

PALESTINE
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Miscellaneous No. 2 (1940)

Palestine Land Transfers Regulations

Letter to the Secretary-General of the
League of Nations

London, February 28, 1940

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty
February 1940*

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PALESTINE LAND TRANSFERS REGULATIONS. LETTER TO THE
SECRETARY-GENERAL OF THE LEAGUE OF NATIONS.

London, February 28, 1940.

Letter to Secretary-General, League of Nations.

Sir,

Foreign Office, February 28, 1940.

I AM directed by Viscount Halifax to transmit to you herewith, for communication to the members of the Council as well as to the Permanent Mandates Commission, the text of Regulations (without the Schedule) made by the High Commissioner for Palestine, under Article 16D of the Palestine Orders-in-Council, 1922-39, prohibiting or restricting the sale of land in certain areas in Palestine, together with a copy of a notice which is being published with the Regulations in the *Palestine Gazette*. An explanatory memorandum by His Majesty's Government in the United Kingdom is also enclosed.

2. As members of the Council are aware, the Report of the Permanent Mandates Commission dealing with Palestine would normally have been taken by the Council at its ordinary session in September last, but, for reasons connected with the international situation, the meeting of the Council was postponed. Further, at its meeting on the 9th December to consider the appeal of the Finnish Government, the Council decided, for similar reasons, to confine its political deliberations to the Finnish question. In these circumstances the discussion by the Council of the Report of the Permanent Mandates Commission on Palestine has been deferred for the time being.

3. In the meantime one point referred to in that Report, namely, the question of the sale of land in Palestine, calls for urgent action, and His Majesty's Government in the United Kingdom have decided to authorise the issue of the enclosed Regulations. They are themselves still of opinion, after the most careful consideration, that this action is in no way inconsistent with the provisions of the Mandate. But in the circumstances set out above they have thought it right to inform the members of the Council of the position in case any member of the Council should wish to ask that the Council should be convened to discuss it.

I am, &c.

LACY BAGGALLAY.

Enclosure 1.

PALESTINE LAND TRANSFERS REGULATIONS.

Text of Regulations in form approved for Issue on February 28, 1940.

IN exercise of the powers vested in me by Article 16D of the Palestine Orders in Council, 1922 to 1939, I, SIR HAROLD ALFRED MACMICHAEL, K.C.M.G., D.S.O., High Commissioner for Palestine, do hereby make the following regulations:—

Citation and commencement. 1. These regulations may be cited as the Land Transfers Regulations, 1940, and shall be deemed to have come into force on the eighteenth day of May, 1939.

Definitions of Zone A and Zone B. 2. For the purpose of these regulations there shall be two zones in Palestine which shall be demarcated as set out in the Schedule hereto.

The exact boundaries of Zone A and Zone B are indicated on a plan marked....., which is deposited in the offices of and is available for inspection during office hours.

Transfer of land within Zone A. 3. The transfer of land situated within Zone A, save to a Palestinian Arab, shall be prohibited:

Provided that the High Commissioner may, if he considers it desirable so to do—

- (a) permit of the mortgage of such land to such companies or societies as he may approve;
- (b) permit the transfer of such land by Palestinian Arabs to religious or charitable institutions;
- (c) permit the transfer of such land to persons not being Palestinian Arabs if, in his opinion, such transfer is necessary for the purpose of consolidating existing holdings, or of effecting the parcellation of village musha' within the meaning of the Land (Settlement of Title) Ordinance;
- (d) in the case of land within the said Zone owned by persons not being Palestinian Arabs, by general or special order, permit the transfer of such land to persons not being Palestinian Arabs:

Provided, further, that the High Commissioner may, if he considers it desirable so to do, authorise the transfer of any land situated within the said Zone to persons not being Palestinian Arabs, if application for the registration of such transfer was lodged in the Land Registry before the date of publication of these regulations in the *Gazette*:

Provided, further, that this regulation shall not apply to any transfer of land made in the execution of any judgment or order of a Court, Chief Execution Officer or Land Settlement Officer—

- (a) in satisfaction of a mortgage executed and registered before the date of the coming into force of these regulations, or
- (b) delivered or made before the date of publication of these regulations in the *Gazette*.

4. The transfer of land situated within Zone B by a Palestinian Arab, save to a Palestinian Arab, shall be prohibited unless the person to whom such transfer is intended to be made has received the approval in writing of the High Commissioner, which he may, in his unfettered discretion, grant or refuse:

Transfer of land within Zone B.

Provided that this regulation shall not apply to any transfer of land made in the execution of any judgment or order of a Court, Chief Execution Officer or Land Settlement Officer—

- (a) in satisfaction of a mortgage executed and registered before the date of the coming into force of these regulations, or
- (b) delivered or made before the date of publication of these regulations in the *Gazette*.

5. Any transfer of land made in contravention of the provisions of these regulations shall be null and void.

Effect of transfer of land in contravention of these regulations.

6.—(1) The High Commissioner may require any person making application for the High Commissioner's approval to the transfer of any land under these regulations to support such application by affidavits by himself or any other person.

Provisions with regard to affidavits.

(2) Any person—

- (a) who knowingly makes any false statement in any affidavit made for the purposes of these regulations, or
- (b) who knowingly uses for the purposes of these regulations any affidavit containing any false statement, is guilty of an offence and is liable to imprisonment for seven years.

7. The provisions of these regulations shall be in addition to, and not in derogation of, the provisions of the Land Transfer Ordinance.

Provisions of these regulations to be in addition to those of Land Transfer Ordinance. Cap. 81.

8. Nothing in these regulations shall be deemed—

Saving.

- (a) to apply to the transfer of any land situated within the area of any municipal corporation established from time to time under the provisions of the Municipal Corporations Ordinance, 1934, or

- (b) to apply to the transfer of any public lands by or on behalf of the High Commissioner or to the transfer of any land to the High Commissioner in accordance with any law or Ordinance or otherwise; or
- (c) to affect the power to expropriate land under the provisions of any law or Ordinance for the time being in force.

Definitions.

9. For the purposes of these regulations—

“Palestinian Arab” shall be deemed to be an Arab who is ordinarily resident in Palestine. In case of any dispute as to whether a person is an Arab or whether he is ordinarily resident in Palestine, the question shall be referred to the High Commissioner, whose decision thereon shall be final;

“land” includes water, buildings, trees and any interest in, or right in, to or over land, water, buildings or trees;

“transfer” includes leases, mortgages, charges and any other dispositions.

.....
 High Commissioner.

Enclosure 2.

Statement Explanatory of the Palestine Land Transfers Regulations.

ARTICLE 6 of the Mandate, which requires the Administration of Palestine to encourage close settlement by Jews on the land, also requires it to ensure that the rights and position of other sections of the population are not prejudiced.

Paragraph 16 of the Statement of Policy of His Majesty's Government in the United Kingdom regarding Palestine, dated the 17th May, 1939⁽¹⁾, drew attention to the fact that the reports of several expert Commissions had indicated that, owing to the natural growth of the Arab population and the steady sale in recent years of Arab land to Jews, there was now in certain areas no room for further transfers of Arab land, whilst in some other areas such transfers of land must be restricted if Arab cultivators were to maintain their existing standard of life and a considerable landless Arab population was not soon to be created. It was therefore announced that the High Commissioner would be given powers to prohibit and regulate transfers of land. Regulations have now been made in order to give effect to this announcement. As stated in paragraph 17 of the Statement of Policy of May 1939, the policy of the Government will be directed towards the development of the land and the improvement, where possible, of methods of cultivation. In the light of such developments, it will be open to the High Commissioner, should he be satisfied that the “rights and position” of the Arab population will be duly preserved, to review and modify any orders passed relating to the prohibition or restriction of the transfer of land.

⁽¹⁾ Cmd. 6019.

2. Two zones, Zone A and Zone B, have been demarcated in Palestine within which transfers of land will be controlled. In determining the boundaries of these zones, the Government has had special regard to the provisions of Article 6 of the Mandate. Zone A includes the hill country as a whole together with certain areas in Gaza and Beersheba sub-districts where the land available is already insufficient for the support of the existing population: in this Zone the transfer of land to a person other than a Palestinian Arab will be prohibited save in exceptional cases for which special provision is made in the regulations. The sanction of the High Commissioner required by the regulations to transfers of land in this Zone between persons not being Palestinian Arabs may be accorded by general order, thus dispensing with the necessity for a special order in each individual case of this description.

3. In Zone B transfers may be permitted in accordance with certain conditions set forth in paragraph 5 of this explanatory statement. This Zone includes the plains of Esdraelon and Jezreel, Eastern Galilee, the maritime plain between Haifa and Tantura and between the southern boundary of the Ramleh sub-district and Beer-Tuviya, and the southern portion of the Beersheba sub-district (the Negeb).

4. There will be no restrictions on transfers in those parts of Palestine not included in Zone A or Zone B. These parts include all municipal areas, the Haifa industrial zone (described in appendix 8 of the Report of the Palestine Partition Commission^(?)) and, roughly speaking, the maritime plain between Tantura and the southern boundary of Ramleh sub-district.

5. Transfers of land in Zone B by a Palestinian Arab to any person other than a Palestinian Arab will be null and void unless the sanction of the High Commissioner to the transfer has previously been sought and obtained. In this regard, it is the desire of His Majesty's Government that recommendations of recent Commissions should generally be followed and in pursuance of this policy the Secretary of State has accepted the recommendation of the High Commissioner that, while his final discretion shall be left unfettered, his powers will be exercised generally on the following lines:—

Sanction to a transfer of land within Zone B by a Palestinian Arab to a person other than a Palestinian Arab will not ordinarily be granted unless the transfer can be shown to be either:—

(1) for the purpose of consolidating, extending or facilitating the irrigation of holdings already in possession of the transferee or of his community, the land to be transferred being contiguous to such holdings; or

(2) for the purpose of enabling land held in undivided shares by transferor and transferee to be parcellated; or

(^{?)} Cmd. 5854.

(3) in furtherance of some special scheme of development in the joint interest of both Arabs and Jews to which the Government may have signified its approval.

6. The regulations have effect from the 18th May, 1939, but the High Commissioner is empowered, at his discretion, to sanction retrospectively any transfer of land in Zone A or Zone B which would be unlawful under the terms of the regulations, provided that application for the registration of such transfer was lodged in the Land Registry prior to the date of their publication. Generally speaking, he will require to be satisfied that the transaction was initiated *bona fide* before the 18th May, the onus of proof being on the transferee. In the absence of such sanction the transaction in question will be null and void.

7. Application for sanction to transfers of land, where required by the regulations, should be addressed to the District Commissioner of the District in which the land is situated, who will forward it to the High Commissioner for his orders.

Enclosure 3.

PALESTINE LAND TRANSFERS REGULATIONS.

Memorandum by His Majesty's Government in the United Kingdom.

His Majesty's Government in the United Kingdom have decided to authorise the High Commissioner for Palestine to issue regulations controlling sales of land as contemplated in the Statement of Policy of May 1939⁽³⁾.

2. Under Article 6 of the Mandate the Administration of Palestine is charged to facilitate Jewish immigration under suitable conditions, and to encourage, in co-operation with the Jewish Agency, close settlement by Jews on the land. But this obligation in Article 6 is qualified by the requirement that the Administration should ensure "that the rights and position of other sections of the population are not prejudiced," and, as shown in the succeeding paragraphs, His Majesty's Government have been advised that the rights and position of the Arab population on the land will be prejudiced unless land sales are prohibited in some areas and regulated in others.

3. The land situation presents a difficult and urgent problem. In order to understand the position it is necessary to trace the history of the problem since 1930, when Sir John Hope Simpson in his Report on Immigration, Land Settlement and Development in Palestine⁽⁴⁾ first expressed the view that, owing to the naturally increasing Arab population and their methods of cultivation, there was already a serious congestion of population over most of Palestine, and that the land left for settlement by new immigrants was limited

⁽³⁾ Cmd. 6019.

⁽⁴⁾ Cmd. 3686.

in extent. Subsequent investigations all confirmed this view. The Royal Commission of 1936⁽⁵⁾ expressed their unanimous agreement with the general conclusions of earlier investigators on the land problem. They recommended that transfers of land from Arabs to Jews should be allowed only where it is possible to replace extensive by intensive cultivation, that is to say, in the plains, and not, at any rate at present, in the hills. The Royal Commission stated without hesitation that at present, and indeed for many years to come, the Mandatory Power should not attempt to facilitate the close settlement of Jews in the hill districts generally. So far as the plains were concerned, the Commission considered that with due precautions land might still be sold to the Jews. They also held that further settlement of Jews in such areas as were possible could best be secured by means of large-scale development by public utility companies, but they felt bound to state, in order to prevent undue optimism, that at present such areas were few and, as far as the Commission could see, to be found only in the plains and not in the hill districts.

4. The Woodhead Commission, who examined in detail the possibilities of partition, confirmed the conclusions of the Royal Commission that, with the existing standard of cultivation and capital resources of the fellaheen, the land in the hill districts of Palestine is already congested. They recommended that the greatest caution should be exercised in regulating the transfer of Arab land to Jews in the extensive areas which under their proposals would be excluded from the Jewish and Arab States and would be retained under mandatory control. In their view, transfers of Arab land to Jews in the "mandated" areas should be permitted only when it was clear that the land in question was capable of closer settlement and when such settlement would result in benefit to Arabs and Jews alike. They were, however, unable to take an optimistic view of the possibilities of additional agricultural settlement in the "mandated" areas.

5. His Majesty's Government are convinced that it would be dangerous to ignore any longer the clear warnings from a series of authoritative and impartial Commissions as to the serious and growing congestion of the Arab population in certain areas. Although these Commissions have sometimes expressed differing views on other matters, they have all been consistent and unanimous in urging the necessity for control of land sales. Quite apart from the obligations of His Majesty's Government under Article 6 of the Mandate, and looking at the question merely from the practical point of view, if land sales remain unrestricted there is likely to arise a "landless Arab" problem of such dimensions that it will be extremely difficult to find any solution to it. Nothing is more likely to contribute to the possibility of renewed bitterness between Arabs and Jews, and to further violent disorders, than the existence of a considerable landless Arab population, and, in fact, some restrictions on land sales are essential if good government in Palestine is to be established.

⁽⁵⁾ Cmd. 5479.

6. After full examination of all these considerations His Majesty's Government have decided to authorise the High Commissioner to proceed with the land regulations, providing for the delimitation of zones in which land sales from Arabs to Jews should, at any rate for the present, be restricted, prohibited or remain free respectively. These restrictions will not prevent the further development of the Jewish National Home. Land purchases will not be stopped; they can be continued without restriction on a considerable scale in many areas, including the greater part of the maritime plain, and, also, under certain conditions, in the plains of Esdraelon and Jezreel, Eastern Galilee, the maritime plain between Haifa and Tantura, and between the southern boundary of the Ramleh sub-district and Beer-Tuviya, and in the Negeb.

7. The proposed regulations do not lay down boundaries between free, restricted and prohibited areas, which are to remain fixed for all time. It will be open to the High Commissioner, in the interests of Jewish settlement, if he is satisfied that the "rights and position" of the Arab population will be duly preserved, to review and modify any orders passed relating to the prohibition or restriction of the transfer of land. The policy of the Palestine Government is directed towards the development of the land and the improvement, where possible, of methods of cultivation. A good deal of attention has already been devoted by the Departments of Agriculture and Education to raising the standards of Arab husbandry, and it should be possible to make steady progress in this sphere of education when normal conditions are restored. It should be noted that Palestine, as a mandated territory, will be eligible for assistance from the monies which are to be provided under the recent Statement of Policy on Colonial Development and Welfare^(c).

8. Finally, it cannot be too often repeated that somehow and at some time the Jews and Arabs in Palestine will have to learn to live together in peace. In the view of His Majesty's Government, the continuation of wholly unregulated transfers of land from Arabs to Jews is bound to exacerbate the present differences between the two communities, and thus postpone indefinitely the harmony which alone can bring contentment in Palestine. Already since the war there are signs of an improvement in Jewish-Arab relations, and His Majesty's Government, on whom falls the responsibility for maintaining good government, peace and progress in Palestine, would be failing in their duty if they did not attempt to remove any obstacle which might obstruct the further development of so desirable a movement.

(^c) Cmd. 6175.