

LEAGUE OF NATIONS.

C.41.1930.VI.

Geneva, 12th January, 1930.

DECLARATION BY THE BRITISH REPRESENTATIVE REGARDING

THE WAILING WALL.

Note by the Secretary-General.

The following declaration by the British Representative is circulated at his request to the Members of the Council.

DECLARATION.

1. The Council will remember that at its last session, in September, the British Delegate made to it a communication regarding the regrettable incidents which had occurred in Palestine, and which were closely connected with the conflict between Jews and Moslems as to their respective rights and claims in connexion with the Western or Wailing Wall. The Council was informed that His Majesty's Government in the United Kingdom had decided on the appointment of a Commission to enquire into the immediate causes which led to the recent outbreak in Palestine and to make recommendations as to the steps necessary to avoid a recurrence. That Commission has now concluded its local investigations but some time must necessarily elapse before it can present a report.

2. However important it may be to define the causes of the recent unfortunate events, it is evidently of greater importance to ensure, in so far as that may be possible, that there shall be no recurrence of them. An essential step in this direction, as the Commission has itself indicated in a communication to His Majesty's Government made in advance of its general report, is to obtain an authoritative and final definition of the respective rights at the Wailing Wall of the two creeds immediately concerned. As a temporary measure, the High Commissioner has issued certain instructions which were communicated to the Jewish and Moslem Authorities, but these

instructions were admittedly provisional, and could not prejudice the existing rights and claims of Jews and Moslems in regard to the Wall. The final and authoritative definition of these rights and claims is provided for in Article 14 of the Mandate for Palestine, which runs as follows:-

"A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connexion with the Holy Places, and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of the Commission shall be submitted to the Council of the League for its approval, and the Commission shall not be appointed or enter upon its functions without the approval of the Council."

3. It will be within the recollection of the Council that the British Delegate, in 1922, submitted to the Council proposals for giving effect to this article. At that time, various difficulties were encountered in the attempt to agree upon the composition and functions of the Special Commission. The British Delegate appealed to the Members, who had been unable to harmonise their views, to endeavour to find some way out of the difficulty, but his appeal met with no response and in the absence of any other proposals His Majesty's Government in the United Kingdom are forced to conclude that the same difficulties still stand in the way of the immediate constitution of the full Commission contemplated in Article 14 for the definition of the rights and claims in connexion with all the Holy Places in Palestine.

4. His Majesty's Government are therefore confronted with this difficulty, that if they are to be responsible for the maintenance of order they must have, as it were, an authoritative code to administer. It would no doubt be possible to regulate the matter by local legislation. But a settlement based on such legislation, while it would, of course, have full validity under the Law of Palestine, might not win that complete and final acceptance by the contending parties which it is most desirable to secure. So long as the provision in the Mandate, whereby a final determination of rights and claims is to be given by the Commission contemplated in Article 14, remains unfulfilled, and no such Commission has in fact been brought into being, any instructions or regulations that may be issued might be looked upon as provisional only and subject to review by the Commission ultimately to be appointed. If the Mandate lays down that "A Special Commission" (to be appointed with the approval of the Council).... "shall determine the rights and claims", it might be argued that instructions or regulations drawn up by any other authority cannot be final.

5. For this reason His Majesty's Government were led to enquire whether, even though the difficulties in the way of giving complete effect to Article 14 of the Mandate may still exist, it might not be possible to give partial effect to it by enabling a final determination to be made of the rights and claims relating to the Wailing Wall. It occurred to them that the particular difficulties attendant on the execution of other parts of the task to be assigned to the Special Commission might not be found to stand in the way of the discharge of this one part of its duties.

6. His Majesty's Government were impressed with the necessity of taking early action by the reports which they had received from the local authorities. This impression has, incidentally, been confirmed by the communication which (as already mentioned) has been received from the Palestine Commission of Enquiry. The Commissioners state

that they have now heard sufficient to enable them to come to a decision in regard to one of the recommendations which they intend to put forward in their report as one of the means of avoiding a recurrence of the recent unfortunate disturbances in Palestine. "The recommendation in question is that His Majesty's Government in the United Kingdom should take such steps as lie within their power to secure the early appointment under Article 14 of the Mandate for Palestine of an ad hoc Commission to determine the rights and claims in connexion with the Western or Wailing Wall in Jerusalem. Since it is the unanimous opinion of the Members of the Commission of Enquiry that the early and final determination of these issues is a measure which is essential in the interests of peace and good government in Palestine, the Commissioners have thought it advisable to anticipate one of their recommendations and to bring it to notice forthwith so that His Majesty's Government may, if they think to do so, make use of that recommendation when the question at issue is discussed by the Council of the League of Nations."

7. It was because of this conviction of the urgency of the matter that His Majesty's Government, in November, formulated a proposal which they requested the Secretary-General to lay before the Permanent Mandates Commission then in session. They hoped that, if the Permanent Mandates Commission could see their way to commend this proposal to the Council, the latter would the more readily agree to its adoption. Their proposal was as follows:-

"His Majesty's Government in the United Kingdom propose that a Commission should be appointed under the terms of Article 14 of the Mandate to study, define and determine the rights and claims of Jews and Moslems at the Western or Wailing Wall. The activities of the Commission would be limited, by its terms of reference, to the specific question of the Wall. By reason of this limitation of its activities the Commission would, in effect, be an ad hoc Commission. Its findings, however, would be final in regard to the Wall and they would not be subject to review by the full Commission contemplated by article 14 of the Mandate to determine questions relating to the Holy Places and religious communities of Palestine in general. His Majesty's Government in the United Kingdom would propose that the composition of the Western or Wailing Wall Commission should be decided by the President of the Council of the League of Nations. At the same time they venture to express the opinion that it is highly desirable that the members of the Commission should be chosen as impartial persons, and not in any way as representing the different racial or religious interests."

8. The Permanent Mandates Commission expressed the view that the proposal was not in conformity with Article 14 of the Palestine Mandate as it (1) conferred upon an ad hoc Commission for matters relating to the Wailing Wall powers which were exclusively vested in the Special Commission contemplated by Article 14 of the Mandate, and (2) proposed that the Commission should be appointed by the President of the Council of the League of Nations, whereas Article 14 laid down that the Special Commission for Holy Places shall be appointed by the British Government with the approval of the Council of the League.

9. His Majesty's Government do not wish to call in question any of the arguments on which the Permanent Mandates Commission based its conclusion that it could not commend this proposal to the Council. If they hold the view that the Commission's conclusion was based on a misunderstanding, they are ready to admit that that misunderstanding may be due to a somewhat incomplete explanation of the true nature of their proposal.

10. His Majesty's Government have examined with care the observations made by the Permanent Mandates Commission as to the compatibility of the proposal which was before them with Article 14 of the Mandate. His Majesty's Government are impressed by the fact that these objections were really of a technical character, and in view of the great importance of an early and final settlement of this question, they feel that they can count on the assistance of the Council in finding a means of overcoming any technical difficulties which may stand in the way. His Majesty's Government would, of course, be ready to consider any proposal to this and which may be put forward, but should the Council share the opinion of the Permanent Mandates Commission as to the incompatibility of the original proposal with Article 14 of the Mandate, the following alternative is suggested for consideration.

11. In order to render possible an early and final definition of the rights and claims of Jews and Moslems at the Western or Wailing Wall, the Commission contemplated by Article 14 of the Palestine Mandate should be set up forthwith. The functions of the Commission should, for the present, be limited to defining and determining these particular rights and claims, and the Commission should be established on the clear understanding that before its functions were extended to cover any question concerning other Holy Places in Palestine, the

matter would be re-submitted to the Council and proposals laid before it as to the future composition of the Commission in view of the further duties which it would then be called upon to undertake. For this purpose it should be provided that the membership of the commissioners appointed for the purpose of dealing with the question of the Wailing Wall should terminate as soon as their decision on the questions referred to them had been given.

12. As regards the method of nomination of the Commission, as to which also the Permanent Mandates Commission held that the proposal before them was not in accordance with Article 14, His Majesty's Government do not find the provisions of the article in question altogether clear in this respect, but they are prepared to comply with whatever the Council may consider to be their correct interpretation. Subject to this, they would propose, if the Council will approve in principle the appointment of the Commission, to submit to the Council their ideas in its composition in accordance with the terms of the Mandate. They would hope to be able even to submit actual nominations for the Council's approval, the actual appointments being made by His Majesty's Government on receipt of the intimation from the President of the Council that the Council approved the nomination. Even if the actual nominations cannot be submitted to the Council at its coming session, it is hoped that, if the Council approve in principle the composition of the Commission, approval of the actual nominees may be obtained without having to wait for the next session.

13. In conclusion, His Majesty's Government desire to make it clear, if that has not already been done, that they do not suggest that the above proposal contains a solution of the difficulties which have hitherto prevented the setting up of

the Holy Places Commission contemplated by Article 14 of the Palestine Mandate. His Majesty's Government are not responsible for those difficulties and it is not for them to say to what extent they may still exist. Their present proposal is merely intended to bring about a solution of the difficulties which have arisen in connexion with the particular question of the Western or Wailing Wall. The proposal is in their opinion in accord with Article 14 of the Mandate, and they invite the co-operation of the Council to enable them to secure an early and final determination of this question, which, as has already been stated, they regard as important not only in the interests of the parties concerned themselves, but also from the point of view of future peace, good order, and decorum in Palestine.