

TRUSTEESHIP  
COUNCILCONSEIL  
DE TUTELLET/123  
17 February 1948

ORIGINAL: ENGLISH

QUESTION OF THE STATUTE FOR THE CITY OF JERUSALEM

OBSERVATIONS OF THE JEWISH AGENCY FOR PALESTINE  
ON THE DRAFT STATUTE (DOCUMENT T/118).Note by the Secretariat.

The Working Committee on Jerusalem, at its twenty-fifth meeting on 16 February 1948, decided to bring to the attention of the Trusteeship Council the following communication dated 2 February 1948, which it had received from the Director of the New York Office of the Jewish Agency for Palestine, and which contains the Jewish Agency's observations on the Draft Statute for the City of Jerusalem submitted by the Working Committee (documents T/118 and T/122).

RECEIVED

FEB 20 1948

UNITED NATIONS  
ARCHIVES

/OBSERVATIONS

OBSERVATIONS OF THE JEWISH AGENCY FOR PALESTINE ON THE DRAFT  
STATUTE FOR THE CITY OF JERUSALEM

New York, 2 February 1948.

The observations on the Draft Statute are set out in order of their importance; hence they do not follow the numerical order of the Articles. An index will be found at the end, showing the articles commented upon and the page reference.

I. COMPOSITION OF LEGISLATIVE COUNCIL AND METHOD OF ITS ELECTION

Article 20

This article consists of Paragraph 1, prescribing that only citizens of the City could be members of the Legislative Council; of three alternative versions of Paragraph 2, prescribing the composition of the Legislative Council; of Paragraph 3, giving the Council power to introduce disqualifications relating to election to and membership of the Legislative Council; and Paragraph 4, dealing with remuneration of members.

Paragraph 1. It is submitted that the provision that only citizens of the City could be elected to the Legislative Council runs counter to the letter and the spirit of the Plan. Paragraph 5 of Part III of the Plan makes no mention whatever of this special qualification for the passive right of election, the provision being that the Council is to be elected by adult residents of the City irrespective of nationality. Again Paragraph 11 of the same Part of the Plan envisages the possibility that a vast majority of the inhabitants would become citizens of the Arab and Jewish States respectively, or would retain the citizenship of the State of which they have been citizens. Throughout this part of the Plan "residents or citizens" is used disjunctively, underlining the nature of the international regime. It should be noted that while under the provisions of Part IC, 3, 1 (page 8) of the Plan, there is peremptory provision that every Arab and Jew "shall" become a citizen of the State in which he is resident, the provision as regards the City allows both Arabs and Jews to retain their foreign nationality if they so wish, this again being in keeping with the international regime. The very severe limitation proposed to be imposed upon the electorate, in that they could only elect Citizens of the City as their representatives, is hardly democratic, and has called forth criticism in similar circumstances elsewhere\*: no class possessed of political rights should be forced to seek its representation outside of its own ranks. The international regime in the City would be conducive to the retention by many of its leading European and American residents, some of whom are public spirited in a high degree, of their foreign Nationality and thus rule them out from participation in the Council, and reduce the choice

\* See discussion in General Assembly, First Session, Second Part on the Indian Representation Act (South Africa).

/of Councillors.

of Councillors. It is to be further noted that the Plan envisages that the administrative staff shall be chosen (the only limitation is "whenever practicable") from the residents of the City and the rest of Palestine on a non-discriminatory basis, and that they shall be classed as international officers. True that the Draft Statute (Article 16, Paragraph 1) excludes the Chief Secretary from the operation of this principle. But it would still be quite illogical that while the Attorney General or the senior administrative officers need not be Citizens of the City, a member of the Legislative Council must needs be one. In fact, no conflict of loyalty is envisaged in the case of the Governor or the Chief Secretary, who will be Foreign Citizens; nor in the case of other senior officials. Members of the Council will, on the one hand, be subject to a certain leaning towards their national or ethnic neighbours even if they hold Jerusalem citizenship; on the other, the responsibility of office and a sense of public duty will, it is to be hoped, help them to discharge their primary debt towards the well-being of the City with due fairness and devotion. It is submitted, therefore, that the distinction between the active and passive right of election may be omitted, and the paragraph amended by changing the word "citizens" into the word "residents".

Paragraph 2. The provisions in two of the three alternatives forms of this paragraph, of elections by ethnic curiae is a departure from the principles laid down in the Plan. In no part of the Plan is there any discrimination or distinction on the ground of race or religion, and it would be straining the provisions of Paragraph 5 of the Plan, or the words "proportional representation" used there, to import into them an intention of separate elections by the Arab residents and the Jewish residents of the City, with paramount rights of holding the balance to be granted to "other" residents of the City. Nor could the fixing of a permanent ratio between the various groups, whatever their real proportion at any time may be, be termed true "proportional representation", although that principle be retained within the groups.

The reference in the preamble to fostering co-operation and to encouraging peaceful development of the mutual relations between the two Palestinian peoples would rather sound like empty verbiage after these provisions. The impossibility of forming any political party or any economic trend or movement in which both sections of the population would pursue their joint interests, may doom co-operation to failure from the beginning.

Moreover, these "other" residents of the City, predominantly Armenians and Greeks, (the European Christians are a very small minority)

/now to such

now to such an extent identify themselves with the Arab Christians, to whom many of them are also bound by ties of marriage and business association, that the proposed arrangement would give a clear preponderance to the Arabs. The Jews form now, and have for many decades formed, a majority in Jerusalem. Their representation on the Municipal Council was that of one-half, and elections were held on common election tickets in several boroughs. The creation of the City of Jerusalem brought down their majority to equality, but the proposed arrangements would reduce them to the status of a minority.

In this connection, it may be noted that Article 25 of the Draft Statute, Paragraphs 6, 7 and 8, gives a simple majority of the members power to convene an extraordinary session of the Council, a quorum and power of decision. As drafted at present, it would be sufficient for the Arab members to persuade, intimidate, or by other means acquire the concurrence of one "other" member to exercise all the powers mentioned. This would reduce the Jewish section of the population to the same position of a minority as is envisaged by alternative "B", - a position in which the willing co-operation of the Jewish section would be frustrated.

Moreover, the favouring of the minority of "others" with 10% of the seats, while their number does not reach 1%, is not in consonance with the basic principles of the Plan, and might lend itself to unfavourable comment and interpretation.

The arrangement laid down by the Mandatory Administration, which the Jews as the majority did not regard as giving them a fair proportion of seats in relation to their numbers, allocated to the Jews 50% of the seats, while the non-Jewish communities were allocated the other 50%. The absence of a fair provision for holding the balance between the two, led to the suspension of the Municipal Council. It is most earnestly urged that the arrangements to be now enacted ought to guard against such pitfalls.

Paragraph 3. As at present drafted, this paragraph would enable a simple majority to introduce a disqualification relating to election to and membership of the Legislative Council, which would disqualify a large number of the opposite side. Thus, Arabs may propose that only a person whose father was born in Palestine shall be a member; Jews may propose that only those who know the two official languages shall be qualified.

It is appreciated that the intention of the paragraph is to provide for such disqualifications as undischarged bankruptcy, criminal conviction involving moral turpitude and the like. It is submitted that the power for this legislation may be safely left to the Governor by order, subject possibly to approval by the Trusteeship Council, and the same observation

/would apply

would apply to the provisions of Article 21, Paragraph 2.

Article 25

Paragraph 2. It is submitted that, in case division of representation as between Jews and non-Jews be persisted in, then the Governor or his deputy or any other person entrusted with holding the balance ought to be the Chairman of the Council, with a casting vote in case of equal division.

Paragraphs 6, 7 and 8. The provisions of these paragraphs have already been commented upon. Whether the ordinary principles of democratic elections and proportional representation be retained or not, the practical provisions would be that one-half of the members could move the Governor to convene an extraordinary session of the Legislative Council and form a quorum, and that whenever the Council is equally divided, the casting vote should decide the balance.

II. JUDICIAL SYSTEM.

Article 27

Paragraph 3. If it is the intention of this paragraph that all the Judges of the Supreme Court should be appointed by the Trusteeship Council from outside the residents of Palestine, then the already existing contact between higher members of the Judiciary and the population would be greatly reduced. Since the Mandate the Supreme Court of Palestine is usually so composed that a part of the bench is fully acquainted with the local languages, customs and milieu in general. It is true that by special request one could get the Court composed of British judges only, but the ordinary composition was a presiding British judge sitting together with a Jew and an Arab. It is submitted that at least the present position ought to be maintained, and only the Chief Justice appointed by the Trusteeship Council, while the others should be local judges, appointed by the Chief Justice in consultation with the Governor.

If the intention of the paragraph is merely that the authority of the Supreme Court Judges should spring from the Trusteeship Council, then this increased prestige could only be welcomed. Any intended limitation as to non-eligibility of residents of the City or nationals of the Arab State or Jewish State, would then clearly apply to the Chief Justice only.

Paragraph 4. It is apprehended that the provisions of this paragraph may be insufficient to vest the Religious Courts with the necessary jurisdiction. There is no doubt that all the Religious communities would ask for a continued existence of the Religious Courts in one system throughout the three territories, with an Appeal to a Court of Appeal in Jerusalem or elsewhere. It would be extremely useful were provisions made:

/(a) defining the

- (a) defining the jurisdiction of the Religious Courts. Insofar as the Rabbinical Courts are concerned, the desirable definition is that they shall have exclusive jurisdiction in all matters of personal status of Jews and in all cases concerning the constitution or internal administration of a Wakf or religious endowment constituted before the Rabbinical Court according to Jewish Law, and also of a Wakf constituted during the Turkish Regime by Jews for the benefit of Jews before a Shari'a Court;
- (b) declaring that the Civil Courts will enforce the judgments of the Religious Courts by the process and offices of the Civil Courts;
- (c) stating that recognition will be given to any right of appeal from a Religious Court outside the City or from a Religious Court within the City to a Religious Court of Superior Jurisdiction, situated either within or outside the City.

This would also require a definition of "matters of personal status" in Article 45. The existing definition is as follows:

"Suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies, and the administration of the property of absent persons."

Further, provision seems to be necessary for the constitution of a Special Tribunal, to be composed of two judges of the Supreme Court and the Superior Judge of the Religious Court concerned, to decide whenever a question arises as to whether or not a case is one of personal status within the exclusive jurisdiction of a Religious Court. Power might also be given to the Chief Justice to decide which Religious Court shall have jurisdiction where any action of personal status involves persons of different religious communities.

Finally, provision might be made for the reciprocal Enforcement of Judgments as between Jerusalem and the Jewish State on the one hand, and Jerusalem and the Arab State on the other, and for the extradition of offenders as between the three territories.

Paragraph 2. It would be better to use the expression "all persons in" in lieu of "all inhabitants of", as was done in Article 8, Paragraphs 1 and 3. The present legislation (Article 38 of the Palestine Order-in-Council) reads: "The Civil Courts...shall...exercise jurisdiction in all matters and over all persons in Palestine."

Article 28

Paragraph 1. The reference to the original and appellate jurisdiction of the Supreme Court is somewhat confusing, and it might be preferable to make clear provision as to the jurisdiction of the Supreme Court sitting as a High Court of Justice and hearing petitions and writs in the nature of mandamus or habeas corpus proceedings. Questions as to the constitutionality of legislation can of course also arise in the course of any proceedings before a Court of Trial, whose decision would be subject to appeal, so that the Supreme Court in its appellate jurisdiction would be called upon to give a final decision.

III. EDUCATION

Article 31

Paragraph 2. The words "on an equitable basis" may lead to misunderstanding and to contentions as to the allocation of the Educational Budget. Some 40,000 rural or semi-rural inhabitants have been added to Jerusalem, nearly all of them Arabs, and the provision of secondary education "on an equitable basis for the Arab community and the Jewish community", may raise complicated issues. If the words "on an equitable basis" are omitted, there is still the provision for "an adequate system" to guide the administration of the City.

Paragraph 3. The right of any community to maintain its own educational institutions has been made subject also to "the special objectives recited in the Preamble to this Statute". This limitation is not contained in Paragraph 6 (page 22 of the Plan) and might lead to interference with the freedom granted by the Plan. Nor would there appear to be any reason for a change in the wording of the Plan in this regard.

This paragraph would meet the realities of the present position if it were to provide that "any such community or specific group shall be entitled to a grant-in-aid out of the educational budget of the City proportionate to the number of children taught in any such institution." The use of the word "children" in this provision would be an answer to any contention that the provision might lead to a claim for the support of a university or any other institution of higher education out of the ordinary educational budget of the City.

IV. CITIZENSHIP

Article 10

This Article entirely omits the provisions of Paragraph 11 (page 21) of the Plan as to persons who filed notice of intention to become citizens of one of the two States, pursuant to Paragraph 9 of Part IA (page 4) of /the Plan.

the Plan. This would appear to call for correction, as the application of the provisions of the Plan would materially change the proposed Draft.

Paragraph 1. The requirement of acceptance of the renunciation by the State of original nationality seems to be an onerous condition. Most Nationality Laws make no provision whatever for the release of their nationals or for the acceptance of any renunciation by them, and in the cases of such nationals the condition could not be fulfilled at all. It is submitted that notification of the renunciation to the representative of the State concerned might suffice. Under the present Law of Nationality no acceptance is required.

Paragraph 2 (b). The second "notice" might be clearly stated to be "notice of her desire to retain her citizenship of the City", as distinct from the first "notice" occurring in the same paragraph. The words "on her own behalf" could then be omitted.

Paragraph 2 (c). The words "as laid down by the legislation of the City" seem to be superfluous. There would be no "legislation of the City" at the time in question. The word "legal" applied to a guardian, already means "a guardian in accordance with the law in force at the time", and the further specification might be omitted.

Paragraph 3. It would be desirable that this paragraph conclude with a provision similar to that of Article VII of the Mandate for Palestine: "There shall be included in any nationality law provisions framed so as to facilitate the acquisition of citizenship of the City by its residents."

Provisions for legal persons might be suitably inserted at the end of this paragraph. It is suggested that they take the following form:

Every company, whether Palestinian or Foreign, and every co-operative society, partnership, association or charitable trust at present registered in Palestine may opt, within a time to be prescribed by the Governor, that its registration be effective either for the City only, or for the City and the Jewish State, or for the City and the Arab State, and upon such election the registration shall be effective accordingly.

#### Article 9

In Sub-Paragraph (a) the word "resident", seems to have been omitted between "ordinarily" and "in".

It would also be desirable to bring into line the expression "have remained" and "have not ceased" used at the end of (a) and (b) respectively, and to insert "the" between "that" and "legislation" in the proviso.

/It is submitted



It is submitted that a period of residence of six months, combined with the requirement of the person being "ordinarily" resident and of his not having ceased to be "ordinarily" so resident, would be quite sufficient to guarantee genuineness for the purposes of Articles 10, 20, 21 and 40 of the Statute.

#### V. VARIOUS PROVISIONS

##### Article 29

Paragraph 1. This paragraph only mentions "freedom of transit through the City", but omits to mention freedom to enter and visit the city. Transit implies the passage to another destination, while pilgrims and visitors ought also to be secured the freedom to enter and visit the City even if this be the final destination of their pilgrimage or visit.

Paragraph 3. "Nationals of other states" would be more accurately described as "persons who are neither citizens nor residents of the Arab State or Jewish State", so as to include persons without a definite nationality. On the other hand, this would clearly show that the paragraph does not cover "nationals of other states" who are residents of the Arab State or the Jewish State.

##### Article 5

Paragraph 4. The City will depend on outside supplies for food and provisions, and must be able to secure access to water and power facilities. It is submitted that amongst the duties of the Special Police Force enumerated in the first 4 lines of this paragraph, the following might also be included: ", and for the maintenance of free access to the City, and free access by the City to water and power facilities".

##### Article 32

It is suggested that between Paragraphs 3 and 4, a paragraph may be inserted to the effect that all existing registrations of Trade Marks, Designs and Patents and all future such registrations in the Jewish State or Arab State shall be effective for the City of Jerusalem.

##### Article 35

Paragraph 2. It is suggested that this paragraph might conclude with a reference to Consular offices abroad being authorized to grant freedom of entry into the City with right of transit through the Jewish State and the Arab State.

##### Article 42

The crucial date mentioned in this Article ("the day preceding the entry into force of this Statute") may give rise to some constitutional difficulties in respect of the period between the termination of the Mandate and the coming into force of the Statute. It would be safer to

/take the

take the date of the termination of the Mandate as the crucial date. The Article might conclude with a provision that all references in any statute to the High Commissioner for Palestine or to the District Commissioner of Jerusalem shall be read as if the Governor is substituted for these terms.

For the sake of avoiding doubts, it would be helpful to make clear provision that the Governor may legislate by order for the establishment of temporary Courts, Municipal Commissions or Councils or any other central or local authority, and define their jurisdiction and power. The Jerusalem Municipal Commission, now consisting of British officials, may disappear upon the British withdrawal, and the vacuum would require temporary filling.

#### Article 37

Paragraph 3. It is suggested that a permanent body in each State would be more workable than one permanent body for the two States.

Paragraph 5. It is suggested that the wording used in Article 36, Paragraph 5, (...community or denomination or section of the community) might be used in this paragraph, as being more lucid and comprehensive.

#### Article 30

It is suggested that the second "shall" in the second line might be replaced by "may", as the use of the working languages is not peremptory but permissive.

#### Article 34

Paragraph 1. As no townships exist now in the City, but local Councils do, it might be proper to replace the former term by the latter.

Paragraph 2. For the sake of lucidity, it would also be useful to insert the words", together with the Old City," between "from" and "part" in the last line on page 21.

#### Article 43

Paragraph 2. It would be helpful if it is made clear whether the Governor shall be bound by the provisions of Articles 20 and 21 (in their eventual final form), or shall have complete liberty to fix age, number of members, system of election, etc. The first alternative being the more reasonable one, provision might be made for the Governor's taking cognizance of these provisions.

#### Article 13

Paragraph 2. In view of the provision of Paragraph 2 of Article 4, and of Paragraph 2 of Article 5, the words "or the Security Council" might be added after the words "Trusteeship Council", as in ~~the~~ <sup>the</sup> ~~words~~ <sup>words</sup> of  
/security the

security the Security Council may find it necessary to exercise direct authority, in addition to cases where urgent action is required and for which provision is made in Paragraph 2 of Article 15. The same observation applies to the penultimate line of Paragraph 4 of Article 16.

Article 23

Paragraph 5. This limits the power of the Governor to the adoption of such amendments only as "have been moved or proposed in the Council or in any Committee thereof", but would exclude amendments suggested by any other public discussion, in the Press, or merely mentioned during debate or criticism in the Council. It is suggested that the limitation may be unnecessary.

Article 45

Sub-paragraph (d). In view of the provisions of this sub-paragraph, the special powers to amend, vary and rescind mentioned in Article 29, Paragraph 3, and in Article 36, Paragraph 9, seem to be superfluous.

Article 27

Paragraph 6. The proposed paragraph does not appear to be necessary.

Article 18

"Council of Government" ought, of course, to read "Council of Administration."

FINANCIAL PROVISIONS:

It is submitted that the Statute ought to provide that the salaries of the Governor, the Chief Secretary, the Chief Justice, and the cost of the Special Police Force should be provided by the Trusteeship Council. It would be burdensome for the City to defray the cost of these international provisions, calculated to ensure to the City its international character.

INDEX

<u>Article of Draft Statute</u>	<u>Page of their observations</u>
5, Para. 4 . . . . .	9
9, Sub. Para. (a). . . . .	8, 9
10, Para. 1 . . . . .	8
Para. 2 (b) - 2 (c) . . . . .	8
Para. 3 . . . . .	8
13, Para. 2 . . . . .	10, 11
16, Para. 4 . . . . .	11
18. . . . .	11
20, Para. 1 . . . . .	2, 3
Para. 2 . . . . .	3, 4
Para. 3 . . . . .	4, 5
21, Para. 2 . . . . .	5
23, Para. 5 . . . . .	11
25, Para. 2 . . . . .	5
Paras. 6, 7 and 8 . . . . .	5
27, Para. 2 . . . . .	6
Para. 3 . . . . .	5
Para. 4 . . . . .	5, 6
Para. 6 . . . . .	11
28, Para. 1 . . . . .	7
29, Para. 1 . . . . .	9
Para. 3 . . . . .	9, 11
30. . . . .	10
31, Para. 2 . . . . .	7
Para. 3 . . . . .	7
32. . . . .	9
34. Para. 1 . . . . .	10
Para. 2 . . . . .	10
35, Para. 2 . . . . .	9
36, Para. 9 . . . . .	11
37, Para. 3 . . . . .	10
Para. 5 . . . . .	10
42. . . . .	9, 10
43, Para. 2 . . . . .	10
45, Sub. Para. (d). . . . .	11