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UNITED NATIONS PALESTINE COMMISSION
Communication Received from United Kingdom
Delegation Concerning Enemy Property in
Palestine

The following communication, enclosing a copy of a memorandum on German Enemy Property and other assets under the control of the Palestine Custodian, has been received from Mr. Fletcher-Cooke of the United Kingdom Delegation.

UNITED KINGDOM DELEGATION TO THE UNITED NATIONS
Empire State Building
New York 1 N.Y.

CONFIDENTIAL

20th April, 1948

My dear Bunche,

May I refer you to Section 5 – Enemy Property, of paragraph 2 of the note on certain matters which was submitted for the information of the Commission on the 21st January, 1948.

2. I now enclose for the information and consideration of the Commission, a memorandum on German Enemy property and other assets under the control of the Palestine Custodian. As the Commission will observe, the position is, broadly speaking, that as much as possible of the German property in Palestine is being liquidated and will be transferred to the United Kingdom but that it will be physically impossible to liquidate quite a large amount. His Majesty's Government desires to place this fact on record with the Commission as an indication of the limit which the termination of the Mandate has placed upon British responsibilities in this matter.

3. Apart from the responsibility for accounting for German assets in Palestine, there are other responsibilities towards Allied Countries and under Peace Treaties with former Enemy Governments. These are fully described in the memorandum and His Majesty's Government consider that they, as well as the responsibility in regard to German assets, should be the concern of the Commission and any successor authority.

4. In conclusion, I would invite the particular attention of the Commission to section V. of the memorandum, from which it will be observed that His Majesty's Government in the United Kingdom ask:-

(1) For an assurance from the Commission that it recognises the responsibilities in respect of property under the control of the Palestine Custodian of Enemy Property, as described in the memorandum, particularly those which have to be fulfilled through His Majesty's Government in the United Kingdom towards the Inter-Allied Reparation Agency, and

(2) for an undertaking from the Commission that in any instrument for which the United Nations is responsible under which transfer of Government of Palestine is affected there will be included suitable provisions requiring a successor authority recognise the obligations and responsibilities as described in the memorandum and that those dischargeable towards the Inter-Allied Reparation Agency through His Majesty's Government will be so discharged,

Yours sincerely,
/s/ J. Fletcher-Cooke (J. Fletcher-Cooke)

Dr. Ralph J. Bunche,
Principal Secretary to the United Nations
Commission on Palestine,
United Nations,
Lake Success

Memorandum for United Nations Commission for Palestine
GERMAN ENEMY PROPERTY, AND OTHER ASSETS
UNDER THE CONTROL OF THE PALESTINE CUSTODIAN

Memorandum as to International and other obligations involved.

1. It is essential to bring to the notice of the United Nations Commission the nature and extent of the responsibilities and obligations which are borne by the present administration in Palestine in respect of property which has come under the control of the Palestine Custodian of Enemy Property by reason of the exercise of the powers contained in trading with the Enemy legislation in Palestine. These responsibilities and obligations are of a continuing character and carry with them certain

international commitments. It is accordingly necessary that the arrangements for the future administration of Palestine on the termination of the mandate should include provisions to ensure recognition and acceptance by any successor authority or authorities of these responsibilities and obligations.

NATURE AND EXTENT OF THE PRESENT CONTROL OVER PROPERTY IN PALESTINE EXERCISED BY THE CUSTODIAN

2. Under the Trading with the Enemy Ordinance No. 36 of 1939 of Palestine, the High Commissioner appointed a Custodian of enemy property in Palestine with a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace. This custodian has control over enemy property in Palestine.

Enemy property under this Ordinance includes *inter alia* the property of states at war with His Majesty, of persons resident in any area under the sovereignty of or in occupation of a power with whom His Majesty is at war, of businesses controlled by enemies or incorporated in or under the laws of enemies. The Custodian's control continues until arrangements made at the conclusion of peace are implemented.

3. "Enemy property" over which the Custodian still has control falls into the following main categories:-

- (a) Property held in connection with states with whom His Majesty is still at war, i.e. Germany and Japan.
- (b) Property held in connection with states with whom His Majesty has concluded treaties of peace, e.g. Italy, Bulgaria, Rumania, Hungary, Finland.
- (c) Property held in connection with territory formerly occupied by the enemy e.g. France, Holland, Belgium, Norway, Czechoslovakia.
- (d) Other property releasable to owners as not accountable as reparations.

4. The assets falling under the above three headings, (a), (b) and (c) consist primarily of immovable property mostly of land. Estimates made by the Custodian of Enemy Property of these properties give a total of approximately £P 20. But reliable estimates of values of property in Palestine at the present time, particularly of land, are impossible and while there is no doubt that the property under custodianship is very considerable in extent and value the foregoing figure should be treated with all reserve. (There are in addition other assets, particularly ecclesiastical property and property belonging to enemy subjects. Most of the ecclesiastical property is expected to be released from custodian control before the termination of the mandate.)

Because of the extraordinary difficulties in estimating values of report in Palestine all the estimates noted in this paper, which are derived from information furnished by the Custodian of Enemy Property, Palestine, should also be accepted with caution.

I. GERMAN ENEMY ASSETS IN PALESTINE

5. There are international obligations to be fulfilled (a) as to disposition of these assets and (b) as to accounting for their value. These obligations, which at the moment rest upon H.M. Government in the United Kingdom, should pass to the authority or authorities having jurisdiction in Palestine when the United Kingdom mandate is relinquished. These obligations arise as follows:-

THE GENERAL BACKGROUND

6. By the decision of the Berlin Conference of July/August, 1945, it was decided that, "the reparation claims of the United States, the United Kingdom and other countries to reparations shall be met... and from appropriate German external assets". By the provisions of Article 6 of Part I of the Final Act of the Paris Conference on Reparation, "Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German assets within its jurisdiction in manners designed to include their return to German ownership or control and shall charge against its reparation share such assets". Article 2 of Part IV of the Final Act statement that "The signature of each contracting Government shall be deemed to mean that the effect of the present Agreement extends... to territories under its protection or suzerainty or over which it at present exercises a mandate". Under Article IF of Part I of the Final Act the Inter-Allied Reparation Agency must charge the reparation account of each Signatory Government for the German assets within that Government's jurisdiction, and each Signatory Government is required to render a return of the value of such assets as defined under Article 6 of Part I of the Agreement. His Majesty's Government in the United Kingdom signed the Paris Agreement on the 21st December, 1945, when it exercised a mandate over Palestine. Under the Final Act the share to be allocated to the United Kingdom (including all areas under its jurisdiction) of the total of German external assets, known as Category A, which are found to be available, is 28%. This means in effect that the United Kingdom is entitled to 28% of the *total* of all German assets in all countries signatory to the Final Act, which includes the United Kingdom, plus any other external assets, e.g. those made available in Neutral Countries. The division of this 28% as between the United Kingdom and all the Colonies including Palestine, is a matter for arrangement between the United Kingdom Government and the Colonial Governments concerned. Certain broad principles of division have already been tentatively decided upon, whereunder the Colonies and Palestine will each receive a proportion of the total United Kingdom receipts from reparations (including external assets) corresponding to the proportion of war damage sustained.

7. The position of accountable German enemy assets in Palestine under the international arrangements described above, and H.M. Government's responsibility in regard thereto is:

(1) While these assets are within H.M. jurisdiction:-

- (i) H.M. Government is required to see that German enemy assets in Palestine are so dealt with as to preclude their return to German ownership or control;
- (ii) H.M. government must ensure that the value of them is included in the United Kingdom returns to the Inter-Allied Reparation Agency;
- (iii) the Inter-Allied Reparation Agency is required to charge H.M. Government's share with the *value* of these German enemy assets in Palestine.

(2) In determining the total of Category A assets for reparation purposes the Inter-Allied Reparation Agency includes all accountable German assets in Palestine.

(3) All German enemy assets in Palestine defined as accountable by the Inter-Allied Reparation Agency are reparations.

8. Had it been possible to liquidate the whole of German enemy assets in Palestine before the termination of the mandate the proceeds could have been transferred to the United Kingdom, and fully accounted for to the Inter-Allied Reparation Agency, and adjustment eventually effected with Palestine to whom transfer would have been made of her share of the Colonial portion of the United Kingdom's Category A share of 28%. But this has not been possible and German enemy assets accountable to the Inter-Allied Reparation Agency of considerable value will remain unliquidated when United Kingdom's jurisdiction in Palestine ends. The account for these to the Inter-Allied Reparation Agency has to be made and H.M. Government seek an assurance from the United Nations Commission that this responsibility is recognised as one which the United Nations Commission should take steps to ensure is discharged by it, or any successor authority in Palestine through H.M. Government. H.M. Government would, for its part, be prepared to give an assurance that adjustment in respect of Palestine's share of the 28% of Category A reparations would be duly effected. In the meantime such liquid proceeds of German enemy assets in Palestine as are available for transfer when the mandate ends will be transferred.

The total value of German enemy assets in Palestine, including liquidated proceeds, accountable as reparations is estimated at £ 5 million. Again for the reasons already stated this estimate must be treated with all reserve. Most of this property will remain in Palestine when the mandate ends.

9. Japanese assets in Palestine. The value and extent of these is negligible. They will, however, be required to be kept in custodianship pending a decision as to their disposal.

II. EX-ENEMY SATELLITE PROPERTY E.G. ITALY, ROUMANIA, BULGARIA, HUNGARY AND FINLAND

10. The Treaties of Peace concluded with Italy, Roumania, Bulgaria and Hungary all contain a similar provision, (articles 79, 27, 25 and 29 respectively), giving the right to the Allied and associated Powers to seize property of these ex-enemy nationals to meet claims, other than claims fully satisfied under other articles of the Treaties. Property or the proceeds thereof in excess of such claims has to be returned.

11. The total value of assets under this category is estimated at £P 1.6 million.

12. An agreement has been made between the United Kingdom and Italy as to discharge of claims other than those covered by the Peace Treaty in return for release of the assets sizable under Article 70. This agreement has been extended to Palestine. The agreement will not however be fulfilled when the U.K. mandate ends.

13. Under these Peace Treaties there will thus be certain international rights and obligations resting upon any future administration of Palestine in respect of the property mentioned.

III. ALLIED PROPERTY

14. There is in Palestine property of a total value of about £P 13 million which has come under the control of the Custodian by reason of the owners being resident in or carrying on business in Allied territory during its occupation by the enemy. Property of a total estimated value of about £P 3.5 million is due to be released under arrangements made between His Majesty's Government and the Allied Governments under agreements which have been extended to Palestine. Although every effort is being made to make the maximum release of this property before the United Kingdom mandate ends there will still then remain a considerable amount of valuable property for which custodian arrangements ought to continue under those arrangements are fully carried out.

15. As to the balance of Allied property in Palestine, of an estimated value of £P 9.5 no agreement has yet been made by His Majesty's Government with the Allied Government concerned, e.g. Poland, Yugoslavia and China. All of this property will be unreleased from custodianship when the mandate ends.

IV. OTHER PROPERTY RELEASABLE TO OWNERS

16. Included in the Germany enemy assets held by the Custodian is a considerable amount of property belonging to German or former German nationals not resident in Germany. These German nationals are either those who settled in Palestine long prior to 3rd September, 1939 or are the descendants of those settlers. This property is not accountable to the Inter-Allied Reparation Agency if it is released to owners who were not physically inside Germany or had their residence in Germany on 24th January, 1946, the operative date of the Paris Act. None of the owners are expected to take up residence in Germany. Some are already in Australia and have acquired British nationality as Australians. Some of the property of this category, which consists almost entirely of land, has been sold and the proceeds made available to the owners. In their provisions for administration of Palestine when the United Kingdom mandate ends the United Nations Commission is asked to include provision for continuance of the practice based on equity and international practice, of release to the persons entitled of assets of this kind which are not required to be accounted for as reparations under the provisions of the Final Act.

17. There are also assets of Allied or Neutral persons, who were resident in enemy territory, e.g. Germany or Italy, which should similarly be released to the persons entitled.

V. UNDERTAKING AS TO CUSTODIAN HELD PROPERTY WHEN MANDATE ENDS

18. His Majesty's Government in the United Kingdom ask:-

- (i) For an assurance from the United Nations Commission that it recognises the responsibilities in respect of property under the control of the Palestine Custodian of Enemy Property, as described above, particularly those which have to be fulfilled, through His Majesty's Government in the United Kingdom, towards the Inter-Allied Reparation Agency; and
- (ii) for an undertaking from the United Nations Commission that, in any instrument for which the United Nations is responsible under which transfers Government of Palestine is effected, there will be included suitable provisions requiring a successor authority to recognise, the obligations and responsibilities as described and that those dischargeable towards the Inter-Allied Reparation Agency through His Majesty's Government will be so discharged.

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