THE
JEWISH YEARBOOK OF
INTERNATIONAL LAW
1948

EDITORS

N. Feinberg
Associate Professor of International
Law and Relations, Hebrew
University, Jerusalem

J. Stoyanovskij
Docteur en Droit (Paris),
LL.D. (London)

Printed in Israel

RUBIN MASS. PUBLISHER, JERUSALEM
1949
characteristics". Thus, in interpreting the Minorities Treaties, the Court did not hesitate to use the term "national".

Here, perhaps, it may be fitting to recall the remark which President Wilson made in a conversation with Jewish representatives during the Peace Conference to the effect that if national rights could be granted to the Jews alone, he would gladly assent, but since all minorities would have to be accorded such rights, including the Germans in Bohemia etc., the whole policy would be fraught with disturbances. 42

It has been the intention in this article to stress the radical change that has come about in the approach to the Jewish question since the close of the First World War, and to outline the effects of the de jure recognition of the Jewish people as a State-forming entity.

Since then thirty years have passed. By successive interpretations culminating in the White Paper of 1939, a series of attempts have been made with the ultimate object of annulling the rights granted to the Jewish people under the Palestine Mandate. On February 25th, 1947, the Foreign Secretary of the State which had issued the Balfour Declaration said in the House of Commons, when dealing with the Palestine question, that he failed to understand how the Jews could demand the right of entry into the United Nations Organization, which is not founded on religious principles and where States and not religions are represented. This statement clearly ignores the basic change inaugurated by the Balfour Declaration and completely disregards the international recognition of the existence of the Jewish people and of its right to national life and statehood in Palestine.

There is an old dictum which may be regarded as a canon of interpretation in Jewish matters, even though it is not to be found in treatises on international law. The dictum is etched in the long and turbulent history of the Jews, and its severity has even been enhanced in our own days: Judaeorum causae non ex aequitate sed rigore juris decidentiae sunt.

---

42 Publications of the Court, Series A/B, Nr. 64, p. 17.
43 It should be noted that the French text of the advisory opinion speaks of the minorities as groupes exclusifs or groupes minoritaires. The corresponding expressions in the English version: "certain elements" and "minority elements", are more general and less precise.

---

THE MEANING OF THE TERM "NATIONAL HOME FOR THE JEWISH PEOPLE"

By Ernst Frankenstein, Dr. Jur.

Professor at The Hague Academy of International Law

I

The term "National Home for the Jewish people" was first introduced into international law in 1917 by the document known as the Balfour Declaration. It was subsequently repeated in the Mandate for Palestine which requires the mandatory Power to place the country under such conditions "as will secure the establishment of the Jewish National Home". Yet, the meaning of this term is still controversial. It may suffice to quote the reply of the Foreign Secretary, in answer to a question about the meaning of the term, during the debate on Palestine in the House of Commons on 25 February, 1947: "I am sorry", he said, "that I cannot give an accurate definition." Later in the same debate he stated: "I was asked a question about defining the National Home. This has been a great puzzle to me." If the spokesman of the mandatory Power is unable to define the term which represents the very object of the Mandate, its clarification is obviously imperative.

Where there is doubt about the meaning of a legal term the usual methods of interpretation must be applied. There are a number of different ways of ascertaining the meaning of such a term. We may analyse—1) its origin; 2) its logical meaning; 3) the events which led to its application; 4) the context of the documents containing the term; 5) statements by those who created or first applied it; 6) later events which throw light on it; 7) parallels in other documents.

II

The term "National Home" has a history of its own. Unfortunately, the records which could fully disclose it are still inaccessible to research. Nevertheless, it may be confidently asserted that the history of the term leads back to the programme of the Zionist movement as adopted at the First Congress (Basle, 1897). In 1896 Theodor Herzl, the founder and first leader of political Zionism, had published his pamphlet Der Judenstaat (The Jewish State). Though the creation or rather the re-establishment of...
ment of the Jewish State remained the ultimate aim of the movement, political considerations determined the Congress to formulate the Jewish demands in less forthright terms. The Basle Programme stated that Zionism aimed at creating "eine öffentlich-rechtlich gesicherte Heimstätte" (a home secured by public law) for the Jewish people.

In this formula are to be found all the main elements of the term "National Home for the Jewish people" with the exception of the qualifying word "national". The addition of this word in the text of the Balfour Declaration modifies the meaning of the formula. A mere "home for the Jewish people" could have been created within another State; and indeed it was in this light that the Basle Congress adopted its cautious wording, being unable at the time to envisage more than the colonization of Palestine under a Turkish charter. A similar construction is now excluded by the addition of the word "national", since it has never been applied except to a people which had attained statehood. This addition thus imports the concepts of nation and State into the term "home for the Jewish people".

III

In law and language the term "National Home" is an innovation. It is normal to connect a people either territorially with a land or politically with a State. But never before the Basle Programme was the word "people" in legal terminology related to the term "home".

The meaning of the word "home" itself is clear. A home is the centre of private life, the place where one lives, to which one belongs. My home is distinct from any other place in the world by virtue of the fact that it is always open to me and that no one else has access to it except with my consent or, in a very few cases, by authority of the law. It was the Basle Programme which, for the first time, applied the concept of a home to the needs of a people. The implications are obvious. A home for a people is the centre of the life of that people, the place where it lives, to which it belongs, the one place in the world which is always open to it and to which no one else has access except with the consent of the people or by authority of the law.

This is the meaning of a home for a people from the view-point of language and logic. But the Jewish people is to have not only a home in Palestine but a national home. "National" means pertaining to a nation. A nation, according to the Shorter Oxford English Dictionary, is "a distinct race of people, characterized by common descent, language or history, usually organized as a separate political State and occupying a definite territory". Logically, therefore, a national home appears to be an equivalent for State. But the very fact that it was found necessary to create the

new term indicates that a national home is not a State but something less than a State.

A few considerations will show why the creation of the term was necessary. A normally situated people does not need a home. It is concentrated in a particular country and, by this very fact, is always in its home, even if it is not independent. But the Jewish people is not in a normal situation. It is not concentrated in a particular country but dispersed over the world. It thus lacks an essential characteristic of a people, i.e., the connection with a country. As soon as the existence of the Jews as a people was recognized, it was therefore necessary to remedy this abnormality and connect the Jewish people with a country.

As that country, however, was not empty and the Jews formed at the time only a small minority of the inhabitants, it was found impossible to establish the connection by making Palestine at once a Jewish State. A scheme had to be devised to connect the Jewish people with Palestine and give it the necessary guarantees without establishing a State under the rule of a small minority. An interim solution had to be found. The concept of the "National Home" provided such a solution. It was devised not only to connect the Jewish people with the country but also to give it the security of a home without at once establishing the Jewish State. The "National Home" thus appears to be a stage on the way to the State.

This construction, however, requires some qualification. A home for a people, as we have seen, is a place to which no other people has access. But the Jews were given their National Home instead of a State precisely because there were others in the country. It was felt that the non-Jewish inhabitants of Palestine had to be protected against the possible consequences of a wide construction of the term "National Home". This consideration led to the insertion of the qualifying words: "it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine".

This clause is of paramount importance for the interpretation of the term "National Home". If the "National Home" meant no more than a refuge or shelter for a persecuted people, its establishment could not possibly prejudice the civil and religious rights of the inhabitants of the country. Only if the Home were a mere interim solution, a stage on the way to the Jewish State, could its further development affect the rights of others. The qualifying words thus confirm the far-reaching implications of the term; otherwise this restrictive proviso would not have been necessary. More important still, it confines the protection of non-Jews to their civil and religious rights, omitting political status, while the immediately following words explicitly protect "the rights and political status
enjoyed by Jews in any other country*. There is a deliberate differentiation between the protection of the non-Jews in Palestine and of the Jews abroad. The Jews are protected in their rights and political status whereas the non-Jewish communities in Palestine are protected only in certain rights and not at all in their political status. This striking differentiation allows of only one conclusion, that the establishment of the National Home implied a change in the political status of the non-Jewish communities of Palestine, that it was meant as the first step towards the establishment of the Jewish State.

IV

The events which led to the Balfour Declaration have been often told and analysed. For our purpose, there is need to stress only a few facts.

The Balfour Declaration was the outcome of long negotiations and deliberations. After Turkey had entered the war the Zionist leaders in Great Britain tried to win the support of the Government for the re-establishment of the Jewish State. But in spite of the sympathetic attitude of prominent members of the Cabinet progress was slow. In the autumn of 1916, however, the situation of the Allied Powers had become difficult. Roumania had been decisively defeated, the situation in Russia was rapidly deteriorating, and the United States still hesitated to join the Allies. One of the many obstacles was the attitude of the Jews in neutral countries who, being vehemently anti-Russian, were not disposed to assist the Allies. It was therefore thought necessary, as Professor Temperley puts it, "to prevent the incalculable and universal influence of Jewry being exerted on the side of the Central Powers—as indeed it was, to a serious extent, then being exerted—and to transfer this highly important influence to the cause of the Entente". Efforts in this direction had so far failed. As the British Government was quite naturally anxious to overcome this grave obstacle, something spectacular had to be done.

This was the situation when, in October 1916, Sir Mark Sykes, then Under-Secretary of the War Cabinet, intervened. A few months before, he had negotiated with France an agreement on the Middle East—the so-called Sykes-Picot agreement—but it was only later that he became aware of the Zionist movement. When towards the end of 1916 Mr. Lloyd George formed his Government, Sir Mark Sykes was officially authorized to take up negotiations with the Zionists.

It does not seem that the assurances given by the British Government to the Jewish leaders were very clearly defined. But whatever may have been the original formulae used, their meaning can be correctly assessed only if we consider the situation as a whole. After repeated failures the British Government was determined to use every means at its disposal to win over the influential and unfriendly American Jewry. At that time, enemy territories were being liberally shared out. More or less secret treaties, which could not have been unknown to the leading American Jews, had disposed of almost the whole of the Turkish Empire. One million square miles had been promised, validly or otherwise, to the Arabs. In these circumstances hardly anything short of the promise of every possible assistance in transforming Palestine into a Jewish State could be expected to win over the potentially decisive influence of American Jewry. From the view-point of British policy it was not so much the promise itself that mattered as a spectacular pro-Jewish gesture; and there was no alternative suggestion to off-set the black record of the Czarist anti-Jewish policy which, up to then, had determined the anti-Allied attitude of American Jewry. It is for this reason that not a restrictive, but on the contrary the most extensive, construction must be placed upon the promises made in order to alter the attitude of American Jewry.

V

The text of the Balfour Declaration was the outcome of a double compromise. In the early summer of 1917 Lord (then Mr.) Balfour had asked the Zionists to submit to him a draft of the declaration. The Political Committee of the Zionist Organization considered a number of different versions, among them one by Mr. Sidebotham which demanded the "re-constitution of an integral Palestine as a Jewish State". The Zionist leaders preferred, however, a compromise formula which did not mention the State but only "the principle of recognizing Palestine as the National Home of the Jewish people". This met with opposition within the Cabinet especially from Mr. Edwin Montague, Secretary of State for India. A new compromise was sought and found in the version "establishment in Palestine of a National Home for the Jewish people" which finally became the official text.

This text must be read very attentively, for it is the result not only of a compromise but of long and careful deliberations:

"Before the British Government gave the [Balfour] Declaration to the world, it had been closely examined in all its bearings and implications, weighed word for word, and subjected to repeated change and amendment. Unless full weight be given to these antecedent facts no correct judgment upon the declaration and its policy in operation can be formed."

The Balfour Declaration contains two passages which throw light on the meaning of the term "National Home".

1. In the first paragraph the Declaration is characterized as a "declaration of sympathy with Jewish Zionist aspirations". As to the meaning of these aspirations no doubt could possibly exist. Political Zionism had started with the publication of Herzl's pamphlet "The Jewish State". The call had stirred world Jewry, and Herzl had become the leader of the Zionist movement. Though for reasons of expediency the Basle Programme had substituted a Home for the State, the avowed Zionist aspirations went further and demanded the eventual re-establishment of Palestine as the Jewish State. Lord Balfour was well aware of these facts. It was his Administration which, in 1903, had for the first time negotiated with the Zionists and offered them a territory in Uganda. It was he who in 1906 had approached the Zionist leader and successor of Herzl, Dr. Weizmann. The Prime Minister, Mr. Lloyd George, had already in 1914 discussed the Zionist aims with the then Home Secretary, Mr. Herbert (now Viscount) Samuel, who had spoken of Palestine and the restoration of the Jewish State. The fact that in these circumstances the British Government officially called its declaration a declaration of sympathy with Zionist aspirations means that the establishment of the Jewish National Home (or more precisely the British "endeavours to facilitate the achievement of this object") was promised in sympathy with the wider Zionist aspirations. The British Government did not reject these aspirations. It did not promise a National Home instead of a State. It promised the Home in sympathy with the demand for a State.

2. The Declaration contains a proviso "that nothing shall be done which may prejudice... the rights and political status enjoyed by Jews in any other country". It is well known that this clause was introduced in order to placate the anti-Zionist Jews who were afraid of adverse repercussions of the pro-Zionist policy. Their anxieties and the need for relieving them are understandable only if the establishment of the National Home was contemplated as a preparatory step towards the crea-

VI

The introduction of a new legal term imposes upon those who have created the term the obvious duty not only to explain it but authoritatively to state its meaning.

The Balfour Declaration, which introduced the new term, was made by Lord Balfour on behalf of H.M. Government with the explicit statement that it had been approved by the Cabinet. The minutes of the Cabinet meetings are not accessible, but we possess two other sources of information. The first is the Report of the Palestine Royal Commission (under the Chairmanship of Lord Peel) which can claim the highest authority since the Commission was permitted to examine the Government records. The other is Lloyd George's work, which is based on official documents and the recollections and personal notes of the man who, at the time of the Balfour Declaration, was Prime Minister and one of the main exponents of the pro-Zionist policy.

According to Lloyd George, Lord Curzon had submitted to the War Cabinet a statement in which he said:

"A 'National Home for the Jewish race or people' would seem, if the words are to bear their ordinary meaning, to imply a place where the Jews can be reassembled as a nation, and where they would enjoy the privilege of an independent national existence."

At a meeting of the War Cabinet held towards the end of October 1917, Lord Balfour explained the meaning of the term "National Home" as follows:

"As to the meaning of the words National Home, to which the Zionists attach so much importance, he understood it to mean some form of

British, American, or other protectorate under which full facilities would be given to the Jews to work out their own salvation and to build up, by means of education, agriculture, and industry, a real centre of national culture and focus of national life. It did not necessarily involve the early establishment of an independent Jewish State, which was a matter for gradual development in accordance with the ordinary laws of political evolution.79

These words, states Lloyd George, "were not challenged at the time by any member present, and there could be no doubt as to what the Cabinet then had in their mind".80

This uncontradicted statement made before the same Cabinet which a few days later approved the Declaration must be considered as the official interpretation placed by the Cabinet upon the term "National Home". Lloyd George himself adds the following considerations:

"It was not their [the Cabinet's] idea that a Jewish State should 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 offered 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."81

Another member of the War Cabinet, Field Marshal Smuts, said later in a public address: "In generations to come you will see a great Jewish State rising there [in Palestine] once more."82

President Wilson, who had not only been informed of the negotiations but had intervened with a personal message to the Government, stated later:

"I am persuaded that the Allied Nations, with the fullest concurrence of our Government and our people, are agreed that in Palestine shall be laid the foundations of a Jewish Commonwealth."83

As to the Report of the Palestine Royal Commission, it arrived at a similar conclusion:

"It is obvious in any case that His Majesty's Government could not commit itself to the establishment of a Jewish State. It could only undertake to facilitate the growth of a Home. It would depend mainly on the zeal and enterprise of the Jews whether the Home would grow big enough to become a State."84

These statements leave no room for doubt. The War Cabinet authorized the issue of the Balfour Declaration with a twofold intention, the one negative and the other positive. It did not intend to establish a Jewish State or to promise its future establishment. But it did intend to give the Jewish people, through the interim solution of the National Home, the opportunity to become "a definite majority of the inhabitants", and to make Palestine by "gradual development" a Jewish State once again.

VII

If the use of the term "National Home" were confined to the Balfour Declaration, only the then British Cabinet could have stated authoritatively what was intended by this term. But the term was taken up by the Principal Allied Powers. Indeed, they adopted the Balfour Declaration, as explicitly stated in the second paragraph of the Preamble of the Palestine Mandate, and embodied the term in the Mandate itself which, in turn, was confirmed by the Council of the League of Nations. For further indications of the meaning of the term we may, therefore, not only consult the text of the Mandate, but also the pronouncements made by statesmen between the issue of the Balfour Declaration and the confirmation of the Mandate.

1. The Mandate contains a provision which should dispel any doubt about the meaning of the term "National Home". The third paragraph of the Preamble states:

"Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their National Home in that country...".

The text uses the word "reconstituting", not "constituting". Now, it is logically impossible to reconstitute a thing that did not exist before. But the Jews did not possess, and could not have possessed, a National Home in Palestine, as the very concept of a National Home was a new creation. What they did possess was their own Jewish State. If they were to reconstitute their National Home of the past (and the preceding recognition of their "historical connection" with Palestine makes this reference to the past amply clear), this could only mean that they should be given the opportunity of making Palestine a Jewish State once again.

2. When the Balfour Declaration was issued, the concept of the "National Home" was, as we have seen, generally understood as an interim solution, as a preparatory stage on the way to the Jewish State. It took more than four years until the Balfour Declaration was embodied
in the Palestine Mandate, and the National Home policy was made one of the two foundations of the Mandate (the other being Art. 22 of the Covenant of the League of Nations).

In the course of these four years numerous pronouncements were made by statesmen and politicians in Parliament and in the press which, though not always in harmony with one another, give a fairly correct idea of what may be called the average construction of the term. The statesmen who, in the Council of the League of Nations, had confirmed the Palestine Mandate on 24 July, 1922, had had ample opportunity to take cognizance of these pronouncements. No one is justified in assuming that they did not know them or agreed to the use of a term the implications of which they did not realize. It is for this reason that the pronouncements made after the issue of the Balfour Declaration and before the confirmation of the Mandate must likewise be considered.

In an article published in 1920, Mr. Winston Churchill, then Secretary of State for War, referred to "a Jewish State… which might comprise three or four millions of Jews". At a meeting of the Imperial Cabinet in 1921, Mr. Churchill, then Colonial Secretary, made the following reply to a question whether the Jews would be given the control of the Government: "If, in the course of many years, they become a majority in the country, they naturally would take it over". Similar statements were, according to the Report of the Palestine Royal Commission, made by Lord Robert Cecil in 1917 and by Sir Herbert Samuel in 1919 who "spoke or wrote in terms that could only mean that they contemplated the eventual establishment of a Jewish State".

Leading British newspapers and the American Press were equally explicit in their comments on the Balfour Declaration.

At the Peace Conference in Paris, Dr. Weizmann declared that the Zionist aim was not the immediate establishment of a Jewish State. "Later on", he said, "when the Jews formed the large majority, they would be ripe to establish such a Government as would answer to the state of the development of the country and to their ideals".

The American "Outline of Tentative Report and Recommendations for the President [Wilson] and the Plenipotentiaries" (January 21, 1919) recommends to assure the Jews "that it will be the policy of the League of Nations to recognize Palestine as a Jewish State as soon as it is a Jew-

ish State in fact". The Report adds: "It is right that Palestine should become a Jewish State if the Jews, being given the full opportunity, make it such." Even the Arabs had no doubt about the meaning of the National Home. On 3 January, 1919, Emir (later King) Feisal, acting on behalf of the Kingdom of Hedjaz, and Dr. Weizmann signed an agreement on the relations between "the Arab State and Palestine". Article 1 of the agreement provides that "Arab and Jewish duly accredited agents shall be established and maintained in the respective territories". As the form of the administration of Palestine had not yet been decided upon, the agreement speaks simply of "Palestine". But it puts Palestine politically on an equal level with the Arab State and takes it for granted that it will be the Jews who will have the diplomatic representation of the country.

It has been maintained, on the other hand, that the statement on "British policy in Palestine", known as the Churchill White Paper, reduced the importance of the Balfour Declaration and excluded the possibility of a Jewish State. The White Paper states:

"When it is asked what is meant by the development of the Jewish National Home in Palestine, it may be answered that it is not the imposition of a Jewish nationality upon the inhabitants of Palestine as a whole, but the further development of the existing Jewish Community, with the assistance of Jews in other parts of the world, in order that it may become a centre in which the Jewish people as a whole may take, on grounds of religion and race, an interest and a pride. But in order that this community should have the best prospect of free development and provide a full opportunity for the Jewish people to display its capacities, it is essential that it should know that it is in Palestine as of right and not on sufferance." At first sight, this rather involved passage seems to justify a restrictive construction. As a matter of fact, however, it rejects an interpretation of the term "National Home" which no one has ever advocated. Neither the Balfour Declaration nor the Mandate speak of the "development" but only of the "establishment" of the National Home. Only this term, and not the non-existing term of "development" of the National Home was susceptible of official interpretation. Furthermore, no one has ever demanded that during the interim stage of the National Home a Jewish nationality should be imposed upon any one, least of all upon "the inhabitants of Palestine as a whole". The National Home should give the

David Lloyd George, op. cit., p. 1193.
Cmd. 5479 (1937), p. 25.
Ibid.
Ibid., p. 161.

Ibid.
Jewish people, the opportunity to become the majority of the inhabitants of Palestine, a construction which is confirmed rather reluctantly by the words "provide a full opportunity for the Jewish people to display its capacities". That the words "Jewish people" refer to world Jewry is clear from the words in the preceding sentence: "with the assistance of Jews in other parts of the world" and "the Jewish people as a whole". In any case the text did not exclude and did not speak of the possibility that "the further development of the existing Jewish community, with the assistance of Jews in other parts of the world" might lead to a Jewish majority and the establishment of a Jewish State.

The Palestine Royal Commission has confirmed this construction:

"...this definition of the National Home [i.e., that of the White Paper of 1922] has sometimes been taken to preclude the establishment of a Jewish State. But, though the phraseology was clearly intended to conciliate, as far as might be, Arab antagonism to the National Home, there is nothing in it to prohibit the ultimate establishment of a Jewish State, and Mr. Churchill himself has told us in evidence that no such prohibition was intended." 18

Confronted with all these statements the Council of the League of Nations did not insist on a definition of the term "National Home", but simply confirmed the Mandate. In these circumstances it is difficult to avoid the conclusion that the Council agreed with the general interpretation of the term. While everything else was left to future development, the National Home was to give the Jews an opportunity to create a State. This is the meaning of the term "National Home".

VIII

That this interpretation of the term is correct is confirmed by its further application. For, though the term was coined in connection with Palestine, its use was not confined to Palestine. Only a few years after the Balfour Declaration, the concept of a National Home was applied in connection with the unsuccessful attempt to solve the Armenian problem. For years, a National Home for the Armenian people was the subject of discussions in the League of Nations. Repeated resolutions of the General Assembly and a detailed report by Dr. Nansen (1925) dealt with it. But the meaning of the term was no longer the subject of discussion, and no attempt was made to define it. Everyone seemed to agree that the National Home was something like a State or a stage on the way to a State.

The French delegate, M. Léon Bourgeois, a former Prime Minister, used the term simply as an equivalent for State, saying that "an independent State of Armenia will be created". But apart from one reference to the Soviet "Republic of Armenia which must be regarded as the only existing and possible National Home for the scattered Armenian people", the Nansen Report as well as the resolution of the General Assembly confined themselves to the necessity of providing the Armenians with a National Home. The meaning of the term was taken for granted.

IX

The National Home was to be a National Home for the Jewish people, not merely for the Jews of Palestine. It was dedicated to an entity which never before had been recognized in international law. Here we are not concerned with the legal consequences of this recognition, but only with its bearing upon the definition of the term "National Home".

"Jewish people" is a collective term. It consists of the noun "people" and the adjective "Jewish". "People", according to the Shorter Oxford English Dictionary, is an equivalent for nation, race or tribe. It thus describes a political or ethnic entity. Its connection with the word "Jewish" was and may still be questioned by those Jews who claim to be merely members of a religious community. But the acceptance of the term by the Council of the League of Nations has disposed of the question, at least as far as international law is concerned. The Jewish people is an internationally recognized political and ethnic entity.

Neither the Balfour Declaration nor the Palestine Mandate has defined the term, though both make use of it. As, however —

"it is inadmissible to assume that the beneficiary of a pact concluded with the concurrence of more than 50 nations is an undetermined entity, the term 'Jewish people', for the purposes of the Mandate, must have a definite meaning. Peoples which form a State have no difficulty in determining who belongs to them; they simply enact a nationality law. The Jewish people is not yet in this position. But it, too, must have the possibility of determining its membership. Thus, the definition of the term 'Jewish people' becomes a matter 'within the domestic jurisdiction' of the Jewish people itself. The fact that appropriate institutions and procedure are still lacking does not alter the principle itself." 22

18 Records of the Assemblies of the League of Nations, Plenary Meetings, 1921, p. 298.
In these circumstances the term "Jewish people" may be described as the
common denomination of all those who, according to general Jewish con-

viction, are Jews.

It is in favour of that entity that the National Home was to be estab-
lished, which means that, as long as the Jewish people itself has not other-
wise determined, the Jewish National Home is the National Home of
every single Jew.

This statement, however, requires some qualification. The establishment
of the National Home does not and cannot affect the political status of
Jews outside Palestine. But it provides, or should provide, for every
single Jew the opportunity of emigrating to and settling in the National
Home. In the same way as the National Home means an opportunity
for the Jewish people as a whole of becoming the majority of the inha-
bitants of Palestine and of reconstituting it as a Jewish State, so the Na-

tional Home gives every individual Jew the opportunity of connecting
his personal fate with the national venture and of settling in Palestine.
But this opportunity is a right, not a duty. No one is obliged to make
use of it, and no compulsion is admitted. Every Jew is a potential, but
only a potential, inhabitant of Palestine.

X

The National Home for the Jewish people is to be established in Pales-
tine. It is not intended to discuss here the controversy relating to the
words "in Palestine". For even the most conservative interpretation of
the term cannot create a right to Palestine in favour of another people
which the Mandate does not recognize. The Mandate admits only one
collective right, viz., that of the Jewish people to its National Home,
while such rights as are provided in the Mandate in favour of the non-
Jewish inhabitants of Palestine are individual rights. Under the Mandate,
a non-Jew who is not an inhabitant of Palestine has no right to be ad-
mitted to the country. It is true that Art. 2 of the Mandate speaks of
the National Home "as laid down in the preamble"; it thus upholds the
reservation of the "civil and religious rights of existing non-Jewish com-

munities in Palestine" contained in the Balfour Declaration. But the right
of a people to a land is, without any doubt, not a civil or religious, but a
political right.

This leads to a further clarification of the concept of the National
Home. The National Home has been defined above as a stage on the way
to a State. Yet a State, as the word itself indicates, is something essen-

tially static, while the National Home, on the contrary, is essentially dyna-