



Report of a Committee
SET UP TO CONSIDER
CERTAIN CORRESPONDENCE BETWEEN
Sir Henry McMahon
[HIS MAJESTY'S HIGH COMMISSIONER IN EGYPT]
AND
The Sharif of Mecca
IN 1915 AND 1916

March 16, 1939

*Presented by the Secretary of State for the Colonies
to Parliament by Command of His Majesty
March 1939*

LONDON

PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

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York House, Kingsway, London, W.C.2; 120 George Street, Edinburgh 2;
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1939

Price 9d. net

Cmd. 5974

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NOTE BY THE SECRETARY OF STATE FOR THE COLONIES.

This report was adopted at the Fourteenth Meeting of the Arab and United Kingdom Delegations to the Conferences on Palestine, which was held on Friday, March 17th, 1939.

Any additional expenditure involved in the preparation of this Report will be borne on the Colonial Office Vote, Subhead BB "Expenses of Palestine Conference". The Cost of printing and publishing this Report is estimated by the Stationery Office at £57 10s.

CONFERENCES ON PALESTINE

REPORT OF THE COMMITTEE SET UP TO CONSIDER CERTAIN CORRESPONDENCE WHICH TOOK PLACE IN THE YEARS 1915 AND 1916 BETWEEN SIR HENRY MCMAHON, HIS MAJESTY'S HIGH COMMISSIONER IN CAIRO, AND THE SHARIF OF MECCA.

At the Sixth Meeting of the Arab and United Kingdom Delegations to the Conferences on Palestine, which was held at St. James's Palace on the 15th February, 1939, it was agreed that a Committee should be set up to consider certain correspondence, commonly called the "McMahon-Husain Correspondence", which took place in 1915 and 1916 between Sir Henry McMahon, at that time His Majesty's High Commissioner in Cairo, and the Sharif of Mecca, afterwards King Husain of the Hejaz, and to furnish a report to the Conference upon this Correspondence.

2. A Committee was accordingly formed, consisting of the following persons:

Representatives of the Arab Delegations attending the Conference.

His Excellency General Nuri al-Sa'id, Prime Minister of Iraq, (replaced after the first two meetings by:

His Excellency Sayyid Taufiq al-Suwaidy, Leader of the Iraqi Delegation after the departure from London of General Nuri al-Sa'id),

His Excellency Abdül-Rahman Bey Azzam, Egyptian Minister in Bagdad and Jedda,

Auni Bey Abdul-Hadi, Palestine Delegate,

Musa Bey al-Alami, Palestine Delegate,

Mr. George Antonius, Palestine Delegate and Secretary-General, Arab Delegations,

16367

Representatives of His Majesty's Government in the United Kingdom.

The Right Honourable The Lord Maugham, P.C., Lord High Chancellor of England,

Sir Grattan Bushe, K.C.M.G. C.B., Legal Adviser, Colonial Office,

Mr. H. L. Baggallay, First Secretary, Foreign Office,

with the following as adviser:

Mr. J. Heyworth-Dunne, Senior Lecturer in Arabic at the School of Oriental Studies, University of London,

and as Secretary:

A 2

with the following as
adviser:

Sir Michael McDonnell, formerly Chief Justice, Supreme Court of Palestine.

Mr. J. R. Colville, Third
Secretary, Foreign Office.

3. The Committee met at the House of Lords on four occasions, on Thursday, the 23rd February, Friday, the 24th February, Tuesday, the 28th February, and Thursday, the 16th March, and considered the "McMahon-Husain Correspondence", as well as certain subsequent events and documents which either the Arab representatives or the United Kingdom representatives thought might shed light upon the meaning and intention of the Correspondence.

4. At the outset of the proceedings of the Committee, the Lord Chancellor explained that he was not present in any judicial capacity and that he made no claim to decide, as a judge, whether the views of His Majesty's Government in the United Kingdom upon the questions at issue, or the views of the Arabs, were right: he was present as the representative of His Majesty's Government only, with the sole function of expounding and advocating their views upon these questions.

5. As the Arab delegations to the Conference had previously criticised certain passages in the English text of the Correspondence on the ground that they were not accurate renderings of the corresponding passages in the Arabic text, the Committee considered a number of corrections to the English text suggested by Mr. George Antonius and agreed to by Mr. Heyworth-Dunne. Although the Arab members of the Committee were of the opinion that even with these corrections the English text still failed to represent the best possible rendering of the Arabic text, they agreed that if these corrections were made the English text would be free from actual error so far as anything essential to a proper understanding of the points at issue in the Correspondence is concerned. The changes agreed upon are indicated in the version of the English text presented to Parliament by the Secretary of State for Foreign Affairs on the 3rd March, 1939 (Command 5957).

6. At the first meeting on the 23rd February the Arab representatives handed in a memorandum explaining generally the Arab interpretation of the Correspondence.

7. At the second meeting on the 24th February the United Kingdom representatives handed in a memorandum explaining generally the British interpretation.

8. At the third meeting on the 28th February the Arab representatives handed in two memoranda dealing respectively with certain legal points connected with the wording of the Correspondence and the surrounding circumstances in which the Correspondence took place.

9. At the fourth meeting on the 16th March the United Kingdom representatives handed in a statement referring briefly to the memoranda handed in at the third meeting.

10. These memoranda are attached hereto, as Annex A, Annex B, Annex C, Annex D, and Annex E.

11. Summaries of the Arab and the British cases are given in the following paragraphs.

12. The argument of the Arab representatives, as set forth in their Memorandum dated the 23rd February, 1939, may be summarised as follows:—

(a) There is no room for doubt that Palestine was in fact and in intention included by both parties to the McMahon-Husain Correspondence in the area of Arab independence. This is abundantly plain from the terms of the Correspondence itself and is, moreover, borne out by the evidence of the historical background.

(b) The historical evidence is useful for the light it throws on the underlying intentions of His Majesty's Government in 1915. It proves that British statesmen, in considering the French claim to a special position in Syria (including Palestine), had already felt the necessity of opposing the French claim in so far as it related to Palestine, and to admit it only in so far as it related to portions of northern Syria. The reservation made by Sir Henry McMahon in his note of the 24th October, 1915, must be read in the light of the attitude prevailing in Whitehall at the time.

(c) Throughout the Correspondence, Sir Henry McMahon bases his exclusion of portions of Syria from the area of Arab independence on the plea of French interests. Such geographical description as he and the Sharif give of the portions to be reserved points unmistakably to the coastal regions of northern Syria. The fact that British policy was already in favour of opposing the French claim to the whole of Syria points similarly to the deliberate omission of Palestine from the zone to be reserved on the plea of French interests.

(d) Quite apart from the intentions of the British Government on whose instructions Sir Henry McMahon issued his notes to the Sharif, the text of the Correspondence itself allows no room for doubt as to what was in fact promised.

(e) It cannot be (and it has never been) disputed that Palestine was included in the area demanded by the Sharif Husain as the area of future Arab independence. That area was accepted by Sir Henry McMahon *in toto*, save for certain reservations. Palestine was not mentioned in those reservations. Whenever he had reason to make an exception, as in the case of the coastal regions of northern Syria, or of the Mesopotamian provinces, Sir Henry McMahon was careful to specify the exception, since the onus of exclusion lay on him. The fact that he does not mention Palestine, either specifically or by paraphrase, makes it impossible for anyone to contend that Palestine was excluded from the area which Sir Henry McMahon had accepted as the area of future Arab independence.

(f) His Majesty's Government's contention that the phrase "the districts of Damascus, Homs, Hama and Aleppo" included the whole of the Vilayet of Syria is untenable. It rests on the theory that *district* is equivalent to *vilayet*, which, in the light of the context as well as of common sense, is demonstrably false.

(g) Even supposing, for the sake of argument, that Palestine had in fact been excluded from the Arab area, its exclusion could only be justified on the plea of the French claim. France ultimately did renounce her claim, so far as Palestine was concerned, and the plea has therefore lost any force which it may have had.

(h) On the strength of these arguments, which are set forth more fully in their Memorandum of the 23rd February, 1939, the Arab representatives contend that the meaning of the Correspondence, whether read as an isolated text or in the light of the historical background and all the surrounding circumstances, is that Palestine was in fact and in intention included in the area in which Great Britain pledged herself to recognise and support Arab independence.

13. The contentions of the United Kingdom representatives were set forth at the second meeting and may be summarised as follows:—

(a) Palestine was in a very special position at the time of the Correspondence having in view its position as the Holy Land of three great religions, the interest which it held for Christians, as well as for Moslems and Jews, all over the world, the large number of religious and other buildings and institutions belonging to non-Arab persons, and the obvious practical interests of Great Britain in a territory so close to Egypt and the Suez Canal. The United Kingdom representatives also contend that Palestine was not a purely Arab country.

(b) The exclusion in Sir Henry McMahon's letter of the 24th October, 1915, of "portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo" from the area of Arab independence claimed by the Sharif of Mecca in his letter of the 14th July, 1915, excluded, and should reasonably have been understood to exclude, the part of southern Syria, consisting of portions of the former *vilayet* of Beirut and the former independent *Sanjaq* of Jerusalem, now known as Palestine. The United Kingdom representatives maintain on various grounds elaborated in the memorandum of the 24th February that this phrase covered an area stretching from the Cilician border to the Gulf of 'Aqaba, to the west of which lay what is now called Palestine.

(c) But whether this contention be right or wrong, and altogether apart from it, if it be wrong, the United Kingdom representatives contend that the reservation made by Sir Henry McMahon in his letter of the 24th October, 1915, in respect of French interests applied, and has ever since continued to apply, to all territory to which France laid claim on the 24th October, 1915, and accordingly to Palestine which was then treated as part of Syria. This reservation would have continued so to apply even if France at a later date, and perhaps as a result of concessions made to her by Great Britain, had totally abandoned her claim to Palestine. But the United Kingdom representatives reject the notion that France has done so as regards Palestine seeing that she maintained her rights as regards Palestine in the "Sykes-Picot" Agreement and subsequently and it is beyond question that as a member of the League of Nations she still has a voice in its disposition.

(d) On the strength of this and other arguments based upon the letter of the 24th October, 1915, and other letters in the Correspondence the United Kingdom representatives contend that the effect of the Correspondence when read in the light of all the surrounding circumstances, including especially those set forth in sub-paragraph (a), was to exclude what is now called Palestine from the area in which Great Britain was to recognise and support the independence of the Arabs.

(e) In addition, the United Kingdom representatives, while admitting that the point has no legal weight on the construction of the letters, desire to draw attention to the fact that Sir Henry McMahon and the late Sir Gilbert Clayton, who were both concerned in the drafting of the letters sent from Cairo, have both placed it on record that it was intended in the Correspondence to exclude Palestine

from the area of Arab independence. Sir Henry McMahon said in 1937:—

“ I feel it my duty to state, and I do so definitely and emphatically, that it was not intended by me in giving the pledge to King Hussein to include Palestine in the area in which Arab independence was promised ”;

while Sir Gilbert Clayton, who was on Sir Henry McMahon's staff in 1915 and 1916, said in 1923:—

“ I was in daily touch with Sir Henry McMahon throughout the negotiations with King Hussein, and made the preliminary drafts of all the letters. I can bear out the statement that it was never the intention that Palestine should be included in the general pledge given to the Sharif; the introductory words of Sir Henry's letter were thought at that time—perhaps erroneously—clearly to cover that point. It was, I think, obvious that the peculiar interests involved in Palestine precluded any definite pledges in regard to its future at so early a stage.”

14. The contentions of the United Kingdom representatives were answered by the Arab representatives in their written Observations of the 27th February, 1939, while the legal aspects of the British argument were commented upon by their adviser, Sir Michael McDonnell. Their answers may be summarised as follows:—

(a) The contention that the sacred character of Palestine and its proximity to Egypt made it inconceivable that Great Britain would hand it over to Arab rule without exacting guarantees is answered by the fact that guarantees for the safety of the Holy Places and for British co-operation in the building up of a sound Arab administration were expressly stipulated for by Sir Henry McMahon, to say nothing of the other guarantees implied in the very nature of the Anglo-Arab compact. The fact that Sir Henry McMahon did insert such a stipulation in respect of the Holy Places is conclusive proof that he had Palestine in mind when he gave the British pledge to the Sharif Husain.

(b) The contention that the phrase “ portions of Syria* lying to the west of the districts of Damascus, Homs, Hama and Aleppo ” did in fact exclude (and should reasonably have been understood to exclude) Palestine is answered in the Memorandum of the 23rd February, 1939, and, in still greater detail, in Sir Michael McDonnell's Statement of the 27th February, 1939.

* In the Arabic text: *Bilad al-Sham*.

(c) The contention that Sir Henry McMahon's reservation in respect of French interests must be held to apply to the whole of Syria is answered in the Observations dated the 27th February, 1939, and in Sir Michael McDonnell's statement of the same date.

(d) The Arab representatives hold that the proper basis for a judgement on the whole question is primarily the text of the Correspondence itself. The fact that, in a letter published in *The Times* of the 23rd July, 1937, Sir Henry McMahon declared it as having been his intention to exclude Palestine from the area of Arab independence ought not to be given more weight than it deserves. As Sir Michael McDonnell points out in his Statement, that which Sir Henry said he intended to mean is of no consequence whatever, for it was not he who was giving the pledge but His Majesty's Government, whose instrument he was. That which matters is what Sir Henry McMahon actually said, not what he may have intended, nor what Sir Gilbert Clayton may have thought he intended.

(e) If account is to be taken of any person's intention as a means to the better understanding of what was actually said, that person can only be the person responsible for the policy, in this case Sir Edward Grey (afterwards Viscount Grey of Fallodon) who was Secretary of State for Foreign Affairs at the time, on whose instructions Sir Henry McMahon gave the British pledge to the Sharif Husain. Speaking in the House of Lords on the 27th March, 1923, the late Lord Grey made it clear that, for his part, he entertained serious doubts as to the validity of the British Government's interpretation of the pledges which he, as Foreign Secretary, had caused to be given to the Sharif Husain in 1915.

15. The United Kingdom representatives replied at the fourth meeting to the principal points made by the Arab representatives in the statements of which a summary is given in the preceding paragraph. Among the points included in the statement which they handed in on this occasion were:

(a) The United Kingdom representatives stated that, in their opinion, their contention in regard to those regions in which Great Britain was not free to act without detriment to the interests of her ally, France—a contention which had not, in their opinion, been met by the contrary arguments—remained unaffected.

(b) The words of Lord Grey in the House of Lords in 1923 were used in debate when he had not the terms of the Balfour Declaration before him.

16. Both the Arab and the United Kingdom representatives have tried (as they hope with success) to understand the point of view of the other party, but they have been unable to reach agreement upon an interpretation of the Correspondence, and they feel obliged to report to the conference accordingly.

17. The United Kingdom representatives have, however, informed the Arab representatives that the Arab contentions, as explained to the committee, regarding the interpretation of the Correspondence, and especially their contentions relating to the meaning of the phrase "portions of Syria lying to the west of the districts of Damascus, Hama, Homs and Aleppo", have greater force than has appeared hitherto.

18. Furthermore, the United Kingdom representatives have informed the Arab representatives that they agree that Palestine was included in the area claimed by the Sharif of Mecca in his letter of the 14th July, 1915, and that unless Palestine was excluded from that area later in the Correspondence it must be regarded as having been included in the area in which Great Britain was to recognise and support the independence of the Arabs. They maintain that on a proper construction of the Correspondence Palestine was in fact excluded. But they agree that the language in which its exclusion was expressed was not so specific and unmistakable as it was thought to be at the time.

19. Mention has already been made of the fact that the Committee considered certain subsequent events and documents which the one party or the other regarded as likely to shed light on the meaning or intention of the Correspondence. In the course of this survey the attention of the Committee was drawn *inter alia* to the so-called "Sykes-Picot Agreement", the "Balfour Declaration", the "Hogarth message" (Annex F), the "Declaration to the Seven" (Annex G), certain assurances given by General Sir Edmund (later Viscount) Allenby when commanding the Allied forces in Syria and Palestine (Annex H) and the Anglo-French Declaration of the 7th November, 1918, (Annex I).

20. With regard to the "Hogarth message", the Committee desire to explain that the Arab representatives rely strongly on a passage in a message delivered to King Husain of the Hejaz by Commander D. G. Hogarth, C.M.G., R.N.V.R., of the Arab Bureau in Cairo, in January, 1918, to the effect that Jewish settlement in Palestine would only be allowed in so far as would be consistent with the political and economic freedom of the Arab population. This passage represents a rendering by the Arab representatives of the corresponding passage in the notes made by King Husain in Arabic at the time of his conversation with Commander Hogarth. The United Kingdom representatives have informed the Arab representatives that it has seemed necessary to His Majesty's Government in

the United Kingdom, in the interests of clarity, to make public the terms of the whole message which Commander Hogarth was instructed to deliver and of the report which he furnished upon his visit (See Annex F).

21. Similarly, the United Kingdom representatives have informed the Arab representatives that it has seemed necessary to His Majesty's Government to make public the terms of the declaration which was made on or about the 16th June, 1918, to seven prominent Arabs who had previously sent to His Majesty's Government a memorial on the subject of the future of the Arab countries (See Annex G).

22. It is beyond the scope of the Committee to express an opinion upon the proper interpretation of the various statements mentioned in paragraph 19 and such an opinion could not in any case be properly expressed unless consideration had also been given to a number of other statements made during and after the war. In the opinion of the Committee it is, however, evident from these statements that His Majesty's Government were not free to dispose of Palestine without regard for the wishes and interests of the inhabitants of Palestine, and that these statements must all be taken into account in any attempt to estimate the responsibilities which—upon any interpretation of the Correspondence—His Majesty's Government have incurred towards those inhabitants as a result of the Correspondence.

T. SUWAIDY.

A.-R. AZZAM.

AUNI ABDUL-HADY.

MUSA ALAMI.

G. ANTONIUS.

MAUGHAM.

GRATTAN BUSHE.

LACY BAGGALLAY.

16th March, 1939.

ANNEX A.

(See paragraph 6.)

Royal Egyptian Embassy, London.

Office of the Secretary-General,

Arab Delegations to the Palestine Conference.

23rd February, 1939.

MEMORANDUM ON THE BRITISH PLEDGES TO THE ARABS.

1. The question has a historical background going back to pre-War days when France was putting forward claims to special rights in Syria in the event of a break-up of the Ottoman Empire.

2. The French claim was to a large extent recognised by Great Britain in a declaration from Sir Edward Grey which the French Prime Minister made public in the French Senate on the 21st December, 1912.

3. The term *Syria* in those days was generally used to denote the whole of geographical and historic Syria, that is to say the whole of the country lying between the Taurus Mountains and the Sinai Peninsula, which was made up of part of the *Vilayet* of Aleppo, the *Vilayet* of Bairut, the *Vilayet* of Syria, the *Sanjaq* of the Lebanon, and the *Sanjaq* of Jerusalem. It included that part of the country which was afterwards detached from it to form the mandated territory of Palestine.

4. Although Great Britain had in 1912 accepted the view that Syria was politically a French preserve, the thought began to gain ground in certain British circles that, in the event of a break-up of the Ottoman Empire, an effort should be made to detach southern Syria as far north as Haifa and Acre to form a separate entity and to fall under British influence. It is a matter of common knowledge among those who knew Lord Kitchener's mind that he became strongly imbued with the idea and worked for its propagation in official circles before the War.

(Note.—Colonel S. F. Newcombe, D.S.O., R.E., 30, Brechin Place, S.W.7, and Colonel Sir Vivian Gabriel, C.S.I., C.M.G., C.V.O., 40, Wilton Crescent, S.W.1, were both associated with the late Lord Kitchener over this question and may be in a position to furnish evidence.)

5. At Lord Kitchener's instigation, a military survey of the Sinai Peninsula was carried out in 1913 by Captain (now Colonel) S. F. Newcombe, R.E. The result of this survey went to confirm Lord Kitchener in his view that southern Syria up to Haifa and Acre and down to the Gulf of 'Aqaba would be, on political and strategic grounds, an indispensable asset to the British Empire in the event of a break-up of the Ottoman Empire.

6. This view governed Lord Kitchener's policy in his dealings with the Arabs. When war broke out, he entered into communication with the Sharif of Mecca, and he took other steps with the various departments of the British Government including the India Office and the Government of India, to try and impress upon them the desirability of resisting the French claim to the whole of Syria, in view of the importance of southern Syria and of Alexandretta to the British Empire of the future.

7. In March, 1915, largely at Lord Kitchener's instigation, a committee was set up by the Prime Minister to inquire into the whole subject of British interests in the Ottoman Empire. It is believed that Lord Kitchener gave evidence before that committee. In any case, the committee is known (as stated in the Report of the Palestine Royal Commission) to have reported in June, 1915, in favour of detaching southern Syria from the area of French influence.

8. This historical background is of fundamental importance for the understanding of what followed. When, in July, 1915, the Sharif Husain sent his first note to Sir Henry McMahon, the British Government had already received the recommendations of the committee as to the desirability of differentiating between northern Syria and southern Syria in respect of the French claim to the whole country. The reservations made by Sir Henry McMahon in his note of the 24th October, 1915, must be read in the light of the attitude prevailing in Whitehall at the time. Throughout the Correspondence, Sir Henry McMahon is at pains to explain to the Sharif that the only portions of Syria which Great Britain wished to exclude from the area of Arab independence were those portions in which Great Britain felt that she was not free to act "without detriment to the interests of her ally, France". This same qualification is expressed in different wording by Sir Henry McMahon in his note of the 14th December, 1915, when he says that "with regard to the *Vilayets* of Aleppo and Bairut, the Government of Great Britain have taken careful note of your observations, but, as the interests of our ally, France, are involved, the question will require careful consideration and a further communication on the subject will be addressed to you in due course". Similarly, the Sharif, throughout the Correspondence, is clearly under the impression that the only portions of Syria in question are those of the northern coastal regions of Syria, that is to say the Lebanon and its seaboard, which he understands Great Britain to wish to reserve solely because of French claims. Southern Syria (i.e. Palestine) could not have formed part of the reserved territories because Great Britain, far from wishing it to be included in the area of French influence, wanted it to be included in the area of Arab independence, that is to say, within the sphere of future British influence.

9. An examination of the text will confirm this interpretation in more ways than one. In the first place, it should be made clear that Sir Henry McMahon never defines the area of Arab independence in his own words. What he does is to accept the frontiers proposed by the Sharif *in toto* save for certain reservations. It follows therefore that, unless it can be shown that Palestine was specifically or even indirectly mentioned in these reservations, it must be held to be included in the area proposed by the Sharif and accepted *en bloc* by Sir Henry McMahon. Nowhere in the Correspondence is there any mention of Palestine or southern Syria or of any of the administrative divisions of Syria which corresponded to the territory now known as Palestine. While certain portions of the area are specifically, if somewhat loosely, singled out for exclusion from the area of complete Arab independence, no mention is made anywhere, even indirectly or by implication, of that part of Syria which was known in Ottoman administrative parlance as the Sanjaq of Jerusalem.

10. A good deal has been made of the possible constructions to be put upon the exact meaning of the word *vilayet*. The use of that word throughout the Correspondence calls for explanation. The word *vilayet* is the Turkish form of the Arab word *wilaya*. In Arabic, the word is used to denote a province or region or district without any specific administration connotation. In Turkish, the word was borrowed from the Arabic to denote certain specified administrative divisions of the Ottoman Empire with precise limits and boundaries. In a correspondence such as this which was conducted in Arabic, the word used was the Arabic term *wilaya*, and this use did not always necessarily correspond to a Turkish *vilayet*. For instance, the Arabic text speaks of the *wilaya* of Mersin, the *wilaya* of Alexandretta, the *wilaya* of Damascus, the *wilaya* of Homs, the *wilaya* of Hama; and yet there were no administrative divisions in existence at any time in the history of these regions, which bore any of those designations. These phrases can only make sense if the word *wilaya* is read in its proper Arab significance of region or district without any reference whatever to administrative boundaries.

11. The English translation circulated by the United Kingdom Delegation shows the Arabic word *wilaya* in its Turkish form of *vilayet* throughout. This is not only a misleading rendering, but it is also unjustified for another reason. The McMahon notes were issued from the Residency in Cairo in Arabic, and that Arabic text was itself a translation from an English original. In that English original the word used in several contexts was the word *district*, as is shown by the quotations in the White Paper of 1922 and in the Report of the Palestine Royal Commission (Chapter II, paragraph 5). It would avoid unnecessary

confusion if the United Kingdom Delegation could see their way to restoring the term *district* wherever it occurred in the original English text.

12. The British Government's contention is that Palestine was excluded by implication, when Sir Henry McMahon notified the Sharif that "portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo" were to be excluded from the area of Arab independence. This contention was publicly sponsored by Mr. Winston Churchill in 1922, when, speaking as the Secretary of State for the Colonies, he tried to argue that the word *districts* in that phrase was to be read as equivalent to *vilayets*; and that, since the "*Vilayet* of Damascus" included that part of Syria—now known as Transjordan—which lay to the east of the River Jordan, it followed that that part of Syria—now known as Palestine—which lay to the west of the Jordan was one of the portions of territory reserved in Sir Henry McMahon's phrase.

13. An examination of the text shows that the British Government's argument is untenable. In the first place, the word *districts* in Sir Henry McMahon's phrase could not have been intended as the equivalent of *vilayets*, because there were no such things as the "*Vilayet* of Damascus", the "*Vilayet* of Homs" and the "*Vilayet* of Hama". There was one single *Vilayet* of Syria of which Damascus was the capital and two smaller administrative divisions of which Homs and Hama were the principal towns. Sir Henry McMahon's phrase can only make sense if we take his *districts* as meaning "districts" in the current use of the word, that is to say, the regions adjacent to the four cities, and his reservation as applying to that part of Syria—roughly from Sidon to Alexandretta—which lies to the west of the continuous line formed by those four cities and the districts immediately adjoining them.

14. Again, in his third note dated the 14th December, Sir Henry McMahon refers to the regions which he wished to exclude as being in "the two *Vilayets* of Aleppo and Bairut". Had he had Palestine in mind, he would certainly have added "and the Sanjaq of Jerusalem". The fact that he did not goes to confirm the conclusion that the only portions of Syria which it was proposed at the time to reserve in favour of France were the coastal regions of northern Syria.

15. Lastly, in giving the pledge contained in his second note, Sir Henry McMahon stated that Great Britain recognised as the area of Arab independence all the regions lying within the frontiers proposed by the Sharif of Mecca in which she was "free to act without detriment to the interests of her ally, France". Both in that note and in his subsequent note of the 14th December, he justified his exclusion of certain

parts of Syria on the grounds of Great Britain's regard for French interests. If, then, Great Britain were to find herself at the end of the War free to act in respect of any portion of Syria which she had felt bound to reserve in favour of France, the reservation loses its justification and indeed whatever force it may have had when it was originally made; and that portion of Syria which was no longer destined to be included in the sphere of French interests—as was eventually the case with Palestine—must, in default of any specific agreement to the contrary, necessarily remain within the area of Arab independence proposed by the Sharif and accepted by Great Britain.

In this connection, it should be pointed out that there is an important discrepancy between the official English text and the Arabic version of Sir Henry McMahon's note of December 14, 1915. In speaking of the exclusion of the two vilayets of Aleppo and Bairut, Sir Henry says: "but, as the interests of our ally France are involved *in them both*". The words in italics do not occur in the official English text, but they occur in the Arabic version which reached the Sharif Husain. The force of those three words is to show once more that Sir Henry McMahon had only those two vilayets in mind and that he could not have been thinking of a third province lying outside the two Vilayets of Aleppo and Bairut.

16. In a letter which appeared over his signature in *The Times* of July 23, 1937, Sir Henry McMahon declared that, in giving the pledge to King Husain, it was not intended by him to include Palestine in the area of Arab independence; and that he had every reason to believe at the time that the fact that Palestine was not included in the pledge was well understood by King Husain.

These declarations of Sir Henry McMahon's will not bear investigation. In the first place, Sir Henry's function was that of an intermediary charged with the task, not of framing policy, but of carrying out the policy laid down by his official chiefs and conveying it to the Sharif Husain in accordance with the instructions issued to him by the Foreign Office. Even if the intention behind the words used could be invoked as an argument to invalidate or distort the proper and ordinary meaning of the words he used, it is not Sir Henry's intention that might count but the intention of the responsible Minister—in this case, the Secretary of State for Foreign Affairs—on whose instructions Sir Henry McMahon was acting. If intentions are to be taken into account despite the obvious and unmistakable meaning of the words used, then it would be necessary to search for such evidence as is available in the files of the Foreign Office to throw light on the Secretary of State's intentions. Some evidence on that point is already public in the speech which Viscount Grey of Fallodon delivered

in the House of Lords on the 27th March, 1923. The relevant extracts from that speech are appended to this Memorandum, together with the remarks made by Lord Buckmaster on the same occasion. Viscount Grey makes it clear that, for his part, he entertained serious doubts as to the validity of the British Government's interpretation of the scope of the pledges which he, as Foreign Secretary, had given to the Arabs in 1915.

17. In the second place, leaving aside for a moment the question of the underlying intention and turning to the text itself, it will be found that the words used throughout the Correspondence can only be interpreted as meaning that Palestine was not, directly or indirectly, excluded from the area of Arab independence. The phrase "districts of Damascus, Homs, Hama and Aleppo", as stated in paragraph 13 above, could only have meant the districts adjacent to those four cities. It is also obvious that the Sharif Husain understood that the portions of Syria to be reserved were those lying immediately to the west of those four cities and no more. In his note of the 5th of November, 1915, he speaks of the Vilayets of Aleppo and Bairut and "their maritime coasts"; while in his note of the 1st of January, 1916, he describes the regions proposed for exclusion as "the northern parts and their coastal regions", and, lower down in the same note, as: "Bairut and its coastal regions which we will overlook for the moment on account of France." Moreover, Sir Henry McMahon himself, in his note of the 30th of January, 1916, speaks of those portions of Syria which were to be excluded as "the northern regions", thereby showing that, at the time at any rate, he did not differ from the Sharif in regarding the reservations as applying only to the northern coastal regions of Syria.

18. Lastly, there is the evidence provided by the Sharif's subsequent actions in regard to Palestine, which shows that he had always understood that part of Syria to have remained within the area of Arab independence. No sooner was the Balfour Declaration issued than he sent in an immediate protest to the British Government to ask for an explanation. This action and other actions taken by the Sharif in subsequent years may be held to fall outside the scope of the present Committee's investigation, which is understood to cover only the examination of the text of the McMahon Correspondence. But they are historical facts nevertheless; and in the light of those facts, Sir Henry McMahon's declaration that he had every reason to believe the contrary loses its force and indeed appears meaningless.

19. The contention that the British Government did intend Palestine to be removed from the sphere of French influence and to be included within the area of Arab independence (that is

to say, within the area of future British influence) is also borne out by the measures they took in Palestine during the War. They dropped proclamations by the thousand in all parts of Palestine, which bore a message from the Sharif Husain on one side and a message from the British Command on the other, to the effect that an Anglo-Arab agreement had been arrived at securing the independence of the Arabs, and to ask the Arab population of Palestine to look upon the advancing British Army as allies and liberators and give them every assistance. Under the aegis of the British military authorities, recruiting offices were opened in Palestine to recruit volunteers for the forces of the Arab Revolt. Throughout 1916 and the greater part of 1917, the attitude of the military and political officers of the British Army was clearly based on the understanding that Palestine was destined to form part of the Arab territory which was to be constituted after the War on the basis of independent Arab governments in close alliance with Great Britain.

20. In conclusion, it should be pointed out that the English text of the McMahon Correspondence, which was communicated confidentially by the United Kingdom Delegation to the Arab Delegations, contains certain errors of translation, some of which affect the meaning perceptibly. It would be desirable in the general interests if a revision of the translation were to be undertaken before that text is made public.

(Signed) G. ANTONIUS,
Secretary-General of the Arab Delegations.

ENCLOSURE IN ANNEX A.

(See paragraph 16 of Annex A.)

The following are the extracts referred to from the speech of Lord Grey:—

“ A considerable number of these engagements, or some of them, which have not been officially made public by the Government, have become public through other sources. Whether all have become public I do not know, but I seriously suggest to the Government that the best way of clearing our honour in this matter is officially to publish the whole of the engagements relating to the matter, which we entered into during the war. If they are found to be not inconsistent with one another our honour is cleared. If they turn out to be inconsistent, I think it will be very

much better that the amount, character and extent of the inconsistencies should be known, and that we should state frankly that, in the urgency of the war, engagements were entered into which were not entirely consistent with each other.

“ I am sure that we cannot redeem our honour by covering up our engagements and pretending that there is no inconsistency, if there really is inconsistency. I am sure that the most honourable course will be to let it be known what the engagements are, and, if there is inconsistency, then to admit it frankly, and, admitting that fact, and having enabled people to judge exactly what is the amount of the inconsistency, to consider what is the most fair and honourable way out of the impasse into which the engagements may have led us. Without comparing one engagement with another, I think that we are placed in considerable difficulty by the Balfour Declaration itself. I have not the actual words here, but I think the noble Duke opposite will not find fault with my summary of it. It promised a Zionist home without prejudice to the civil and religious rights of the population of Palestine. A Zionist home, my Lords, undoubtedly means or implies a Zionist Government over the district in which the home is placed, and if 93 per cent. of the population of Palestine are Arabs, I do not see how you can establish other than an Arab Government, without prejudice to their civil rights. That one sentence alone of the Balfour Declaration seems to me to involve, without over-stating the case, very great difficulty of fulfilment.”

“ It is not from any prejudice with regard to that matter that I speak, but I do see that the situation is an exceedingly difficult one, when it is compared with the pledges which undoubtedly were given to the Arabs. It would be very desirable, from the point of view of honour, that all these various pledges should be set out side by side, and then, I think, the most honourable thing would be to look at them fairly, see what inconsistencies there are between them, and, having regard to the nature of each pledge and the date at which it was given, with all the facts before us, consider what is the fair thing to be done.”

The following are the extracts referred to from the speech of Lord Buckmaster:—

“ If those documents are accurate—and I am bound to say that, upon the face of them, they appear to me to be

perfectly sound—they show unmistakably that there has not been, as the noble Viscount Lord Grey suggested, something in the nature of casual inconsistency between different announcements at different times, but that a deliberate pledge has been given on the one hand, which has been abandoned on the other. No amount of examination and no amount of comparison will ever enable the two things to be reconciled, because these documents show that, after an elaborate correspondence in which King Hussein particularly asked to have his position made plain and definite so that there should be no possibility of any lurking doubt as to where he stood as from that moment, he was assured that within a line that ran north from Damascus through named places, a line that ran almost due north from the south and away to the west, should be the area that should be excluded from their independence, and that the rest should be theirs.”

“ I do not profess to have any knowledge of foreign politics. I have always believed that they can be summed up in two sentences. I believe that we ought to say what we mean, and I think we ought to do what we say. I believe it was because the Noble Viscount, Lord Grey of Fallodon, took those simple phrases as his motto and he achieved the astonishing success which followed his discharge of the great and responsible duties of the Foreign Office. We certainly meant what we said in 1915. We did not do what we said in 1918. I would ask the Government even now to retrace their steps at the earliest moment, and go back to obedience to the promise that we gave at a moment when we were gravely beset by difficulties, to the relief of which the Arab help in no slight degree contributed.”

ANNEX B.

(See paragraph 7.)

THE “ McMAHON-HUSAIN ” CORRESPONDENCE.

The Lord Chancellor has listened with interest to the statements made at the first meeting of the Committee by the various Arab members of the Committee, explaining the views held by the Arabs in general in regard to the proper interpretation of the so-called “ McMahon-Husain ” Correspond-

ence; and he has since read with equal interest the memorandum by Mr. Antonius communicated to him at the same meeting.

2. Owing to the short space of time available for the preparation of the present memorandum, it may be found that there are points made in the Arab statements or in Mr. Antonius' memorandum which have not been specifically covered; but it is hoped that this memorandum will nevertheless serve to explain on general lines the views held by His Majesty's Government about the correspondence now under discussion.

3. As the members of the Committee are aware, all Governments of the United Kingdom from 1915 onwards have held firmly to the opinion not only that Sir Henry McMahon intended by his correspondence with the Sharif of Mecca in 1915 and 1916, and especially by his letter of October 24th, 1915, to leave the territory now known as Palestine outside the area of Arab independence, but also that the Correspondence in question could not then and cannot now be read as having any other meaning.

4. In order, however, to understand the attitude of His Majesty's Government it is necessary to take into account not only the words of the Correspondence itself, but all the surrounding circumstances.

5. For a start and above all, it is imperative to remember the unique position which Palestine held then, as now, as the Holy Land not only of the Moslems, but also of the Christians and the Jews, and as a country in which all European and American countries were deeply interested. It was more important for the Christians and the Jews even than for the Moslems, since for members of the first two religions it was the principal, and in fact the only, Holy Land, whereas for Moslems it was second in importance to the Hejaz. It is no exaggeration to say that for Christians, and also for Jews, Palestine is as important as are Mecca and Medina for Moslems.

6. Moreover, Palestine could not be considered even in 1915 as exclusively Arab territory. It is realised that one of the Arab spokesmen has stated that, on the contrary, it was, unlike the coastal regions further to the north, unmistakably "purely Arab", and that this is a factor which must be taken into account in assessing the surrounding circumstances. But it must be remembered that apart from any Jewish population there may have been it was filled with Christian churches, schools and institutes of all kinds, while thousands of Christian pilgrims

and tourists went there every year. These institutions were scattered over the land. Some towns, such as Bethlehem, were almost purely Christian. In fact, in 1912 there were only 300 Moslems out of 11,000 inhabitants. In Nazareth, out of 15,000 inhabitants 10,000 were of different Christian religions—Greeks, Latins, Maronites and Protestants. The great majority of these Christians were no doubt Arabs by race, but even so a large residue of foreign Christians and foreign Christian interests remained.

7. Great Britain clearly had no right and no authority in 1915 to say that if the Allies succeeded in wresting from the Ottoman Empire a land of such importance to the Christian world they would hand it over to the rule of another independent Moslem Power without first obtaining every kind of guarantee whereby the Christian and Jewish Holy Places should be protected and free access to them allowed, at least as fully and freely as in Ottoman times.

8. It is therefore inconceivable that Sir Henry McMahon should have intended to give the Sharif an unconditional promise that Palestine was to be included in the area of Arab independence. The fact that the question of guarantees was not even mentioned makes it clear beyond all doubt that Sir Henry McMahon never supposed for a moment that his letter would be read as including Palestine in this area; and it is surely reasonable to believe that the Sharif of Mecca, who showed such legitimate concern for the Moslem Holy Places of the Hejaz, must have understood the strength of Christian sentiment on this point, and realised that no British official could possibly undertake to assign Palestine to another Moslem State without making the most express reservations with regard to the Christian Holy Places.

9. Another highly important factor was the rapidly growing port of Haifa. This port and other ports on the Palestinian coast were very important from the British point of view, having regard to the great interests of Great Britain in the Suez Canal. It must have been apparent to any informed observer that in the event of a victory for the Allied Powers Great Britain would require guarantees precluding the use of Palestinian territory, and particularly of such ports as that of Haifa, for future attacks on Egyptian territory.

10. As regards the interests of France, it is common knowledge that in 1915 France laid claim to the eventual exercise, if not of actual sovereignty, at any rate of a considerable degree of influence, over wide and to some extent undefined areas in the Middle East; and the existence of these claims must have

been known to the Sharif of Mecca, as the result of information received from Arab nationalists in Syria with whom he had been in communication, if from no other source, even before the first mention of French interests in the Correspondence.

11. Having regard to these considerations it is in this case again inconceivable that Sir Henry McMahon should have omitted all specific mention of French and British interests in what is now called Palestine unless he had regarded Palestine as automatically and obviously excluded from the area in which he was promising the Arabs independence; and it is almost as difficult to understand how any reader of the letter who was acquainted with the general political situation in the Middle East could have supposed, at any rate without further and most precise enquiry, that Palestine was intended to be included in that area.

12. The general position in 1915 must also be borne in mind. The Turks were in control of both Syria and Palestine and had not been beaten. Great Britain had France and Russia for her main Allies, but she also had to consider a number of other countries in Europe, particularly Italy. She could not give a pledge to the Sharif which might involve her in serious difficulties at the end of the War with the most important countries in Europe.

13. To turn now to the actual words of the "McMahon Pledge" in the letter of October 24th, 1915, these must be read in the light of certain discussions which took place between the British High Commissioner in Cairo and Muhammad Sharif al-Faruqi concurrently with parts of the McMahon-Husain Correspondence.

14. Al-Faruqi may not have been an accredited representative either of the Sharif of Mecca or of the leaders of the Arab nationalist movement in Damascus, none of whom may have been aware until later of the tenour of his discussions with the High Commissioner in the autumn of 1915. But he was unquestionably well informed as to the views and aspirations of the Arab leaders and no Arab would be likely to deny, either then or now, that he was putting their claims at their lowest when he said (as he did) that the Arabs would fight for "the districts of Aleppo, Hama and Homs and Damascus", that by "districts" he must have meant the surroundings of these towns in the widest possible sense and that he cannot possibly have meant that the Arabs would fail to fight for any part of the Mediterranean hinterland from the Cilician border to the Gulf of 'Aqaba. This point is important because the phrase subsequently used in Sir Henry McMahon's letter was adapted from al-Faruqi's own words.

15. It was furthermore al-Faruqi who expressed the opinion that the Arabs might accept a general reservation by Great Britain of the areas in which she was not free to act without detriment to her allies, and although His Majesty's Government do not wish to lay too much stress on this, seeing al-Faruqi was not a plenipotentiary, the point is germane to a consideration of what Sir Henry McMahon had in mind when giving the pledge.

16. All these considerations must be remembered when any attempt is made to attach a special and specific meaning to certain words in the correspondence of 1915 and 1916. The correspondence between Sir Henry McMahon and the Sharif may appear at this date to be far from clear in its meaning. But the circumstances summarised above, as well as all the numerous anxieties pressing upon any official in Sir Henry McMahon's position at that time, and the position in Arabia, are all relevant to a consideration of the text. This is true above all if the meaning of the pledge is considered in the broad light of the probable intentions of the two parties; but it is also true if it is considered in the narrower light of the actual legal interpretation of the words of the pledge, for in such a case as this, where the language used has given rise to controversy and speculation, it is legitimate to take all the surrounding circumstances into account when attempting to reach a decision as to what the words could and should have been taken to mean.

17. In the light, then, of all these surrounding circumstances, the case of His Majesty's Government rests on two main points:

(1) a specific, geographical, reservation with regard to the areas in which Great Britain could promise the Arabs independence:

(2) a general reservation with regard to the same area.

18. As regards (1), the view of His Majesty's Government has always been that the phrase "portions of Syria lying to the west of the districts of Damascus, Hama, Homs and Aleppo" embraced all that portion of Syria (including what is now called Palestine) lying to the west of *inter alia* the administrative area known as the "*Vilayet* of Syria".

19. It is true that there were no *Vilayets* of Homs or Hama, but it is also true that both Damascus and Aleppo were the capitals of *Vilayets*, and the reference to Damascus should alone have sufficed to establish Sir Henry McMahon's meaning. The additional mention of Homs and Hama was evidently made because al-Faruqi had mentioned them and to ensure that the

intervening territory of which they were the most important towns should not be excluded from the area consigned to Arab rule. Obviously no reference was intended to non-existent *Vilayets*.

20. It is also true that the official Turkish name for the *Vilayet* of which Damascus was the capital was “*Vilayet* of Syria”, but there should have been no misunderstanding of this phrase, especially as the writer of the letter had already found it necessary to use “Syria” (even though there was a *Vilayet* of that name) in order to describe comprehensively a vague geographical area evidently including the *Vilayets* of Syria and Beirut, the independent *Sanjaq* of Jerusalem, the Province of the Lebanon, and part of the *Vilayet* of Aleppo.

21. It may be worth adding at this point that the phrase “districts of Damascus, etc.” would hardly have been desired by the Sharif to be taken to mean small areas immediately surrounding the towns in question (as one of the Arab spokesmen argued, if the Lord Chancellor has correctly understood him, at the first meeting) since if this had been the case the territory in which the Arabs would have been denied independence would have been brought much further east than on a more liberal interpretation of the phrase. The non-Arab territory would in fact have reached eastwards almost to the outskirts of Damascus and the other towns, and have covered substantial portions of Transjordan and considerable sections of the Hejaz Railway.

22. Nor is it denied that in one sense there was no territory east of the *Vilayet* of Aleppo and that if the letter of October 24th, 1915, was to be interpreted by the Sharif on the lines suggested by His Majesty’s Government the area of Arab independence would not reach the Mediterranean, although the fact that it would not do so was not mentioned in the letter.

23. As regards the first point, it must be remembered that Sir Henry McMahon was not attempting to define with any great accuracy the eastward limits of the territory which he was excluding from the area of Arab independence, and he clearly used a phrase to define in a general way a stretch of territory lying along the Mediterranean coast some of which might lie outside, and some of which might lie inside, the “districts of Damascus, Homs, Hama and Aleppo”, but all of which lay to the west or in the western parts of those districts.

24. As regards the second point, the Lord Chancellor does not feel that it is possible to base any conclusions on the fact that the exclusion of access to the Mediterranean for the Arab area of independence was not specifically mentioned by Sir Henry McMahon. If the areas which he defined as lying outside that area were so situated that access to the Mediterranean was denied there was no necessity to say so in so many words.

25. The Lord Chancellor has taken note of the argument based upon the fact that in his letter of December 14th, 1915, Sir Henry McMahon only referred to the possible exclusion from the area of Arab independence of the two Vilayets of Aleppo and Beirut, and these two only, without any mention of the Sanjaq of Jerusalem or of other areas. But it seems clear that in referring to these two *Vilayets*, Sir Henry McMahon was merely replying to a point raised by the Sharif in his letter of November 5th, 1915, and it does not seem possible to draw any particular conclusion from this circumstance.

26. This no doubt leads to another point made by one of the Arab spokesmen: that seeing how much importance the Sharif attached throughout the correspondence to the Vilayets of Aleppo and Beirut, and to the *Vilayets* of Mesopotamia, the Sharif would unquestionably have referred in even stronger terms to Palestine (or the Sanjaq of Jerusalem) had he had the slightest suspicion that it was being excluded from the area of Arab independence. This may well be the case, but surely the opposite conclusion can equally well be drawn, that the Sharif understood and accepted the fact that because of its special position as a country interesting all the world Palestine was a territory which had to be reserved for special treatment.

27. The same considerations apply to the fact that in his letter of January 1st, 1916, the Sharif referred to "the northern parts and their coasts". It is possible in this case again to conclude that Palestine was accepted by him as lying outside the area of Arab independence. But in any case, the words "northern parts" or "northern coasts" could legitimately be taken by the reader of a letter written in the Hejaz as meaning the whole Mediterranean coast.

28. The foregoing arguments with regard to the "specific" reservation are offered in order to show that in regard to each point of criticism it is possible to find a probable reason for what Sir Henry McMahon had in mind. But the Lord Chancellor would not for a moment wish to suggest that this passage in the letter which Sir Henry McMahon sent on October 24th, 1915, on the instructions of His Majesty's Government was clear or well-expressed, or that any of the other territorial references (on either side) were clear or well-expressed, or that it is upon such arguments that His Majesty's Government rely in the presentation of their case.

29. The best explanation which His Majesty's Government can give as to what was meant by the phrase "districts of Damascus etc." in the letter of October 24th, 1915, is that the phrase was borrowed from al-Faruqi and used in the same wide and general sense as that in which he himself used it, i.e.

as one which covered the Syrian hinterland southwards to the Gulf of 'Aqaba.

30. But although His Majesty's Government consider that the specific reservation should have sufficed to exclude Palestine, they attach less importance to this point than to the general reservation.

31. The wording of the general reservation is, in view of His Majesty's Government, perfectly clear. It limits the area to which Sir Henry McMahon's pledge was to apply to:

“ . . . those portions of the territories therein (i.e. in the area claimed by the Sharif) in which Great Britain is free to act without detriment to the interests of her ally, France.”

In other words, the pledge did not extend to any territory in which Great Britain was not free to act without regard to French interests on the date on which the letter was despatched, i.e. on October 24th, 1915.

32. It must also be made clear, since the point has been raised by the Arab members of the committee, that, in the opinion of the Lord Chancellor, any subsequent developments which may at later dates have modified the extent of the area in which Great Britain was free to act without detriment to French interests are irrelevant to a consideration of the extent of the area to which the pledge applied on October 24th, 1915 and has continued to apply ever since.

33. Now, if there is anything which is certain in this controversy it is that Great Britain was not free in October, 1915, to act in Palestine without regard to French interests. It may be perfectly true that under the influence of Lord Kitchener and others His Majesty's Government before and after the outbreak of the war were anxious to restrict the French claims on the Levant coast if they could find a legitimate means of doing so. But there is a great difference between desiring an object and attaining it. It can be stated as a fact that at the time of the Correspondence France claimed the Mediterranean littoral as far south as the Egyptian border and as far east as Damascus, and it was not until the Spring of 1916 that these extreme claims were modified as the result of discussions culminating in the so-called “ Sykes-Picot ” Agreement.

34. As has been stated, the Sharif must have realised the possibility and even the extreme probability of the existence of a French claim to Palestine, even if he did not know of it for a fact, and in view of the circumstances, and of the extensive British and religious interest in Palestine, the wording of the “ McMahon pledge ” ought surely to have suggested to him and to any other reader of the letter that Palestine was excluded

from, or, to say the least, not clearly included in, the area of Arab independence.

35. There are some further points which must be noted in connexion with the Correspondence. In paragraph 2 of the Sharif's letter of November 5th, 1915, and in the fourth paragraph of Sir Henry McMahon's reply of December 14th, 1915, it is made clear that many important details regarding the territorial situation were left over for a later settlement.

36. Furthermore, in his letter of January 1st, 1916, the Sharif agrees to leave for future consideration the French occupation of "Beirut and its coasts". Whatever may have been meant by this phrase—and it might well be argued that the "coasts" of Beirut extended as far as the Egyptian border—it clearly excluded the coasts of Palestine as far south as the limits of the Vilayet of Beirut, i.e. as far south as a point just north of Jaffa. This in itself amounted to a provisional acceptance of a reservation of nearly half of Palestine.

37. The "Sykes-Picot" Agreement of May, 1916, has already been mentioned, as has also the fact that the claims of France at the beginning of the War extended over the whole of Palestine, as well as to Damascus and Aleppo. In this connexion it must be remembered that Sir Mark Sykes was definitely sympathetic towards the Arab cause and he must clearly have negotiated the agreement in the belief that the reservations in the pledge of October 24th, 1915, justified his concluding an agreement in the form which it eventually assumed. His Majesty's Government have no doubt that he was right.

38. Moreover, Sir Mark Sykes secured a great concession from the French negotiators as regards the *Sanjaqs* of Hama, Damascus and Aleppo, which, as a result of what al-Faruqi had said at a slightly earlier period, His Majesty's Government had reason to suppose were vital to the Arabs. It was an exceedingly difficult task to obtain this concession from the French Government and it was genuinely believed at the time that the arrangements would (to quote from an official report of the period) "adjust the fundamental divergencies of Arabs and French regarding Syria."

39. In the agreement Palestine was admittedly to be international. The Sharif of Mecca was, however, to be consulted, and the form of government was to be agreed upon with (amongst others) his representatives. These points are generally overlooked, but if they are taken into account it is difficult to see how the agreement can fairly be represented as a breach of faith with the Sharif. Moreover, as has already been emphasised, His Majesty's Government were not, in 1915, in a position to give the sovereignty of Palestine to the Arab people. They had to consult their Allies and other countries having interests in that territory just as they are now obliged to consult the members of the League of Nations.

40. The form of the promise given to the Sharif assumes particular importance in connexion with the "Sykes-Picot" Agreement. It is apt to be forgotten by the Arabs. It was to the effect that Great Britain was prepared "to recognise and support the independence of the Arabs" and "when the situation admits Great Britain will give to the Arabs her advice, and will assist them to establish what may appear to be the most suitable forms of government in those various territories".

41. His Majesty's Government maintain that Great Britain has substantially carried out these promises—in the face of great difficulties. They may regret that she could not carry them more fully into effect; but she never gave, and the Sharif could not have thought she was giving, a promise of such a kind as might involve her in war with any of her allies in order to fulfil the Arab aspirations in every part of the territory which the Sharif had claimed.

42. The Balfour Declaration is a subject of frequent complaint, but it cannot be supposed that Mr. Balfour would have made it had he thought that Palestine had been included in the promise given in Sir Henry McMahon's letter of October 24th, 1915. It should, however, be observed that the grievance as regards which the Arabs complain is dependent very largely on the view which is taken as to the meaning of, and the implications said to be derived from, the Declaration. It is not within the scope of this memorandum to express an opinion as to the validity of the Zionist view on this matter; but it must be remembered that the Declaration expressly safeguards the civil and religious rights of the Arabs, and this qualification is one of great importance and should have a far-reaching effect on policy.

43. It is hoped that these explanations will convince the Arab members of the Committee that Sir Henry McMahon never had any intention of including Palestine in the area of Arab independence; and furthermore that he never had any reason to suppose that his intention was not perfectly clear to the Sharif. But whether this hope is realised or not, His Majesty's Government must make it clear that they repudiate very strongly any suggestion of breach of faith on the part of their predecessors or of themselves.

44. In conclusion, the Lord Chancellor would remind the Committee that what matters to-day is the existing state of affairs. The Mandate was given to Great Britain with the approval of some fifty-two nations from all parts of the world, and its existence as an obligation incumbent upon His Majesty's Government, which His Majesty's Government cannot themselves alter, is a fact which cannot be ignored. Cannot all concerned recognise the reality of these facts and work together to make a fair settlement in the existing circumstances?

House of Lords,
February 24th, 1939.

ANNEX C.

(see paragraph 8)

STATEMENT BY SIR MICHAEL McDONNELL ON CERTAIN LEGAL POINTS ARISING OUT OF THE LORD CHANCELLOR'S STATEMENT AT THE SECOND MEETING OF THE COMMITTEE ON THE 24TH FEBRUARY.

February 28th, 1939.

I have been invited, with the assent of the Secretary of State for the Colonies, by the Arab Delegations to be present at these meetings and to address Your Lordship to-day. My position differs from that of these gentlemen in that the text of the Correspondence, known to them for long in Arab publications, came first to my knowledge, as to Sir H. McMahon's letter of 24th October, 1915, only when published on page 18 of the Report of the Royal Commission in 1937, and as to the whole Correspondence only upon the publication of Mr. Antonius' book* three months ago. There can be no doubt that the Sharif's first letter of the 14th July, 1915, included a demand for the whole of what are now Syria, Iraq, the Arabian Peninsula, Transjordan and Palestine with the express exclusion of the enclave of Aden.

As to the contention of the British Government that there was no intention on its part of including Palestine in the area of independence, it seems to me incredible that a similar reservation of that enclave was not made in the first of Sir Henry's letters to the Sharif or, if not there, in the second, in reply to the Sharif's letter of the 9th September in which, according to Mr. Antonius' text, he said " Our people believe that these frontiers form the *minimum* necessary to the establishment of the new order for which they are striving "

Much stress has been laid upon that which Sir H. McMahon in his letter to *The Times* of the 23rd July, 1937, and that which Sir Gilbert Clayton in his letter of the 12th April, 1923, to Sir Herbert Samuel, declared was intended.

That which Sir Henry or Sir Gilbert say they intended to mean seems to me to be a matter of no consequence whatever. It was not they who were making an offer to the Sharif; it was, as Sir Henry himself states in his letter of the 24th October, the British Government. The High Commissioner in Egypt was merely the conduit pipe through which the proposals of His Majesty's Government were conveyed to the other party. Sir Gilbert merely made preliminary drafts of the letters. There is a dictum of Lord Halsbury as Lord Chancellor, in the case of *Hilder v. Dexter* [1902] A.C. at p. 477, on the construction of

* *The Arab Awakening*, by G. Antonius, 1938.

statutes, which might equally well be applied to any written instrument, including the letter under consideration:—

“ I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps, it was not done.”

The case was concerned with the interpretation of a subsection of the Companies Act of 1900, and after the observation which I have cited Lord Halsbury proceeded:—

“ For that reason I abstain from giving any judgment in the case myself, but at the same time I desire to say, having read the judgments proposed to be delivered by my noble and learned friends, that I entirely concur with every word of them. I believe that the construction at which they have arrived was the intention of the statute, I do not say my intention, but the intention of the Legislature. I was largely responsible for the language in which the enactment is conveyed and for that reason, and for that reason alone I have not written a judgment myself, but I heartily concur in the judgment which my noble and learned friends have arrived at.”

That with which a Court of Law alone would be governed in interpreting Sir Henry's letter of the 24th October would be that which was called by a very distinguished Judge, Lord Wensleydale, the Golden Rule of legal interpretation, to the effect that in construing all written instruments, the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words might be modified so as to avoid the absurdity and inconsistency but no further. The problem, therefore, before one is to ascertain what, giving words their ordinary meaning, is the area referred to in Sir Henry's letter as “ the portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo which cannot be stated to be purely Arab.”

I suggest that a reference to Map No. 1 in the Report of the Royal Commission, which is a War Office Map, showing the Pre-War Turkish Administrative Districts comprised in Syria and Palestine, or to the Map opposite page 248 in Mr. Antonius' book, makes it perfectly easy to give a grammatical and ordinary sense to the words of the British Government to which the High Commissioner of Egypt put his signature.

Having studied the administrative divisions on the map, can it be said that they bear out Mr. Churchill's interpretation, when Colonial Secretary in 1922, that the portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo,

cover the southern part of the Vilayet of Beirut and the independent Sanjaq of Jerusalem? It was clearly necessary to say so if Palestine, which comprises the Sanjaqs of Acre and Balqa in the Vilayet of Beirut and the independent Sanjaq of Jerusalem, was to be held to be excluded from the area promised to the Arabs.

So far from it being clear that Palestine was included in the reservation defined in the letter of the 24th October, one can, on the contrary, only say that everything possible was done in order to indicate that it was intended to include Palestine in the area promised to the Sharif. Why, for example, speak of the districts of Damascus, Homs, Hama and Aleppo, not one of which is east of Palestine, and all of which go northward in that order away from Palestine? Why say nothing of the Sanjaqs of Hauran and Maan to the west of which the whole of Palestine lies? Why not, if Palestine was to be described, speak of Lake Huleh, the River Jordan, the Lake of Tiberias and the Dead Sea as the eastern boundaries?

So far from the words in their grammatical and ordinary sense excluding Palestine, they do the exact opposite, and leave Palestine clearly within the area to which Arab independence was to be granted. To hold otherwise is exactly as though anyone who in a description of the South of England wished to exclude the area south of the River Thames, that is to say, the Counties of Berkshire, Surrey and Kent, in purporting to do so were to speak of the districts of Gloucester and Monmouth which are miles away from the line which it is intended to demarcate—a line moreover which is clearly defined by a natural geographical feature in the shape of a river. As Mr. Antonius states, Mr. Churchill in 1922 tried to argue that the word *districts* in the phrase, in Sir H. McMahon's letter of the 24th October, 1915, "the portions of Syria lying to the west of the districts of Homs, Hama and Aleppo" was to be read as equivalent to "*vilayets*"; and that since the "*Vilayet* of Damascus" included that part of Syria—now known as Transjordan—which lay to the east of the River Jordan, it followed that that part of Syria—now known as Palestine—which lay to the west of the Jordan was one of the portions of territory reserved in Sir Henry McMahon's phrase. As Mr. Antonius points out, on pages 177 and 178 of his book, this argument is untenable inasmuch as there was no "*Vilayet* of Damascus," "*Vilayet* of Homs" or "*Vilayet* of Hama."

The Arabic word *wilayat* may have been employed in the translation of Sir Henry's letter to the Sharif, but the meaning of this is nothing more than "district" in general, and it does not necessarily import an Ottoman *vilayet*, which was a determined administrative unit, controlled by a Vali (hence its name), as definite as is an English county.

To say that when Sir Henry wrote of the "district of Damascus" he meant the Ottoman Vilayet of Syria is exactly as though one should be asked to believe that a reference to the district of Maidstone meant the County of Kent.

Lord Lindley, when Master of the Rolls, in the case of *In re Birks, Kenyon v. Birks* (1900) 1 Ch. p. 418 said:

"I do not know whether it is law or a canon of construction, but it is good sense to say whenever in a deed, or will, or other document, you find that a word in one part has some clear and definite meaning, then the presumption is that it is intended to mean the same thing where, when used in another part of the document, its meaning is not clear."

The fourth paragraph of Sir Henry McMahon's letter of the 24th October, 1915, speaks of no less than six "districts" in connection with six towns, namely Mersin, Alexandretta, Damascus, Homs, Hama and Aleppo.

Of these, there was only one, namely Aleppo, from which an Ottoman *vilayet* took its name, and since to the west of the Vilayet of Aleppo was the sea, that vilayet cannot have been meant. It is surely contrary to good sense, in view of these facts to pick out a second of the five remaining towns, namely Damascus, and allege that a reference to its "district" indicates the Ottoman *vilayet* in which it lay, a *vilayet* which bore the name not of Damascus, but of Syria, and which contained in it, moreover, two of the other towns, namely Homs and Hama, whose "districts" were named in Sir Henry's letter immediately after the "district" of Damascus. Does not common sense indicate that in every case the term "district" implies the neighbourhood of the town which is named? By this interpretation alone do we arrive at a consistent explanation of the use of the words which have been employed and thus alone are we enabled to give a meaning to every word including the "Districts of Homs and Hama".

It is to be observed, further, that the Sharif, in his letter in reply, of the 15th November, 1915, (Antonius page 421, Note 1) uses the Arabic word *wilayat*, in speaking of Mersin and Adana, clearly in the general sense of "district" inasmuch as there was not, as he must have known, an Ottoman *Vilayet* of Mersin, but only a Vilayet of Adana in which the port and district of Mersin were situated.

In speaking of Mersin and Adana the Sharif, one may believe, was harking back to the mode of definition employed in his first letter of the 14th July, 1915, in which he had laid down the northern boundaries for which he asked, limited, not by administrative districts, whether *Vilayets* or *Sanjags*, but by a line of towns situated approximately on a particular parallel of latitude.

I therefore believe that the Sharif was using the Arab term *wilayat* in this letter in the sense of the *environs* of the towns named, not only in reference to Mersin and Adana, but also when speaking later of the two "*Wilayats* of Aleppo and Beirut". I base this contention on the fact, moreover, that in insisting in their inclusion in the independent Arab area he says that the two "*vilayets* of Aleppo and Beirut and their western Maritime coasts . . . are purely Arab provinces"; while in his next letter, of 1st January, 1916, the Sharif refers to "the Northern parts and their coastal regions", and later to "Beirut and its coastal regions".

Now, why did the Sharif explicitly refer to the "maritime coasts" and the "coastal regions"? If one is speaking, for example, of Durham, one does not speak of "the County of Durham and its maritime coasts" or of "the County of Durham and its coastal regions". The mention of the coasts, if one is speaking of the County, is mere redundancy; but if one's intention is to cover in one's description only a part of that county, including some of the environs of the chief town of the same name and the adjoining sea coast, what is more natural than that one should speak of the "district of Durham and its maritime coasts" or the "district of Durham and its coastal regions"?

A further point of great importance is this, that the only reason set out in Sir Henry McMahon's letter for the exclusion of the portions of Syria to the west of the districts of Damascus, Homs, Hama and Aleppo, as well as of the districts of Mersin and Alexandretta, was that "they cannot be said to be purely Arab". Now, Mersin contained a large Turkish population, as did the contiguous territories of the coast-line of the Vilayet of Aleppo, in which is situated Alexandretta. The districts of Latakia, Tripoli and the Lebanon comprised large numbers of Alawis, of Druzes and of Maronites who differed in some cases in race, and in all in religion, from the majority of the Moslem Arabs of Syria, and it is of the highest significance that the portions of Syria which may be accurately described as lying to the west of the districts of Damascus, Homs, Hama and Aleppo comprised exactly these areas of Latakia and of the Lebanon and Tripoli where the minorities in question are to be found. Further, an area of which it emphatically could not be said that the population was not purely Arab was Palestine, where notwithstanding the presence of a number of Christian European institutions, at that time at least 95 per cent. of the population was Arab.

Not one single word of the world-wide importance of the Holy Land appears in the McMahon Correspondence. Freedom to act without detriment to the interests of France was the only

condition precedent to recognition and support of Arab independence in any portion of the territory involved. The greater part of the small Sanjaq of Beirut is not west of the Sanjaq of Damascus and this area, containing the towns of Tyre and Sidon, was included in the area allotted to France in the Sykes-Picot Agreement of 1916 and is to this day part of the French mandated territory. To suggest that an area of the size of Palestine and of the importance of the Holy Land, if not excluded by the fact that it did not lie west of the districts of Damascus, Homs, Hama and Aleppo, was intended to be excluded by a side wind by the reference to the interests of France which, at the very time, the British Government was refusing to admit, is an argument that will not hold water.

Sir Henry McMahon in the last paragraph of his letter to *The Times* of the 23rd July, 1937, which has been already quoted, concluded as follows:—

“I also had every reason to believe at the time that the fact that Palestine was not included in my pledge was well understood by King Hussein.”

Sir Henry does not state upon what grounds he bases that belief; but here, again, a court of justice, if it were concerned to interpret the meaning of the written instrument containing the offer to King Husain would not attend for one minute to what impression the person making the offer stated 22 years after that he had reason to believe the words conveyed to the person accepting the offer; it would arrive at the intention by the meaning of the words which had been made use of in the offer in the light of the words made use of in the acceptance.

The second paragraph of the Sharif Husain's third note to Sir Henry McMahon, dated the 5th November, 1915 (Antonius, p. 421), in reply to the latter's letter of the 24th October, is of great importance in this connection. It runs as follows:—

“First, in order to facilitate and serve the cause of Islam by the removal of possible sources of hardship and tribulation, and in earnest of the great esteem in which we hold Great Britain, we no longer insist on the inclusion of the districts of Mersin and Adana in the Arab Kingdom. As for the Vilayets of Aleppo and Beirut and their western maritime coasts, these are purely Arab provinces in which the Moslem is indistinguishable from the Christian, for they are both the descendents of one forefather. And we Moslems intend in those provinces to follow the precepts laid down by the Commander of the Faithful, Umar ibn al-Khattab (God have mercy upon him!) and the Caliphs who came after him, when he enjoined upon the Moslems to treat Christians on a footing with themselves, saying: ‘they are to enjoy the same rights and bear the same obligations as ourselves’. They will, moreover, have their denominational privileges as far as the public interest allows.”

It will be observed that once more there is no mention of the Sanjaq of Jerusalem; that the Sharif in speaking of the Vilayets of Aleppo and Beirut is clearly referring to the part of the latter

Vilayet west of the districts of Damascus, Homs, Hama and Aleppo, referred to in the letter under reply, inasmuch as he protests that they are by *heredity* purely Arab provinces, whether the inhabitants be Christian or Moslem, and he is not contemplating the area west of the Hauran or still less that which is west of Maan which would include the Sanjaqs of Acre, Balqa and Jerusalem or, in other words, Palestine.

The fact that he explicitly undertakes to safeguard the rights of Christian Arabs is a confirmation of this, as it is natural to suppose that he has in mind the large Christian Maronite community in the Lebanon which had for years looked upon France as its protector and which was the only Christian community living in a compactly defined sphere in the whole area in question.

In reply to this, in his letter of the 14th December, 1915, Sir Henry McMahon wrote to the Sharif as follows (Antonius, p. 423):—

“ I was glad to find that you consent to the exclusion of the Vilayets of Mersin and Adana from the boundaries of the Arab countries . . . As for the two Vilayets of Aleppo and Beirut, the Government of Great Britain have fully understood your statements in that respect, and noted it with the greatest care; but as the interests of their ally, France, are involved in these two provinces, the question calls for careful consideration. We shall communicate again with you on this subject at the appropriate time.”

It will be observed that here, too, although there is an express reference to the Vilayets of Aleppo and Beirut, not one word is said by Sir Henry McMahon about the Sanjaq of Jerusalem; and that the interests of France in the two provinces in question, not as hitherto the fact that they are not purely Arab, are the only reason given for the exclusion of the two Vilayets. No mention is made of Palestine and no reference whatever is made to the world-wide interest in its Holy Places.

Next comes, in the Sharif Husain's fourth letter of the 1st January, 1916 (Antonius, p. 425), the following passage:—

“ With regard to the northern parts and their coastal regions, we have already stated, in our previous note the utmost that it was possible for us to modify. We made these modifications solely in order to achieve the ends which, Almighty God willing, we desire to attain . . . On the other hand—and this Your Excellency must clearly understand—we shall deem it our duty at the earliest opportunity after the conclusion of the War to claim from you Beirut and its coastal regions, which we shall overlook for the moment on account of France . . . The proximity of the French to us would be a source of difficulties and disputes such as would render the establishment of peaceful conditions impossible, to say nothing of the fact that the people of Beirut are resolutely opposed to such dismemberment . . .

“ Thus any concession designed to give France or any other Power possession of a single square foot of territory in these parts is quite out of the question.”

Here again, there is not one word about the Holy Land, the Sanjaq of Jerusalem or any reference with geographical intent, save to the "northern parts and their coastal regions" and to "Beirut and its coastal regions"; both of which come clearly within the area to the west of the districts of Damascus, Homs, Hama and Aleppo.

It is very significant, also, that the last paragraph which I have quoted is concerned to name France alone as a Power concession to which of any of the territory is out of the question. Precisely the same may be said of the only relevant remark in the final letter in the Correspondence. Sir Henry McMahon's note of the 30th January, 1916 (Antonius, p. 426), runs as follows:—

"As for the northern regions we note with great satisfaction you desire . . . to avoid anything that might impair the alliance between Great Britain and France."

It seems to me that the Sharif must have been endowed with a remarkable gift of clairvoyance if he understood, from the letters in question, that the Government intended to exclude Palestine from the area whose independence it guaranteed, for every one of the four communications to the Sharif forwarded by the British Government over Sir Henry McMahon's signature, so far from indicating that Palestine was to be excluded from the sphere of Arab independence, served to evade all suggestion that any question of Palestine was in issue, by using geographical descriptions which exactly fitted the adjoining territories, but were not apt to describe Palestine itself, and by giving as reasons for the exclusion of the territory in question none of the religious and historic grounds which were applicable to the Holy Land, but only political grounds which were applicable to the northern parts of Syria and in no case political grounds which would have been germane to the case of Palestine.

I have confined myself to the intention which, as I contend, may without great difficulty and without stretching the meaning of words be gathered from the expressions used in the Correspondence as a whole.

The only interpretation by the Government other than that which we have heard from Your Lordship was that embodied in the White Paper of 1922 in which Mr. Churchill as Colonial Secretary stated that "the portions of Syria lying to the west of the district of Damascus", for thus he partially quoted the definition, was regarded by His Majesty's Government as covering the Vilayet of Beirut and the independent Sanjaq of Jerusalem, in other words all Palestine west of the Jordan.

At that time the whole Correspondence had never been published in English. Successive Governments declared that it would be contrary to the public interest so to do.

Now that it has been published by Mr. Antonius it appears to me that the Government has been compelled to shift its

ground and to say that it was "inconceivable" that it was intended to include Palestine and that it must have been "regarded as automatically and obviously excluded".

To support this contention surrounding circumstances, namely religious, historical and political considerations, are called in aid by His Majesty's Government.

I do not propose to deal with these, as members of the delegation itself are more competent to do so; but I would point out that it is only when, from the imperfection of language it is impossible to know what the intention is, without enquiring further, that then it is legitimate to see what the circumstances were with reference to which the words were used and what was the object appearing from those circumstances which the person using them had in view (per Lord Blackburn. *River Wear Commissioners v. Adamson* (1877) 2 A.C. at page 763).

In my contention the grammatical and ordinary sense of the words used in the Correspondence lead to no absurdity and no inconsistency, and for that reason it is not necessary, indeed it is not legitimate, to consider any surrounding circumstances in order to modify their meaning. I submit that it is only when the language is ambiguous that it may be controlled by surrounding circumstances or explained by other documents, and that in the absence of such ambiguity no subsequent statement written or verbal can have any effect on the construction of the Correspondence. (Per Wightman J. in *Lewis v. Nicholson* (1852) 18 Q.B. at page 512.)

I would point out also that there is always some presumption in favour of the more simple and literal interpretation of the words of a written instrument. (*Caledonian Railway and North British Railway* (1881) 6 A.C. at page 121 per Selborne L.C.)

Finally, may I say that His Majesty's Government has changed its ground of defence more than once in the history of this controversy. In 1922 it relied solely on the allegation that the whole of Palestine west of the Jordan was excluded from Sir Henry McMahon's pledge by the reservation of the portions of Syria lying west of the district of Damascus. Judging from pages 19 and 20 of the Report of the Royal Commission* it appears in giving evidence before that body to have relied on the claims of France in respect of her alleged interests in the area in question. The present line of defence of His Majesty's Government, that Palestine must have been regarded as automatically and obviously excluded *sub silentio* from the area involved, which is incompatible with the other two arguments, has never been brought forward publicly before and if it was put before the Royal Commission when sitting *in camera* it was deemed of so little value that they omitted all reference to it in their Report.

* Cmd. 5479, 1937.

ANNEX D.

(See paragraph 8)

Royal Egyptian Embassy, London.
Office of the Secretary-General,
Arab Delegations to the Palestine Conference.

27th February, 1939.

OBSERVATIONS ARISING OUT OF THE LORD CHANCELLOR'S
STATEMENT ON THE 24TH FEBRUARY, 1939.

1. The Arab representatives on the Committee appointed to discuss the McMahon Correspondence have listened with the greatest interest to the statement made by the Lord Chancellor at the second meeting of the Committee on the 24th February, 1939, and have most carefully read the written memorandum of the same date, entitled "The McMahon-Husain Correspondence" (Annex B), which was communicated to them at the close of that meeting.

2. The Arab representatives wish to pay a sincere tribute to the painstaking care with which the Lord Chancellor has gone into the question, and to express their great gratification at finding that, in whatsoever degree his conclusions may differ from theirs in the interpretation of the Correspondence, he agrees with them in recognising the importance of certain other pledges made by Great Britain to the Arabs during the War. In this connexion, it is a matter of particular satisfaction to them that the Lord Chancellor should have seen fit to stress the significance of the message delivered to King Husain by Commander Hogarth in January 1918 and of the Anglo-French Declaration of November 1918.

3. At the same time the Arab representatives find, to their great surprise and regret, that the Lord Chancellor takes the view that Palestine was excluded from the area in which Great Britain pledged herself in the McMahon Correspondence to recognise and support independent Arab Governments. Their careful examination of the statement and the memorandum under reference has led them to the conclusion that there may be some misapprehension in the Lord Chancellor's mind as to the exact purport of a correspondence which was entirely exchanged in Arabic. In the hope of removing those misapprehensions, one of the Arab representatives has conferred with the expert delegated by His Majesty's Government and has communicated to him a list of the errors of translation and other discrepancies between the Arabic text and the official English version. In the hope of dispelling possible misapprehensions still more fully, the Arab representatives feel it their duty to submit certain supplementary observations.

4. With a view to achieving greater clarity, the distinction drawn by the Lord Chancellor between the words of the Correspondence itself on the one hand, and, on the other, the surrounding circumstances will here be observed. The Arab representatives propose therefore to deal with those two aspects of the question in the order named, and to invite Sir Michael McDonnell, former Chief Justice of Palestine, who has very kindly consented to help them with his advice on the legal aspects of the question before the Committee, to make a statement.

5. On the subject of the surrounding circumstances, the Arab representatives have the following observations to offer.

6. In paragraph 7 of his memorandum, the Lord Chancellor states that, in view of the sacred character of Palestine, "Great Britain clearly had no right and no authority in 1915 to say that if the Allies succeeded in wresting from the Ottoman Empire a land of such importance to the Christian world they would hand it over to the rule of another independent Moslem Power without first obtaining every kind of guarantee whereby the Christian and Jewish Holy Places should be protected and free access to them allowed, at least as fully and freely as in Ottoman times." From that, His Lordship goes on to conclude that it was inconceivable that Sir Henry McMahon should have intended to give the Sharif an unconditional promise that Palestine was to have been included in the area of Arab independence. The Lord Chancellor then proceeds to uphold his conclusion in the following words: "The fact that the question of guarantees was not even mentioned makes it clear beyond all doubt that Sir Henry McMahon never supposed for a moment that his letter would be read as including Palestine in this area."

7. The Arab representatives submit, with all respect, that the conclusion rests on a substantial misapprehension of the position. In the first place, the safety of, and the freedom of access to, the Holy Places were expressly stipulated for in certain *ad hoc* provisions of the Treaty of Berlin (1878) which enjoyed the widest international recognition, including that of Turkey, and which would have been automatically made binding on any Power that were to succeed to the Ottoman sovereignty in Palestine. In the second place, the text of the Correspondence itself shows clearly that the future independent Arab Governments were intended by both parties to have the benefit of British advice and the assistance of British officials in the establishment of a sound system of administration; and this alone was sufficient guarantee that the Holy Places stood in no danger whatever from the Arab governments-to-be. In the third place, Sir Henry McMahon imposes a specific

stipulation in regard to the Holy Places, when he says, in his note of the 24th October, 1915, that "Great Britain will guarantee the Holy Places against all external aggression and will recognise their inviolability" or, alternatively, in a more literal translation of the Arabic text, "Great Britain will guarantee the Holy Places against all external aggression and will recognise the obligation of preserving them from aggression."

8. The Arab representatives are at a loss to understand what the Lord Chancellor had in mind when he said, in reference to the Holy Places that "the question of guarantees was not even mentioned." Not only were the protection of and the freedom of access to the Holy Places implicit in any international compact in respect of Palestine; but also, Sir Henry McMahon went out of his way to stipulate a specific and emphatic guarantee which the Sharif never for one moment objected to or questioned. And the fact that Sir Henry McMahon found it advisable to insert such a stipulation is surely conclusive proof that he had Palestine in mind when he gave that pledge to the Sharif Husain.

9. The Arab representatives fully agree with the Lord Chancellor when he says that "it is surely reasonable to believe that the Sharif of Mecca, who showed such legitimate concern for the Moslem Holy Places of the Hejaz, must have understood the strength of Christian sentiment on this point, and realised that no British official could possibly undertake to assign Palestine to another Moslem State without making the most express reservations with regard to the Christian Holy Places." That the Sharif Husain understood and respected Christian and Jewish sentiment with regard to the Holy Places of Palestine is clear not only from the fact that he never questioned Sir Henry McMahon's stipulation but also from his numerous declarations, and in particular those he made to Commander Hogarth, about the Arab readiness to ensure at all times the safety of and the freedom of access to the Holy Places of all three faiths.

10. In paragraph 9 of his memorandum, the Lord Chancellor speaks of the importance of Haifa and other ports on the Palestinian coast from the British point of view, and states that it must have been apparent to any informed observer that Great Britain would require guarantees precluding the use of Palestinian territory in general and of the port of Haifa in particular for future attacks on Egyptian territory. Here again, be it said in all respect, the Lord Chancellor appears to have overlooked the fact that the Sharif Husain's proposals envisaged a military alliance to be entered into between Great Britain and the future independent Arab Government of

Palestine, and that Sir Henry McMahon, on his side, had further stipulated that European advisers and officials required in the future Arab State should be exclusively British.

11. In paragraph 33 of his memorandum, the Lord Chancellor says: "Now, if there is anything certain in this controversy it is that Great Britain was not free in October 1915 to act in Palestine without regard to French interest." He goes on to say that although it may be true that His Majesty's Government were anxious to restrict the French claims, it does not follow that they were free to do so, for, the Lord Chancellor adds, "there is a great difference between desiring an object and attaining it".

The Arab representatives wish to submit that the Lord Chancellor's contention is untenable. Whether or not the British Government were in fact free to act in relation to Palestine without regard to the French claims, it is quite clear from the evidence referred to by the Lord Chancellor that they had desired, even as far back as 1915, to withdraw Palestine from the area in which the French claims might be recognised. The available evidence points unmistakably towards that conclusion, which is also borne out by the extract* from the report of the Committee presided over by Sir Maurice de Bunsen, which the Lord Chancellor has so kindly communicated.

12. The observation that there is a great difference between desiring an object and attaining it, although obviously true, is beside the point. The point is that the British Government desired to exclude Palestine from the sphere of future French influence and were trying in the McMahon Correspondence to pave the way for the attainment of that object. There is a great difference between attaining an object and trying to attain it. The contention of the Arab representatives is that the British Government, in their desire to resist the French claim to Palestine as distinct from the rest of Syria, tried to attain the object of that desire in successive steps: first, by abstaining from making any mention of Palestine when they enumerated (in Sir Henry McMahon's note of October 24, 1915) those portions of Syria which were to be reserved for the sake of French interests; then, after the note had been actually despatched, by inviting French representatives to come to London and trying to induce them to abandon France's claim to Palestine; later still, in 1916, by insisting on provision being made in the Sykes-Picot Agreement for the internationalisation of Palestine; and lastly, at the end of the War, by asking the French point-blank to assent to a British Mandate in Palestine.

13. That is the historical sequence of events which occurred between the formulation of the British desire in 1915 and the attainment of it in 1919. And Sir Henry McMahon's note

* See Annex J.

of October 24, 1915, was but the first of a series of steps by which the British Government tried to attain the object of their desire to withdraw Palestine from the area of future French influence with a view ultimately to bringing it into the sphere of future British influence.

14. In paragraph 39 of his memorandum, the Lord Chancellor calls attention to the fact that the Sykes-Picot Agreement provided for consultation with the Sharif in regard to the form of the administration to be ultimately established in Palestine; and he argues from that that "it is difficult to see how the Agreement can fairly be represented as a breach of faith with the Sharif".

The Agreement constituted a breach of faith for several reasons one of which was that Palestine had previously been included in the area of Arab independence. The fact that the British Government kept the Sharif in ignorance of it seems to indicate that they had a bad conscience about it. When he heard of it accidentally eighteen months after its conclusion and protested to the British Government, they replied with an evasion and tried, in two messages which have since been made public, to mislead him into believing that no such agreement had ever been concluded.

15. Other instances could be adduced, both from the Lord Chancellor's memorandum and from his oral statement as summarised in the Record of the Second Meeting (February 24, 1939), which give the Arab representatives the impression that His Lordship could not have been fully informed as to the facts when he made those statements and comments.

One notable example is the passage in which he expressed his conviction that, in drawing up the Balfour Declaration, Mr. Balfour did not think he was doing anything that would involve a Jewish claim to an independent State in Palestine. It is none the less a historical fact that in drawing up the Balfour Declaration, Mr. Balfour did have a future Jewish State in Palestine definitely in mind. That fact is well known to those who were in touch with Mr. Balfour at the time. It was also made public by Mr. Lloyd George himself, who was Prime Minister at the time and who, in the evidence he gave before the Palestine Royal Commission, spoke 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."*

* Report of the Palestine Royal Commission, Cmd. 5479, 1937, Chapter II, paragraph 20.

16. Thus the Balfour Declaration, while it promised no more than a National Home—whatever that phrase may mean—was, in the minds of Mr. Lloyd George and his colleagues, to serve as a cloak behind which the Zionists were to be allowed and helped to establish a Jewish majority and a Jewish State in Palestine. That was the real purpose of the Balfour Declaration, as revealed by no less an authority than Mr. Lloyd George; and meanwhile, Commander Hogarth, under instructions from the British Government, was assuring King Husain that the settlement of Jews foreshadowed in the Balfour Declaration did not mean, and would not be allowed to mean, any interference with the political and economic freedom of the Arab population in Palestine.

17. Towards the end of his statement, the Lord Chancellor said that he must in any case repudiate strongly any charge of bad faith on the part of His Majesty's Government or their predecessors. Nothing had been said by the Arab representatives, either in the memorandum submitted on the 23rd February or in their oral observations about the bad faith of the present or previous Governments. They thought it preferable to avoid all recrimination and to confine the discussion to the matter immediately before the Committee, namely that of an objective examination of the meaning and scope of the pledges contained in the McMahon Correspondence. In their opinion, it would serve no useful purpose to enter into a protracted discussion of the ethics of war-time politics and expedients, but rather to confine themselves to the more fruitful task of elucidating the truth. They derive particular encouragement from the jealous regard for the good name of His Majesty's Government which the Lord Chancellor has shown, and they venture to hope that he will reconsider his conclusions in the light of their observations and of the facts brought to light in the present memorandum.

18. In particular, the Arab representatives wish to invite His Lordship's attention to the desirability of his reconsidering the comments he made upon the late Lord Grey's speech in the House of Lords on the 27th March, 1923. In the Lord Chancellor's view, Lord Grey's speech was based on a complete misunderstanding of the Balfour Declaration. This is scarcely fair to Lord Grey. The remarks he made in his speech show that he possessed real and intimate knowledge of what was in Mr. Lloyd George's mind with regard to a future Jewish Commonwealth in Palestine.

19. The present memorandum does not attempt to answer all the points raised by the Lord Chancellor, but only those in which it has seemed to the Arab representatives that certain aspects of the "surrounding circumstances" had escaped His

Lordship's attention. It is not their desire to pass moral judgments on the conduct of Allied policy during the War, but rather to urge that, if mistakes and inconsistencies did occur in the heat of war, the proper course now, from the point of view of Great Britain's good name and of peace in Palestine, is to admit the mistakes and inconsistencies and then proceed to examine how and to what extent they can be reconciled. In the words of Lord Grey: "It would be very desirable, from the point of view of honour, that all these various pledges should be set out side by side, and then, I think, the most honourable thing would be to look at them fairly, see what inconsistencies there are between them, and, having regard to the nature of each pledge and the date at which it was given, with all the facts before us, consider what is the fair thing to be done." Those are the words of the eminent statesman under whose instructions the McMahon pledges were issued; and the advice he tendered to the Government on that occasion is precisely what the Arab representatives are now urging upon His Majesty's Government.

(Signed) G. ANTONIUS,
Secretary-General of the Arab Delegations.

ANNEX E.

(See paragraph 9.)

STATEMENT BY THE LORD CHANCELLOR.

At the third meeting of the Committee, the Lord Chancellor listened to two able Statements, the first by Sir Michael McDonnell upon certain purely legal issues, and the second by Mr. George Antonius upon the "surrounding circumstances" of the Correspondence.

2. In this Statement the Lord Chancellor will endeavour to deal with the main points on which the Arab representatives rely in contesting the claim that Palestine was excluded by the Correspondence from the area of Arab independence.

3. The Lord Chancellor has been impressed by some of the arguments brought forward in regard to the exclusion of Palestine under the phrase "portions of Syria lying to the west of the districts of Damascus, Homs, Hama and Aleppo". He considers that the Arab point of view as regards this aspect of the question has been shown to have greater force than has appeared hitherto, although he does not agree that it is impossible to regard Palestine as covered by the phrase "portions of Syria, etc."

4. On the other hand, the Lord Chancellor does not consider that the force of the reservation in respect of French interests has been diminished by the counter-arguments.

5. In particular, he wholly disagrees with the contention that the Correspondence was a first step in a deliberate scheme whereby His Majesty's Government set out to exclude what is now called Palestine from the area of French influence and eventually succeeded in doing so. The supposition that His Majesty's Government conducted the Correspondence with this end in view appears to him to be unsupported by any evidence. He does not deny that in the autumn of 1915 His Majesty's Government wished to restrict the claims of their ally to Palestine if they could do so in the only way open to them, i.e., by an understanding with that ally. But they cannot have thought that they would make their position stronger in any eventual negotiations by entering in advance into commitments on the subject to a third party. The French Government would not have regarded these commitments as having any validity where they themselves were concerned, and the result of any such action on the part of His Majesty's Government would have been far more likely to render the attainment of their object more difficult than ever.

6. The Lord Chancellor maintains, therefore, that the reservation in respect of French interests applied, and was meant to apply, to all territory, including what is now called Palestine, to which the claims of France extended at the time.

7. But it was not only because of the claims of France that Great Britain was not free to make promises about Palestine in the autumn of 1915. The interest in Palestine of almost all the countries in the world had to be taken into account, and in this connexion the Lord Chancellor would like to say that although he does not wish to differ from any of the authorities quoted by Sir Michael McDonnell, he thinks there may have been some misunderstanding of his argument.

8. He did not mean to convey the impression that his argument, or at any rate one of his arguments, was that Palestine was excluded from the area of Arab independence merely because it was not mentioned. So far as he is aware this argument has never been put forward, either before the Royal Commission or anywhere else. His argument is that on a fair construction of the Correspondence which takes into account the circumstances in which its language was used Palestine was in fact excluded, even though it was not mentioned.

9. In other words, he holds that the Correspondence as a whole and particularly the reservation in respect of French interests in Sir Henry McMahon's letter of the 24th October, 1915, not only did exclude Palestine, but should have been understood to do so, having in view the unique position of Palestine.

10. This view is forcibly stated in a speech of Lord Milner in the House of Lords on the 27th June, 1923, when he said:—

“ I am a strong supporter of pro-Arab policy. . . . I believe in the independence of the Arab countries. . . . I look forward to an Arab Federation. . . . But Palestine can never be regarded as a country on the same footing as the other Arab countries. You cannot ignore all history and tradition in the matter. You cannot ignore the fact that this is the cradle of two of the great religions of the world. It is a sacred land to the Arabs, but it is also a sacred land to the Jew and the Christian; and the future of Palestine cannot possibly be left to be determined by the temporary impressions and feelings of the Arab majority in the country of the present day.”

11. As regards the individual factors which go to make up the surrounding circumstances, the Lord Chancellor has noted the contentions based upon the Treaty of Berlin, and the proposals for Anglo-Arab co-operation which run through the Correspondence. It may be observed that by Article LXII of the Treaty the rights of France were expressly reserved.

12. Article LXII seems to him to enforce his contention that in regard to Palestine Great Britain had to think not only of herself, but of almost the whole world. If she had indeed been purporting to recognise and support Arab independence in Palestine, she would not and could not have done so without giving a clear indication of the rights to be reserved not only for herself but for all other interested parties.

13. The point about the Holy Places is different. The Lord Chancellor is of opinion that the phrase “ Holy Places ” as used in the Correspondence meant and was taken to mean the Holy Places of Mecca and Medina. But assuming that the phrase covered Jerusalem and the other Holy Places of Palestine, the fact that Great Britain might have been willing to protect the Holy Places of Palestine against external aggression did not mean or contain an implication that she or other Christian peoples thereby acquired any rights in regard to those Holy Places. It is exceedingly improbable, to say the least, that Great Britain would have accepted this liability without a clear understanding as to these rights.

14. The Lord Chancellor does not wish to pursue the argument about the Sykes-Picot Agreement, although he must make all reserves on this subject, but as he has been especially invited to modify his former remarks about what was said by Viscount Grey of Fallodon in 1923 he will deal with this point.

15. On this point he wishes to say that he sees no reason to modify his remarks. The words of Lord Grey were used in the course of debate, when, as he said, he had not the terms

of the Declaration before him. In any case the Lord Chancellor's opinion was based on a clear view of what the words of the Balfour Declaration meant when it was made in 1917 and this view is not affected by the fact that at later dates interpretations, which he thinks were mistaken ones, may have been placed upon these words by persons of eminence, particularly since these interpretations have not been accepted by other persons at least as likely to form a correct view.

House of Lords,

March 16th, 1939.

ANNEX F.

(See paragraphs 19 and 20.)

THE HOGARTH MESSAGE.

The following are the terms of the message which Commander Hogarth was instructed to deliver to King Husain when he visited Jeddah in January, 1918:

“(1) The Entente Powers are determined that the Arab race shall be given full opportunity of once again forming a nation in the world. This can only be achieved by the Arabs themselves uniting, and Great Britain and her Allies will pursue a policy with this ultimate unity in view.

“(2) So far as Palestine is concerned we are determined that no people shall be subject to another, but

(a) in view of the fact that there are in Palestine shrines, Wakfs and Holy places, sacred in some cases to Moslems alone, to Jews alone, to Christians alone, and in others to two or all three, and inasmuch as these places are of interest to vast masses of people outside Palestine and Arabia, there must be a special régime to deal with these places approved of by the world.

(b) As regards the Mosque of Omar it shall be considered as a Moslem concern alone and shall not be subjected directly or indirectly to any non-Moslem authority.

“(3) Since the Jewish opinion of the world is in favour of a return of Jews to Palestine and inasmuch as this opinion must remain a constant factor, and further as His Majesty's Government view with favour the realisation of this aspiration, His Majesty's Government are determined that in so far as is compatible with the freedom of the existing population both economic and political, no obstacle should be put in the way of the realisation of this ideal.

“ In this connexion the friendship of world Jewry to the Arab cause is equivalent to support in all States where Jews have a political influence. The leaders of the movement are determined to bring about the success of Zionism by friendship and co-operation with the Arabs, and such an offer is not one to be lightly thrown aside.”

ANNEX G.

(See paragraphs 19 and 21.)

THE DECLARATION TO THE SEVEN.

His Majesty's Government have considered the memorial of the seven with the greatest care. His Majesty's Government fully appreciate the reasons why the memorialists desire to retain their anonymity, and the fact that the memorial is anonymous has not in any way detracted from the importance which His Majesty's Government attribute to the document.

The areas mentioned in the memorandum fall into four categories:—

1. Areas in Arabia which were free and independent before the outbreak of war;
2. Areas emancipated from Turkish control by the action of the Arabs themselves during the present war;
3. Areas formerly under Ottoman dominion, occupied by the Allied forces during the present war;
4. Areas still under Turkish control.

In regard to the first two categories, His Majesty's Government recognise the complete and sovereign independence of the Arab inhabiting these areas and support them in their struggle for freedom.

In regard to the areas occupied by Allied forces, His Majesty's Government draw the attention of the memorialists to the texts of the proclamations issued respectively by the General Officers Commanding in Chief on the taking of Bagdad and Jerusalem. These proclamations embody the policy of His Majesty's Government towards the inhabitants of those regions. It is the wish and desire of His Majesty's Government that the future government of these regions should be based upon the principle of the consent of the governed and this policy has and will continue to have the support of His Majesty's Government.

In regard to the areas mentioned in the fourth category, it is the wish and desire of His Majesty's Government that the oppressed peoples of these areas should obtain their freedom and independence and towards the achievement of this object His Majesty's Government continue to labour.

His Majesty's Government are fully aware of, and take into consideration, the difficulties and dangers which beset those who work for the regeneration of the populations of the areas specified.

In spite, however, of these obstacles His Majesty's Government trust and believe that they can and will be overcome, and wish to give all support to those who desire to overcome them. They are prepared to consider any scheme of co-operation which is compatible with existing military operations and consistent with the political principles of His Majesty's Government and the Allies.

June, 1918.

ANNEX H.

(See paragraph 19.)

SIR EDMUND ALLENBY'S ASSURANCE TO THE AMIR FAISAL.

The following are the terms in which General Sir Edmund Allenby reported to His Majesty's Government on the 17th October, 1918, a communication which he made to the Amir Faisal:

" I gave the Amir Faisal an official assurance that whatever measures might be taken during the period of military administration they were purely provisional and could not be allowed to prejudice the final settlement by the peace conference, at which no doubt the Arabs would have a representative. I added that the instructions to the military governors would preclude their mixing in political affairs, and that I should remove them if I found any of them contravening these orders. I reminded the Amir Faisal that the Allies were in honour bound to endeavour to reach a settlement in accordance with the wishes of the peoples concerned and urged him to place his trust wholeheartedly in their good faith "

ANNEX I.

(See paragraph 19.)

THE ANGLO-FRENCH DECLARATION OF NOVEMBER 7, 1918.

The object aimed at by France and Great Britain in prosecuting in the East the War let loose by the ambition of Germany is the complete and definite emancipation of the peoples so long oppressed by the Turks and the establishment of national governments and administrations deriving their authority from the initiative and free choice of the indigenous populations.

In order to carry out these intentions France and Great Britain are at one in encouraging and assisting the establishment of indigenous Governments and administrations in Syria and Mesopotamia, now liberated by the Allies, and in the territories the liberation of which they are engaged in securing and recognising these as soon as they are actually established.

Far from wishing to impose on the populations of these regions any particular institutions they are only concerned to ensure by their support and by adequate assistance the regular working of Governments and administrations freely chosen by the populations themselves. To secure impartial and equal justice for all, to facilitate the economic development of the country by inspiring and encouraging local initiative, to favour the diffusion of education, to put an end to dissensions that have too long been taken advantage of by Turkish policy, such is the policy which the two Allied Governments uphold in the liberated territories.

ANNEX J.

EXTRACT FROM THE REPORT OF A COMMITTEE PRESIDED OVER
BY SIR MAURICE DE BUNSEN: JUNE, 1915.

(See paragraph II of Annex D.)

PALESTINE.

Still less do the Committee desire to offer suggestions about the future destiny of Palestine, but since that territory has been included within the geographical limits assigned to the British sphere in the two schemes, of partition, and of zones of interest, they desire to repeat that they see no reason why the sacred places of Palestine should not be dealt with as a separate question. They have felt free to deliberate on the assumption that the French claim will be rejected, since they are convinced that the forces opposed are too great for France ever to make that claim good, but for the same reason they consider that it will be idle for His Majesty's Government to claim the retention of Palestine in their sphere. Palestine must be recognised as a country whose destiny must be the subject of special negotiations, in which both belligerents and neutrals are alike interested.

