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SECOND SESSION

SUMMARY RECORD OF THE SEVENTEENTH MEETING  
OF THE WORKING COMMITTEE ON JERUSALEM

Lake Success, New York

Monday, 19 January 1948 at 2.00 p.m.

Present:

Chairman:	Mr. GERIG	(United States)
Rapporteur:	Mr. LAURENTIE	(France)
	Mr. Forsyth	(Australia)
	Mr. Lin Mousheng	(China)
	Mr. Garreau	(France)
	Mr. Noriega	(Mexico)
	Mr. Fletcher-Cooke	(United Kingdom)

Secretary: Mr. Anker

CONTINUATION OF THE HEARING OF THE REPRESENTATIVES OF THE JEWISH AGENCY.

The CHAIRMAN informed the representatives of the Jewish Agency that two copies of the revised draft Statute would be handed to them and that any comments to that document could be submitted to the Committee in writing. He requested them to proceed with their comments on Part III of the Plan.

Mr. SHERTOK (Jewish Agency) expressed thanks to the Committee; after they had studied the document they might present written comments or might request another hearing.

Dr. ELIASH (Jewish Agency) submitted to the Committee a memorandum on the religious courts. Continuing his comments on paragraph 6 of the Plan, he considered that the Governor should be given transitional powers to run the judiciary system after the termination of the Mandate.

Mr. LIN MOUSHENG (China) thought that these would be interim provisions which need not be written into the Statute itself.

Dr. ELIASH feared that existing courts would lose their authority unless it was renewed by the Statute; rights of appeal might be lost and other hardships inflicted on the population, unless there was a smooth transition.

/Mr. NORIEGA

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Mr. NORIEGA (Mexico) considered that the Statute should recognize the validity of existing courts or indicate the form of the judicial organization during the interim period.

Dr. ELIASH, commenting on paragraph 7, said that it was not clear at present who would assent on behalf of the City of Jerusalem to development projects mentioned in Part I, Section B, paragraph 7 of the Plan. He considered that the Governor should be designated as the person empowered to give such assent. He asked whether Jerusalem would have the powers in financial matters which had been granted to the States by paragraph 9 of the same Section. It should also be made clear in the Statute that Jerusalem enjoyed the economic powers conferred upon the States by paragraph 10 of this Section. There was a similar lacuna in paragraph 15 with regard to the signing of treaties entered into by the Joint Economic Board.

Mr. AUSTER (Jewish Agency) stated that there was no mention of representation for Jerusalem on the Tariff Commission mentioned in paragraph 11 of this Section, or on the Joint Economic Board.

The CHAIRMAN explained that the Committee had already studied this question. It was not clear if any of the three members of the Joint Economic Board appointed by the Economic and Social Council could represent Jerusalem. The Committee would try to get clarification on this point and would discuss the matter with the Palestine Commission.

Dr. ELIASH, reverting to Part III of the Plan, asked what were the economic matters dealt with in the second paragraph of paragraph 7. He did not wish to see Jerusalem prevented from making trade or barter agreements and other reciprocal agreements with any country by the terms of this paragraph. He raised the question of the future position in regard to trade marks and patents. He suggested that a central registry for all Palestine should be established at the Headquarters of the Economic Board. He pointed out with regard to paragraph 8 that it did not provide for the free entry into the City of persons other than residents or citizens of the Arab State and the Jewish State. The City would arrange for consular protection abroad but nothing was said in the Plan about granting visas to would-be visitors. He was not thinking merely of immigration, but also of pilgrims and transients. It would be perhaps useful if freedom of entry were distinguished from residence; freedom of entry as distinct from residence might be permitted to any person lawfully within the borders of either State. He pointed out that "nationals of other States" referred to in the last sentence of this paragraph might also be residents of one of the Palestine States and he proposed in place of those words "persons neither residents nor citizens of the Arab and Jewish States". He had no observations to make on paragraph 9.

/With regard

With regard to paragraph 10, he felt some anxiety that the Governor might adopt a large number of working languages. It might be safer if these were limited to one or two in the Statute.

The CHAIRMAN referred him to Article XXXVII of the draft.

Dr. ELIASH thought the Statute might be more explicit on the subject of what constituted a working language so that all documents might not have to be published in all four languages.

The CHAIRMAN explained that all documents which would come before the Trusteeship Council would have to be in both working languages.

Dr. ELIASH wished the Governor to have a wide discretion as to what documents would have to be printed in all languages.

In regard to paragraph 11, he asked what would be the situation of legal persons such as companies, co-operatives, associations established under Ottoman law and charitable trusts. The Office of the Registrar was now in Jerusalem. What status these legal persons should continue to enjoy must be specified in the Statute. He suggested the following text: "Each company ... at present registered in Palestine may opt whether its registration shall be effective for the City and the Jewish State or for the City and the Arab State ..."

It might be desirable to lay down principles in the Statute as to the future law of citizenship. He did not think it should be too difficult to acquire citizenship. The present qualifying period was two years. The Statute might lay down that there should be no unnecessary impediments.

The CHAIRMAN asked whether the representatives of the Jewish Agency thought it proper to restrict membership of the Legislative Council to citizens.

Dr. ELIASH thought the choice of electors would be too limited. The Governor might want to appoint and might have to appoint citizens of the other States to responsible administrative posts.

The CHAIRMAN pointed out that he was thinking only of eligibility to the Legislative Council.

Mr. SHERTOK considered that a large proportion of the residents of Jerusalem would exercise their option to become citizens of the Arab State and the Jewish State. Surely the General Assembly had not intended and it seemed unreasonable that such persons should be deprived of a part in the public life of the City. The City of Jerusalem had been conceived as the metropolis and future common centre for both States.

Dr. ELIASH referred to the second of the special objectives in the Plan, namely "to foster the spirit of co-operation among all inhabitants of the City, to contribute ... to the peaceful evolution of relations between the two Palestinian peoples." The citizenship provisions of the Plan were more liberal

for Jerusalem than for the States, because it had been felt that a person might opt for the citizenship of another state and yet be a useful and loyal resident of this international City.

Mr. NORIEGA (Mexico) thought that the spirit of the Plan required that members of the Legislative Council should be citizens.

Mr. SHERTOK said that it had been assumed in Sub-Committee I of the Ad Hoc Committee, that most Jews and Arabs would exercise the option and that separate citizenship had been provided for Jerusalem only to prevent other persons from being stateless. The Plan implied that all residents should vote and could be elected to the Legislative Council; the provisions concerning self-government would otherwise be nugatory.

The CHAIRMAN considered that the role of the Legislative Council would have to be more an advisory one, if members were under obligations to foreign states.

Dr. ELIASH said that there were many foreigners other than Jews who had not severed ties with their country of origin but who were loyal residents of Jerusalem and took an active part in its affairs and development.

Speaking of the rights of citizens mentioned in paragraph 12, he suggested that there should be recognition in the Statute as there had been in the Mandate of official days of rest (Holy days). He hoped that under sub-paragraph 2, the Land Regulations would be abrogated in the Statute.

Paragraph 12 (4) seemed to maintain the jurisdiction of the religious courts. He hoped that Jewish religious courts would be made part of the machinery of justice. He considered sub-paragraph 6, laudable as it was, an ideal which could not be achieved for some years. The Jewish community maintained a system of primary education only; secondary schools were private. The Statute should make it clear that the establishment of an adequate educational system was a gradual task and that secondary schools would not have to be maintained in small villages. The age limit in Jewish schools was at the present time fourteen years.

Mr. GARREAU (France) said that in examining the budgetary position, the Committee had perhaps not taken account of the heavy burden of education.

Dr. ELIASH, continuing his remarks on education, thought it should be made clear that the right of communities to maintain schools should not be confined to the Arab and Jewish communities. He pointed out that Jewish education in the City was part of a general education system in Palestine, with a central inspectorate and interchangeability of teachers. This would remain the case for a number of years. As a counterpart to the right of the community to maintain schools, there should be a right to receive grants-in-aid from the City based on the number of children taught.

Mr. FLETCHER-COOKE



Mr. FLETCHER-COOKE (United Kingdom) asked if expenses on education had been taken into account in the Note on the Viability of the City of Jerusalem prepared by the Secretariat. If they had been, Mr. Garreau's point would be met.

The SECRETARY asked for time to settle that point. He thought, however, that only governmental expenditure had been taken into account in that note, not expenditure by the communities on their own schools.

Dr. ELIASH asked whether the words "its own schools" would cover the Hebrew University. Right of entry into the territory should be granted freely to prospective teachers and students of the University.

Mr. FLETCHER-COOKE (United Kingdom) thought if any provision was made to this effect it should be couched in general terms, so as to cover Arab higher educational institutions as well.

Mr. LIN MOUSHENG (China) stated that the committee had already substituted the word "institutions" for "schools".

Dr. ELIASH, speaking of foreign educational institutions, thought it unsatisfactory to base their activities on existing rights, because it was doubtful what rights did exist in this connection. He suggested that their activities should be permitted "as heretofore". This would confirm the present position.

With regard to paragraph 13 (Holy Places), he thought it foreshadowed the perpetual retention of the status quo. He would like to see a commission, such as had been provided for in Article 14 of the Mandate, to be contemplated in the Statute, even though he knew the difficulties in establishing such a commission. He would like a provision in the Statute similar to the present Holy Places Order-in-Council putting such questions outside the jurisdiction of the courts. It would be useful to include in the Statute some indication of what constituted a Holy Place. The Jews considered Holy Places to be those sanctified by tradition, but there had been a tendency to adopt a wider interpretation making the term applicable to modern churches, mosques, synagogues and even cemeteries. The Statute should make the position clear. Of course, one should remember that new Holy Places might be discovered by archeologists.

Mr. LIN MOUSHENG (China) asked Dr. Eliash if he made a distinction between Holy Places and religious buildings and sites.

Dr. ELIASH placed both classes in the same category although one was more concrete than the other. It should not be permitted to oust the jurisdiction of the courts and invoke the cumbersome special procedure in the case of modern buildings and sites.

Mr. NORIEGA (Mexico) requested a memorandum of Dr. Eliash on this subject.

/Dr. ELIASH

Dr. ELIASH enquired what powers of enforcement the Governor would have under paragraph 14 (special powers of the Governor regarding Holy Places, etc. outside the City). He supposed that the Governor would issue orders to the States concerned who would then set their own machinery of execution in action. Otherwise they would risk action by some international body. If this was not the position, the Governor should be given the power to use force, and might perhaps be empowered to use his Special Force to guard the Holy Places.

He queried the word "rites" in sub-paragraph 3 and wondered whether it was not a misprint for "rights".

The CHAIRMAN thought the word "rites" was used here to refer to sects.

Dr. ELIASH considered that a "rite" was a religious ceremony.

The CHAIRMAN said that enquiries would be made as to the correct text.

Mr. GARREAU (France) spoke of the difference between customary rights and the legal, established rights.

Dr. ELIASH mentioned the difficulty of establishing the advisory council mentioned in this paragraph, and thought it would be better if the Governor called in the representatives of the communities concerned individually in a consultative capacity.

With regard to Section D of the Plan, he suggested a qualifying period of six months' residence for voting rights in the referendum. The actual period of qualification would depend on when referendum was announced and it should be three months longer than the period between the date of the announcement and the date of the referendum.

The CHAIRMAN considered that people might assume that a referendum would be held shortly after a little more than ten years after the entry into force of the Statute, and there might be an influx of people wishing to vote.

Mr. SHEETOK thought that a referendum should be confined to genuine residents and in that case a six months qualifying period would be adequate.

Mr. GARREAU (France) pointed out that the draft Statute provided a qualifying period for elections to the Legislative Council and that the same period would apply to the referendum.

Dr. ELIASH considered that all persons resident in the City on 1 October 1948 (the date of the coming into force of the Statute) would, under the terms of the Plan, be considered as "residents".

The CHAIRMAN drew Dr. ELIASH's attention to Article VIII which mentioned 29 November 1947 in this connection.

Dr. ELIASH did not think that the right of residents should be limited; he did not think there would be any political manoeuvring in regard to elections, and that any difficulty in regard to the referendum would be met by a six months qualifying period.

/Mr. AUSTER

Mr. AUSTER pointed out that the present qualifying period for citizenship in Palestine was two years; six months would be an ample qualifying period for residence.

Mr. GARREAU (France) pointed out, that under the terms of Articles VIII and IX of the Draft Statute, there would be a certain number of citizens who would not have the right to vote.

Dr. ELIASH submitted that the date of 1 October 1948 would be more appropriate in Article VIII.

Mr. SHERTOK expressed thanks for the hearing which the representatives of the Jewish Agency had received; they would study the revised draft and would request a new hearing or submit comments in writing as soon as possible.

The CHAIRMAN considered that in general the Committee and the Jewish Agency representatives had been thinking along the same lines, but there had been divergences of opinion on the matter of proportional representation and of qualifications of members. However, everything was still open. It might be better if the representatives submitted comments on the Statute in writing and promptly, though he hoped there might be another oral hearing.

The Committee might be able to take account of these comments before adopting a final draft or it might include them in its report to the Trusteeship Council.

The Committee took a recess from 3.45 p.m. to 4.15 p.m.

#### QUESTION OF THE FUTURE PROCEEDINGS OF THE COMMITTEE

The CHAIRMAN stated that the Secretary had been in touch with the two other groups which wished to be heard and suggested that the arrangements be made to hear them on the afternoon of 21 January 1948. He considered that the Committee should finish work on the draft Statute by 23 January. The Committee might meet a few days in advance of the Trusteeship Council's session to adopt its report to the Council. It might also perhaps forward the comments of the Jewish Agency.

Mr. LAURENTIE (Rapporteur) thought that the report might be prepared in two stages; otherwise it might not be possible to include everything. The first draft could be prepared by 26 January.

The CHAIRMAN did not think it necessary that the report should accompany the draft Statute. The Committee might meet two days before the session and adopt the final report.

Mr. LAURENTIE (Rapporteur) suggested that the report should be at least studied on beforehand. He thought that the Secretariat and he could produce a draft for 26 January.

Mr. FORSYTH (Australia) thought the Chairman's suggestion should be adopted, but that the draft report should be circulated as soon as it was ready.

Mr. AUSTER

Mr. LAURENTIE (Rapporteur) asked if Mr. Forsyth wished the draft report to be circulated to the members of the Trusteeship Council.

Mr. FORSYTH (Australia) replied in the negative.

It was agreed that the draft Statute should be circulated with a covering note by the Secretariat and that the draft Report should be circulated among members of the Committee as soon as it was ready. It was decided to hold both morning and afternoon meetings on each subsequent working day.

CONSIDERATION OF THE DRAFT STATUTE (Second reading)

Mr. LIN MOUSHENG (China) asked if each article required a title. As the Committee decided to retain the titles, he suggested that they should be examined with some care.

There was no discussion on the Preamble.

The CHAIRMAN asked the pleasure of the Committee with regard to Article I (Definitions). Should it be put in the beginning, or in the text of the articles concerned, or in footnotes?

Mr. FORSYTH (Australia) considered that the article should be placed at the end if there were no legal difficulties.

The CHAIRMAN suggested that it be the penultimate article.

Mr. GARREAU (France) preferred that this article should be an annex, but the Chairman pointed out that it would then have no validity.

Mr. NORIEGA (Mexico) wanted the article deleted but had no objections to putting definitions in the articles concerned.

Mr. LIN MOUSHENG (China) thought that paragraphs b, c, d and e were unnecessary. Some of the definitions in paragraph (a) could be dispensed with and other terms might be defined as they first appeared in the Statute.

Mr. TRAFFORD SMITH (United Kingdom) said that legal advice should be sought on the matter. If the article were retained it should logically be placed at the beginning.

Mr. LIN MOUSHENG (China) stated that he had seen interpretation clauses in treaties, but not in any written constitutions that he had studied.

Mr. RANKIN (Secretariat) explained that Mr. Gibson had drafted paragraph (a) of this article for neatness. The Statute might be redrafted so as to absorb the various definitions contained in this paragraph, but the result might be a little awkward in places.

Mr. FORSYTH (Australia) suggested referring the matter to the Legal Department of the Secretariat.

Mr. ANKER (Secretary) thought that there was no legal problem involved.

The CHAIRMAN said that in Mr. Gibson's opinion paragraphs (b), (c) and (d) had more validity. However, certain constitutions had stood up without such provisions.

/Mr. ANKER



Mr. ANKER (Secretary) pointed out that the Trieste Statute had no such article.

Mr. FLETCHER-COOKE (United Kingdom) thought that that might be a good reason for not including it in this Statute.

Mr. NORIEGA (Mexico) thought that items (c), (d) and (e) might be included in Article X (Organs of Government). There should also be a definition of Holy Places.

It was agreed to seek the advice of the Legal Department.

The CHAIRMAN proposed to add the following words to Article II (Special International Regime) "In accordance with the Plan of partition...".

Mr. RANKIN (Secretariat) suggested adding also "hereinafter referred to as the Plan" to remove any ambiguity and it was so agreed.

The CHAIRMAN called for comments on Article II (a) (Fundamental Human Rights and Freedoms).

Mr. LIN MOUSHENG (China) suggested that Articles II (a), II (b) and II (c) be placed after Article VII (Flag, Seal and Coat of Arms). It was agreed to accept this order and to defer discussion on these articles.

The CHAIRMAN commenting on Article III (Boundaries of the City) recalled the proposal of Dr. Eliash in regard to the Pools of Solomon, but this and other proposed changes in the frontier line would not affect the drafting of this article.

Mr. FORSYTH (Australia) pointed out that if the airfield was included in the City, paragraph 1 would no longer be correct.

The CHAIRMAN did not consider that they could do anything until a decision was reached by the Trusteeship Council and the Palestine Commission.

Mr. NORIEGA (Mexico) proposed that paragraph 1 should read: "The territory of the City shall include ...", and this wording was adopted.

Mr. RANKIN (Secretariat) proposed that the term "City" should be defined in this clause.

Mr. LIN MOUSHENG (China) said that the term was unambiguous and had already been used in Article II.

The CHAIRMAN proposed that the title of the article should be changed to "Territory of the City".

Mr. FORSYTH (Australia) wished the present title to be retained.

It was finally agreed to adopt the title "Boundaries of the Territory of the City".

The RAPPORTEUR said that it would be necessary to mention in the report possible changes in the boundaries of the Territory, and an exact draft in paragraph 1 might prove embarrassing later.

The CHAIRMAN asked whether the Committee wished to make any positive recommendation about modifications in the boundaries.

/Mr. FORSYTH

Mr. FORSYTH (Australia) did not think this matter was within the terms of reference of the Committee, and the CHAIRMAN agreed.

Mr. GARREAU (France) thought that the Committee should make recommendations to the Trusteeship Council which could in turn make recommendations to the General Assembly. He did not think the Palestine Commission could make the necessary changes. Some of these changes were very important for the life of the City.

Mr. ANKER (Secretary) pointed out that the Committee had considered three possible rectifications, that one of these changes, which involved only the unification of the lands of the village of Abu Dis, could be carried out by the Palestine Commission. The other two changes (relating to the Pools of Solomon and the airfield of Qualandia) could not be made without a decision of the General Assembly.

Mr. FORSYTH (Australia) and the CHAIRMAN still considered that no recommendation should be made.

Mr. GARREAU (France) pointed out that changes would be necessary in the Statute if additional territory was incorporated in the north.

The CHAIRMAN pointed out that the Trusteeship Council could change the Statute in the meantime.

Mr. LIN MOUSHENG (China) thought paragraph 3 (regarding a description of the boundary) was unnecessary.

The CHAIRMAN considered it might be replaced by the following addition to paragraph 2 "and shall in due course be attached to this Statute as an annex".

Mr. GARREAU (France) proposed that paragraph 1 should begin with "Subject to subsequent rectifications ....".

Mr. FORSYTH (Australia) thought any such form of words would introduce an unfortunate element of uncertainty.

Mr. FLETCHER-COOKE (United Kingdom) considered that the present draft of paragraph 1 should be retained. If it was decided to alter the boundaries, it would be a simple matter to alter the wording.

Mr. NORIEGA (Mexico) agreed that any doubt would be unfortunate and might cause permanent agitation.

It was agreed to make reference to the question of possible changes in the boundaries in the report, to amend paragraph 2 along the lines proposed by the Chairman and to delete paragraph 3.

The CHAIRMAN proposed that the parentheses be removed from the words "as the administering authority" in Article IV (Functions of the Trusteeship Council).

Mr. LAURENTIE (Rapporteur) wished the words "administering authority" to be deleted, as they might imply that the United Nations derived its

/authority

authority in Jerusalem from some other source. In fact the United Nations were sovereign. The words were useless and confusing.

Mr. LIN MOUSSENG (China) wished to retain the words of the Plan. If they were ambiguous it was the fault of the General Assembly. The present draft Article IV was even more ambiguous.

Mr. FORSYTH (Australia) pointed out that the General Assembly did not require the precise wording of the Plan to be reproduced in the Statute. The Committee was not bound to reproduce typographical errors and ambiguities. He supported the view of the Rapporteur.

Mr. LIN MOUSSENG (China) did not like the article as drafted and objected in particular to the reference to "special powers".

The CHAIRMAN proposed that the phrasing: "By virtue of the authority conferred upon it..." be used and that the words in brackets be deleted. It was so agreed.

Mr. FORSYTH (Australia) thought that paragraph 3 of Article V (Territorial Integrity) could be deleted, and its provisions could be taken for granted.

Mr. GARREAU (France) suggested that it would be more logical to transpose paragraphs 2 and 3. He suggested the addition of the word "directly" in paragraph 2. The Security Council should be required to inform the Trusteeship Council of what it had done.

Mr. FLETCHER-COOKE (United Kingdom) considered that if paragraph 3 were deleted the words "and of the Trusteeship Council" should be added in paragraph 2.

Mr. GARREAU (France) said that it would have to be settled whether the Governor would correspond directly with the Trusteeship Council or through the Secretary-General.

Mr. ANKER (Secretary) pointed out that this was a question of form. Telegrams addressed to the Security Council would be sent to the Headquarters of the Organization and would in fact be handled in the first instance by the Secretariat.

Mr. FLETCHER-COOKE (United Kingdom) suggested that paragraph 2 should read "... the Governor should bring the matter to the ... attention of the Trusteeship Council and the Security Council". This would emphasize that the Governor was responsible to the Trusteeship Council.

Mr. FORSYTH (Australia) thought that this might create confusion. The Governor should be in no doubt that in an emergency he should refer the matter to the Security Council and act under its instructions. The Trusteeship Council should be informed for information only.

The CHAIRMAN pointed out that paragraph 3 dealt with threats to the special regime as well. As paragraph 2 was the exceptional case, the order of paragraphs could be reversed.

/Mr. NORIEGA

Mr. NORIEGA (Mexico) did not think that the Statute in its present form authorized emergency action by the Governor except under the directions of the Security Council. In this Article or in Article XV, the Committee should make it clear that the Governor possessed emergency powers.

The CHAIRMAN pointed out that it was perhaps illogical to mention the Governor here, before the article dealing with the Governor.

Mr. LIN MOUSHEUNG (China) thought the present order of paragraphs was sound. The matter was almost entirely within the purview of the Security Council. It was not necessary to confine paragraph 2 to cases of imminent threats.

Mr. NORIEGA (Mexico) disagreed. Article V dealt not only with threats to the territorial integrity but to the special regime itself. The Trusteeship Council had an important role in this connection.

Mr. LIN MOUSHEUNG (China) pointed out that an internal threat should be brought before the Security Council, under paragraph (c) of the Assembly Resolution. He suggested that paragraph 1 of this article should read "the existence of the City, under the special international regime, shall be assured by the United Nations. In the case of any threat to or any action against the special international regime, the Governor shall bring the matter to the attention of the Security Council and he shall inform the Trusteeship Council accordingly".

Mr. NORIEGA (Mexico) thought that there was a distinction to be made between threats to the territorial integrity and to the special regime, as recent experiences had shown. This latter question was not within the scope of the Security Council.

The meeting adjourned at 5.45 p.m.

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