CONCLUSIONS of a Meeting of the Cabinet held at 10 Downing Street, S.W. 1, on Friday, 12th November, 1948, at 10 a.m.

Present:

The Right Hon. C. R. Attlee, M.P., Prime Minister (in the Chair).


The Right Hon. A. V. Alexander, M.P., Minister of Defence.

The Right Hon. Viscount Addison, Lord Privy Seal.

The Right Hon. J. Chuter Ede, M.P., Secretary of State for the Home Department.


The Right Hon. George Tomlinson, M.P., Minister of Education.

The Right Hon. Sir Stafford Cripps, K.C., M.P., Chancellor of the Exchequer.


The Right Hon. Viscount Jowitt, Lord Chancellor.


The Right Hon. Aneurin Bevan, M.P., Minister of Health.

The Right Hon. J. H. Wilson, M.P., President of the Board of Trade.

The following were also present:

The Right Hon. Viscount Hall, First Lord of the Admiralty (Item 1).


Mr. C. P. Mayhew, M.P., Parliamentary Under-Secretary of State for Foreign Affairs (Items 1 and 2).

The Right Hon. E. Shinwell, M.P., Secretary of State for War (Item 1).

The Right Hon. the Earl of Listowel, Minister of State for Colonial Affairs (Items 1 and 2).


Mr. M. R. Wright, Foreign Office (Item 1).

Secretariat:

Sir Norman Brook.

Mr. S. E. V. Luke.
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Constitutional Developments in India and Eire.
1. The attention of the Cabinet was drawn to recent developments in Palestine. Both sides had failed to observe the Truce and, as the result of recent operations, the Jews had extended their control over a large part of Palestine and were, indeed, in occupation of a number of Lebanese villages. The efforts of the Security Council to re-establish the Truce had so far proved unsuccessful and there were some grounds for fearing that, in their present aggressive mood, the Jews might attack Transjordan. In that event His Majesty’s Government would be bound by their Treaty obligations to come to the assistance of Transjordan. If such an attack should take place, our task would be complicated by the serious shortage of arms and ammunition from which both the Royal Air Force detachments and the Transjordan Forces were suffering as the result of our strict fulfilment of the terms of the Truce. Supplies of equipment and ammunition were available, but had not hitherto been sent to Transjordan in view of the criticism which might be provoked by such action. There were, however, two arguments for immediate action: the increasing threat to Transjordan, and the risk of bad weather conditions which might render impracticable the regular use of the Amman airfield. In these circumstances, the Chiefs of Staff had advised that immediate steps should be taken to despatch by air reinforcements for the Royal Air Force detachment at Amman, together with anti-aircraft equipment and some 30-50 tons of ammunition to be held in readiness for issue, in case of emergency, to the Arab Legion. They had also advised that naval dispositions should be made for the defence of Aqaba in the event of threatened attack. In view of our close association with the United States Government in the attempt to establish an effective Truce through the Security Council, it would be necessary to keep the United States Secretary of State fully informed of our intentions.

Ministers were generally agreed that our Treaty obligations with Transjordan must be fulfilled; and they approved the adoption of the precautionary measures proposed. In this connection the point was made that the transfer of ammunition from one British base to another in the Middle East was not incompatible with the terms of the Truce. Ministers were, however, agreed that it was essential to keep in close touch with Mr. Marshall in this matter.

In further discussion, the following points were made:

(a) Some concern was expressed at earlier suggestions to the effect that, under certain circumstances, British Forces might be called upon to support the Transjordan Forces operating in Palestine. It was pointed out that any such proposal raised very wide and controversial issues. Our Treaty obligation to defend Transjordan itself was well known and inescapable; but public opinion here and abroad would not regard this obligation as covering the despatch of British troops to operate in Palestine itself. When it was decided to withdraw from Palestine, the general understanding had been that British troops would not again be called upon to operate there except as part of a United Nations Force engaged in carrying out an international settlement, and there should be no departure from that policy. Moreover, it was clear that, notwithstanding the Truce, the strength of the Jewish Forces had greatly increased in recent months, and it would not be easy, in view of our commitments in Malaya and elsewhere, to deploy forces in Palestine on the scale which would be necessary to ensure success.

(b) The suggestion was made that the best means of securing a settlement might now be to encourage direct negotiations between the Israeli and Transjordan Governments. The general view of Ministers was, however, that this suggestion would be regarded as a blow to the prestige of the United Nations. Moreover, it was
argued that the great discrepancy in military strength between the two sides precluded the possibility of equitable negotiations. In the circumstances, it was thought that the right course was to give full support to the efforts of the Security Council to achieve a settlement.

The Cabinet—

(1) Authorised the Minister of Defence to arrange for additional reinforcements and ammunition to be despatched by air to the Royal Air Force at Amman, including 30-50 tons of ammunition to be held for issue to the Transjordan Forces in the event of emergency.

(2) Authorised the Minister of Defence to arrange for naval dispositions to be made in the Suez area to enable Aqaba to be defended against attack.

(3) Invited the Parliamentary Under-Secretary of State for Foreign Affairs to arrange for the United States Secretary of State to be informed of the action which was to be taken in accordance with Conclusions (1) and (2) above; and took note that the Prime Minister would decide, in the light of anything which might be said by the United States Secretary of State, on what date that action should be taken.

2. The Cabinet had before them the following memoranda:—

C.P. (48) 258 : by the Prime Minister, covering an account of the meeting held with Eire Ministers at Chequers on 17th October;

C.P. (48) 253 : by the Secretary of State for Commonwealth Relations, covering a note by the United Kingdom representative in Dublin on the repeal of the Eire Executive Authority (External Relations) Act, 1936;

C.P. (48) 262 : by the Secretary of State for Commonwealth Relations, covering the draft of a reply to the aide-memoire of 20th October from the Eire Government;

C.P. (48) 263 : by the Secretary of State for Commonwealth Relations, covering a memorandum on the measures which might be taken to mitigate the practical effects on the United Kingdom of Eire's repeal of the External Relations Act;

C.P. (48) 264 : by the Lord Chancellor, covering a Legal Opinion discussing the effect of that repeal on the special privileges granted to Eire and her citizens in such matters as trade preferences and freedom from aliens restrictions;

C.P. (48) 254 : by the Prime Minister, covering (i) a note of the constitutional proposals discussed with the Prime Minister of India during his recent visit to London, and (ii) an Opinion prepared by the Lord Chancellor and the Law Officers on the question whether those proposals would constitute an adequate basis for enabling India to remain within the Commonwealth and for resisting claims by foreign countries under "most-favoured-nation" provisions in existing treaties.

The Cabinet first discussed the effect of the proposed repeal of the Eire Executive Authority (External Relations) Act. It was clear that the Eire Government were determined to carry through their declared intention of repealing that Act; and, further, that they were resolved that Eire should cease to be a member of the Commonwealth. What they desired was that Eire, while ceasing to be a member of the Commonwealth, should continue to enjoy many of
the advantages of membership through a factual association based, not only on her historical relations with Commonwealth countries, but on a reciprocal exchange of trade preferences and citizenship rights. They evidently envisaged an intermediate position in which Eire would be neither a British nation nor a foreign State. Was it conceivable that such an intermediate position would be recognised in international law?

The Lord Chancellor and the Attorney-General said that they had considered this question with great care, but had reached the conclusion that there was no device by which they could hope to satisfy an international court that a country which was not a member of the Commonwealth was not a foreign State. If Eire repealed the External Relations Act she would, in the contemplation of international law, become a foreign State in relation to the United Kingdom and other Commonwealth countries. Some of the practical consequences might be mitigated by United Kingdom legislation. The Parliament at Westminster could enact that Eire should be treated for some specific purposes as though she was within His Majesty's dominions. But such domestic legislation could not affect the position under international law. And it followed that we could not accord to Eire or her citizens any special privileges which we were not willing to accord to other foreign countries to whom we had contracted to give "most-favoured-nation" treatment. As was explained in the memorandum annexed to C.P. (48) 264, our position would not be secure even in respect of countries which had signed the General Agreement on Tariffs and Trade and the Havana Charter. For other countries not signatories to that Agreement and Charter could claim that the United Kingdom should accord to them the same trade advantages as she accorded to Eire; and, if that claim were conceded or upheld by the International Court, the countries which were parties to the Agreement and the Charter could then claim that they were entitled to the same privileges under article 1 of the Agreement and article 16 of the Charter. Full consideration had been given to the possibility that common citizenship might afford a constitutional link on which to found an adequate defence against a challenge made by third parties on "most-favoured-nation" grounds. But this had been found, on examination, to be inadequate even for India, which was prepared to declare that she remained a member of the Commonwealth. For a true common citizenship must confer on the citizen a right to enter any part of the territory of which he was a citizen and a right to share in its government; and the possession of Commonwealth citizenship would not confer those rights throughout all the territories of the Commonwealth. Even for India, therefore, the Commonwealth citizenship would not in itself afford a sufficient constitutional link; and it would be even less effective in respect of Eire, since her Government were determined to declare that she had ceased to be a member of the Commonwealth. If, therefore, Eire repealed the External Relations Act, there seemed no room for doubt that in international law she would become a foreign State and that, by reason of the treaty obligations which they had undertaken in "most-favoured-nation" clauses, the United Kingdom Government would have no alternative but to treat her as a foreign State and her citizens as aliens.

In discussion some Ministers stressed the disadvantages of Eire's becoming a foreign State. The Home Office would be confronted with the most formidable administrative difficulties if all Eire citizens had to be treated in this country as aliens. If Eire became a member of the United Nations and raised the Partition issue there, the United Kingdom Government would find it highly embarrassing to be forced to give positive support for the continuance of Partition—as they would probably find themselves compelled to do for strategic reasons alone, apart from any
consideration for the feelings of the people of Northern Ireland. Account must also be taken of the unfavourable reactions on public opinion, both in the United Kingdom and in other Commonwealth countries, of Eire's secession from the Commonwealth. Were not all these good reasons for looking at the spirit, rather than the letter, of the aide-mémoire from the Eire Government? This had recognised the existence of a specially close relationship between Eire and Commonwealth countries "arising, not only from ties of blood and kinship, but from traditional and long-established economic and social trade arrangements based on common interest"; and had urged that this relationship "should be maintained on the basis that the rights and privileges involved... were dependent upon long-established custom and tradition." Was it not clear that Eire Ministers had been led by considerations of domestic politics too hastily to the repeal of the External Relations Act; and could not some means be found of helping them to extricate themselves from their difficulties? Might not a solution be found along the lines of persuading the Eire Government to make a public declaration that they did not regard Eire as foreign to the countries of the Commonwealth in certain specified respects?

In reply, it was pointed out that the difficulties in international law could not be evaded by a unilateral declaration made by one Government or even by domestic legislation enacted by one Government. Due consideration must also be given to the risk that, if Eire were allowed to secede from the Commonwealth and still retain many of the advantages of membership, other Commonwealth countries might ask what they stood to gain by their continuing membership. Further, if trade preferences and other privileges were accorded to Eire solely on the basis of the factual association which she advocated, how could we continue to maintain that our "most-favoured-nation" rights would be infringed by a similar relationship between the South American countries or the States of the Arab League, who could allege a similar historical association and similar ties through language, religion and political co-operation?

After further discussion Ministers agreed that we should at least put clearly on record the legal implications, as we saw them, of Eire's repeal of the External Relations Act and the difficulties to which this repeal would give rise. We should also make it clear that these were consequences which would inevitably follow, as a matter of international law, as a result of the action of the Eire Government in repealing the Act. It was important that it should, if possible, be brought home to public opinion in Eire that these were the inevitable consequences of the action taken by their own Government, and not measures applied by the United Kingdom Government, at their discretion, in retaliation against Eire's secession from the Commonwealth. It was therefore desirable that a formal communication should be sent without delay to the Eire Government and that full publicity should be given to its contents. The Cabinet recognised that there was little prospect that, as a result of such a communication, the Eire Government would delay the introduction of legislation to repeal the External Relations Act. They were, however, informed that this legislation was to include provision for its being brought into operation at a date to be determined by Order; and it might at least be urged that the date to be fixed for the commencement of the Act should be such as to allow ample opportunity for full discussion of all its legal implications and the practical difficulties to which it would give rise. It was also agreed that the communication might end with the suggestion that if the Eire Government had any doubt about our view of the legal implications of their action, they might appoint legal experts to discuss with ours the legal and constitutional issues which were involved. It was most desirable that our communication should be published before the proposed legislation was introduced into the
Dail; and the text of the communication should be carefully worded
with publication in view.

Representatives of the Governments of Canada, Australia and
New Zealand had taken part in the conversations with Eire
Ministers at Chequers on 17th October; and it was therefore
desirable that they should at least be aware of the contents of the
communication which we proposed to send to the Eire Government
before it was despatched. After discussion, it was agreed that the
Attorney-General, who was going to Paris on other business that
afternoon, should take the opportunity of discussing the text of the
proposed communication in Paris with the Prime Minister of
New Zealand, the Deputy Prime Minister of Australia and the
Canadian Secretary of State for External Affairs. Subject to their
comments, the communication should be despatched to the Eire
Government that evening; and, as soon as it had been delivered, it
and the aide-mémoire of 20th October from the Eire Government
should be communicated to the Press.

The Cabinet—

(1) Agreed that the draft reply to the Eire Government
annexed to C.P. (48) 262 should be revised on the lines
indicated in the course of the Cabinet's discussion.

(2) Invited the Attorney-General to show the text of the
revised communication to the Prime Minister of New
Zealand, the Deputy Prime Minister of Australia and the
Canadian Secretary of State for External Affairs in
Paris that afternoon.

(3) Subject to any comments received as a result of the action
to be taken under Conclusion (2) above, invited the
Secretary of State for Commonwealth Relations to
despatch a communication to the Eire Government in
the terms of the revised draft and to make arrangements
to ensure that it and the aide-mémoire of 20th October
from the Eire Government should receive full publicity
at the earliest possible date.

The Cabinet then discussed the issues raised in C.P. (48) 254
regarding India's future relations with the Commonwealth.

The Cabinet's discussion and the conclusions reached are
recorded in the Secretary's Standard File of Cabinet Conclusions.

Cabinet Office, S.W. 1,
12th November, 1948.