

RESTRICTED
UK/42
25 February 1948

UNITED NATIONS PALESTINE COMMISSION

Communication Received by Mr. Federspiel from the United Kingdom Delegation Concerning Termination of the Mandate, Contracts of Employment and Compensation Terms.

The following communication, concerning the legal meaning of the "Termination of the Mandate", Contracts of Employment and Compensation Terms, have been received by Mr. Federspiel from Sir Alexander Cadogan of the United Kingdom Delegation.

RESTRICTED
UK/42
25 February 1948

United Kingdom Delegation
to the United Nations
New York

20th February, 1948.

No. 52/195/48

Dear Federspiel,

You will remember that on the 7th February we had some discussion about the legal meaning of "the termination of the Mandate". I duly reported the Commission's view on this matter to my Government and have now received their comments, which are set out in the enclosed memorandum marked "A", which I am sending to you for the information of the Commission.

2. As regards the question of Contracts of Employment, to which you drew particular attention, I have now been authorised to communicate to the Commission the views of my Government, which are set out in the memorandum marked "B", which is also enclosed with this letter. The details of the Compensation Terms decided upon for officers and employees of the Palestine Government on the termination of the Mandate are set out in the enclosed Note marked "C".

3. I have been asked to draw your attention to the last paragraph of the memorandum marked "B", from which you will observe that, as regards public announcement of the abolition terms, for administrative reasons there can be no question of deferring the announcement of these terms beyond the 28th February.

4. As regards the question of the preparation of estimates for the financial year 1948/49, the views of the Commission are being examined by His Majesty's Government in consultation with the Government of Palestine and I will address you further on this matter in due course.

Yours sincerely,

Monsieur Per Federspiel,
Room 608,
Hotel Plaza, New York, N.Y.

Alexander Cadogan.

MEMORANDUM

"A"

LEGAL MEANING OF THE "TERMINATION OF THE MANDATE"

Palestine is today a legal entity but it is not a sovereign state.

Palestine is a territory administered under mandate by His Majesty (in respect of the United Kingdom), who is entirely responsible both for its internal administration and for its foreign affairs.

2. After the 15th May, 1948, Palestine will continue to be a legal entity but it will still not be a sovereign state because it will not be immediately self-governing. The authority responsible for its administration will, however, have changed.

3. Where the sovereignty of Palestine lies at the present time in a disputed and perhaps academic legal question about which writers have expressed a number of different conclusions. Where the sovereignty of Palestine will lie after the 15th May, 1948, is perhaps also a question on which different views will be held but so far as His Majesty's Government are aware, it is a question which it is unnecessary to answer in connection with any practical issues.

4. After the 15th May, 1948, the United Nations Commission will be the Government of Palestine. It does not seem very material whether it is considered to be the de facto or the de jure Government. In any case, its title to be the Government of Palestine will rest on the resolution of the General Assembly.

5. His Majesty's Government will recognise the United Nations Commission as the authority with which to make an agreement regarding the transfer of the assets of the Government of Palestine.

6. The present employees of the Palestine Administration are the servants of the Crown of the United Kingdom in right of its Government of Palestine. The existing contracts of employment of such employees are automatically terminated when His Majesty ceases to be responsible for the government of Palestine because they never agreed to serve any other authority than His Majesty.

7. Subject to the views set out above on the legal position and the action necessarily following from those views, all proper assistance will be given

RESTRICTED
UK/42
25 February 1948

to the Commission in making arrangements for continuing the employment of all officials in office on the same terms as they enjoy at present and with the same rights, on the understanding that it will be open to the officials concerned voluntarily to accept or refuse any offer made by the Commission.

MEMORANDUM "B"
CONTRACTS OF EMPLOYMENT

It follows from His Majesty's Government's view of the legal position set out in Memorandum "A" that the termination of the contracts of Civil Servants employed by the Mandatory Government is a corollary to the termination of the Mandate. His Majesty's Government welcome, however, the policy already expressed by the Commission of continuing all Palestinian officers in employment on the same terms and with the same rights as those enjoyed under the Mandatory Government and His Majesty's Government would not wish to take any action which would prejudice the successful application of that policy.

2. On the other hand, in cases where the appointments of Civil Servants are not renewed on the same terms and with the same rights as those enjoyed under the Mandatory Government, there should be just terms of compensation for loss of office. The financial commitments involved in such compensation constitutes a liability to be assumed equally with the cost of superannuation benefits now being paid or falling due in the future, by the successor authorities. Whilst His Majesty's Government are anxious to provide the fullest opportunity for continuing employment to be arranged, the Mandatory Government cannot regard itself as precluded from paying compensation benefits before or at the date of the termination of the Mandate in appropriate cases where there is no reasonable prospect of further employment under a successor authority. It is agreed, however, that in cases where a definite offer of appointment on the same terms and with the same rights as under the Mandatory Government has been made by a successor authority to a Palestinian officer, compensation, as distinct from statutory or contractual benefits, would not be payable, or if already paid would be refundable, provided that in every case the Mandatory Government reserves the right to pay compensation if it is satisfied that the merits of the case justify such payment.

3. The terms of compensation which the Mandatory Government has decided to be suitable for application in cases where there is no such renewal or offer of appointment are set out in the enclosed Note marked "C". It is essential

for the preservation of normal service of government that an immediate announcement should be made to the Palestine Civil Service in regard to terms of compensation. It is, therefore, the intention to announce them on Saturday, 28th February and if before that date no notification is received to the contrary, it will be assumed that the Commission accept the terms and the liability involved.

4. The Commission has already published a declaration of policy to the effect that it proposes to ensure the maintenance of existing conditions of employment for all employees of the Palestine Administration who continue in service after the termination of the Mandate. Steps have already been taken in Palestine to bring to the notice of all employees of the Palestine Administration this general statement of the Commission's policy and the Government of Palestine are endeavouring to secure from all Government employees a declaration of their intention to continue or not to continue in service after the termination of the Mandate, indicating in the former case whether they prefer to serve in the Jewish or the Arab State or in the City of Jerusalem or under the Joint Economic Board to be set up under the Plan.

5. For administrative reasons, there can be no question of deferring the announcement of the compensation terms decided upon beyond the 28th February, 1948.

NOTE "C"

COMPENSATION TERMS FOR OFFICERS AND EMPLOYEES OF THE
PALESTINE GOVERNMENT ON TERMINATION OF THE MANDATE

It is the wish of the Mandatory Government that the maximum number of its expatriate staff should be absorbed in suitable alternative employment in the Colonial Service and elsewhere and that the maximum number of its non-expatriate staff should be absorbed in employment under the successor authorities under the same terms and with the same rights as those enjoyed by them in its own service. The following terms of compensation for loss of office will be applicable in cases where an officer or employee is not re-employed in this way, save that in the case of non-expatriate staff they will not apply where a definite offer of appointment on the same terms and with the same rights as under the Mandatory Government has been made by a successor authority. This proviso will not be regarded as applicable in cases where the Mandatory Government is satisfied that on the merits of the case refusal of the offer is justified and that such refusal has in fact taken place.

- I. They will receive whatever retiring benefits they may have earned under the existing laws of Palestine, or in accordance with the terms of their contract, in respect of their service under the Mandatory Government.
- II. The following additional benefits will be payable in compensation for loss of career and office.

1. Pensionable Officers

(a) Additional pension based on the terms granted to public officers in Ceylon, to be commuted in full at the option of the officer into a cash gratuity. The right of option will be withheld initially in the case of non-expatriate officers pending clarification of their prospects of re-employment. Appendix I sets out the factors on which the additional pensions will be calculated at different retiring ages. Appendix II sets out the table for commuting additional pensions into cash gratuities. An officer will be allowed to opt for the abolition terms prescribed under Pensions Rule 16 of the Pensions Ordinance No.1 of 1944 (copy attached), where these are more favourable to him.

(b) The qualifying period of service for a pension under the Police Ordinance to be reduced from 15 to 10 years, thus bringing it into line with the qualifying period prescribed under the Pensions Ordinance.

2. Officers in Pensionable Posts who have not yet qualified for pension

(a) A gratuity equal to 10% of the retiring pensionable emoluments for each completed year of service.

(b) A gratuity calculated under Pensions Rule 2 -- I.E. five times the amount of pension the officer would have earned had there been a qualifying period.

3. All Officers (other than Police below the rank of Inspector) who are pensionable or who would in due course have qualified for pension by length of service.

A disturbance grant equivalent to $2\frac{1}{2}$ times the annual leave entitlement on full pay.

4. All Police below the rank of Inspector

(a) A disturbance grant equivalent to 3 months' leave on full pay.

(b) Special police gratuities

(i) the qualifying period of five years to be waived.

(ii) gratuities to be calculated on the basis of (1) one month's salary for each of the first five years of service and (2) two months' salary for each year of service over five. (In the case of British police transferred to other suitable service (a) and (b) will apply, but gratuities will be calculated on the basis provided in the Police Ordinance).

5. Provident Fund Officers

A gratuity equal to half the amount of the bonus due under the Provident Fund Ordinance at the date of the termination of the officer's appointment.

6. Salary in lieu of notice to all temporary employees (other than casual labour) and officers on Provident Fund terms.

(a) to all officers entitled to 3 months' notice --

A bonus equal to 3 months' full-pay leave or earned leave, whichever is the greater.

RESTRICTED
UK/42
25 February 1948

(b) To all officers entitled to 1 month's notice

A bonus equal to one month's full-pay leave or earned leave, whichever is the greater.

(c) To all other personnel in this category

A bonus equal to a fortnight's full-pay leave.

III. A very approximate estimate of the cost of existing statutory and contractual commitments and of the compensation terms set out above, in respect of the whole Civil Service, is set out at Appendix III. In practice the cost will of course be reduced in proportion to the number who are absorbed in other public employment and who are thus ineligible for compensation benefits.

IV. Transfers

To facilitate the absorption of as many expatriate officers as possible into appointments in the Colonial Service, the following arrangements will be applied.

- (a) an officer transferred to an appointment in the Colonial Service involving an immediate reduction in pensionable emoluments will receive a lump sum payment of five times the reduction.

If, however, he is within less than five years of the compulsory age of retirement in his new post, the payment will be reduced in proportion to the number of completed months by which his expectation of further service falls short of five years.

- (b) an officer transferred to another appointment in the Colonial Service who is subsequently retired through no fault of his own in such circumstances that his pension is less than that which he would have received if he had retired on grounds of ill-health at the date of the termination of the Mandate shall have his pension made up to the latter figure.

Appendix ICompensatory pension for loss of career

Age at Retirement	Officers	Matrons etc.	Judges
No. of 1/600ths of retiring salary given as compensation (1/720ths in the case of non-expatriate officers).			
20			
1			
2			
3			
4			
25			
6	6		
7	12		6
8	18		12
9	24		18
30			
1	30		24
2	36	6	30
3	42	12	36
4	48	18	42
	54	24	48
35			
6	60	30	54
7	66	36	60
8	72	42	66
9	78	48	72
	84	54	78
40			
1	90	60	84
2	90	60	90
3	90	60	90
4	90	60	90
	84	54	90
45			
6	78	48	84
7	72	42	78
8	66	36	72
9	60	30	66
	54	24	60
50			
1	48	18	54
2	42	12	48
3	36	6	42
4	30	-	36
	24	-	30
55			
6	18	-	24
7	12	-	18
8	6	-	12
9	-	-	6
	-	-	-
60			
1	-	-	-
2	-	-	-

25 February 1948

Appendix IIAge next BirthdayNumber of years' purchase

21	17.279
22	17.185
23	17.089
24	16.990
25	16.889
26	16.783
27	16.673
28	16.561
29	16.444
30	16.324
31	16.200
32	16.072
33	15.938
34	15.800
35	15.657
36	15.509
37	15.356
38	15.197
39	15.032
40	14.862
41	14.687
42	14.504
43	14.316
44	14.120
45	13.917
46	13.708
47	13.490
48	13.265
49	13.032
50	12.798
51	12.546
52	12.291
53	12.030
54	11.762
55	11.489
56	11.209
57	10.923
58	10.633
59	10.338
60	10.041
61	9.759
62	9.469
63	9.178
64	8.887
65	8.597

Appendix IIIEstimate of Cost.1. Recurrent Payments(i) Expatriate Officer

	£
(a) existing pensions commitments	66,000
(b) earned pensions on abolition	85,000
(c) compensatory additional pensions	60,000
<u>Total</u>	<u>211,000</u>

(ii) Non-expatriate officers

(a) existing pensions commitments	80,000
(b) earned pensions on abolition	515,000
(c) compensatory additional pensions	129,000
<u>Total</u>	<u>724,000</u>

Estimated total pension commitment 935,000 p.a. ✓

The foregoing figures are based on the assumption that all retiring officers will take their compensatory pensions in full instead of taking advantage of the option to commute them for a cash gratuity. In practice a majority of those eligible to do so will probably commute their pensions for cash.

2. Gratuities(i) Under para. II.2.

	£
(a) Expatriates	15,000
Non-expatriates	97,000
(b) Expatriates	15,000
Non-expatriates	97,000
<u>Total</u>	<u>224,000</u>

(ii) Under para. II.3

Expatriates	86,000
Non-expatriates	143,000
<u>Total</u>	<u>229,000</u>

III

(iii) Under para. II.4

£

(a) Expatriates

286,000

Non-expatriates

149,000

(b) Expatriates

190,000

Non-expatriates

131,000

Total756,000(iv) Under para. II.5

Expatriates

1,000

Non-expatriates

209,000

Total210,000(v) Under para. II.6

Expatriates

50,000

Non-expatriates

525,000

Total575,000

Total gratuities

1,994,000 say
2,000,0003. Earned Leave Commitments

Expatriates (including British Police)

340,000

Non-expatriates

286,000

Total626,000 ✓4. Gratuities payable under Pensions Rule 12 to non-pensionable staff not covered by Provident Fund benefits

Non-expatriates

265,000

(an inconsiderable fraction of this amount
will be payable to expatriate personnel)Grand total of non-recurrent payments2,891,000 ✓