

Geneva, November 13th, 1928.

LEAGUE OF NATIONS

PERMANENT MANDATES COMMISSION

MINUTES

of the

FOURTEENTH SESSION

HELD AT GENEVA

FROM OCTOBER 26TH TO NOVEMBER 13TH, 1928

Including the

Report of the Commission to the Council

and Comments by Various Accredited Representatives of the
Mandatory Powers

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Petition from the Bahai Spiritual Assembly at Baghdad.

M. ORTS observed that, according to the letter from the British Foreign Office dated October 17th, 1928, the accredited representative was authorised to reply to questions on the subject of the petition from the Bahais. M. Orts wished to put the following questions.

First, the Bahais had opposed a judgment of the Court of Appeal at Bagdad regarding certain immovable properties which, according to their statement, had been allocated to persons who were not entitled to them. Was the judgment of the Court of Appeal definitive or had the petitioners some means of appealing against the judgment before a higher Court ?

Mr. BOURDILLON replied in the negative as regards means of appeal. At the same time, the buildings in question had not been used for religious purposes.

M. ORTS observed that he was not expressing any opinion as to whether the case involved interference with the freedom of conscience. It appeared that the judgment of the Court of Appeal was final.

Mr. BOURDILLON replied that that was the case.

M. ORTS observed that the Court was called by various names. Was it the Court of Appeal or the Court of Cassation ?

Mr. BOURDILLON replied that the Court also sat as the Court of Cassation.

M. ORTS asked whether, if that was so, the case could not come again before the same Court sitting in cassation.

Lord LUGARD asked if there was any right of appeal to the Privy Council.

Mr. BOURDILLON replied in the negative.

M. ORTS asked whether, since the petitioners had exhausted all legal means, there were any other means, for instance, political means, of righting the wrong to which they appear to have been subjected. Did the Mandatory, which took the view that the Bahais had suffered an injustice, consider that it had exhausted all the means at its disposal to make amends for the wrong done? From a letter from the Under-Secretary of State for the Colonies dated February 9th, 1927, it appeared that the mandatory Power had intended to take action in favour of the Bahais either through the mediation of the High Commissioner or by asking the Court of Appeal to revise its judgment or by urging the Iraq Government to expropriate the property in order to restore it to its legitimate owners.

Mr. BOURDILLON said that, according to legal opinion, revision by the Court of Cassation was not possible. It was a fact that the mandatory Power had recognised that the Bahais had suffered an injustice and, ever since the award made by the High Court, the High Commissioner had been considering what means could be found to remove, either by an executive act or otherwise, the unjust effects of that decision. Three different courses had been suggested. The first was that the State, which had so far taken no part in the action, should put in a claim to the escheat of the property in question, on the ground that the person in whose name the property had been registered had died without heirs. An Iraqi lawyer had been consulted and had reported that the proposal was not feasible for various reasons.

M. ORTS asked if there had been a suit for escheat in the Court of First Instance.

Mr. BOURDILLON replied that there had been no suit for escheat in the Court of First Instance, but only a pronouncement that it was not the Shiah, but the State, who should claim the property in the default of heirs. The State, however, had made no claim.

The second suggestion, which Mr Bourdillon himself had made to a representative of the Bahais, was that they should avail themselves of the provision in Turkish law whereby, if a person were in *bona-fide* occupancy of property not belonging to him and if he erected on that property buildings of greater value than the site itself, he became entitled to purchase the site. The head Bahais had refused to take this course because they were not prepared to admit that the property did not belong to them.

The third proposal was that the Government should expropriate the property for some public purpose—for instance, for use as a school—to which the Bahais would not object, in the hope that in years to come, when the excitement had died down, it would be possible to hand the building over to the Bahais. That course had been urged upon the Iraq Government, which, however, had refused to take it, on the ground that it would arouse such violent opposition among the Shiah and that there would be grave danger of a breach of the peace.

M. ORTS recalled that he had asked the accredited representative whether the mandatory Power considered that it had done everything possible to assure freedom of conscience in the mandated territory and that Mr. Bourdillon had replied that a provision to that effect was contained in the Organic Law of Iraq. That being so, M. Orts had asked whether the mandatory Power possessed means of exercising pressure on the authorities in order, if necessary, to ensure that the Constitution would be respected, and Mr. Bourdillon had replied in the affirmative. When asking this question, M. Orts had had in mind the case of the Bahais. He understood from what the accredited representative had said that morning that the mandatory Power had means of ensuring that the principle of freedom of conscience did not remain a dead-letter. In the present case, however, where it was a question of justice inspired by religious or political passion, the accredited representative had said that, notwithstanding the opinion of the mandatory Power that the Bahais had suffered an injustice, its means of action would be without result.

Mr. BOURDILLON replied that that was the case. Up to the present time, the mandatory Power had exercised very considerable pressure without success, but it was still possible that the injustice might be remedied on the lines which he had stated.

Relations between the Shiah and Sunnis.

M. ORTS observed that the matter had an importance which exceeded that of the individual case of the Bahais. The judgment of the High Court was suspected of having been inspired by political prejudice. The consequent impression was that, from a moral point of view, conditions in Iraq were not improving. Religious passions still ran high and peace had not yet been brought about between the various religious communities. The account given, on pages 16 to 20 of the report, concerning friction between the Sunnis and Shiah showed that the state of affairs in regard to religion was rather serious. It seemed that, now that a regime of political liberty existed, the Shiah and Sunnis were tending to form into two general political parties, each on a confessional basis.

Mr. BOURDILLON replied that the position between the Shiah and Sunnis was better than in the previous year and that there were fewer active signs of disagreement between the two sects. He was, of course, referring to the present moment—that was to say, ten months after the preparation of the report. M. Orts had said that he was under the impression that the Shiah and Sunnis were tending to form into two religio-political parties. Mr. Bourdillon replied that that was true of the Shiah, but the Sunnis showed no signs of forming a religio-political party. The "hahdhah" party was almost entirely Shiah, but the other parties contained Shiah as well as Sunnis. Mr. Bourdillon did not think that the situation was becoming worse.

Mortgage of Land.

Lord LUGARD asked whether there was any check against foreclosure on mortgaged lands by usurers.

Mr. BOURDILLON replied in the negative. There was a legal maximum rate of interest, amounting to only 9 per cent, which could be obtained in the Courts. There was no prohibition on the mortgage of land.

Liquor Traffic.

Lord LUGARD referred to the statement, on page 166 of the report, that more dates than usual had been used for the manufacture of date syrup and alcoholic spirit. Was this liquor distilled, and by whom was it drunk ?

Mr. BOURDILLON replied that date spirits were drunk chiefly by the non-Moslem population.

Traffic in Opium and other Dangerous Drugs.

Lord LUGARD asked whether the Iraq Government co-operated in any way with the Persian Government on the opium question ; for instance, with regard to carrying out the terms of the Geneva Convention as regards the growth of the poppy and exports and imports of opium.

Mr. BOURDILLON pointed out that the poppy was not grown in Iraq and that only the Government was authorised to import opium. There was not much difficulty in checking imports from Persia and, so far as he knew, little opium was smuggled.

In reply to a further question by Lord Lugard, Mr. Bourdillon said that "Charas" was a hemp drug.

Article 4 of the old treaty is the article under which the Iraq Government was bound to accept the advice of the British High Commissioner in certain matters and to consult him in certain other matters. That, of course, is *the* article which has most wounded the *amour-propre* of the Iraq nationalists, namely, that they should be bound by a treaty to accept the advice of another Government.

In the new treaty there is no mention of the word "advice" nor of any obligation to consult the British Government, but under Article 5 :

"His Majesty the King of Iraq agrees to place His Britannic Majesty's High Commissioner in a position to give information to His Britannic Majesty regarding the progress of events in Iraq and the projects and proposals of the Iraq Government, and the High Commissioner will bring to the notice of His Majesty the King of Iraq any matter which His Britannic Majesty considers might prejudicially affect the well-being of Iraq or the obligations entered into under this treaty."

In other words, the Iraq Government must keep the British Government informed, through the High Commissioner, of all that is happening, and of important projects, and the High Commissioner has the right to inform the Iraq Government when he thinks things are going wrong.

That article of the new treaty must be read in conjunction with Article 8, which says :

"Provided the present rate of progress in Iraq is maintained and all goes well in the interval, His Britannic Majesty will support the candidature of Iraq for admission to the League of Nations in 1932."

Article 8 provides the sanction without which the second part of Article 5 would possibly be inoperative. There is nothing in the treaty to compel the Iraq Government to accept the advice of the British Government, but it knows that if it does not do so the British Government will be in a position to say : "You have refused to accept our advice in such-and-such a matter. Owing to that refusal, you have not continued your rate of progress. Therefore we are unable to recommend for the acceptance of the Council your application for admission to the League of Nations."

I hope that I have now given the Commission a sufficient general idea of the motives underlying the new treaty and of its effect on the existing regime.

I should like to repeat that anything I have said must not be taken as the formal and official reasons which my Government will give in asking the Council to accept this treaty (if it ever does so). I am not in a position to give such official and formal reasons.

The CHAIRMAN pointed out that the accredited representative had not referred to the omission in the new treaty of any article guaranteeing freedom of conscience. The Commission thought this matter to be of great importance—above all, in a country where a sectarian feeling was highly developed.

Mr. BOURDILLON replied that Article 3 of the new treaty would appear to meet the Commission's point in regard to the question of freedom of conscience. That article was as follows :

"His Majesty the King of Iraq undertakes to secure the execution of all international obligations which His Britannic Majesty has undertaken to see carried out in respect of Iraq."

"His Majesty the King of Iraq undertakes not to modify the existing provisions of the Iraq Organic Law in such a manner as adversely to affect the rights and interests of foreigners or as to constitute any difference in rights before the law among Iraqis on the ground of difference of race, religion or language."

M. RAPPARD thought that the Commission would be grateful for the information which Mr. Bourdillon had given it. The opinion he had formed, however, during that declaration must be the same as that of the Nationalists in Iraq, except that it must be a source of great satisfaction to the latter that the Iraq Government was not bound by treaty to accept the advice of another Government. If the new treaty were to come into force, Great Britain, if it were still responsible in theory for what was going on in Iraq, could only call the attention of the King of Iraq to any matters which might prejudicially affect the well-being of Iraq or the obligations entered into under this treaty ; but would the British Government still possess any legal means of controlling the policy of Iraq ?

The accredited representative had said the great weapon of the British Government would be a threat to refuse to recommend to the League of Nations the entry of Iraq into the League ; but suppose, for example, that like Russia, Mexico, Turkey and the United States of America, Iraq did not apply for admission, what would happen then ? The Iraq Government would always be obliged to tolerate the presence of a High Commissioner and inform him of what was going on, but not to take the advice which the Commissioner had no longer even the right to give. That being the case, M. Rappard could not understand what Great Britain could do if, for example, the Bahai petition had been sent in under the regime of the new treaty.

Doubtless the British Government would have to call the attention of the Iraq Government to the prejudicial effects of its action in the case, and there the matter would end so far as Great Britain was concerned.

He appreciated the tendency of the mandatory Power, but did not think it compatible with any measure of control by the League of Nations. The situation created by the new treaty might be satisfactory on the morrow of the day when Iraq had joined the League of Nations, but in the meanwhile, when Iraq must still submit to advice from the mandatory Power, it seemed to M. Rappard that this treaty was a decisive step and not merely an interim treaty indicating the progress achieved. With the entry into force of that treaty, the last legal bonds between Iraq and the League of Nations under the terms of Article 22 of the Covenant would be broken.

M. PALACIOS agreed in the main with M. Rappard. The political motives for amending the treaty of 1922 by the treaty of 1926 had been conditioned by the entry of Iraq into the League, as was clearly shown by the following passage in the report by M. Undén adopted by the Council on March 11th, 1926 (document C.161.1926.VI, reproduced in document C.216.M.77.1926.VI) :

“ By the provisions of this new Treaty, the Treaty of Alliance of October 10th, 1922, and the various agreements subsidiary thereto are to remain in force for a period of twenty-five years from the 16th day of December, 1925, unless before the expiration of that period Iraq shall have become a Member of the League of Nations. ”

The revision of the treaty of 1926 was therefore to be carried out as the result of the entry of Iraq into the League. Did the Nationalist Party in Iraq desire both the revision of the treaty of 1926 and the entry of Iraq into the League, or merely the latter event, which would automatically imply the revision of the treaty of 1926 ?

In Article 1 of the new treaty of 1927 now before the Commission it was said that “ His Britannic Majesty recognises Iraq as an independent sovereign State ”. The moment the treaty came into force, therefore, would not Iraq as a sovereign State be entitled to claim immediate membership of the League ? This did not appear to be so, since there was still the condition imposed by Article 8. Between Article 1 and Article 8 there existed quite a number of problems which should be carefully examined.

M. MERLIN agreed with the observations of M. Rappard and M. Palacios. The new treaty of 1927 transferred most of the obligations contained in the mandate to Iraq, and the control of the mandatory Power therefore practically disappeared. The accredited representative had assured the Commission that the British Government would always be able to bring pressure to bear upon the Government of Iraq should its actions prove in any respect to be contrary to the terms of the mandate. No stipulation of this kind, however, was to be found in the new treaty.

Constant pressure from the Nationalist Party in Iraq had apparently caused the terms of that treaty to be so modified that the control of the mandatory Power was no longer apparent. Was it not to be feared that, once this treaty had been ratified and put into force, the Nationalist Party would increase its demands, in which case the mandatory Power's position would become more and more difficult ? It might find itself forced to acknowledge its failure to preserve the stipulations of the mandate. Would it not have been better if a provision had been inserted in the treaty binding the Government of Iraq to fulfil all the provisions of the mandate and stipulating that Great Britain's responsibility for the fulfilment of the mandate remained in fact as in law ?

Mr. BOURDILLON, with regard to the question whether or not the treaty between Great Britain and Iraq was susceptible of amendment, would refer the members of the Commission to Article XVIII of the old treaty,¹ which says :

“ Nothing shall prevent the High Contracting Parties from reviewing from time to time the provisions of this treaty . . . ”

and to Article III of the 1926 treaty² :

“ Without prejudice to . . . the provisions of Article XVIII of the said treaty, which permit the revision at any time, subject to the consent of the League of Nations, of the provisions of the said treaty . . . ”

As regarded the question whether the Nationalists in Iraq desired the amendment of the treaty or entry into the League of Nations, he would say that they desired anything they could obtain ; they would like to enter the League, or to have the treaty amended, or preferably both.

M. Palacios had asked whether Iraq was a sovereign State which could enter the League of Nations at any moment. The point was really, Mr. Bourdillon thought, that Iraq was

¹ Document C.216.M.77.1926. VI, page 11.

² *Idem.*, page 7.

TWENTY-FIFTH MEETING

Held on Monday, November 12th, 1928, at 10.15 a.m.

Chairman: The Marquis THEODOLI; later, M. VAN REES.

963. **Iraq: Petition from the Bahai Spiritual Assembly at Baghdad, dated September 11th, 1928** (continuation).

M. ORTS read the conclusions of his report (Annex 13).

He added that Lord Lugard had proposed another version for one of the last paragraphs, but that he had hesitated to adopt it. He was, however, prepared to do so if the Commission desired. Lord Lugard proposed to insert, after "the documents accompanying it", the words:

"The Commission recommends the Council to invite the British Government to inform the Government of Iraq that a country in which the Sovereign and the highest law courts are capable of so flagrant a denial of justice would probably not be considered to be eligible to become a Member of the League of Nations and to call upon the Government of Iraq to restore to the petitioners the property of which they have been illegally dispossessed."

In view of the fact that the Iraq Government seemed very anxious to become a Member of the League of Nations, this argument had a very good chance of being effective.

Lord LUGARD said that the draft as it stood—especially the words "to compel the Government of Iraq"—would probably give rise to a strong reaction, since Iraq under the treaty claimed to be an independent sovereign State. The Commission had been told that it was the ambition of Iraq to become a Member of the League of Nations, and the insertion of the words he suggested would probably have the immediate effect of bringing home to the Iraq Government the necessity of taking the steps required without calling upon the Mandatory to resort to methods of compulsion.

M. MERLIN said that he had intended to propose the following draft for the second recommendation covered by the amendment of Lord Lugard:

"The Commission recommends the Council to ask the British Government to compel the Government of Iraq to put an end without delay to the position, which is entirely contrary to the provisions of the Covenant, of the British mandate, of the Organic Law of Iraq even, and finally of the sacred mission of civilisation entrusted to the mandatory Powers."

M. Merlin did not think that the question of the entry of Iraq into the League of Nations should be confused with that of the Bahai petition. If it were desired to make use of this incident, then a place should be found for it in the observations of the Commission.

The draft proposed by Lord Lugard would cause the League of Nations to play the scurvy part of a bargainer and a blackmailer.

M. ORTS said it was scarcely possible to refer to the terms of the mandate, since there was no mandate properly so called, but a treaty which had taken its place. On the other hand, a reference to the Organic Law was scarcely possible, for there had been no direct violation of freedom of conscience.

After reflection, he agreed with M. Merlin that the two questions should not be combined.

M. PALACIOS was against the proposal of Lord Lugard. He asked the Commission to reflect very carefully whether the attitude of the Government of Iraq amounted to an interference with freedom of conscience.

M. ORTS said that, after having carefully examined the petition from this aspect, he now thought that there had not, properly speaking, been any attack on freedom of religion, but only a flagrant violation of justice which the mandate should make impossible.

M. RAPPARD proposed to add, after the paragraph ending "partiality, servility and sectarianism", the following sentence:

"Of the various moral and material interests protected by the League in accordance with the Covenant, there is none more precious than the assurance of an impartial administration of justice."

The Commission adopted this form of words.

M. RAPPARD suggested the following draft for the sentence covered by the amendment :

“ The Commission recommends the Council to invite the British Government to ensure the restitution to the Bahai, through the Government of Iraq, of the property of which they have been illegally dispossessed. ”

The CHAIRMAN pointed out that it would perhaps be preferable not to ask for the restitution of this property in order that the Government of Iraq might find another solution of the problem, such, for example, as granting to the petitioners other properties which would be more advantageous.

After an exchange of views, in which the CHAIRMAN, M. RAPPARD, M. MERLIN, M. ORTS and M. CATASTINI took part, *the Commission agreed on the following text :*

“ The Commission recommends the Council to ask the British Government to call upon the Government of Iraq to redress without delay the denial of justice from which the petitioners have suffered. ”

964. **Iraq : Observations of the Commission.**

The Commission examined the text of its draft observations on the administration of Iraq.

After an exchange of views, *the draft was adopted with certain amendments* (for final text, see Annex 16), *with the exception of the paragraph concerning the relations between Great Britain and Iraq.*

Relations between Great Britain and Iraq.

M. VAN REES regretted that he could not agree with the observations made in the following paragraphs :

“ The Commission has carefully considered the treaty between the United Kingdom and Iraq signed at London on December 14th, 1927, which the mandatory Power had communicated to the Secretary-General of the League of Nations with the report on Iraq for 1927, with covering letter from the Foreign Office dated August 28th, 1928.

“ The Commission noted that this treaty would not be put in force before the Council of the League had approved it, and that this approval had not yet been sought. As, however, the treaty had been officially communicated to it, the Commission believed it to be its duty to consider it. Accordingly, it examined the said treaty in the light of the principles of Article 22 of the Covenant and of the obligation retained by Great Britain under the agreements at present in force.

“ It noted that, under the provisions of the new treaty, Great Britain abandons all right to advise the Government of Iraq and all legal means of controlling its policy. The Commission therefore cannot escape its apprehensions that the coming into force of the new treaty would release Great Britain from all responsibility towards the League of Nations in respect of Iraq and would imply the severance of all legal ties provided for under Article 22 of the Covenant. ”

He proposed that these paragraphs should be deleted and put forward the following considerations in support of his proposal.

As Mr. Bourdillon, the accredited representative of Great Britain, had formally stated on several occasions, the treaty in question had only been communicated to the Permanent Mandates Commission for information. It had transpired from the discussions which had taken place regarding this treaty that Great Britain had not submitted the document in question to it for the purpose of analysis and comment. The treaty was intended to define the relations between Great Britain and Iraq and was therefore essentially a political act accomplished by these two Powers acting together. As such, it does not call for the comments of the Permanent Mandates Commission, which was not bound or authorised by the terms of the last paragraph of Article 22 of the Covenant to submit an opinion to the Council upon an act of that kind. This point of view was confirmed by the fact that the Permanent Mandates Commission had not been consulted in regard to the two similar treaties concluded between Great Britain and Iraq in 1922 and in 1926. It had abstained from examining those treaties and it had expressed no opinion upon them.

The last two treaties had been communicated to the Council, which was the only body competent to take note of them. Did the fact of their communication imply that the treaties must necessarily be approved by the Council before entering into force? M. Van Rees would reply in the negative. At its meetings of September 27th, 1924, and of March 11th, 1926, the Council had accepted and approved, not the two treaties, but the terms of the declaration made by the Government of His Britannic Majesty which had simultaneously been submitted to the Council. Those terms had been described by the Council as being suitable to give effect to the provisions of Article 22 of the Covenant. In its first resolution of 1924, the Council made no reference to the treaty of 1922, and in its second resolution of

3. Because, as regards the substance of such questions, the Treaty of Versailles established a right, a regime, a Reparation Commission, a procedure and even a Mixed Arbitral Tribunal (Articles 304, 305 and the corresponding Annex), and if an irregularity is committed under the system established therein in connection with matters of vital interest, it is for the States concerned to take up the claims made by their respective nationals. Infringements of this kind can always be made a diplomatic question, and it is the State concerned and not the Permanent Mandates Commission which is called upon to find a solution.

* * *

In view of the foregoing, I accordingly propose :

(1) That the existence in South-West Africa of landed estates constituting ex-enemy property should be communicated to the Council, with the request that it should be good enough to ask the mandatory Power for the necessary explanation in connection with its statement of March 19th, 1926, concerning the condition and disposal of the said estates ;

(2) That, in reply, the petitioner should be informed that, whatever view may be taken of the Company's title and rights and of the mandatory Power's alleged justification, the substance of the claim exceeds the Commission's competence in the matter of petitions.

ANNEX 13.

IRAQ.

C.P.M.817 (1).

PETITION FROM THE BAHAI SPIRITUAL ASSEMBLY AT BAGDAD, DATED SEPTEMBER 11TH, 1928.

Report by M. Orts.

The British Government forwarded the following documents to the Secretary-General of the League of Nations under cover of letter dated October 17th, 1928 (document C.P.M.784).

I. Petition (with three annexes) to the Permanent Mandates Commission of the League of Nations from the National Spiritual Assembly of the Bahais of Iraq, dated Bagdad, September 11th, 1928.

II. Copy of letter from the Prime Minister of Iraq to Sir Henry Dobbs, High Commissioner for Iraq, dated Bagdad, September 19th-20th, 1928.

III. Memorandum to the Permanent Mandates Commission containing the comments of His Britannic Majesty's Government on the petition.

The despatch of document No. II is in reply to representations made by the British Government to the Government of Iraq, which was invited to submit its own comments on the subject of the Bahai petition, so that the Permanent Mandates Commission is in possession of two memoranda with reference to the case under consideration — one from the mandatory Power, the other from the Government of the mandated territory. The British Government, in its letter dated October 17th, explained this departure from the usual procedure in regard to petitions as follows :

“ Since, however, this petition is presented by inhabitants of, and relates to events which have occurred in, territory in which an independent national Government has been established, they (the British Government) consider it desirable that the comments of both the Iraq Government and His Majesty's Government themselves should be placed before the Permanent Mandates Commission at the same time as the petition. ”

Your Rapporteur is of opinion that the Commission will have no objection to this procedure. If the Commission, in deciding the merits of a petition, desires to rely in the main on the comments of the mandatory Power, there can be no objection to the mandatory Power attaching to this essential document, which is required by the procedure in regard to petitions, information derived from such other sources as may appear likely to enlighten the Commission.

* * *

We shall analyse the contents of the above three documents in turn.

I. The *petition* is signed by the President of the “ National Spiritual Assembly of the Bahais of Iraq ”. This document is well drafted, clear in its argument and moderate in tone.

According to the information at our disposal, the sect of the Bahais constitutes a small minority in Iraq, where the population is about equally divided between the Sunnis and the Shiah. The Bahais in Iraq are generally drawn from a lower social grade; this sect, which is of a relatively recent origin, has been the object of constant hostility on the part of the Sunnis and Shiah — particularly of the latter — and a prey to persecution. It has at the present time neither political nor social influence.

The petitioners state at great length the facts which have led them to appeal to the League of Nations. These facts can be summarised as follows :

The founder of the sect, Baha'u'llah, in whom the Bahais recognise the inspired messenger of God, settled at Bagdad in 1852 after being exiled from Persia. He established himself and his family in certain dwelling-houses belonging to one of his disciples. This property — which is the subject of the present litigation — was subsequently acquired by Baha'u'llah and on his death passed into the possession of his son Abd'ul-Baha. Baha'u'llah resided eleven years in these houses, upon which his long residence conferred in the eyes of his disciples a sacred character.

In view of the lack of security which prevailed under the former system of government and the constant hostility of the Shiah, Baha'u'llah decided never to reveal his ownership of the dwelling-houses in question, which to all appearance remained the property of one of his disciples, and for the same reasons the sect abstained from using these dwellings for the exercise of their religion, thus refraining from drawing attention to the sacred character which they attached to this property.

Matters remained in this condition until, with the establishment of the British mandate, the liberty of conscience and religion proclaimed in the Covenant of the League of Nations was confirmed in Iraq by the Treaty of 1922 with Great Britain and later by the Organic Law of Iraq. Taking advantage of a security they had never known before, the Bahais, under the direction of Abd'ul-Baha, henceforth the leader of their movement, set about putting into repair the dwellings sanctified by the residence of Baha'u'llah with a view to the open exercise of their religion.

Then began the tribulations which they ascribe to the fanaticism of the Shiah. The era of persecution and violence had passed, but the Shiah resorted to intrigue in order to relegate into the background a sect whose development they feared.

A first attempt on the part of the Qadhi of the Shiah Courts at Bagdad to obtain possession of the property in question was frustrated by the intervention of the Iraq authorities. A fresh application was subsequently made by the same Qadhi to the Peace Court at Bagdad for the eviction of the occupants.

The decision of the Court was still pending when the Government intervened afresh, moved by the state of public opinion caused by the Shiah : the Government ordered the Bahais to be evicted and the keys of the houses in dispute to be given into the custody of the Governor of Bagdad. After a judgment dismissing the application, the Peace Court made fruitless efforts to reinstate the defendants in possession of the property. Its decision remained a dead-letter, as the Government maintained its refusal.

The case passed from Court to Court and was finally brought before the Court of Appeal at Bagdad, which, by a majority of four (the native members) to one (the British Presiding Justice), decided in favour of the plaintiffs (the Shiah).

According to the petitioners, the property which was the subject of litigation was at once converted into Waqf property, the effect of which was to render redress from the injustice of which they complain even more difficult. The accuracy of this fact was disputed by the accredited representative of the mandatory Power during his last hearing before the Commission.

Finally, the petition contains extracts from correspondence exchanged between the British Secretary of State and the representative of the petitioners, from which it will be gathered that the mandatory Government has taken active steps through its High Commissioner in Iraq with a view to inducing the Government of Iraq to adopt a compromise which would give satisfaction to the complainants. This intervention remained without success.

The Bahai community maintains that, on account of a series of intrigues inspired by religious fanaticism in which the administrative authorities and finally also the judicial authorities of Iraq were associated, it has been seriously disturbed in the exercise of its religion and deprived of property belonging to its religious head, to which the community attaches a sacred character, to the advantage of a rival sect.

In support of its claims, this community appeals to the principle of the liberty of conscience and religion contained in the Treaty of 1922 between Iraq and Great Britain (Article III) and in the Organic Law of Iraq (Article XIII), as also to Article 22 (1) of the League Covenant, which states that the well-being and development of the peoples (of the mandated territories) formed a sacred trust of civilisation.

II. *The letter from the Prime Minister of Iraq* does not meet any of the allegations of the petitioners.

The Prime Minister merely stated that :

“ The Iraq Government had no comments to offer on this petition other than to say that the judgment given by the Court of Appeal regarding the case under discussion was in accordance with the laws in force in Iraq ”,

and he added that the members of the Court which gave the final decision belonged to diverse religious communities, which proved that there was no truth in the contention that the judgment given by the members was biased by religious prejudice.

III. *The memorandum of the mandatory Power* and the *petition* are parallel documents, and a comparison will show that, on the whole, they present the essential facts in the same light, while on certain subsidiary points the British note supplements the petition.

It is desirable to refer to certain passages in the comments of the British Government which bring out the origin of the affair and explain the heated atmosphere in which it developed. The property under dispute is situated on the right bank of the River Tigris " in a quarter (see Comments) the majority of the inhabitants of which are fanatical Shiahhs ". As already mentioned in the petition, the Bahais did as little as possible to advertise their use of this property, but with the change of regime they acquired confidence and ventured to spend considerable sums on the property with a view to using it openly for religious purposes.

" This drew attention to the existence of property belonging to Bahais in the middle of a Shiah quarter and incensed the Shiahhs, who started a campaign to get rid of those whom they regarded as enemies of their religion."

The memorandum accordingly shows that the affair was due to religious fanaticism. This is also what the petitioners have affirmed.

We shall now give the mandatory Power's views on the various judgments and interventions of the authorities which mark the stages of the dispute.

1. The first decision of the Qadhi of the Shiahhs, stating that the last owner had died without heirs, was " *wrong* ".

2. The second decision of this Qadhi, based on the opposite argument, *i.e.*, that a third person, not joined as a party to the case, was the heir of the last owner, and therefore that the Bahai occupants had no claim, was " *unjust and undoubtedly actuated by religious prejudice* ".

3. The ejection of the Bahais while the case was still undecided and the transfer of the property to the Governor of Bagdad were the result of a personal order given by King Feisal. According to the Memorandum, " His Majesty's action was illegal." The reason for his action was the fear of a riot among the Shiahhs if the case went against them.

" He therefore deemed his action, though illegal, necessary in the interest of public security. . . . Danger undoubtedly existed, but it cannot be denied that His Majesty's action made things more difficult for the Bahais."

4. The instructions to the Governor of Bagdad given by the Council of Ministers, with the approval of His Majesty, not to give up the keys to the Bahai claimants after the judgment of the Peace Court had recognised their right to occupy the property were inspired by the same fears.

" But their [the Council of Ministers'] action, to which the High Commissioner took strong exception at the time by means of a written request to His Majesty the King, was *highly irregular*, and it is doubtful whether the emergency was grave enough to warrant it."

5. The final judgment of the Court of Appeal, taken against the formally expressed dissenting judgment of the British President of the Court, is pronounced by the mandatory Power to be *unsustainable and contrary to law*. The mandatory Power adds that *a strong suspicion must, however, remain that the majority judgment was not uninfluenced by political considerations*. The comments of the mandatory Power describe and examine the procedure followed, weigh the legal arguments submitted on both sides, and conclude as follows :

" That there has been injustice the British Government is compelled to recognise, in that property which has been for years in the possession of the Bahais, without its ownership being legally established, has passed into the ownership of persons who have no conceivable claim to it whatever."

The Commission will note this conclusion as evidence, while reserving its right, such being its mission, to give its opinion, in accordance with the letter and spirit of the Covenant, on a dispute the scope of which (as is already apparent) goes beyond that of an ordinary civil case.

What value should be assigned to the comments and conclusions of the mandatory Power reproduced above? Your Rapporteur is of opinion that their value is decisive.

It would appear to be obvious that, if the Mandatory, notwithstanding the possibility of undesirable repercussions, decides so unambiguously in favour of a minority which have no influence and against all the political, social and religious forces of the country, its action must be dictated by strong considerations in presence of which, no matter what may be the result, the conscience of a civilised Government cannot possibly compromise.

* * *

Two prior questions remain to be settled :

1. Does any lawful remedy lie open to the petitioners after the decree of the Bagdad Court of Appeal? No ; it is proved that this Court gave a final judgment and that this judgment cannot be quashed or revised by any higher Court.

2. The rule of the Permanent Mandates Commission has been to regard any petition the author of which appeals to the Commission from a decision given by a Court of Law as not being in order. This rule is based on the assumption that any duly constituted Court functioning in a mandated territory is free from suspicion of partiality, servility and sectarianism.

As this assumption is shown to be erroneous by the evidence of the mandatory Power itself, the general rule referred to above does not apply in the particular case before us. The petition is therefore receivable.

* * *

The three documents submitted to the Commission and the additional information furnished by the accredited representative of the mandatory Power allow of a first conclusion being drawn, *i.e.*, that the petitioners were dispossessed, in favour of third parties without rights, of property which had been in their possession for a number of years.

It is clear that the decisive cause of the wrong done to the petitioners is not to be found in a judicial error or an inaccurate interpretation of the facts or of local laws, but in the religious passions which rage in these parts and which have exerted their influence on the Bagdad Court of Appeal.

Do the facts constitute a clear violation of the freedom of worship and liberty of conscience? I would not go so far as to affirm this, seeing that the property which is the subject of the dispute was not consecrated for worship and that the petitioners were not molested in the exercise of their religion.

At the same time, I consider that the petitioners rightly invoked Article 22 of the Covenant for the purpose of submitting their case to the League of Nations as the "protector [to use their own expression] of the peoples in mandated territories". Of all the various moral and material interests placed by the Covenant under the protection of the League of Nations, none is more precious than the impartial administration of justice.

The revelations made in connection with this petition show the present position in Iraq in an unfavourable light. In a country where the conduct of the highest authorities has led the mandatory Power to pass such severe criticisms, where the supreme Court of Justice is under legitimate suspicion, and where religious fanaticism pursues minorities and controls power, a state of affairs prevails which is not calculated to ensure the development and well-being of the inhabitants.

The petitioners have suffered a serious denial of justice the direct responsibility for which rests on the authorities of Iraq.

The fact that this denial of justice could not be prevented or immediately made good was due to the weakening of the mandatory Power's control in Iraq. The Mandatory attempted, but in vain, to redress the injury done to the petitioners by using the means of influence at its disposal under the regime set up by the 1922 Treaty *vis-à-vis* King Feisal and the Iraq Government.

These efforts would not appear to correspond fully to the engagements resulting from the British Government's declaration, which was approved by the Council on September 27th, 1924, and renewed by the British Government in 1926, whereby the Treaty of Alliance between the British Government and Iraq "was to ensure the complete observance and execution in Iraq of the principles which the acceptance of the mandate was intended to secure".

* * *

I propose :

That the Commission should draw the Council's attention to the considerations and conclusions which were suggested to it by the examination of the petition from the National Spiritual Assembly of the Bahais of Iraq and the documents accompanying it ;

That the Commission should recommend that the Council request the British Government to call upon the Iraq Government to redress without delay the denial of justice which the petitioners have suffered.

ANNEX 14.

WESTERN SAMOA.

PETITION OF THE ANTI-SLAVERY AND ABORIGINES PROTECTION
SOCIETY, DATED LONDON JUNE 8TH, 1928.

C.P.M.822.

Report by Dr. Kastl.

The petition draws the attention of the Permanent Mandates Commission, with regard to the administration of the mandated territory of Western Samoa, to the fact that an official circular has been issued to the natives of Samoa by the Administration of the territory and that, in the opinion of the Committee of the Anti-Slavery and Aborigines Protection Society, the terms of this circular, if the text is authentic, more particularly those of Article 21, are inaccurate and misleading, and, if upheld by the Council of the League of Nations, would deprive the natives in the mandated territories of a recognised right.

The petitioners ask the Commission to endeavour to see that steps are taken to make it clear, in a form which may be understood by the people of Samoa, that the right to petition the

The Commission notes the statement of the Administrator that the Colour-Bar Act of the Union of South Africa is applied in South-West Africa in so far as employment under the Administration and in the railways is concerned. The Commission considers that this Act, the effect of which is to limit the occupations open to native and coloured workers and thus place them at a disadvantage with white workers in the area under mandate, is based upon considerations which are not compatible with the principles laid down in the mandate (page 106).

5. *Liberty of Conscience.*

In the report on its ninth session the Commission expressed some doubt as to whether the practice of requiring the mission operating in Ovamboland to give a written undertaking ; (a) to assist and support the policy of the Administration, and (b) to encourage all natives under their influence to seek employment in South-West Africa, was in conformity with the spirit and letter of Article 5 of the Mandate. The Commission was glad to note from the statements of the Accredited Representative that these conditions are no longer in force (pages 107-108).

6. *Education.*

The Commission hopes that the Administration will continue to increase its efforts to develop the system of native education and that it will consider the question whether a larger financial support could not be given to the educational work of the missions (pages 108-109).

7. *Public Health.*

The Commission appreciates greatly the full information given in the report concerning the health conditions and medical work of the Administration. It hopes that the mandatory Power will continue to give its attention to possible improvements in this respect, especially by way of larger grants in support of the medical work of the missions, in the territories outside the police zone (page 110).

8. *Land Tenure.*

The Commission hopes to find in the next report a more complete account of the measures taken in regard to the settlement of the " Angola Boers " in the territory. It will follow with interest the results of this experiment (pages 93-95).

9. *Railways and Harbours.*

The Commission heard with considerable interest the detailed information given by the Accredited Representative as regards the legal and financial status of the railways and harbours of the territory — a question to which the Commission has had occasion to refer repeatedly in previous years — and also concerning their working and economic importance.

The Commission hopes that the mandatory Power will now find it possible to amend the South-West Africa Railways and Harbours Act (No. 20) of 1922, in order to bring the legal regime of the railways and harbours into conformity with the principles of the mandate and the Treaty of Versailles and the decision adopted by the Council of the League of Nations on June 9th, 1926. On the other hand, it trusts that future annual reports will always contain a special statement concerning the working of the railways in South-West Africa and its financial results (pages 71-79, 115).

OBSERVATIONS ON PETITIONS.

The Commission, in the course of its fourteenth session, considered the petitions mentioned below, together with such relevant observations or information as were furnished in writing by the mandatory Powers or, orally, by their Accredited Representatives. The petitions were reported on in writing, or orally, by a member of the Commission. After discussion, the conclusions of the reports, which are reproduced as annexes to the Minutes, were adopted by the Commission. ¹

1. Iraq.

(a) *Letter, dated January 3rd, 1928, from Mr. B. S. Nicolas* (document C.P.M. 689).

Observations from the British Government, dated July 26th, 1928 (document C.P.M. 768). Report (see Minutes, Annex 7).

CONCLUSIONS.

The documents in the possession of the Permanent Mandates Commission show that Mr. B. S. Nicolas was not born in Iraq and that, on August 6th, 1924, he did not have his habitual residence there.

¹ As regards those petitions and observations of the mandatory Powers relating thereto, which the Commission has not considered necessary to annex to its Minutes, it recommends that copies should be kept in the League Library at the disposal of persons who may wish to consult them.

In these circumstances, the mandatory Power and the Government of Iraq did not consider that the provisions of Article 30 of the Treaty of Lausanne and Article 3 of the Nationality Law of Iraq were applicable to his case.

In taking this view the mandatory Power and the Government of Iraq did not infringe any of the provisions of the mandate, and the claim of Mr. B. S. Nicolas against the mandatory Power appears to be unfounded.

The Permanent Mandates Commission, not being responsible for settling individual questions of nationality, considers that it is not its duty to ascertain whether, in view of the fact that Mr. B. S. Nicolas was born at Jelu, he has or has not remained a Turkish subject, or whether he can or cannot acquire Iraq nationality by applying to the Government of Iraq for naturalisation.

(b) *Petition, dated September 11th, 1928, of the Bahai Spiritual Assembly of Bagdad* (document C.P.M.784).

Observations of the British Government, transmitted on October 17th, 1928 (document C.P.M.784).

Report (see Minutes, Annex 13).

CONCLUSIONS.

The Commission draws the Council's attention to the considerations and conclusions suggested to it by an examination of the petition of the Bahai Spiritual Assembly of Bagdad and of the documents accompanying it.

It recommends that the Council should ask the British Government to make representations to the Iraq Government with a view to the immediate redress of the denial of justice from which the petitioners have suffered.

Moreover, the Commission proposes to the Council that the petitioners be answered in the following terms :

“ The Permanent Mandates Commission, recognising the justice of the complaint made by the Bahai Spiritual Assembly of Bagdad, has recommended to the Council of the League such action as it thinks proper to redress the wrong suffered by the petitioners. ”

2. Palestine.

(a) *Telegram from the Arab Congress of Palestine dated June 20th, 1928* (see Minutes, Annex 9A).

Observations from the British Government, dated July 24th, 1928 (see Minutes, Annex 9B).

Report (see Minutes, Annex 9C).

CONCLUSIONS.

The Commission feel bound to state that, as responsible for supervising the enforcement of the principles and rules of the Covenant and the mandates, it is not called upon to recommend any particular form of government in the mandated territories. It is for the mandatory Power alone to determine the regime applicable within the terms of Article 22 of the Covenant.

(b) *Petitions relating to the incident which occurred at Jerusalem, on September 24th, 1928, at the Wailing Wall; from the Zionist Organisation and from the Chief Rabbis Kook and Meir* (see Minutes, Annex 11 A).

Observations from the British Government, dated October 29th, 1928 (see Minutes, Annex 11B).

Report (see Minutes, Annex 11C).

CONCLUSIONS.

The Commission, having heard the Rapporteur's statement, adopts the following conclusions :

The Permanent Mandates Commission, while regretting the incidents that have taken place, has noted with great satisfaction that the Palestine Government has already approached both parties with a view to facilitating an agreement. It hopes that the mandatory Power will thus succeed in allaying public feeling and that neither party will, through unreasonable demands or intolerant refusals, assume the responsibility of provoking public disturbances.

3. Syria and the Lebanon.

Petitions, dated March 8th and June 4th, 1928, from the Emir, Chékib Arslan and M. Riad El Souh (documents C.P.M. 702 and 748).

Observations from the French Government, dated October 19th, 1928 (document C.P.M. 794)

Report (see Minutes, Annex 8).

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