1930.

²⁸ See Paragraph 12 of the White Paper, Cmd. 6019, pp.8-9.

them, for all time and in all circumstances, to facilitate the immigration of Jews into Palestine subject only to consideration of the country's economic absorptive capacity." What is, however, required to be shown, in order to justify the Arab veto, is that the Mandate *does* entitle His Majesty's Government to lay it down that after the lapse of another five years Jewish immigration shall "for all time and in all circumstances" be prohibited, subject only to any wishes to the contrary which may be expressed by the Arabs. Next follows a rejection of the view that the establishment of a Jewish National Home cannot be effected unless Jewish immigration is allowed to continue "indefinitely." On this it may be observed that the question now at issue is not whether Jewish immigration must continue indefinitely, but whether, so long as the Mandate is in force, His Majesty's Government are free to disregard the injunction that Jewish immigration shall be facilitated. Finally, His Majesty's Government draw attention to the consequences which, in their opinion, will follow if "immigration is continued up to the economic absorptive capacity of the country, regardless of all other considerations." If this is intended as a justification of the Arab veto, it is left to be inferred, but no attempt is made to demonstrate, that either Jewish immigration must be kept up to the full limits of economic absorptive capacity, regardless of all other considerations, or else that, regardless of all other considerations, an Arab demand for the total cessation of Jewish immigration must, so long as it is maintained, be regarded as conclusive.

13. It remains to mention certain points, which, though not raised in the White Paper itself, played a prominent part in its exposition by the Secretary and Under-Secretary of State for the Colonies in the House of Commons and the House of Lords respectively. It was urged by Mr. MacDonald²⁹ that a continuance of Jewish immigration beyond the limit now proposed to be set would prejudice the "rights and position of other sections of the population" within the meaning of Article 6 of the Mandate. In construing Article 6, due weight must be given to the fact that it speaks not of the Arabs or of the non-Jewish inhabitants collectively, but of "other sections of the population" in the plural. The choice of words can hardly have been fortuitous and suggests that the draftsman was thinking of separate groups of the population rather than of the Arabs as a whole. Those who framed the 1922 Statement of Policy³⁰ had the draft Mandate before them, and it may reasonably be conjectured that the words "other sections of the population" are reflected in the language of that Statement in laying it down that the immigrants are not "to deprive any section of the present population of their employment." Be that as it may, Mr. MacDonald did not clearly explain what "rights" were considered to be involved. Even if the reference be assumed to be to the Arab population as a whole, its "rights" could hardly be said to include the right to retain a crushing numerical preponderance—still less, when

²⁹ House of Commons, May 22, 1939, Official Report, Col. 1955.

³⁰ Cmd. 1700.

the context is considered, the right to decide for itself whether Jewish immigrants should be admitted or not. The point may be made that it is a question not only of "rights" but of "position." But the word "position," fairly construed in its context, cannot bear the weight which must be put upon it if it is to yield the desired result. In the French text of Article 6 the word "position" appears as "situation," and in ordinary usage the French word "situation" connotes financial or economic position. That "position" is to be interpreted in an economic sense is suggested by the relevant passages in the Statement of Policy of 1922, which, without indicating any other tests, explains that "immigration cannot be so great in volume as to exceed whatever may be the economic capacity of the country to absorb new arrivals," and that "it is essential to ensure that the immigrants should not be a burden on the people of Palestine as a whole, and that they should not deprive any section of the present population of their employment." The passages in the White Paper relating to immigration, which must clearly have been drafted in the light of and with reference to the provisions of the Mandate, support the view that it is the economic position of "other sections of the population" which is referred to in Article 6. There is, indeed, in another part of the 1922 Statement of Policy an assurance to the Arabs that His Majesty's Government have never contemplated "the disappearance or the subordination of the Arabic population, language or culture in Palestine," nor do they contemplate "that Palestine as a whole should be converted into a Jewish National Home."³¹ But the very fact that assurances in these terms were so specifically given in 1922 is of itself a reason against reading into Article 6 of the Mandate assurances of a different and much more sweeping character. In the 1922 Statement of Policy, His Majesty's Government were publicly declaring their intentions on the eve of the confirmation of the Mandate. If it was part of their duties under the Mandate, as they understood it, to guarantee the Arabs not only equality of status, but a heavy and perpetual preponderance in numbers, the language they selected was singularly inadequate to convey this conception. It was more particularly incumbent upon them to keep nothing back because, in order "to remove any misunderstandings that may have arisen,"³² they invited the Zionist Organisation to intimate its acceptance of the policy set forth in the Statement. It is inconceivable that they would have done so with the knowledge that its silence on a point of the highest importance made it incomplete and misleading.

14. There is another line of argument which, though not mentioned in the White Paper itself, was favoured by the Government spokesmen in Parliament. Article 6 of the Mandate requires the Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, to "facilitate Jewish immigration under suitable conditions." From the words "under suitable conditions" it was sought to extract a

³¹ Cmd. 1700, p.18.

³² Cmd. 1700, p.17.

restriction independent of, and additional to, that contained in the words "while ensuring that the rights and position of other sections of the population are not prejudiced." It was contended,³³ in effect, that the real meaning of the injunction to facilitate immigration under suitable conditions was that the Mandatory was to facilitate immigration to the extent, and only to the extent, to which the conditions were suitable, and that whether conditions were suitable or not was for the Mandatory to decide as it thought fit. It is to be observed that this construction of Article 6 is clearly an after-thought on the part of His Majesty's Government. The White Paper of 1930³⁴ states that "the obligation contained in Article 6 to facilitate Jewish immigration and to encourage close settlement by Jews on the land is qualified by the requirement to ensure that the rights and position of other sections of the population are not prejudiced." There is no suggestion of any other qualification. It clearly never occurred to the authors of the 1930 White Paper that a further, and much more extensive, because much more vaguer, qualification was contained in the words "under suitable conditions." Again, Mr. Ramsay MacDonald's letter of 1931 states that "in the one aspect, His Majesty's Government have to be mindful of their obligations to facilitate Jewish immigration under suitable conditions and to encourage close settlement by Jews on the land; in the other aspect they have to be equally mindful of their duty to ensure that no prejudice results to the rights and position of the non-Jewish community."³⁵ It will be seen that the obligation to the non-Jewish community is set against the obligation to the Jews "to facilitate Jewish immigration under suitable conditions," with no suggestion that the words "under suitable conditions" connote an obligation, not towards the Jews, but towards the Arabs. It is evident that both those who framed the White Paper of 1930 and Mr. Ramsay MacDonald in 1931 took it for granted that the words "facilitate Jewish immigration under suitable conditions" were to be read as a whole, and that, the qualifications having been disposed of by the words "while ensuring . . . are not prejudiced," Article 6 then passes to the positive obligation. This construction seems clearly to be correct. Article 6 does not say—though it could easily have been said had it been meant—that Jewish immigration is to be permitted subject to such conditions as the Mandatory may think fit to impose, or that it is to be permitted to such extent (if any) as the Mandatory may think suitable. A duty to "facilitate Jewish immigration under suitable conditions" is a duty to facilitate Jewish immigration coupled with a duty to see that the immigrants come in under suitable conditions, as, for example, by making administrative arrangements ensuring that the flow of immigration is orderly and that the immigrants are properly selected. On no fair construction of the Mandate, read as a whole, is it possible to torture the words "under suitable

³³ See Mr. Malcolm MacDonald's speech in the House of Commons, May 22, 1939, Official Report, Cols. 1954-1955, and Lord Dufferin's speech in the House of Lords, May 23, 1939, Official Report, Col. 86.

³⁴ Cmd. 3692.

³⁵ See paragraph 15 of the letter, Hansard, February 13, 1931, Vol. 248, cols. 751-757.

conditions" in Article 6 into a justification for subjecting Jewish immigration to an Arab veto.

15. For the purpose of enquiring whether the Arab veto can be justified in the light of the Mandate by what has been said by His Majesty's Government in defence of their immigration policy, it has not been necessary to enter closely into the questions raised in Part II of the White Paper with regard to the principle of economic absorptive capacity. Even if all that is said on the subject were admitted, the Arab veto would still require, for its justification, more cogent arguments than any which His Majesty's Government have been able to advance. But in fact no such admission is made. On the contrary, there are ample grounds, both in reason and in authority, for the view that the principle of economic absorptive capacity is implicit in the Mandate, and that on no other principle can the duty to facilitate Jewish immigration be properly discharged.

16. So far as can be ascertained, the expression "economic absorptive capacity" was first used in an official statement in a speech in the House of Lords by the Duke of Sutherland, speaking for the Government, on February 14, 1922.³⁶ The Government had been asked a question with regard to "the introduction into the country [Palestine] of more than 20,000 aliens against the wishes of more than 90 per cent. of the people, and in violation of enemy³⁷ law." The Government's reply was as follows:—

"As regards immigration, the obligations imposed on His Majesty's Government by the conditions under which Palestine was entrusted to them made it necessary for them to initiate a policy of strictly controlled and selected Jewish immigration up to the economic absorptive capacity of the country."

It will be observed that the words are "up to the economic absorptive capacity." No doubt can exist as to what was meant when it is remembered that what the Government had been invited to explain was why so many immigrants had been admitted. Thus, as early as February, 1922, when economic absorptive capacity was first mentioned in an official statement in connection with immigration, it was mentioned in language which implied that it was regarded as providing a criterion, and not merely as fixing an upper limit.

17. In the Statement of Policy contained in the White Paper of 1922 the material passage is that which lays it down that "Jewish immigration cannot be so great in volume as to exceed whatever may be the economic capacity of the country at the time to absorb new arrivals."³⁸ Attempts have been made to extract support for the proposals now put forward from the words "cannot be so great as to exceed."³⁹ It has been pointed out that all that is actually

³⁶ House of Lords, February 14, 1922, Official Report, Col. 149.

³⁷ i.e. Ottoman.

³⁸ Cmd. 1700, p.19.

³⁹ See, for example, Mr. MacDonald's speech in the House of Commons, May 22, 1939, Official Report, Col. 1954.

announced is a restriction, the inference sought to be drawn being that, while the 1922 Statement of Policy strengthens the negative obligations contained in the qualifying proviso to Article 6 of the Mandate, it leaves His Majesty's Government free to give effect to the positive obligation in such manner and to such extent as they may think fit. The passage relating to economic absorptive capacity in the White Paper of 1922 does announce a restriction, but its real significance cannot be appreciated by looking at the restrictive words in the abstract and without reference to the circumstances in which they were used. When the Balfour Declaration was published, the impression made upon the mind of the average Zionist was that Palestine was to be thrown open to Jews as freely as England is open to home-coming Englishmen, or at the least, that there was to be mass immigration controlled and organised by the Jews themselves. These expectations were cut down by the announcement that immigration could not be permitted to exceed the economic capacity of the country to absorb new arrivals. In making it clear that that limit must be respected, His Majesty's Government were, indeed, imposing a restriction, but a restriction which cannot be properly understood without considering its antecedents and background. Let it be supposed that a person who was under the impression that he was to receive ten pounds is told that he is not to have more than five. He would have some reason for feeling aggrieved if, on asking for the five pounds, he were told that no such sum had been promised him—he had merely been informed that he was not to have ten.

18. But the Jewish case is, in fact, much stronger than this. On June 3rd, 1922, a copy of the 1922 Statement of Policy was sent by the Colonial Office to the Zionist Organisation with a request for a formal assurance that it accepted the policy.⁴⁰ In giving this assurance on June 18th, 1922, the Zionist Organisation commented as follows on that part of the Statement which related to immigration:—⁴¹

“The Executive further observe that His Majesty's Government acknowledge . . . that it is necessary that the Jews shall be able to increase their numbers in Palestine by immigration, and understand from the Statement of Policy that the volume of such immigration is to be determined by the economic capacity of the country from time to time to absorb new arrivals.”

This was plainly intended to exclude the possibility of the passage in question being construed as merely imposing an upper limit. The Zionist Executive were at pains to make it clear that what they understood the Statement to mean was that Jewish immigration was to proceed up to, though not beyond, the limit fixed by economic absorptive capacity. This letter did not elicit any indication of dissent on the part of His Majesty's Government. The assurance which the Zionist Organisation had been invited to give had been

⁴⁰ Cmd. 1700, No. 5, p.17.

⁴¹ Ibid. No. 7, pp.28-29.

asked for, as explained in the Colonial Office letter of June 3rd, 1922,⁴² with a view to the removal of misunderstandings. It is clear that misunderstandings would have been created rather than removed if, on one of the main points touched upon in the Statement of Policy, His Majesty's Government and the Zionist Organisation had been at variance in their construction of the Statement. If His Majesty's Government did not agree with the construction placed by the Zionist Executive on the passage relating to immigration, they might reasonably have been expected to make this clear. Shortly before the confirmation of the Mandate, copies of the Statement of Policy, the Colonial Office letter of June 3rd, 1922, and the Zionist Organisation's reply of June 18th, were sent by His Majesty's Government to the Secretary General of the League of Nations for the information of the Council.⁴³ This was plainly an invitation to the Council to take note of these documents in confirming the Mandate. The Council was entitled to treat the Statement of Policy as an authoritative exposition of the principles which His Majesty's Government proposed to apply in giving effect to the Mandate so far as it related to the Jewish National Home. In the absence of any indication to the contrary, the Council was also entitled to assume that the construction placed by the Zionist Organisation upon what was said in the Statement on the subject of absorptive capacity was accepted by His Majesty's Government as correct. Let it be supposed that A sends a document to B with a request for his assent. On one vital point the document is not free from ambiguity. B, in assenting, explains the construction which he places on the document. A makes no comment. He then sends the document and the correspondence to C, still without comment. For a period of years, A, B, and C all act in harmony with B's construction. It would hardly be suggested that, either as between A and B, or as between A and C, it would still be open to A to insist that B's construction, though left uncontradicted at the time, and subsequently acted upon by all parties for a period of years, must be set aside in favour of precisely the construction which B had quite plainly intended to exclude.

19. That the economic absorptive capacity principle was for a long period of years applied in practice in the sense of the Zionist Organisation's letter of June 18th, 1922, is a fact which is not in dispute, though the White Paper appears to under-estimate its relevance. But, quite apart from this, there is ample authority for the view that the construction contended for by the Jewish Agency is correct. There is first the authority of British Ministers. In 1911, for example, more than ten years after the publication of the White Paper, and the confirmation of the Mandate, the then Colonial Secretary (Sir Philip Cunliffe-Lister) stated in the House of Commons:—

“It has always been the policy followed by the Mandatory Power—and no other policy could possibly be pursued in Palestine in carrying out the idea of a national home—that the

⁴² Ibid. No. 5, p.17.

⁴³ Cmd. 1708, communication dated July 1, 1922.

economic conditions of the country must govern the number of immigrants.”⁴⁴

In the light of the opening words of this statement, there can be no doubt as to what was meant by the expression “govern.” But of greater significance are the more considered statements made on behalf of His Majesty’s Government at the Seventeenth (Extraordinary) Session of the Permanent Mandates Commission in 1930, when the Accredited British Representative was the then Under-Secretary of State for the Colonies, Dr. Drummond Shiels. Speaking of immigration policy, Dr. Shiels said that

“there had been no want of guiding principle. The guiding principle had been specifically stated in the Command Paper of 1922, where the principle was laid down that immigration into Palestine must be effected according to the economic capacity of the country to absorb new immigrants. That was a very definite guiding principle.”⁴⁵

The proposition that immigration must not exceed economic absorptive capacity, interpreted in a purely restrictive sense, would plainly not answer to the description of “a very definite guiding principle,” since it would merely fix a point beyond which immigration must not go, without affording any positive guidance as to how many immigrants were in fact to be brought in. When Dr. Shiels said that the White Paper of 1922 laid down the very definite guiding principle that immigration must be effected “according to the economic capacity of the country to absorb new immigrants,” the principle to which he was alluding was clearly that immigration was to be permitted up to, but not beyond, the point at which the country was economically capable of absorbing it. A similar inference is to be drawn from Dr. Shiels’ remark, at a later stage of the proceedings,⁴⁶ that the Jewish Agency

“had always accepted the provision laid down in 1922 that the number of immigrants was to be according to the economic capacity of the country to absorb them.”

Dr. Shiels can have been in no doubt as to the nature of the principle which had, in fact, been accepted by the Jewish Agency and had in practice formed the basis of all its dealings with the Palestine Government on the subject of immigration. It is true that Dr. Shiels was stating the effect of the White Paper of 1922, and was not referring to any express provision of the Mandate, but reasons have already been given for the view that the 1922 White Paper is binding on His Majesty’s Government in relation to the construction of the Mandate, on which it was designed to serve as an authoritative commentary. As late as January, 1936, the High Commissioner, in summarising the reply of the Secretary of State for the Colonies to a memorandum from Arab leaders, said:

“The guiding principle as regards the admission of immi-

⁴⁴ House of Commons, April 3rd, 1933, Official Report, Col. 1419.

⁴⁵ XVII P.M.C., page 54.

⁴⁶ XVII P.M.C., page 82.

grants is a policy of economic absorptive capacity, and His Majesty's Government contemplate no departure from that principle."⁴⁷

20. The economic absorptive capacity principle, as thus interpreted, was approved by the Permanent Mandates Commission, which in its Report to the Council on the work of its Seventeenth Session, stated that

"The Commission views with approval the Mandatory Power's intention of keeping Jewish immigration proportionate to the country's capacity of economic absorption, as clearly intimated in the White Paper of 1922."⁴⁸

The Report was approved by the Council of the League,⁴⁹ which must therefore be taken to have endorsed the views expressed by the Mandates Commission on the subject of immigration. Another passage from the same Report, but on a different subject, is quoted in the 1930 Statement of Policy,⁵⁰ with the comment that "it is a source of satisfaction to them [His Majesty's Government] that it has been rendered authoritative by the approval of the Council of the League of Nations." The Council's approval was given at the same time and in the same manner as it was given to that part of the same Report which dealt with immigration. The recent White Paper⁵¹ refers to "resolutions of the Permanent Mandates Commission," but refrains from adding that they have been rendered authoritative by the approval of the Council of the League.

21. The principles governing immigration into Palestine were further discussed by the Permanent Mandates Commission at its 32nd Session (1937). The Chairman's remarks leave no doubt as to what the Commission meant to convey by its observations on the subject in its 1930 Report:—

"The Chairman...recalled that in 1930 the Council, on the advice of the Mandates Commission, had accepted the principle put forward by the Mandatory Power itself—namely that Jewish immigration should be authorised to the extent allowed by the country's capacity of economic absorption."⁵²

The discussion on this occasion arose from the decision taken by His Majesty's Government to fix an arbitrary quota for Jewish immigration, pending a decision on the question of partition.⁵³ The Commission made the following observations in its report to the Council:—⁵⁴

"The Commission does not question that the Mandatory

⁴⁷ Official Communique of the Palestine Government, January 30th, 1936.

⁴⁸ XVII P.M.C., page 142.

⁴⁹ League of Nations Official Journal, Nov. 1930, page 1292.

⁵⁰ Cmd. 3692, paragraph 8, page 11.

⁵¹ Cmd. 6019, paragraph 12, pp.8-9.

⁵² XXXII P.M.C., page 112.

⁵³ See Cmd. 5513, paragraph 6.

⁵⁴ XXXII P.M.C., page 233.

Power, responsible as it is for the maintenance of order in the territory, may on occasion find it advisable to take such a step, and is competent to do so, as an exceptional and provisional measure; it feels, however, bound to draw attention to this departure from the principle, sanctioned by the League Council, that immigration is to be proportionate to the country's economic absorptive capacity."

In September, 1937, a resolution taking note of this Report was adopted by the Council.⁵⁵ In a later resolution on the question of partition, the Council took occasion to recall "the assurances given... by the Representative of the United Kingdom on the subject of immigration"—the allusion being to Mr. Eden's assurance that the imposition of the arbitrary quota was to be regarded as a "purely temporary measure designed to meet temporary and exceptional conditions. If, as the Commission said, it were a departure from a principle sanctioned by the Council on a former occasion, Mr. Eden's colleagues on the Council would, he was sure, appreciate the special circumstances in which that decision had been taken."⁵⁶ It is clear that both the Mandates Commission and the Council viewed with misgiving even the temporary substitution of an arbitrary quota for the principle of economic absorptive capacity. What is now announced is not a temporary departure from the principle but its total repudiation.

22. Article 6 of the Mandate, which requires the Administration of Palestine to facilitate Jewish immigration, requires it also to encourage close settlement by Jews on the land, special reference being made to State lands and waste lands not required for public purposes. Just as the White Paper proposes to bring Jewish immigration to an end, so also it proposes to obstruct the acquisition of land for Jewish settlement by restrictions which, though vaguely described, are clearly intended to be sweeping. Any measures interfering with sales by Arabs as such, or with purchases by Jews as such, would, in so far as they affected inhabitants of Palestine, infringe the principle of non-discrimination implicit in Articles 2 and 15 of the Mandate. But even if in form discrimination is avoided, what is clearly intended is a drastic reduction of the area available for Jewish settlement. His Majesty's Government refer, in defence of their policy, to "the reports of several expert Commissions," but the Commissions which have visited Palestine of recent years were not primarily composed of agricultural experts qualified to express an authoritative opinion on the matters with which Part III of the White Paper is concerned. Much clearer evidence than any which has yet been produced would be required to show that the far-reaching restrictions which are evidently contemplated are genuinely required to ensure that the rights and position of the Arab rural population shall not be prejudiced, within the meaning of Article 6 of the Mandate. It is to be observed that the duty of ensuring that the rights and position of other sections of the population shall not be prejudiced

⁵⁵ See Minutes of Ninety-Eighth Session, para. 3937.

⁵⁶ *ib.* p.16.

is coupled in Article 6 with a positive obligation, not only to facilitate the immigration of Jews, but to encourage close settlement by Jews on the land. The White Paper contains nothing to suggest that His Majesty's Government propose to take any steps to carry out this obligation, or indeed, that they recognise its existence.

23. Attention was drawn in the preceding paragraph to the reference in Part III of the White Paper to "the reports of several expert Commissions" with regard to land settlement and agriculture. But there are other matters on which both the Royal Commission and the Woodhead Commission were qualified to speak with much greater authority, and if His Majesty's Government rely unreservedly upon their Reports in Part III of the White Paper, their views are clearly entitled to at least equal weight in relation to the matters discussed in Part I. The foregoing excerpts may, therefore, be apposite:

"At any given moment there must be either an Arab or a Jewish majority in Palestine, and the Government of an independent Palestine, freed from the Mandate, would have to be either an Arab or a Jewish Government." (Royal Commission Report, p. 362.)

"The worst possible form of settlement would be one which left both Jews and Arabs in any part of Palestine uncertain whether in a few years' time either of them may not be subjected against their will to the political dominance of the other." (Partition Commission Report, p. 103.)

"If the projected measure of self-government was to have any reality, if it meant any real increase of Arab power or influence in legislation and administration, then the Jews believed—and in our opinion the belief was justified—that such power or influence would be used against the interests of the Jewish National Home." (Royal Commission Report, pp. 359-360.)

24. The reports of the "expert Commissions" relied upon in Part III of the White Paper will be found, properly understood, to offer the plainest warnings against proposals of the nature outlined in Part I. The essence of these proposals is that, at the end of a transitional period, Palestine shall become an independent State, in which, by means of the artificial restriction and eventual stoppage of Jewish immigration, the Arabs are to be assured of a preponderance of at least two to one. During the transitional period, the majority status of the Arabs is to be reflected in a two to one representation among the heads of Departments—a clear indication of the principles on which the Constitution of the independent State may be expected to be framed. It is by these means that His Majesty's Government propose to carry out their obligation under the Mandate to create such political, administrative and economic conditions as will secure the establishment of the Jewish National Home.

25. In paragraph 4 of the White Paper His Majesty's Govern-

ment state that "they would regard it as contrary to their obligations to the Arabs under the Mandate, as well as to the assurances which have been given to the Arab people in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will." It is difficult to understand how His Majesty's Government can have persuaded themselves that it would not be contrary to their obligations to the Jews under the Mandate, and to the assurances given to the Jewish people in the past, that the Jewish population of Palestine should be made the subjects of an Arab State against their will. It is no answer to say that the State will not be an Arab State but a Palestinian State. It is not names that matter, but realities. The authority of the Royal Commission has already been quoted for the proposition that "at any given moment there must be either an Arab or a Jewish majority in Palestine, and the Government of an independent Palestine, freed from the Mandate, would have to be either an Arab or a Jewish Government." It can make little difference to the Jews whether the State into which they are forced is an Arab State so described or a "Palestinian" State with an Arab Government. "Forced" is the correct expression, for it has been made clear that the independent State is to be formed, and the Jews included in it, with or without Jewish consent.⁵⁷ It is true that it is stated to be the desire of His Majesty's Government that the independent State "should be one in which Arabs and Jews share in government in such a way as to ensure that the essential interests of each community are safeguarded."⁵⁸ There was some talk of safeguards in the Parliamentary Debate, but, pressed for more precise information, Mr. MacDonald could only state vaguely that "those are matters for consideration when the time arrives."⁵⁹ Here again it may be apposite to quote the Royal Commission:

"We are not questioning the sincerity or the humanity of the Mufti's intentions or those of his colleagues; but we cannot forget what recently happened, despite treaty provisions and explicit assurances, to the Assyrian minority in Iraq; nor can we forget that the hatred of the Arab politician for the National Home has never been concealed."⁶⁰

25. But it is not only a question of security; it is a question of status. Mr. MacDonald, though unable to be more specific on the question of safeguards, declared that "the whole spirit of this arrangement...is that the interests of the minority and majority in Palestine shall be adequately secured."⁶¹ The status of a minority in the nominal enjoyment of minority rights is not the status which was contemplated for the Jews when His Majesty's Government promised them to facilitate the establishment in Palestine of a National Home for the Jewish people, or when that promise was subsequently incorporated in the Mandate. Addressing the Permanent Mandates Commission as the Accredited British Representative in 1937, Lord

⁵⁷ See House of Lords, May 23, 1939, Official Report, Cols. 104-105.

⁵⁸ Cmd. 6019, paragraph 10, p.6.

⁵⁹ House of Commons, May 22, 1939, Official Report, Col. 1961.

⁶⁰ Cmd. 5479, Chapter V, par. 58, p.141.

⁶¹ House of Commons, May 22, 1939, Col. 1962.

Harlech⁶² stated, with reference to the Jews, that "he agreed...that the fundamental question was that of status...From the Jewish point of view, status was all important."⁶³ In the White Paper of 1937⁶⁴ His Majesty's Government point out, as one of the advantages of the partition scheme, that "the Jews would at last cease to live a 'minority life,' and the primary objective of Zionism would thus be attained." It is now proposed to fulfil the British Government's "declaration of sympathy with Zionist aspirations" by imposing upon the Jews in Palestine precisely the status of which Zionism is designed to relieve them.

26. It is characteristic of the spirit in which the constitutional proposals are conceived that they tacitly brush aside the connection, repeatedly acknowledged by British statesmen in the past and expressly recognised in the preamble to the Mandate, between Palestine and the Jewish people as a whole. The symbol of that connection, the Jewish Agency, is studiously ignored. The "appropriate body" to be set up under paragraph 10 (6) of the White Paper for the purpose of reviewing the constitutional situation is to be representative of "the people of Palestine." The Jewish Agency is not mentioned and seems clearly intended to be excluded, notwithstanding that in the White Paper of May, 1930,⁶⁵ the question of self-government was described by His Majesty's Government as "one which deeply concerns the Jewish Agency." As though to make it clear that the Arab people as a whole is henceforth to be brought into the affairs of Palestine, and the Jewish people as a whole kept out, the White Paper proceeds to announce that if, at the end of ten years, His Majesty's Government should desire to postpone the creation of the independent State, they will first consult with representatives of the people of Palestine, the Council of the League of Nations, and the neighbouring Arab States, and that if they should still think that postponement is unavoidable, the Arab States will be included among the parties to be consulted as to plans for the future. The Jewish Agency, with all that it stands for, recedes from the scene, and in its place are brought forward the Arab Kings. It was not in this spirit nor with these intentions that the British Government published the Balfour Declaration and accepted the Mandate.

London,
1.6.39.

⁶² Then Mr. Ormsby-Gore.

⁶³ XXXII P.M.C. p. 180.

⁶⁴ Cmd. 5513, para. 7.

⁶⁵ Cmd. 3582, para. 7, page 9.

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