

C.536.1922.VI.

LEAGUE OF NATIONS.

Geneva, August 17th, 1922.

Mandate for Palestine.

Commission for the Holy Places.

Note by the Secretary-General.

The Secretary-General has thought that it might be convenient to co-ordinate in one paper for the use of the Members of the Council extracts from the following documents, which have already been communicated to the Council, relating to the Commission for the Holy Places:

1. Text of Article 14 of the Palestine Mandate as published by the British Government in August 1921.
2. Extract of a letter from Cardinal Gasparri communicated to the Council on May 23rd, 1922 (C.332.1922.VI)
3. Extract of a Note of the British Government in reply to Cardinal Gasparri's letter and revised draft of Article 14 of the Palestine Mandate, communicated to the Council on July 4th, 1922, (C.436.1922.VI).
4. Text of Article 14 of the Palestine Mandate as approved by the Council at its 19th. Session.

1. Article 14.

(Draft text published by the British Government in August 1921).

In accordance with Article 95 of the Treaty of Peace with Turkey, the Mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of this Commission the religious interests concerned will be taken into account. The Chairman of the Commission will be appointed by the Council of the League of Nations. It will be the duty of this Commission to ensure that certain Holy Places, religious buildings or sites regarded with special veneration by the adherents of one particular religion, are entrusted to the permanent control of suitable bodies representing the adherents of the religion concerned. The selection of the Holy Places, religious buildings or sites so to be entrusted, shall be made by the Commission, subject to the approval of the Mandatory.

In all cases dealt with under this article, however, the right and duty of the Mandatory to maintain order and decorum in the place concerned shall not be affected, and the buildings and sites will be subject to the provisions of such laws relating to public monuments as may be enacted in Palestine with the approval of the Mandatory.

The rights of control conferred under this article will be guaranteed by the League of Nations.

2. Extract of a letter from Cardinal Gasparri.

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"As regards the second point, special attention should be directed to Article 14 of the draft, which provides - in conformity with Article 95 of the Treaty of Sèvres - for a "special Commission to study and regulate all questions and claims relating to the different religious communities . This Commission (which is to be constituted by Great Britain though with a chairman appointed by the League of Nations), consists of a number of members - the total is not stated in the draft - who are to include representatives in a proportion which is not fixed of all the religious interests concerned.

It is evident that the Holy See cannot agree that the interests of Catholics should be in the hands of representatives who have not been selected by the competent hierarchical authorities. Moreover, the Commission in question has the duty to "ensure that certain Holy Places, religious buildings or sites, regarded with special veneration by the adherents of one particular religion, are entrusted to the permanent control of suitable bodies representing adherents of the religion concerned".

The wording of this article is - it will be observed - so vague that it gives rise to a number of difficulties. For instance, nothing is laid down as to the manner in which these "suitable bodies" representing the different religions are to be constituted; further, no indication is given of the extent of the powers of this body or what steps are to be taken for the protection of the places regarded with such veneration by the adherents of different religions (e.g. by Catholics and schismatics). In this case, as the Holy Places in question are of interest to numerous religions it is only too probable that bitter dissensions will arise within this Commission, composed of representatives of all religions; and that these dissensions will inevitable result in a combination of all the other members against those of the religion which is in possession of the Holy Places which may be

concerned; the result will be to make any reasoned and impartial decision impossible.

Finally, it should be noted that, by the terms of the mandate "the selection of the Holy Places, religious buildings or sites so to be entrusted shall be made by the Commission, subject to the approval of the Mandatory"; this clause would, it is clear, give England undue influence, not to mention the fact that it is apparently incompatible with Article 95 of the Treaty of Sèvres.

For all these reasons, Article 14 appears to be unacceptable, and the Holy See ventures to suggest that the members of the Commission should be the Consuls maintained in the Holy land by the Powers represented on the Council of the League of Nations.

The undersigned Cardinal has the honour to bring the above considerations to Your Excellency's notice; and to request that you will be good enough to submit them to the most excellent Council of the League of Nations."

3. Extract of a note from the British Government
in reply to Cardinal Gasparri's letter and
revised Draft of Article 14.

10. They have carefully considered the observations offered by the Cardinal Secretary of State on Article 14 of the draft Mandate in its present form, and in order to remove all possible ground for apprehension, have prepared an alternative draft of which a copy is enclosed. For the purpose of ensuring that the delicate task of deciding what are the existing rights in the Holy Places and religious buildings or sites which His Britannic Majesty as mandatory for Palestine is responsible for protecting, should be entrusted to a body of whose impartiality there can be no question, they now suggest, not only that the composition of the Commission shall be subject to the approval of the Council of the League of Nations, but that any report made by them shall also be laid before the Council of the League for confirmation.

11. As a further means towards ensuring absolute impartiality His Majesty's Government would be prepared, if the Council of the League approved this course, to select nominees for the Commission from a panel put forward in the first place under some international procedure, whether by the Assembly or Council of the League of Nations, or by the President of the Court of International Justice, while reserving to themselves the right to submit additional names for stated reasons to the Council of the League for approval. The panel should in their opinion be composed of persons of world wide reputation, to be selected in such a way that the Commission would be a thoroughly representative international body, on which none of the Great Powers interested in Palestine and none of the three confessions, namely, Christian, Mohammedan and Jew, would be without representation. His Majesty's Government would also invite the Council of the League to appoint one of the

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members of the Commission as its first Chairman, by whatever procedure commands itself to the Council.

12. The Council will observe that His Majesty's Government do not propose in the draft Article which is now enclosed, to retain the obligation that the Commission shall necessarily ensure that certain Holy Places, religious buildings or sites are entrusted to the permanent control of suitable bodies. Nor have they attempted to define the exact number of members of whom the Commission shall be composed, beyond providing that the body shall be sufficiently large to ensure all interests being represented upon it.

13. The reason which has prompted His Majesty's Government to suggest that respective nominees shall be recommended under some international procedure rather than by political or hierarchical authorities is that it appears to them preferable that a body to which this responsible task is to be entrusted should not be composed of persons who might possibly be regarded as agents of a particular Power or community whose interests might be directly concerned. Political interests are fully safeguarded by the provisions that the appointment of the Commission shall be subject to the approval of the Council of the League of Nations, and that all reports presented by the Commission shall require their confirmation. Religious interests are equally well protected by the provisions that the Commission shall be in consultation with representatives of the confessions concerned, and that any religious confession which considers that the Mandatory is not giving effect to the provisions of the report may appeal to the Council of the League of Nations, who may require the Mandatory to reassemble the Commission.

14. His Majesty's Government confidently expect that the Great Powers and confessions who are interested in Palestine, and who will, it is hoped, also be represented upon the Commission, will realise that the traditional policy of His Majesty's Government, its application in Palestine, and the proposals now put forward for the Holy Places Commission are such as to dispel all legitimate apprehensions. They invite the Council to

members of the Commission as its first Chairman, by whatever procedure commends itself to the Council.

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agree that no further political or religious safeguard is either necessary or practicable."

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Article 14.

(1) In order to determine the existing rights in the Holy Places and religious buildings or sites in Palestine, which the mandatory is pledged under the preceding Article to maintain, a Commission consisting of not less than seven members shall be appointed by the mandatory subject to the approval of the Council of the League of Nations. The duty of the Commission shall be to frame a report defining these rights, including rights of ownership, user and access. The report shall be placed before the Council of the League of Nations for confirmation and when confirmed shall be binding on the mandatory.

In the preparation of their report the Commission will consider all conflicting claims to any of the Holy Places and religious buildings or sites, and will endeavour in consultation with representatives of the confessions concerned to arrive at an agreed definition of existing rights. If no agreement can be arrived at within a period to be fixed in each case by the Commission, the Commission after hearing all parties shall decide judicially on the claims of which it has had notice and shall embody such decisions in their report.

(2) The report of the Commission may also contain recommendations for ensuring that certain Holy Places, religious buildings or sites which the Commission finds to be regarded with special veneration by the adherents of one particular religion are entrusted to the permanent control of suitable bodies representing the adherents/

of the religion concerned.

Such control will be guaranteed by the League of Nations.

(3) The Commission will settle its own procedure, and shall appoint its own staff. Each member of the Commission will in turn act as Chairman of the Commission. The expenses of the Commission shall be defrayed by the League of Nations.

(4) In all cases dealt with under this Article, the right and duty of the mandatory to maintain order and decorum in the place concerned shall not be affected, and the buildings and sites will be subject to the provisions of such laws, relating to public monuments as may be enacted in Palestine with the approval of the mandatory.

(5) Any religious confession which considers that the mandatory is not giving effect to the provisions of the report may appeal to the Council of the League who may require the mandatory to reassemble the Commission for the purpose of considering and reporting upon any such appeal. Such report shall be laid before the Council of the League of Nations for confirmation and when confirmed shall be binding on the mandatory.

4. Article 14.

(Text approved by Council at its 19th. Session).

A special Commission shall be appointed by the Mandatory to study, define and determine the rights and claims in connection 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 this 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.