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July 11, 1921.

LEAGUE OF NATIONS.

M A N D A T E F O R P A L E S T I N E.

Note by the Secretary General.-

The following letter from the Zionist Organisation, together with a statement by Sir William Finlay on the Mandate for Palestine, is circulated for the information of the Council and of the League.

T R A N S L A T I O N.

Representative of the Committee  
of Jewish Delegations to the  
League of Nations.

GENEVA, June 10, 1921.

12 rue des Pitons.

No. 141.

Sir,

I am instructed by the Zionist Organisation to send you on its behalf the enclosed memorandum containing a statement of opinion by Sir William Finlay, K.C. regarding the Mandate for Palestine, and to request that you <sup>will</sup> be good enough to communicate this memorandum to the Council and to the Members of the League of Nations.

I have the honour to be, Sir, etc.

(sd) ZELVI ABERSON.

To Mr. William F. Kappard,  
Director of the Mandates Section,  
League of Nations,  
GENEVA.

re Draft PALESTINE MANDATE.

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1/13211/2413

O P I N I O N.

I am asked to advise whether the terms of the draft Palestine Mandate, which is before me, conflict in any way with Article 22 of the Covenant of the League of Nations "either by conferring special privileges on any nationality or body or otherwise."

In the first place however I desire to point out that the governing provisions appear to me to be those of the Treaty of Sevres. By Article 95 the parties to that Treaty agree to entrust, by application of the provisions of Article 22 of the Covenant, the administration of Palestine to a mandatory to be selected by the Powers. This Mandatory is to be responsible for putting into effect the Declaration of November 2nd, 1917. The provisions of Article 22 are to be applied - but for the purposes laid down in the Treaty of Sevres, and, if there were any inconsistency between Article 95 of the Treaty of Sevres and the mandate on the one hand and Article 22 on the other, (which in my opinion for reasons stated below there is not) Article 95 would prevail. That this is the real position is I think shown by the fact that Palestine does not really fall within any of the three categories laid down in Article 22 and the validity of this Mandate depends upon Article 95 of the Treaty of Sevres which applies to the special case of Palestine the provisions of Article 22.

I now proceed to consider Article 22. That Article appears to me to have been, for perfectly intelligible reasons, drafted

in very general terms. The first paragraph lays down the principle that the well-being and development of the peoples in question form a sacred trust of civilisation. The second paragraph lays it down that the tutelage of such peoples should be entrusted to advanced nations as Mandatories. The third paragraph points out what is obvious and what really lies at the root of the inevitable vagueness of the whole Article viz:- that the character of the Mandate must differ according to the development of the people, the geographical situation, economic conditions etc. My attention was called in conference to the last sentence of the 4th paragraph. But I do not think this sentence is relevant to the matter I have to consider (1) because I do not think this paragraph applicable to Palestine (2) because it is only in the selection of the Mandatory that the wishes of the community must be a principal consideration (3) because the words are "a principal consideration" and not "The principal consideration". The later paragraphs are less immediately important but I may refer to the penultimate paragraph which lays it down that the degree of authority, control, or administration to be exercised shall if not previously agreed upon be explicitly defined in each case by the Council.

It appears to me as I have said that all this is purposely and inevitably vague. It is not and in my view it could not be laid down that no special privileges were to be conferred on any nationality or body. It might be of the essence of a perfectly proper scheme that some such privileges should be conferred.

I now turn to the draft Mandate for Palestine. This Mandate lays down the general principles upon which the administration is to be conducted and it appears to me that it is in complete accord with the general principles laid down in Article 22. Three matters were suggested to me as being grounds upon which it might be argued that there was some conflict between the draft Mandate and the Article. These are (a) the provision for the Jewish National Home laid down in Article 2. (b) the recognition of an appropriate Jewish agency and of the Zionist Organisation as being for the present such an agency contained in Article 4 and (c) the provision that Hebrew shall be one of the official languages of Palestine laid down in Article 22.

Objections (b) and (c) above may be dealt with very summarily. These provisions are in my opinion really consequential upon the provisions of Article 2. If the scheme of settlement laid down in Article 2 is properly within the scope of the Mandate then the provision of an authorised agency for dealing with the immigration and settlement and the provision that Hebrew should be one of the official languages, seem to me to be merely consequential provisions.

The real point and the only point appears to me to be whether it can be said that the scheme contained in Article 2 is

inconsistent with Article 22 of the Covenant. I am clearly of opinion that there is no such inconsistency. Article 22 of the Covenant does shew that the general object is to secure the well-being and development of the mandated territories. Article 2 of the Mandate of course deals with a special scheme of immigration and settlement viz:- that of the Jewish people. But I see absolutely no inconsistency between the two. It may well be that a judicious scheme of immigration is the best possible method of developing the resources of Palestine and securing the well-being of that country. It is in my view impossible upon any principle of construction to say that there is any inconsistency between this scheme and either the letter or the spirit of Article 22 merely because the scheme, which may benefit Palestine, may also benefit one particular people viz: the Jews. What is hoped is obviously that this scheme, while beneficial to the Jews, will also prove in the best interests of Palestine. There is no inconsistency between these objects.

I need hardly point out that I should be entirely exceeding my functions if I attempted to express any opinion upon the questions of policy which arise. Regarding the matter from the point of view of law I am clearly of opinion, for the reasons I have stated (1) that there is no conflict between the terms of the draft Palestine Mandate and Article 22 of the Covenant, (2) that if there were any such conflict it would be a conflict between Article 95 of the Treaty of Sevres on the one hand and Article 22 on the other hand, and Article 95 would prevail.

(Signed) WILLIAM FINLAY.

Temple.

April 8th, 1921.