

LEAGUE OF NATIONS

PERMANENT MANDATES COMMISSION

MINUTES
OF THE
FIFTEENTH SESSION

Held at Geneva from July 1st to 19th,
1929.

including the
REPORT OF THE COMMISSION TO THE COUNCIL

and

Comments by Various Accredited
Representatives
of the Mandatory Powers.

Palestine.1/

Political.

As regards the general political situation, I can repeat, in general terms, what my predecessors have stated before me. You are all aware of the Arab-Jew controversy, which has played so prominent a part in the politics of Palestine. I think I can say that the relations between the two communities continue to improve. There has been little open friction between them. The one exception to this general statement is the Wailing Wall case. Apart from the controversy as to the Wailing Wall, my general statement as to the improvement in the relations of the two races holds good.

This does not, of course, mean that there is no room for further improvement, or that anything in the nature of a final solution has yet been reached in the relations of the Jews and Arabs. Since I assumed office as High Commissioner last autumn, it has been made clear to me that the Arab population still resents the Balfour Declaration and is hostile to the policy of setting up a national home for the Jews in Palestine. Their hostility is perhaps less marked than it was, but it is still there. The apprehensions of the Arabs that their country would come under the domination of the Jews are abating and the more intelligent of them are realising the advantage accruing to all sections of the population from the influx of Jewish capital and industry.

A further phase of Arab opinion that has come to my notice relates to the constitutional position. You are familiar in general terms with what that position is. No progress has been made in the direction of creating a central legislative body or of representative institutions for the country as a whole. I need not go into past history of this question. As you are aware, the mandatory Power is not to blame for the failure to take action in this matter. Prior to November 1923, three successive proposals were put forward by the mandatory Government with a view to the closer association of the Arab community with the Administration of Palestine. Towards all these proposals the Arabs adopted the same attitude, namely, refusal to cooperate in measures which they considered did not satisfy their aspirations. The mandatory Government was accordingly driven reluctantly to the conclusion that further efforts on similar lines would be useless, and consequently decided not to repeat the attempt.

That is the position to-day; but there have been recent indications of a change of attitude on the part of the Arab community. Several deputations of Arab bodies have already waited upon me to protest against the present constitutional position and to ask for the constitution of a representative character in order that they may have a share in the Government of the country. The grant of constitutions to Trans-Jordan and Iraq is constantly urged as an argument in favour of the grant of a similar privilege to the people of Palestine.

In replying to these representatives, I explained in

general terms the various considerations that prevented the grant to Palestine of democratic institutions under which the people would be free to govern the country in their interests and as they thought fit.

These considerations are: (1) The international obligations imposed upon the mandatory Power by the League of Nations and (2) The importance of Palestine to hundreds of millions of people throughout the world as the home and birthplace of three great religions.

In these circumstances, the reservation of powers to the Mandatory is essential in order that he should not be prevented or hampered in discharging the obligations that devolve upon him. That is the general line that I have taken upon the subject in replying to deputations, and I informed them that I intended to discuss the question with the Secretary of State when on leave in England this summer. I am now in correspondence with the British Government in regard to the whole question, which I need not assure you will be examined with the utmost care and with the single desire to do what is best for the mandated State.

Economic.

I do not know that I can add much under this head to what has been stated by my predecessors. You are aware that Palestine, like other countries, has passed through a period of acute depression. But it may be fairly claimed that the tide has now turned. The financial position of the country is better than it has been for several years past. Unemployment, once a serious menace, has greatly diminished. Agriculture and industry have revived, or are reviving. In particular, there has been a great extension of the area of the orange plantations, which may be described as the staple industry of the country.

Work has actually been started upon the great project of constructing a harbour at Haifa, which should do much in the future to promote the commerce and prosperity of the country. Past experience makes me hesitate to adopt too optimistic a tone, but I do believe that the worst of the economic difficulties are over, that confidence in the future of the country is established, and that an era of substantial progress may be anticipated.

Economic development must depend, in the first instance, upon public security. On that point I can report that the situation is satisfactory. There has been no serious breach of the peace since I became High Commissioner, and I consider that the resources at the disposal of the Government are sufficient to deal with any situation that is likely to arise.

You will perhaps allow me to deal with one or two subjects in rather more detail. I will say a word in the first place about the development of the Jewish national home. This, as is obvious, is largely dependent upon Jewish immigration and upon the financial support of the movement by Jews in all parts of the world. The economic crisis of two years ago brought immigration practically to a standstill. For some months the number of Jews who left the country was actually greater than those who entered it. In this respect the tide has now definitely turned. Since the beginning of the present year there has been an average monthly balance in favour of immigrants of about 200, and the Government has been able to issue a substantial number of immigration licences for the current half year. The Hebrew University at Jerusalem continues to make progress and affords a conspicuous centre of Hebrew culture in the country. The Hebrew language holds its own as a living medium of speech.

Public Health. -- Marked progress has been made in the control of malaria and ophthalmia. The success of the anti-malarial campaign may fairly be pointed to as a striking example of the benefit that Palestine has gained from the mandatory regime. Whole areas have been freed of the scourge. The campaign proceeds steadily and I look forward to a time when, as regards the greater part of the country at any rate, malaria will be unknown. Its conquest is a blessing that can hardly be over-estimated.

Education. -- This is a subject which has engaged my very close attention ever since I assumed office. The difficulties of establishing a uniform system of education in Palestine are insuperable. The Jews insist upon maintaining separate schools for Jewish children; so do numerous religious and missionary bodies. The Government, even supposing that it desired to do so (which, of course, it does not) could not interfere with the activities of these various communities nor can it exercise over them controlling authority. At the same time, it is desirable

that the Government should at least be able to co-ordinate information with regard to the different educational institutions and that it should be in a position, as required by Article 15 of the Mandate, to impose such educational requirements of a general nature as it may deem necessary. A draft Ordinance designed to secure this object has been framed after careful consideration and anxious efforts have been made to meet the views of the various religious communities concerned. It is hoped that this draft Ordinance, when it passes into law, will mark a definite stage in the progress of education in Palestine.

The subject of higher education has also been much in my mind. I cannot say that any definite decision has yet been reached on this important matter, but the whole question is under close examination and it is my hope that I shall be able before long to make concrete recommendations to the mandatory Government on the subject. I should like, however, to utter a word of warning at this point. The creation of facilities for higher education is beyond the financial means of the Palestine Government. If anything is to be done, it can only be as the result of a successful public appeal for funds.

Trans-Jordan.

The report mentions the conclusion of an Agreement last year between the British Government and the Amir, and also the enactment, two months later, of the Organic Law of the country. The Agreement could not be ratified until it had been approved by the Legislative Council to be established under the Organic Law. This necessarily meant some delay; but the Legislative Council was duly elected and proceeded to consider the Agreement. The Legislative Council approved the Agreement a few weeks ago, and the way is now clear for its ratification.

Generally speaking, I can report favourably upon the administrative and other progress made in Trans-Jordan. Public security on the frontiers of the country still leaves something to be desired, and on the southern frontier, in particular, various raids have occurred between the nomad tribes on either side. Such incidents are almost inevitable on an ill-defined desert frontier, but the whole question is being examined most carefully and every effort will be made to prevent the recurrence of

trouble. Internally, public security in Trans-Jordan has been unbroken.

The constitutional regime recently introduced must be regarded as in the nature of an experiment. The new regime will no doubt have difficulties to face and obstacles to overcome. That is inevitable and is no more than falls to the lot of every young State wherever situated. Only gradually can the new system become efficient and acquire the momentum attained by older constitutions elsewhere. Patience will certainly be required, but, given patience and goodwill, I do not see why the experiment should not prove a success.

Form of the Annual Report: Replies to Observations of the Commission.

The CHAIRMAN thanked the accredited representative for the statement he had just made, the more so as he had thereby filled a gap which the Chairman had noticed in the annual report, the general introduction to which seemed to him to be a little brief and dry. He wondered whether it would not be possible to extend somewhat the introductory section so as to afford a more graphic picture of the principal events that had occurred during the year.

Further, while the mandatory Power had endeavoured to indicate in the report the replies to the various questions put by the Commission in its observations on Palestine in the previous year, the Commission would find it useful if some indication of the replies -- for instance, a list of the pages in the report on which the information might be found would suffice -- could be given under separate cover or in a separate chapter in the report. It was important for the Commission to be able to ascertain without difficulty the action taken by the mandatory Power upon the observations which had been approved by the Council.

Sir John CHANCELLOR agreed that the report might be improved in the matter of editing. The imperfect form in which it had been drafted in the present year was due to pressure of other work consequent, in part, upon his recent arrival in the territory. He would make every endeavour to see that the editing of the report was improved in the following year, and he had indeed already given instructions to that effect.

Relations between the Jews and the Arabs.

M. PALACIOS said that, in his opening statement, the accredited representative had mentioned many points of great interest which were not indicated in the report. He had, in particular, given information concerning the currents of public opinion and political movements in the mandated territory. He had stated that while the relations between the Jews and the Arabs remained on the whole unsatisfactory, some progress had nevertheless been made. Further, the accredited representative had said he had received deputations who had come to ask for more direct representation in the political life of Palestine. Could the accredited representative say what was the power of the opposition? Did the Arab Congress still meet, and did it still stir up agitation?

Sir John CHANCELLOR said that the Arab Congress still met, and he had received two deputations from the Congress, the second of them only a month previously, which had made a strong appeal for representation in the Government of the country, and for the institution of some form of representative government. They had instanced the institution of representative government in Trans-Jordan and Iraq, the population of which were, they alleged, far less advanced than that of Palestine, which had enjoyed a certain measure of representative government under the old Turkish regime. He had said in his opening statement that the relations between the Jews and the Arabs were improving.

M. PALACIOS said that he understood that part of the Arab population had shown readiness to co-operate in the Government of the country. Did that mean that the situation was improving as a whole, or was the opposition still strong or becoming stronger?

Sir John CHANCELLOR reminded M. Palacios that in his opening statement he had said that the position was improving and that the Arabs were showing willingness to co-operate on such terms as the mandatory Power was able to offer them. He had told the Arab deputations that the establishment of democratic institutions in Palestine must depend upon the terms of the mandate and, further, that as Palestine was the home of three great religions, the adherents of those religions in all parts of the world felt

that they had an interest in the country. There were therefore certain obstacles to the introduction of complete democracy in the mandated territory.

Self-Government.

M. PALACIOS congratulated the accredited representative not only on his interesting statement but for his great cordiality and frankness. When speaking of the self-governing institutions, he had removed a misunderstanding which had often been noted in the reports and which occurred once more in the 1928 report. Thus, on pages 114 and 115 of the report, the replies given to Questions I, 2, and II tended to be the same. The mandate, however, distinguished between self-government, to which reference was made in Article 2, and local autonomy, mentioned in Article 3. The High Commissioner had always taken this distinction into account, using the term self-government in connection with the highest representative institutions of the State.

Sir John CHANCELLOR said that he had taken certain action in connection with the development of local self-governing institutions.

M. PALACIOS suggested that the accredited representative's information on this point should be given when the Commission came to consider the question of the autonomous municipalities.

TENTH MEETING.

Held on Friday, July 5th, 1929, at 4 p.m.

Chairman: Marquis THEODOLI.

1003. Palestine and Trans-Jordan: Agreement between Great Britain and the Amir of Trans-Jordan : Attitude of the Commission.

The CHAIRMAN recalled that, at the second meeting, he had asked the Commission if it wished to take up again the examination of the Treaty between Great Britain and the Amir of Trans-Jordan. He asked the question because the

Commission, even if it did not deal with the matter on its own account when examining the annual report, would be called upon to consider a certain number of problems connected with it which were raised in a petition from certain inhabitants of Kerak, a petition for which M. Orts was Rapporteur. For that reason, the Commission should agree on the attitude which it should take in the matter in order that the views expressed during the discussion on the annual report should not differ from those expressed during the discussion of the petition.

M. ORTS said that the petition referred to three different points. In the first place, the petitioners criticised the facts which had led to the establishment of the British mandate over Trans-Jordan, and, finally, to the conclusion of the Treaty with Great Britain. This part of the petition was now of no interest and need not be considered. In the second place, the petitioners complained of the administration in force up to the date of the Treaty. In regard to this matter, M. Orts proposed to put a number of questions to the accredited representative the replies to which would complete the written observations of the mandatory Power. In the third place, the petitioners attacked a number of clauses in the Treaty concluded with the Amir Abdullah. What they desired in fact was independence, and they considered that they should only accept the assistance of the mandatory Power in so far as they themselves considered it necessary to do so.

M. Orts did not think that the examination of the Agreement concluded on February 20th 1928 between Great Britain and the Amir Abdullah was any longer within the competence of the Commission, for it had been duly submitted to the Council of the League, which had expressed the view that it was in conformity with the terms of the mandate. Further, the Commission had been informed by the accredited representative that the Treaty had recently been approved by the Legislative Council of Trans-Jordan. That being so, the Treaty could be and should be regarded as final.

M. RAPPARD recalled that the Commission had expressed a discreet opinion in regard to the terms of the Treaty when it was being drafted about a year previously. The Council had not asked the views of the Commission in regard to it.

M. CATASTINI recalled that the Treaty had been forwarded at

the same time as the annual report of the mandatory Power for 1927, and that the Permanent Mandates Commission, during its thirteenth session, had made some criticisms regarding the Treaty which it had inserted in its report to the Council. When the matter had come before the Council, Lord Cushendun had made a declaration in answer to the anxiety expressed by the Permanent Mandates Commission.

M. ORTS quoted the end of the declaration of Lord Cushendun:

"There should be no doubt at all in the minds of the members of the Council that my Government regards itself as responsible to the Council for the proper application in Trans-Jordan of all the provisions of the Palestine mandate, except those which have been excluded under Article 25."

M. CATASTINI remarked that the mandatory Power had circulated to the members of the Commission a collection of the administrative acts completing the Treaty and in force in Trans-Jordan, and which constituted together a complete administrative system.

M. ORTS repeated that, in his view, the Commission was not now called upon to express an opinion regarding the terms of the Treaty. If any abuses arose in its application, the Commission would have full powers to discuss them. At the moment, however, there was no complaint in regard to the fulfilment of the Treaty, the petitioners confining themselves to protesting against the principles embodied in the Treaty.

The views of M. Orts were adopted by the Commission.

1004. Palestine and Trans-Jordan: The Dead-Sea Concession and the Harbour Works at Haifa.

The CHAIRMAN reminded the Commission that, by the terms of Article 18 of the Mandate, all the Members of the League were on a footing of economic equality. In respect of the Dead-Sea Concession, as far as he knew, this article of the mandate had been ignored and, in his view, the mandatory Power was showing a similar tendency in regard to the public works on the harbour of Haifa. He would remind his colleagues that he had raised the question at the previous session, and that the accredited representative had returned an evasive reply.

Should he press the point now as Chairman of the Commission or merely as one of its members?

M. ORTS quoted Article 11 of the Mandate, whereby the Mandatory Power "shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein".

M. KASTL agreed with the Chairman. In his view, the mandatory Power was wrong in using the Crown Agents only, for these naturally had recourse exclusively to British firms.

Public works in the territory and any concessions ought to be open to international public tender. In the case of the Dead Sea, a certain Mr. Tulloch had applied for the concession. As far as he could find out, Mr. Tulloch had formerly been an officer of the Palestine Administration, and had been asked by the Administration to investigate the possibilities of profit to be derived from the Dead Sea. He had later resigned and now was applying for the concession.

M. RAPPARD pointed out that Articles 11 and 18 of the Mandate might give rise to different interpretations. In his view, all that the Commission could do would be to draw attention to the action of the mandatory Power, and thus afford any Member of the Council an opportunity to demand an official interpretation of the terms of the mandate from the Permanent Court of International Justice, if it felt the need to do so.

M. VAN REES agreed with M. Rappard on condition that the Commission did not express any opinion regarding the two points raised by the Chairman. It should be pointed out that

the clause relating to concessions included in the B mandates and in the mandate for Syria and the Lebanon had been omitted from the Palestine mandate. This omission had not been accidental but, on the contrary, intentional, as could be seen from the official documents reproduced in a publication of the State Department at Washington issued in 1927.² In the matter of concessions, therefore, the mandatory Power was free to act as it wished in Palestine.

As regards public works, these also escaped the application of the principle of economic equality by the terms of

Article 11 of the Palestine Mandate already mentioned by M. Orts, and also in view of the fact that the working of the public services and the execution of public works were essentially matters for the Government and not economic in character.

M. PALACIOS agreed with M. Rappard and, as far as the substance of the question was concerned, with the Chairman. What M. Van Rees had said was correct if the administrative part of the mandate were interpreted literally.

M. KASTL did not think that a merely legal interpretation of the meaning of Articles 11 and 18 of the Mandate was sufficient. In his view, the Commission was perfectly competent to interpret those articles itself. If the clauses for economic equality were not interpreted in the broadest sense, they would be of no value.

M. MERLIN drew the attention of the Commission to the character of the Chairman's question. It was one of procedure and not of substance. Wishing to remind the mandatory Power, in the person of its accredited representative, of the provisions of Article 18 of the Palestine Mandate, the Chairman had asked the Commission whether he should offer his observations in his capacity as Chairman of the Commission or in his own name.

There was no question, therefore, for the moment of settling the matter of the application of the clauses of the mandates relating to economic equality. This was a subject on which the members of the Commission had already had an exchange of views on several occasions and to which it would revert, since it remained upon the agenda. It was a subject on which all the members of the Commission had not yet reached agreement and on which, indeed, agreement should not be reached without adequate examination and discussion. Under these circumstances, M. Merlin thought that it would be difficult for the Chairman to speak on behalf of a Commission which had not finally determined its guiding principles.

M. Merlin added that he wished to warn the Commission against any excessive extension of the principle of economic equality in the mandated territories. The term "economic equality" was a well-known one and was in common use in respect of Customs tariffs or regulations, whether maritime or commercial. It had already appeared in the

Berlin and Brussels Acts, and it was in its original spirit that it had been included in the various mandates, when these instruments had been drawn up in 1919 in the course of the Peace Conference. It had appeared in the 1898 Agreements between France and Great Britain relating to their respective possessions in the Bight of Benin. The term would be greatly abused if it were to be allowed so to degenerate as to mean an international system, such as the one established at Tangiers by the Act of Algeciras.

For his own part, M. Merlin thought that the Commission should maintain M. Van Rees' views as set forth in his masterly work on international mandates.

He could not support the procedure suggested by M. Rappard. If a Member State of the League thought that the application by one of the mandatory Powers, in any particular circumstances, of the clauses of the Covenant or of the mandate relating to economic equality was prejudicial to its interests, it was for that State, either to inform the Permanent Mandates Commission of this by means of a petition, or to request an interpretation from The Hague Court.

It was not for the Permanent Mandates Commission to apprise the Court of the question, when it had not itself received a complaint from either of the parties concerned. Its intentions in doing so might be misunderstood, or its action might be regarded as being at any rate inopportune. He could not but believe that the Commission's prestige depended not only upon the stability of its views but also upon the prudence of its actions.

Under these circumstances, and also considering the fact that certain members of the Commission had not yet reached a common point of view, M. Merlin thought that if the Chairman wished to question the accredited representative on the subject under discussion he could only do so in his own name.

M. RAPPARD thought that the Commission should do no more than draw the Council's attention to the decisions of the mandatory Power in regard to the Dead-Sea Concession and the public works at Haifa, and at the same time inform the Council that it had discussed the matter. By the terms of Article 26 of the Mandate, any State Member of the League could submit any dispute concerning the interpretation or

application of the provisions of the mandate to the Permanent Court of International Justice. It was not for the Commission to take the place of the Court, but it could recall to the States Members of the League the possibility of recourse to the Court.

He could not agree with the views of M. Merlin regarding economic equality. The clauses stipulating that such equality should be granted were based on the terms of the Covenant, and had been inserted so as to make it quite clear that the mandatory Powers were trustees and should derive no exclusive profit from that position.

The CHAIRMAN, in summing up the discussion, noted that the members were not unanimous, and proposed, therefore, to raise the matter, not as Chairman of the Commission, but as one of its members.

1005. Palestine and Trans-Jordan: Petitions from the Agudath Israel (Jerusalem) dated January 4th, 1928, and the Askenasic Community dated April 29th, 1928.

M. PALACIOS, Rapporteur, said that these petitions contained a complaint against a religious Ordinance issued by the mandatory Power. The petitioners had twice asked the Commission to postpone its discussion and decision until it had received a supplementary petition. This had never been forthcoming. He would propose that the Commission should adjourn the examination of the petition *sine die* until the additional information arrived. There was one point, however, about which he was in doubt. As two parties were concerned in the petition, namely, the petitioners and the mandatory Power, the matter might call for a resolution on the part of the Mandates Commission. In any case, however, the petition had the character of an administrative or civil case, and there was nothing objectionable in it from the point of view of the Mandatory. The Commission might ask the latter if it wished an immediate reply. M. Palacios did not think so. The report even referred to new arrangements which were contemplated for the Jewish communities. He was therefore inclined to suggest an adjournment.

The *Commission* decided to adjourn its consideration of the petition until the further observations from the

petitioners had been received.

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1008. Palestine and Trans-Jordan: Examination of the Annual Report for 1928 (*continuation*).

Sir John Chancellor and Mr. Clauson came to the table of the Commission.

Enlargement of the Jewish Agency and its Relations with the Administration.

M. PALACIOS, referring to the passage on page 6 of the report indicating that negotiations had been proceeding between Zionists and non-Zionists with a view to establishing an enlarged Jewish Agency, asked whether this sentence was to be taken to mean that the enlarged Jewish Agency would represent Zionists and non-Zionists in equal proportions, and whether in that case the Zionist Organisation would not be the only organisation contemplated under Article 4 of the Mandate.

Sir John CHANCELLOR replied that the proposal had been approved by the Zionist Organisation, and there was ground for hoping that it would be confirmed by the Jewish Congress to be held in Zurich in July. The object was to secure the co-operation of the non-Zionists, especially in America, by broadening the basis of the Agency so that it would consist of Zionists and non-Zionists in equal numbers. In this way it was hoped to obtain the co-operation of all Jews throughout the world, whether Zionists or non-Zionists, irrespective of the opinions held with regard to the political aspects of the National Home.

Lord LUGARD asked what was the specific point of difference between the Zionists and non-Zionists, since the latter were now willing to form part of the Jewish Agency in promoting the Jewish National Home.

Sir John CHANCELLOR said that some of the non-Zionists were not satisfied with the ability of the Zionists from the administrative and economic point of view. It would be recalled that two years ago an economic Mission had been sent out to Palestine by Lord Melchett and other Jews associated with him to enquire into the position of the Zionist agricultural colonies. The report of that Mission

had, he believed, been before the Mandates Commission. The Mission had criticised adversely the economic position of some of the agricultural colonies, on the ground that they were not self-supporting and were only able to continue to exist through the subsidies granted to them by the Zionist Organisation. The Mission had thought that, while these grants-in-aid were essential for new colonies for a certain number of years, it was desirable that they should come to an end after a certain period, and that when settlers had received all the assistance necessary to establish themselves and to equip their farms, they should be required to subsist on their own resources.

The idea of the proposal now under consideration was to strengthen the Executive in Palestine by the addition to it of men with wide administrative and business experience.

Lord LUGARD understood from this explanation that the differences were purely economic.

Sir John CHANCELLOR replied in the negative. He believed that many American Jews did not approve of the political objects of the Zionist Organisation, but were anxious to assist the members of their race who were living in countries where they were oppressed and to help them to establish themselves in Palestine.

M. VAN REES observed that Article 4 of the Mandate read as follows:

"An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish National Home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country."

The annual report for 1923 (page 6) stated that a Committee nominated by the Zionist Organisation had been established in Palestine, and was officially recognised as an advisory body to give advice to and co-operate with the Government on all matters which might concern the establishment of the Jewish National Home. From the terms of the mandate, it followed that the Jewish Agency did not form an integral part of the Administration. Nevertheless, it was a sort of

advisory body, without executive powers, but serving as one of the wheels of the Administration. It would, he thought, be interesting to know whether the Agency was considered as such. If so, it would seem that, if it were to work properly, the relations between it and the Government and the obligations of both should be established by some form of regulations. Did such regulations exist? There was no trace of them in any of the reports. The only mention of the Agency's activity given in the annual reports was that indicated in the replies to Question 3 of the Questionnaire, where it was regularly stated that the Agency had made such-and-such proposals to the Administration and that those proposals had been taken into consideration or not.

M. Van Rees therefore wished to ask whether, in practice, the Jewish Agency was consulted by the Administration on all matters appertaining to the establishment and development of the National Home, or whether, as a general rule, measures of the kind were taken by the Administration without consulting the Agency.

Sir John CHANCELLOR pointed out that the Jewish Agency had been established and its relations with the Administration defined under the second paragraph of Article 4 of the Mandate, which read:

"The Zionist Organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency (the Jewish Agency). It shall take steps, in consultation with His Britannic Majesty's Government, to secure the co-operation of all Jews who are willing to assist in the establishment of the Jewish National Home."

The Jewish Agency's functions were described in the previous paragraph already quoted by M. Van Rees. While there were no periodical consultations between the Administration and the Palestine Zionist Executive Committee (*i.e.*, the local agency of the Zionist Organisation), the High Commissioner himself frequently discussed with the Executive Committee questions affecting the Jewish population. The Executive Committee sometimes took the initiative in approaching the High Commissioner, as it had done, for instance, in regard to labour questions and the Haifa harbour works. On other occasions, the initiative came from the Government. It was impossible to generalise.

He would point out that the Palestine Zionist Executive was in no sense part of the Administration of the territory, and it had been observed in the White Paper of 1922, which laid down the policy of His Majesty's Government in Palestine, that the Zionist Organisation did not possess and did not desire to possess any share in the administration of the country. The position was that its advice might be given and sought on questions affecting the Jewish population.

M. VAN REES feared that he had failed to express himself clearly. He had not meant to ask whether the Zionist Executive Committee took part in the administration of the territory. He had observed that it constituted an advisory body, which was officially recognised by the mandate and, in fact, by the mandatory Power. He therefore thought that he had been right in saying that, without forming part of the Administration, it constituted an organ that was at the disposal of the Administration, and was, in fact, a sort of advisory body. The point which he had wished to know was whether the Administration invariably waited for proposals to be made by the Agency, or whether it took the initiative in consulting that organisation before taking certain measures which might affect the interests of the Jewish population. In short, he would like to know what was the usual practice in these matters.

Sir John CHANCELLOR replied that he had already said that on some occasions the Administration took the initiative in consulting the Executive Committee, while on other occasions the initiative was taken by the Executive Committee itself.

Municipal Government.

M. PALACIOS said that the time had come to hear what the High Commissioner had to say regarding the local autonomies. The Arab Press, of which clippings were sent to the members of the Commission by the Secretariat, complained that the municipalities had no independence. Some newspapers, rightly or wrongly, complained rather loudly. It appeared that a member of the British Parliament had also mentioned the matter in the House of Commons.

Sir John CHANCELLOR said that he had been devoting much attention to this problem. The municipalities were

constituted on an elective basis. He had found that the municipalities were not satisfied with their present position. They had formerly derived a considerable part of their revenue from "octroi" duties, a system which had been found inconvenient. The octroi had accordingly been exchanged for a 1-per-cent duty on imported goods, but this second system too had been found inconvenient and had been abolished. The municipalities were now given a lump sum grant-in-aid by the Government. They were not, however, satisfied with this system, since the amount of the grant-in-aid varied and they considered it to be contrary to their dignity to be dependent upon the goodwill and charity of the Government.

Some months ago, the High Commissioner had therefore assembled a conference to discuss the whole question of local government. A number of meetings had been held, and a new Ordinance had been drafted. The draft Ordinance would shortly be printed and discussed with the local authorities. Three weeks ago, Sir John Chancellor had summoned all the mayors to meet him and had explained the position to them. He had stated that, as soon as the Bill had been printed, he intended to circulate it to the municipalities for their comments, and to discuss any proposals and amendments suggested by them before the Bill was examined by the Legislative Council.

Jewish National Development.

M. ORTS wished to ask a question which would enable the accredited representative to complete the general statement he had made when he first came to the table of the Commission. Jews came to Palestine -- which would henceforth offer them a national home -- from all parts of the world, and principally from Eastern Europe, where they had had no political rights and had sometimes only quite recently acquired civil rights. The Jewish immigrants therefore represented a great diversity of political training. He would like to know whether this Jewish nation, now in course of re-formation, tended to coalesce? Did it reveal signs of some moral unity, which was an essential condition if it was to become a nation? Did those Jews, who had never had any political experience, show a political sense which made it possible to hope that they would be able to direct their own affairs?

Sir John CHANCELLOR said that it was true that the Jewish

immigrants came from all parts of the world, and that there was a certain antagonism between the different sections of the Jewish population. The Agudath Jews, for instance, were strongly religious and attached great importance to ritual and to the observance of the letter of the law. The Jews brought up in Eastern Europe, on the other hand, were much less strict in their religious observances. The Agudath Jews were therefore out of sympathy with them, and had refused to join the Jewish community now being set up under the law. They had asked the High Commissioner to allow them to be formed into a separate community. Apart from that, unity in the political sense was developing in a very conspicuous manner among the Jews settled on the farms. The interest of the Jews in politics might be termed excessive.

He added that the younger generation on the farms showed a striking improvement in physique and health as compared with their parents. Both young men and young women worked enthusiastically on the farms.

M. ORTS said that he had had in mind political qualities, namely, a sense of responsibility, respect for the rights of minorities, and, above all, a sense of realities.

Sir John CHANCELLOR replied that the Jews in Palestine had had no opportunity of showing their strength or weakness in regard to the treatment of minorities, since the responsibility of government in that respect rested entirely on the shoulders of the High Commissioner.

Administration of Tel Aviv.

M. RAPPARD observed that there was a large measure of local self-government allowed in the case of the administration of Tel Aviv. Did the members of the municipal council of that city show a certain sense of political responsibility?

Sir John CHANCELLOR replied in the affirmative. Some time previously, the Town Council had fallen into financial difficulties, and the Administration had had to amend the law with a view to controlling its activities. The Council had consisted of forty members, a number which had been found unwieldy. It had been reduced under the new law to something like twelve or fifteen members. At the recent elections, a more moderate body of Councillors had been elected, and the finances of the town were now being placed on a better basis.

M. PALACIOS observed that Tel Aviv was quite exceptional.

Sir John CHANCELLOR agreed that Tel Aviv formed a unique unit. It was not, however, a municipality in the strict sense of the term, since it was originally a quarter of the town of Jaffa, but its individuality was so peculiar that the Government had taken advantage of a clause in the law which allowed of the establishment of local councils for certain quarters or wards of towns and communities. Although, therefore, the town had no municipality, the local Council had considerable powers and had taken advantage of them to introduce a special system of proportional representation of a most advanced character.

Immigration.

M. VAN REES handed the accredited representative a paper, giving information concerning difficulties experienced by Jewish immigrants from the Yemen, and asked whether the information deserved attention.

Sir John CHANCELLOR replied that he had no knowledge of the complaint in question. The Government had issued a considerable number of immigration certificates in the course of the year. Applications from persons desirous of coming to Palestine were sent to the Immigration Office in Jerusalem, which considered them on their merits.

Land Tenure.

M. VAN REES enquired whether the new regulations regarding the Baisan Lands had been inspired by Article 6 of the Mandate. He understood that a certain part of the lands conceded to the Arabs in that area could be transferred by them to other persons who could then cultivate them.

Sir John CHANCELLOR said that the settlement had been effected before his arrival in Palestine and he was therefore unable to say whether it had been inspired by Article 6. The regulations were, however, certainly in conformity with that article. Progress was being made with the transfer of certain Arab lands to the Jews.

In reply to a further question by M. Van Rees, Sir John Chancellor said that it must be remembered that the Government had little land at its disposal. The land tenure

system had been found in a state of chaos at the time when the Administration took over the territory. In many cases, the land registers had been destroyed by the Turks, and the whole work of surveying and registering titles had to be taken in hand de novo. A Survey Department had been established which cost the Government some 40,000 per annum. A Settlement Commission was now enquiring into the ownership of every parcel of land. This was necessarily a very slow process, and until the rights of ownership had been determined it was impossible to say what area of land was owned by the Government. The ownership of a plot of land was often divided into a number of minute shares, reckoned in millionths.

M. VAN REES enquired whether the work was making progress.

Sir John CHANCELLOR replied in the affirmative. When the survey had been completed, the Administration would proceed to registration. The Administration began the registration of the lands in each district as soon as the survey was completed.

M. VAN REES said that he would be glad to have further information concerning the claim against the Government of Transjordan made by the Department of Waqfs to the title of 100,000 dunums in the Jordan Valley, mentioned on page 103 of the report.

Sir John CHANCELLOR regretted he was unable to answer M. Van Rees' question. The case had been settled before his arrival in the country.

Barat Caesarea Lands.

M. VAN REES enquired whether the accredited representative could give any additional information regarding the report of the commission concerning the Barat Caesarea Lands mentioned on page 132 of the annual report.

Sir John CHANCELLOR regretted that he was unable to comply with this request as the report had not been ready when he left Palestine.

M. RAPPARD observed that the question of these lands had been before the Commission for years, and, while he fully understood the complexity of the question, he was unable to understand the advantage of spending years on the study of

it. What advantage was it hoped to gain by postponing the final decision?

Sir John CHANCELLOR agreed that there was nothing to be gained from postponing the decision, but pointed out that the difficulty was due to the fact that it sometimes happened that at the last moment, when a decision had been reached, some claimant might put forward a claim for perhaps a thirteen-millionth share of a plot, and the proceedings had to be re-opened.

M. RAPPARD said that he would not have insisted on this point, but he had the impression that some individual claimant would always turn up at the last moment to prevent the Administration from making a settlement. The Administration would perhaps, therefore, stand to gain by a definite solution even though it were an imperfect one.

Sir John CHANCELLOR said that he would bear M. Rappard's point in mind, and would prepare for a final decision.

Palestinian Citizenship.

M. VAN REES recalled that Article 7 of the Mandate required that the Administration should enact a nationality law to include provisions "framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine". The Administration had promulgated the Palestinian Citizenship Order of 1925, but did that Order contain any special provision facilitating the acquisition of Palestinian citizenship by the Jews, or were the latter on the same footing as any other non-Palestinians?

Sir John CHANCELLOR pointed out that under the mandate no discrimination was to be made in legislative matters between the inhabitants of Palestine. The legislation that had been passed did, however, in point of fact specially favour the acquisition of Palestinian nationality by the Jews, since the grant of immigration licenses was confined almost entirely to members of the Jewish race.

Lord LUGARD enquired whether residence in Palestine qualified a Jew for British naturalisation.

Sir John CHANCELLOR replied in the negative. Residence in

Palestine was a qualification only for Palestinian naturalisation.

Treatment of Palestinians in the States Members of the League.

The CHAIRMAN asked for information upon the position of Palestinians who had emigrated to other countries.

Sir John CHANCELLOR replied that a number of Syrians and Palestinians had gone to South America, where they had made large fortunes. He believed that the South-American Governments were imposing restrictions on these immigrants.

M. RAPPARD said that the Commission had had before it the case of certain Syrians who had been expelled from Liberia. Under the mandates, the nationals of all Members of the League were entitled, in the territories under A and B mandates, to the same rights and treatment as those enjoyed by the nationals of the mandatory Power or of any other country.

In the existing legislation of the Members of the League there was, however, no clause providing for reciprocity in this respect, that was to say, a clause to the effect that the inhabitants of the mandated territories should enjoy in the territory of the Members of the League the same rights as those enjoyed by the nationals of the other Members of the League. The Commission had accordingly had under consideration the advisability of proposing a Protocol by which all States Members would undertake to grant equal treatment to inhabitants of territories under A and B mandates. He enquired whether Sir John Chancellor would view such an arrangement with favour.

Sir John CHANCELLOR replied that he saw no *prima facie* objection to the proposal, but that he thought that the question was one of minor importance.

Justice.

M. KASTL drew attention to the heavy increase in serious crime (page 59 of the Report), murder, attempted murder and manslaughter. Was there any special reason for this increase?

Sir John CHANCELLOR said that he knew of no special reason, but suggested that the increase might perhaps be due to the

results of the bad season, which might have led to theft and consequently to murder.

Lord LUGARD asked what was the relation between the High Court and the Supreme Court?

Sir John CHANCELLOR replied that the High Court had original jurisdiction. The appeal was from the High Court to the Supreme Court. The right of appeal in Palestine was excessive and was inconvenient and hampering to the administration of justice.

M. MERLIN pointed out that, in France, appeal proceedings were more expensive than ordinary proceedings and that this system reduced the number of appeals.

Legislative Powers of the High Commissioner.

The CHAIRMAN enquired whether the High Commissioner enjoyed in legislative matters powers which were similar to those of a Parliament.

Sir John CHANCELLOR replied in the affirmative.

Right of Petition to the League.

The CHAIRMAN observed that Section 85 of the Palestine Order in Council, 1922, read as follows:

"85. If any religious community or considerable section of the population in Palestine complains that the terms of the mandate are not being fulfilled by the Government of Palestine, it shall be entitled to present a memorandum through a member of the Legislative Council to the High Commissioner. Any memorandum so submitted shall be dealt with in such manner as may be prescribed by His Majesty in conformity with the procedure recommended by the Council of the League of Nations."

Had any amendment to this section been adopted since the Council resolution of January 1923, establishing the procedure in the matter of petitions to the League of Nations? It would seem that in the first sentence of Section 85, the words "considerable section" would seem to limit the right of petition in a way which was not contemplated by the Council. Probably it was, however, only

a question of an unsuitable form of words which might have escaped the notice of the mandatory Power.

Sir John CHANCELLOR said that he did not think that any change had been made in the section of the Order in question. He did not think that the right of petition had been limited in any way.

Dead-Sea Concession.

M. KASTL enquired what procedure had been adopted in regard to the Dead-Sea Concession. Had the concession now been granted?

Sir John CHANCELLOR replied that the negotiations had been conducted by the Secretary of State in London and that the concession had been granted.

M. KASTL asked whether the concession had been granted to the company formed by Mr. Tulloch.

The CHAIRMAN pointed out that the text of the concession had not been communicated to the Permanent Mandates Commission.

Sir John CHANCELLOR said that he would be glad to communicate a copy of the concession to the Commission. He had only received a copy himself a week before he had left Palestine.

The concession had been granted to Major Tulloch and Mr. Novomaysky. A company had now been floated by them to work the concession. The Chairman of the company was Lord Lytton. Several financial houses, British and American, were interested in the company. All of them were firms of good standing, so far as the accredited representative was aware.

M. KASTL asked whether, before the concession had been granted, it had been offered for public tender and whether any foreign tenders had been received?

Sir John CHANCELLOR said that he could only answer M. Kastl's question from memory. He believed that public tenders had been invited several years ago and five applications for the concession had been received. The conditions proposed by the applicants had been examined,

and it was considered that the most favourable offer was that of Major Tulloch and Mr. Novomeysky. The negotiations for the concession had continued for a long time and the concession had, so far as the accredited representative knew, been granted only within the last few weeks. All particulars with regard to the concession had been elicited by question and answer in the British Parliament within the last few years.

M. KASTL said that he had observed a report of a debate on the subject in the House of Lords. It appeared that there had been a movement in the House of Lords for the exclusion of foreign interests, but the Government had rightly objected to that movement on the ground that it was incompatible with the condition of economic equality laid down in the mandate. M. Kastl therefore wished to know whether any tenders had been received from foreigners and whether there had been any other movement to exclude foreigners.

Sir John CHANCELLOR replied that there had been no such movement but that, from the time when the tender of Major Tulloch and Mr. Novomeysky had been selected as the most satisfactory application, negotiations had been conducted solely with them.

M. RAPPARD observed that, in May, a fresh demand had been made upon the British Government to exercise vigilance in watching over British interests in the mandated territory, and the Under-Secretary of State had replied that all claims were carefully considered, and had assured the House of Lords that all due care was taken to protect the British interests involved. The protection of British interests seemed somewhat incompatible with the principle of economic equality. Had as much care been taken to protect that principle as to safeguard the interests of British subjects?

Sir John CHANCELLOR said that he found it difficult to reply to that question. His main object had been to protect the interests of residents in Palestine and Trans-jordan in the matter and to obtain the best possible terms for the mandated territories. He had acted in consultation with the Trans-Jordan Government throughout.

M. KASTL asked whether a statement regarding the concession could be included in the next report.

Sir John CHANCELLOR undertook to comply with this request.

The CHAIRMAN said that the Commission would be particularly glad to have this statement in the next annual report. The matter had merely been discussed eight years ago.

Haifa Harbour Works.

The CHAIRMAN said there was another question in which the principle of economic equality was involved. The Commission understood that the Crown agents were making arrangements for important work, such as dredging in connection with the construction of the harbour at Haifa. Would that work be offered to public tender in all countries?

Sir John CHANCELLOR replied that the Haifa harbour works would be carried out departmentally by the Palestine Government and not by the Crown agents.

Ruthenberg-Jordan Electricity-Concession.

M. KASTL asked whether the Ruthenberg-Jordan electricity concession had been promulgated by law.

Sir John CHANCELLOR replied in the affirmative.

M. KASTL asked whether that concession had been put up to public tender. He had received complaints that foreign tenders had been excluded.

Sir John CHANCELLOR replied that the concession had been granted as long ago as 1921 before the mandate came into force. The concession was operated by a private company and was not under Government control.

He added that the hydro-electric power-house under construction on the Jordan would be completed in October.

Agriculture.

M. SAKENOBE asked what was the position of the Jewish population in Palestine in regard to agriculture.

Sir John CHANCELLOR replied that the Jewish population was extending the area under agriculture and that the number of Jewish farms was growing. The orange-growing industry, for

instance, was largely developed by the Jews. A million and a half boxes of oranges had been exported in the current year and it was estimated that, with the new areas coming under cultivation, exports would increase to five or six million boxes within the next five or six years.

M. SAKENOBÉ asked whether agriculture was almost entirely in the hands of the Jews.

Sir John CHANCELLOR replied that that was not the case. The greater part of the orange plantations were in Jewish hands. On the other hand, the cultivation of grain, wheat, barley, maize and durra was in mainly Arab hands. The Jews were also developing the dairy industry.

Economic Conditions.

M. MERLIN reminded the accredited representative that, in his opening statement, he had said that the general economic conditions in Palestine were satisfactory. While optimism of that kind was usual in the Administration, M. Merlin did not think that it was altogether justified, at any rate by the figures given in the report for 1928. The report noted, it was true, an increase in revenues from Customs duties. Was that due to the application of the new tariff or to increased commercial activity?

Sir John CHANCELLOR said that both causes operated. In the current year, the revenue from Customs duties was even more satisfactory, the receipts to date exceeding the estimates of £P.100,000.

M. MERLIN said that there were other figures in the report which did not seem absolutely to justify, at any rate as regards 1928, the High Commissioner's optimism. Exports in 1928 had declined as compared with the 1927 figures. A further point which required particular attention was the very considerable adverse trade balance. It was hardly necessary for him to say that unless a country had special reserves it was not economically sound that it should import more than it exported, since in that way it would gradually become impoverished.

Reference, too, was made on page 26 to the drop in the purchasing power of the rural population. Finally, it was said that there was a decline in the growth of tobacco and that there had been a certain number of bankruptcies. On

page 65 of the report, it was indicated that there had been an agricultural crisis. The High Commissioner had made a special point of the development of the orange plantations and yet the report indicated that the value of orange exports in 1928 had been £P.189,000 less than in 1927. It might therefore be wondered whether the situation was quite so brilliant as had been depicted by the accredited representative. Although, therefore, M. Merlin would not assert that the situation was bad, he would be glad to have some explanations of the contradictory statements given in the report for 1928 and in the general statement of the High Commissioner.

Sir John CHANCELLOR agreed that the trade balance did not appear satisfactory. Indeed, on his arrival in the country, he had felt some alarm about it. Closer examination, however, had shown that the situation was not so gloomy as might be supposed. Important factors in the situation were that the Zionist Organisation spent some three-quarters of a million of pounds of money, which was sent to Palestine by supporters of the Zionist movement in all parts of the world. There was, further, a considerable invisible export in the form of the receipts from the tourist traffic. Over 63,000 travellers had visited Palestine in 1928 and it had been estimated that the expenditure of each traveller in the country amounted to about 10. The trade balance would therefore be improved to the extent of the sum indicated.

The reductions in exports last year had been due to the bad season of 1927, when the drought had damaged the crops. The orange crop in particular had suffered. The same reason was responsible for the reduction in the tobacco crop and for the entire absence of exports of grain and cereals. The local scarcity had indeed made it necessary to import grain and cereals to feed the population. The olive crop also had failed, so that there had been no export of olive oil, and the soap factories, which were of some economic importance, had been obliged to import oil for their industry.

The 1928 season, on the other hand, had been a very good one. Sir John Chancellor had himself inspected all parts of the country and he could affirm that, with the exception of a small area near Beersheba, the crops were in exceptionally good condition. There was therefore every ground for hoping that the figures for the next year would show a marked improvement. In particular, it might be expected that there would be no imports of grain or olive

oil.

M. MERLIN thanked the accredited representative for his explanations. It was valuable for the Commission to know, as he had presumed, that there was an invisible import which was a source of wealth.

Afforestation.

M. MERLIN said he took particular interest in the question of afforestation. He wished to congratulate the Administration on the steps it had taken to prevent deforestation and to encourage afforestation. What, however, was the reception accorded to these measures by a population which consisted very largely of herdsmen? Sheep and goats were the worst enemies of trees. Was it hoped to improve the habits of the herdsmen? Any such effort would necessarily take a considerable time.

Sir John CHANCELLOR said that the Government was doing all in its power to further afforestation. At the same time, it was in a difficult position as it had no clear title to any considerable area of land suitable for afforestation. That being so, it had adopted the policy of declaring certain lands to which it had some title to be forest reserves. It had declared, or would shortly declare, as forest reserves about one million dunums which would ultimately be planted or regenerated. The bare slopes of the Judean hills were responding to conservation measures in the most extraordinary way; trees planted on rocky slopes grew freely, especially the Aleppo pine, which was indigenous. In regard to the destruction of trees, Sir John Chancellor could not agree with M. Merlin in giving the sheep so bad a character from a forestry point of view. It was the goats which were so harmful. He had seen areas from which goats had been excluded where regeneration of the forests was making good progress. It was to be hoped that, as Palestine became more prosperous, the Government would have more money available to devote to the work of afforestation, especially in view of the resulting benefits to the water supplies and amenities of the country.

Development of Rock Phosphate Deposits.

Lord LUGARD asked whether any steps had been taken to develop the rock phosphate deposits mentioned on page 78 of the report.

Sir John CHANCELLOR replied that applications had been received for concessions, but that claims had been received in respect of concessions alleged to have been granted by the Turkish Government before the institution of the mandate. It would therefore be impossible to grant some of the concessions applied for until these claims had been examined.

ELEVENTH MEETING

Held on Saturday, July 6th, 1929, at 10.15 a.m.

Chairman: Marquis THEODOLI.

1009. Palestine and Trans-Jordan: Examination of the Annual Report for 1928 (continuation.)

Sir John Chancellor and Mr. Clauson came to the table of the Commission.

Holy Places.

M. PALACIOS recalled that during the examination of the last report he had raised before the accredited representative certain questions regarding the Holy Places and had even referred to the Commission mentioned in Article 14 of the Mandate and which did not yet exist. All was going well at the time. Unfortunately, however, a short time later the unfortunate incident of the Wailing Wall occurred, regarding which the Commission had received numerous petitions and expressions of opinion from all parts of the world, both for and against the respective causes of the Jews and the Arabs. The Commission had expressed its opinion regarding the event. M. Palacios entirely agreed with M. Rappard's report which, while regretting the incident, expressed complete confidence in the experience and tact of the mandatory Power. M. Palacios would like to see established a condition of moral peace and mutual respect, perhaps even collaboration, between the religious communities concerned. The report stated (page 123) that the Administration had intervened to preserve the *status quo*. M. Palacios asked Sir John Chancellor to be good enough to give the Commission information regarding the present situation.

The CHAIRMAN recalled that this question had acquired extraordinary prominence throughout the world. It had been widely exploited, and it was to be hoped that as a result of the discussion which was about to take place it would be restored to its due proportions.

Sir John CHANCELLOR spoke as follows: I have this morning received the following telegram from the National Council of the Jews in Palestine (Waad Leumi):

"Request that Mandates Commission should not proceed with our memorandum dated October 14th regarding Wailing Wall submitted through the mandatory Government to the League, pending submission of additional material. Organisation hopes memorandum may be held over for further consideration by the Commission."

I presume the Commission will not think it necessary for me to postpone anything I have to say on the subject.

When I went to Jerusalem six months ago, a white paper had been issued by His Majesty's Government in November. That was subsequent to the incident at the Wailing Wall on the Day of Atonement.

The Moslems were satisfied with the views expressed in the paper, which they interpreted as a decision that the Jews were not entitled under the *status quo* to bring benches and certain other appurtenances to the Wall. The head of the Moslem community recently came to me and asked that decisions contained in the white paper should be enforced. I replied that I was unable to accede to his request without the authority of the Secretary of State for the Colonies, with whom I was in communication on the subject.

On the plan which I have brought for the information of the Commission will be seen a blue flat wash which indicates the pavement on which the Jews stand to carry on their worship, and the blue vertical area is the lane by which they have access to the pavement in front of the Wall. Strictly speaking, that is the only part of the Wall in which the Jews are interested, the Wall being the outside boundary wall of the Moslem area -- the Haram-ash-Sharif. It should be made quite clear that the whole of that area, including the pavement and the adjacent buildings, belongs to the Moslem community. You will see on the plan adjacent

to the pavement an enclosure containing houses. That belongs to the Moroccans and is Waqf property. It is a collection of mean hovels in which the Moroccans live. Although the Jews have right of access only to the area indicated by the blue flat wash, they claim the right to prevent the Mohammedans making any structural alterations to their property overlooking or in the neighbourhood of the Wall.

On the plan you will see a small wall painted in brown. Subsequent to the trouble last September, the Mohammedans heightened that wall. It is there that the Grand Mufti lives, and the object of heightening the Wall was to screen the ladies of his household from public view. The Secretary of State has ruled in regard to those matters that the Moslems must not alter their buildings in that locality in such a way as to cause disturbance to the Jews in carrying out their accustomed devotions. Anything in the way of erecting buildings in which there would be loud celebrations or other disturbance of the *status quo* would therefore be illegal. In accordance with that ruling, the heightening of the wall to give seclusion to the ladies of the Grand Mufti's family is regarded as legitimate.

About two months ago, the Jews complained to me that certain other alterations, against which they protested, were made in the neighbourhood of the Wall. These are shown at the right of the plan. I had, I believe, no legal right to interfere with this building, but I sent for the Grand Mufti and asked him to suspend the work until I could ascertain whether the proposed buildings would interfere with the rights now exercised by the Jews. The Grand Mufti consented to do so, but only as a personal favour to me, and not because he admitted that the Jews had any right to interfere with the construction of the buildings. Subsequently, I received instructions from the Secretary of State as regards the Jews' rights in the matter of the buildings in the neighbourhood of the Wall, and I came to the conclusion that the alterations proposed by the Grand Mufti were not of such a nature as to interfere with the rights of worship enjoyed by the Jews, and, before I left Jerusalem, I gave authority for the construction of the building to be continued.

The Commission will remember that last year it expressed the hope that it might be possible to bring about an agreement between the Jews and the Mohammedans in regard to

this question.

Accordingly, when I went to Palestine last November, I lost no time in studying the question and I discussed the position with both the Jewish and Mohammedans leaders. The conclusion I came to was that there must not, in the first place, be any attempt to expropriate, in favour of the Jews, the area of the pavement in front of the Wall.

The Mohammedans are exceedingly suspicious of the motives of the Jews in respect of their rights at the Wailing Wall. They say that there is constant encroachment on the part of the Jews. The Grand Mufti maintained that, if the Moslems made any concession over and above the rights to which they were entitled under the status quo, the Jews would soon be building a synagogue overlooking the Wall. That is of course absurd, but his fears explain the uncompromising attitude which the Mohammedans have adopted in regard to this matter.

The area adjacent to the pavement where the Jews come to pray is an enclosure with a wall around it, and inside are the houses occupied by Moroccan Arabs to which I referred previously. It is Moslem religious property and the use of the pavement as a thoroughfare by the inhabitants of these houses frequently disturbs the Jews praying at the Wall.

My view was that the difficulty would be overcome if the Moslem authorities would consent to sell the enclosure to the Jews, who would be able to make there a courtyard surrounded by a loggia where they could say their prayers in peace and in dignified surroundings. I suggested this to the leading Jews in Palestine, and to Dr. Weizmann, who welcomed the suggestion. At the present time the Jews have, I understand, a sum of money at their disposal which would enable them to buy the area if the Mohammedans would consent to sell it.

I approached the Grand Mufti on the question, and asked him if he would be prepared to come to terms on that basis. I found the Grand Mufti, however, uncompromising on the subject. He said that the area in question was a Waqf property, and that it could not, therefore, be sold. I suggested that, if superior accommodation were provided for the Moroccans elsewhere in exchange at the expense of the Jews, he might transfer the property to me and I could hand it over to the Jews if he would prefer that to dealing with

them directly. He answered that the Mohammedans' feelings were so excited on the question at present that if any such proposition, even from me, were made public it would arouse bitter religious feelings and perhaps cause a disturbance. There is therefore nothing that I can do in the matter until conditions are more favourable.

I explained the position to the Jewish leaders, and expressed the opinion that their best course of action was to be silent on this question and not to fill their newspapers with attacks on Government and the Moslem authorities. By so doing, the bitterness of feeling would die down and the confidence of the Mohammedans would be gradually re-established and an atmosphere would be created in which I might be able to intervene usefully. That being the present position, it became necessary to consider the question of giving decisions in harmony with the policy laid down in the white paper of last November. Both the Jews and the Moslem authorities, in interviewing me, claimed that they could show authority for the practices which the one party desired to carry out and which the other party desired to prevent. The Mohammedans maintained that the right to bring benches to the Wall, as the Jews were now doing, was a practice which had been prohibited by the Turks, and which in addition had twice been prohibited by the mandatory Government since it came into power. The Jews, on the other hand, contended that they had been bringing up benches to the Wall for a long time, and they produced photographs showing that benches were brought to the wall thirty or forty years ago. I showed these photographs to the Grand Mufti and his rejoinder was that anyone could take a photograph of benches put there at a time when the question of the Wailing Wall was not exciting general interest and that he did not therefore attach any importance to such photographs. He also produced a Turkish document in which the bringing of benches to the Wall was prohibited. I therefore asked both sides to produce their documentary authority for bringing benches to the Wall. The Mohammedans produced a copy of the Turkish Government's document to which I have referred above. This information was asked for last January, but I have received no communication from the Jews in support of their claim, and when the incident in connection with the structural alterations near the Wall arose in the middle of May last I asked the Grand Rabbinate to submit without further delay any documentary authority they might possess, as decisions on the question could not be much longer delayed. The head

of the Zionist Executive came to see me in order to discuss the question, and I inferred from his conversation that there was no official document authorising the Jews to bring benches to the Wailing Wall.

I asked the Grand Mufti if he would consent to individual Jews being given a licence or a permit to bring up benches, in order that the old and infirm who prayed there could do so in comfort. He declined to consent to this.

I am in communication with the Secretary of State for the Colonies on the whole subject; but at present I can give no indication of his views.

I should like to add that the Jews claim that they should be allowed to do the things which they have been doing in the past, whether they have documentary authority or not. I have been trying to obtain information from both parties that would enable the *status quo* to be determined. The Secretary of State has instructed me not to make any pronouncement in regard to the *status quo* without his authority. The Commission will realise that the position is a delicate one and that it is necessary to be exceedingly careful in giving any ruling on the subject.

M. RAPPARD congratulated the High Commissioner on the action that he had taken. It had been the unanimous feeling of the Commission at the last session that the situation was not very satisfactory. It had therefore recommended that that situation should, if possible, be modified by mutual agreement, but failing this that the *status quo* should be scrupulously respected. M. Rappard was pleased to note that the High Commissioner had in all respects acted in conformity with those principles.

He understood that the construction of a new wall was not contrary thereto, as that construction was outside the limits of the area affected.

Could the High Commissioner state whether both parties regarded the *status quo* as a legitimate basis for agreement on principle?

Sir John CHANCELLOR replied that the *status quo*, as they interpreted it, satisfied the Mohammedans, but that to the Jews it represented only a minimum claim. It was necessary, however, to have an authoritative ruling with regard to the

status quo -- in the definition of which the two parties disagreed -- in order to enable him to enforce it. Delay was dangerous, for the Mohammedans were circulating certain rumours intended to give Mohammedan sanctity to a section of the Wall.

M. RAPPARD thought that the Commission might express complete satisfaction with the action of the High Commissioner. The situation appeared to be the same as that of last year. The Commission could but hope, therefore, that the minds of the people would become calmer and that in the absence of a mutual agreement the *status quo* would not be modified in favour of one party without the full consent of the other party.

The CHAIRMAN agreed that the High Commissioner was to be congratulated upon the manner in which he had endeavoured to solve this question in accordance with the recommendations of the Commission. The Chairman's own experience in the East had proved to him how easily religious passions might trouble relations between Eastern races. This enabled him to estimate to the full the difficulty of the High Commissioner's task, and to congratulate him upon having done all in his power to obtain a fair and satisfactory solution of the problem.

Freedom of Conscience.

M. PALACIOS asked if the proposed arrangements to which reference was made on pages 36 and 37 of the report affected the Askenasic community. He asked this question as it might explain why that community had already asked the Commission on two occasions to adjourn, until the receipt of supplementary information, its examination of the petition from the community, regarding which the mandatory Power had already made known its views. This supplementary information was always on the point of arriving, but had never yet reached the Commission.

Sir John CHANCELLOR said that 78,000 adult Jews had expressed their desire to be registered as members of the Jewish community. This number represented practically the whole of the Jewish population, with the exception of the community of the Agudath, which numbered approximately 10,000, and which had requested recognition as a separate community. It had not been found possible to comply with that request.

The CHAIRMAN asked whether strained relations also existed between various groups of the same religion, whether Jewish or Christian. Had the High Commissioner noted any improvement in the relations between the religious groups during his stay in Palestine?

Sir John CHANCELLOR said that he had seen few signs of any marked improvement in the short time he had been in Palestine. At one extreme of the Jewish population was the orthodox community which regarded the Zionist Organisation as negligent in regard to religious formalities and at the other extreme were the Communist Jews who had little religion. The Communist Jews, who immigrated mainly from Eastern Europe and Russia, were hostile to the Zionists.

With regard to the Christians, the divided ownership of individual churches between several communities and the complicated regulations governing the use of churches by them made it inevitable that friction should arise. Feelings ran high in connection with matters of ownership of the Holy Places, and there was always a danger of incidents occurring between the officiating clergy. There seemed to be little possibility of immediate improvement in the situation.

Constitution of the Supreme Moslem Sharia Council.

M. PALACIOS said that, according to Ordinance No. 18 of 1926 (Ordinances of Palestine, page 111) and No. 17 of 1929 (*Official Gazette*, May 1st, 1929, page 230), the members of the Supreme Moslem Sharia Council, which was now working, were appointed by the High Commissioner. This he had done temporarily until the next elections. What were the difficulties, if any, in the way of a final constitution of the Council? This point had been one of those which had given rise to criticism in Arab circles. The latter had held that this state of affairs served to prove that authority was becoming more and more concentrated in the hands of the mandatory Power.

Sir John CHANCELLOR said that these rumours were unjustified. The affairs of the Sharia Courts were in the hands of the Supreme Moslem Council and independent of the Government. He added that he had been disturbed by rumours that justice was being denied to certain of the humbler Moslems by these Courts. His predecessor had appointed a

Commission of Enquiry to report upon the organisation of the Supreme Moslem Council. The Commission had recently reported, and two members of the Commission had presented minority reports.

M. PALACIOS said that undoubtedly the High Commissioner had misunderstood his question. M. Palacios had neither thought nor spoken of rumours. The question he had asked was in conformity with the third paragraph on page 37 of the report. He would like to know whether the draft presented by the Committee appointed in 1926 and relating to the method of election of the Moslem Council had been accepted?

Sir John CHANCELLOR said that it was proposed to introduce election of members to the Council by Moslem electors.

M. PALACIOS thanked the High Commissioner for the information he had given.

/...

TWENTY-THIRD MEETING.

Held on Monday, July 15th, 1929, at 10.30 a.m.

Chairman: Marquis THEODOLI.

1036. Palestine: Petitions concerning the Wailing Wall at Jerusalem (continuation).

The CHAIRMAN recalled that, when the petitions concerning the Wailing Wall at Jerusalem had been discussed and dealt with some days previously, M. Van Rees had wished to make a statement on the matter.

M. VAN REES said that he had asked to be allowed to explain his views on the question of the Wailing Wall, which had been dealt with some days before, not in order to re-open the discussion, nor to induce the Commission to revise the decision which it had taken, with which he could say, in passing, that he agreed, but simply in order to explain his personal views, for an opportunity of doing so had been lacking at the nineteenth meeting. On that occasion, he had made the following statement in regard to a report of M.

Rappard on the petitions concerning the Wailing Wall: "In his report 3/ M. Rappard stated that, failing agreement, 'the mandatory Power can merely ensure respect for the *status quo* (situation acquire)'. It was questionable, however, to say that the mandatory Power's only legal duty was to ensure respect for the *status quo*, for by the terms of Article 13 of the mandate it was in no wise prevented from taking other action. M. Van Rees recognised that, from the political point of view, the British Government had acted wisely, but this did not imply that, from the legal point of view, it was prevented from adopting any other attitude. In order to explain his views, he had prepared a note which he wished to submit at a later date to his colleagues".

This explanation might, at the same time, clear up a fact that might appear a little surprising, which was that, while protesting against the statement that the Commission, if an agreement were not achieved, "could only approve the scrupulous maintenance of the *status quo*", M. Van Rees had made no objection to the amended text proposed by M. Merlin and adopted by the Commission, in virtue of which, "failing such an agreement, it appreciates the scrupulous care with which the mandatory Power is ensuring the maintenance of the *status quo*".

Since the expressions "status quo" and "existing situation" could be considered synonymous, it might have appeared strange, and this had now proved to be the case, that the objection he had made to the first expression had not led M. Van Rees to make objections to the second.

The explanation was very simple.

In speaking of the "scrupulous maintenance of the *status quo*", M. Rappard had used the expression in a purely literary sense, and in that sense those terms could only mean the existing situation. The British Government, however, in referring to the *status quo* in the official communications in which it commented upon the incident in question, had used these terms in quite another sense.

That Government, in declaring that it was necessary to maintain the *status quo*, had meant -- and members had only to refer to the printed document Cmd. 3299 to make certain of this point--that Article 13 of the Palestine mandate

bound the British Government not to make any departure from the rule followed by the Ottoman Government which, in 1912, had prohibited Jews from bringing before the Wailing Wall any objects other than the indispensable accessories for the celebration of the Jewish ceremonies. What M. Van Rees wished to prevent was that, in using the same terms, that was to say, in referring to the *status quo*, the Commission should give the impression that it agreed with the interpretation put by the British Government on Article 13 of the mandate. It was precisely that interpretation which M. Van Rees considered open to question, and against which he had made objections when the incident had first been examined during the fourteenth session of the Commission.

On that occasion he had pointed out that: "The British Government justified the attitude of the local authority by referring to Article 13 of the mandate. But did this justification not reveal a spirit of formality which was scarcely in harmony with the generally broad-minded views of the British nation, seeing that Article 13 clearly dealt with the maintenance of existing rights, and that it was scarcely admissible to infer, from the temporary use of a screen and the placing of some chairs on another's property, that an attempt was being made on the part of the Jews to infringe any right whatever".

These observations deserved comment.

By Article 13 of the mandate, the mandatory Power was required to preserve the existing rights over the Holy Places, religious buildings and sites in Palestine and to ensure free access to these institutions and free exercise of religious rites.

The regulations of the Ottoman Government referred to by the British Government prohibited Jews from the performance of a certain practice. They prohibited a certain thing and nothing more. The prohibition affected the Jews and it would be difficult to see in it any addition to the full right of ownership possessed by the Moslems over the lane in front of the Wall, a right, moreover, which had never been disputed. It could add nothing to this right of ownership, for it was unable to extend or complete it because the right of full ownership was the most comprehensive right known and did not require anything to complete it.

The object of the Ottoman regulation could not, therefore, have been to confer any additional right of ownership on the Moslem owners of the lane. It had, therefore, been dictated by administrative considerations. In other words, it had been merely a police measure, in the nature of a precaution or protection, which had been thought necessary at the time. Precisely because it was of that nature and could be of no other nature, the Ottoman Government could, had it so desired, have removed the prohibition laid on the practice in question, without that act affecting, in any way, the rights of ownership held by the Moslems.

Could it be admitted, apart from any political considerations, that what the Ottoman Government could have done could not be done by the British Government which had taken its place in Palestine?

Was Article 13 of the mandate opposed to this conception? Certainly not, unless the meaning of the words "existing rights" which that article stipulated should be preserved was misunderstood. Far from forbidding such action, Article 13 itself pointed an opposite course and stipulated expressly that "nothing in this article shall prevent the mandatory Power from entering into such arrangements as he may deem reasonable with the Administration for the purpose of carrying the provisions of this article into effect".

This stipulation obviously did not allow of any arrangement which would infringe existing rights. On the other hand, the Government had full powers not to maintain an administrative prohibition, of which the suppression could not in any way affect the real rights covered by Article 13.

In conclusion, from a political point of view, the British Government had acted wisely in maintaining the Ottoman regulation of 1912, as was to be seen from the agitation provoked by the incident in the Moslem world. From the legal point of view, however, its statement that it had been careful to maintain this rule was open to doubt.

Lord LUGARD observed that M. Van Rees had said that "the expressions '*status quo*' and 'existing situation' were synonymous". He wished to point out that the term "*status quo*" was an abbreviation of *status quo ante* and should be translated as the "pre-existing situation" and not the "existing situation".

1037. Palestine and Trans-Jordan. Observations of the Commission.

After discussion, the observations of the Commission regarding Palestine and Trans-Jordan under British mandate were adopted (see Annex 20).

M. PALACIOS raised, at the end of the discussion, the question of the Holy Places. He did not wish that the satisfaction expressed by the Commission to the accredited representative regarding certain of his replies on possible agreements between the Jews and Arabs in the matter of the Wailing Wall should in any way prejudice the question of the appointment of the "Holy Places" Commission -- which was still non-existent -- required under Article 14 of the mandate.

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ANNEX 9.

(Extract from document C.P.M.830.)

PALESTINE.

PETITIONS CONCERNING THE WAILING WALL OF JERUSALEM.

A. Text of the Petitions.

(a) Communications from the General Moslem Conference for the Defence of Buraq.

I. Telegram dated November 7th, 1928.

The Grand Moslem Conference convened Jerusalem first November representing Moslems and their official bodies in Palestine Syria Lebanon Trans-Jordan decided submit that Buraq so-called Wailing Wall is Moslem sanctuary sanctified by text of Koran and Moslem uncontested Wakf inalienable property and that all Jewish claims are supported by no right whatever except that previously they were allowed as followers of all creeds to visit Buraq with no right of worship preachings or speeches and while standing as registered in official documents and enforced long time ago as attested by administration new Jewish claim to worship and prayers rites to which they never had rights is only made to gain prescription rights which Moslems can never tolerate as actually infringing their rights alienating

their property by actual possession of one of their Shrines Moslems determined defend their absolute rights in this their Holy Place with no matter what consequences this may entail ends. -- GENERAL MOSLEM CONFERENCE FOR DEFENCE OF BURAQ.

(Extract from document C.P.M.831.)

II. *Letter dated November 7th, 1928.*

His Excellency, The High Commissioner, Jerusalem.

I beg to inform Your Excellency that a General Moslem Conference was held at Jerusalem on Thursday, November 1st, 1928, which was attended by delegates representing all the Moslems of Palestine including all classes, societies, associations, and clubs, and by official deputations from Syria, the Grand Lebanon, Trans-Jordan, Arab tribes and sub-tribes of Palestine and Trans-Jordan, and supported by Moslem Young Men's Associations in Egypt and by Moslem public opinion here and abroad. This Conference was convened with a view to studying the present situation and taking the necessary measures for the purpose of eliminating the menace of Jewish ambitions on the Prophet's Holy Buraq, and for the safeguarding of the rights of the Moslems in their Holy Places. The following resolutions, which were called for by the gravity of the present situation, were passed by the Conference.

The Secretaries have the honour to submit to Your Excellency, in accordance with the decision passed at the meeting, such resolutions of the Conference as are of direct concern to the Government. The Secretaries request Your Excellency to be good enough to transmit these resolutions to His Britannic Majesty's Government in London and to the League of Nations.

The following are the resolutions:

1. The Conference unanimously declare that the place of the Holy Buraq, which forms part of the Mosque of Aqsa, is a Moslem Holy Place sanctified by the text of the Koran, and that this place, together with all Waqf buildings and premises which surround it from all directions over a large area, is private property of the Moslems. The Conference further declare that any Jewish claim on this place is

unfounded and not based on any right. The Jews, similarly to others, are only entitled to visit this place, simply stand therein and neither to hold prayers nor to raise their voices or give speeches, in accordance with official documents in possession of the Moslem authorities, of which the Government of Palestine is fully aware, and the genuineness of which the Government has admitted expressly in communication to Moslem official bodies and actually by preventing the Jews from creating for themselves a right to place several objects in the area which were removed by Government themselves during the incident of 1925 and during the recent incident in September 1928.

The Conference therefore unanimously resolved:

(a) To strongly protest against any action or attempt which aims at the establishment of any right to the Jews in the Holy Buraq area and to deprecate any such action or attempt. The Conference further protest against any leniency, disregard or vacillation which the Government may show in this respect.

(b) To ask the Government immediately and perpetually to prevent the Jews from placing under any circumstances whether temporary or permanent any objects in the area, such as seats, lamps, objects of worship or reading, and to prevent them also from raising their voices or making any speeches, in such a manner as would not compel the Moslems to take such measures themselves, in order to defend at any cost this holy Moslem place and to safeguard their established rights therein which they have exercised for the last thirteen centuries.

(c) To hold Government responsible for any consequences of any measures which the Moslems may adopt for the purpose of defending the Holy Buraq themselves in the event of the failure of the Government which are entrusted with the maintenance of public security and the safeguarding of the Moslem Holy Places to prevent any such intrusion on the part of the Jews.

2. The Conference unanimously declare that the attempt of the Jews to intrude upon the Holy Buraq with a view to creating a dispute between the Moslems and themselves in

respect of this place and to include such dispute amongst the many prevalent disputes in respect of the Holy Places in Palestine is an unjustified and unwarranted attempt which is actuated solely by the desire to take control of the Moslem Holy Places. The Conference strongly protest against any such attempt and ask the Government, in the name of all the Moslems, to put an end to such attempts for the reason that the Holy Buraq, the Western Wall of the Mosque of Aqsa, is a purely Moslem Holy Place, which is governed by the second part of Article 13 of the Mandate, and as to which the rights of the Moslems, similarly to all other Moslem Holy Places, are incontestable.

3. The Conference resolved that it is its religious duty, in view of this dangerous situation, to make known the following facts to the entire world:

Whereas the Jews have repeatedly intruded upon the Buraq, which form an integral part of the Mosque of Aqsa -- the first of the "Qiblas" and the third of the three holy mosques -- which is revered by the entire Moslem world; and

Whereas the Moslems of Palestine are, on behalf of all the Moslems, the guardians of this holy mosque and of the Buraq area, which is connected with the "Isra" of their Prophet; and

Whereas the evident objective of the repeated encroachments of the Jews upon this place is to challenge the Moslems in respect of one of their most holy places, situated, as it is, in the centre of the Moslem world; and

Whereas such encroachment will naturally give rise to a strong religious disturbance not only in Palestine and in neighbouring countries, but also in the entire Moslem world;

In view therefore of the above and of the duty imposed upon the Moslems of Palestine in their capacity of guardians of the Mosque of Aqsa to appeal to the Moslem world to remove such a grievance and repel this danger, the Conference has resolved to issue an appeal to the Moslem world in this respect; to notify the local Government, His Britannic Majesty's Government in London, the League of Nations, and the foreign

Powers through their respective consuls; and to acquaint public opinion in the East and West with the fact that the repeated encroachments of the Jews upon the Buraq, the Western Wall of the Mosque of Aqsa, and the reluctance on the part of the Government to put an end to such intrusions will, in the nature of things, result in serious occurrences in the Moslem countries in which Moslems will rise to defend themselves against the most serious menace that has threatened them in the past eight centuries and which endangers their most precious religious sanctuary. The Moslems appeal to the Powers and Nations of the world against such incursion, which is sure to have serious consequences.

4. The Conference observe that the Expropriation of Land Ordinance, 1924, includes *inter alia* certain provisions which in view of the special circumstances prevailing in Palestine aroused the anxiety of the Moslems in respect of their Wakfs and religious places. The Moslems are aware that such provisions were made in the Ordinance as a result of the endeavours of the Jews to realise many of their ambitions which aim at their taking control of Moslem Wakfs and buildings which are safeguarded by the text of the second part of Article 13 of the Mandate. Official Moslem bodies on several occasions protested to Government, in the name of all Moslems, against this Ordinance, when it was first published, and requested not to include in the Ordinance any such provisions which were the cause of their fears. Such fears have now been justified by the demand made by the Jews to expropriate the Buraq area, under the provisions of this Ordinance, which is a purely Moslem Wakf.

In view therefore of the above, the Conference ask the Government to remove the causes of such fears in the law so as to assure the Moslems of the safeguarding of their Holy Places and religious Wakfs. Such aim could only be attained either by the repeal of the provisions of the Ordinance which were the object of the fears of the Moslems or by the issue of an official announcement declaring that the Expropriation of Land Ordinance does not apply to Moslem religious places and that no Moslem Wakf shall be expropriated to meet the wishes of any other religious community, and also that Moslem Wakfs could only be expropriated by following the Sharia procedure of

substitution (Istibdal) through a Moslem Sharia Court and in accordance with the Moslem Sharia Law.

5. Whereas Mr. Norman Bentwich, the Attorney-General to the Government of Palestine, is an ardent Zionist leader, as is evident from his views, activities and books, and as the office of the Attorney-General is a great factor in legislation, the Moslems of Palestine therefore see in the presence of this person in such a legislative and executive office a serious menace to their most important interests. The Moslems, who form the majority of the population, have protested on previous occasions against the presence, since the British occupation, of this person in such a high office, through which he paves the way for the realisation of Jewish and Zionist aspirations. The Conference therefore ask the Government, in the name of the Moslem community, to remove Mr. Bentwich from the legislative and executive office which he occupies in the Government of Palestine, and resolve to protest against his presence in such an office. The Conference feel that it is a serious prejudice to the Moslems that such an office be occupied by a Zionist leader such as Mr. Bentwich, who endeavours to achieve the realisation of the Zionist aspirations, which are very harmful to the religious rights of the Moslems in their Holy Places.

6. In view of this serious situation and the intense commotion of the Moslems, the Conference resolved to delegate at once a deputation from among its members to wait on His Excellency the High Commissioner and to ask him in the name of the Conference that Government issue as soon as possible an official *communiqué* proclaiming the protection of the Buraq and of other Moslem sacred places from any encroachment in which the Jews may, by various means, attempt to introduce innovations, in order that the apprehensions of the Moslems may be removed. The deputation should also summarise to His Excellency such resolutions of the Conference as are a direct concern to the Government, pending the communication of such resolution to Government in writing.

7. The Conference resolved that such resolutions be officially communicated to the Government of Palestine and that a copy thereof be transmitted through the Government to His Britannic Majesty's Government in London and the League of Nations.

(Signed) HASSAN ABUL SA'OUH.

(Extract from document C.P.M.830.)

(b) *Telegram, dated November 7th, 1928, from the Supreme Moslem Council.*

Supreme Moslem Council official representative Palestine Moslems draw your attention to Jewish aggression upon prophets Buraq being the Western Wall of Aqsa Mosque. Buraq itself including all grounds around it stretching for a long distance is uncontested Moslem Wakf property. Buraq is Moslem Sanctuary and an integral part of Aqsa Mosque which is sanctified in Koran. Jewish aggression openly contravenes status quo the principle that was adopted by League of Nations thus creating among Moslems great excitement. In applying status quo the present Government as well as Turkish Government have had to prevent directly such aggression every time the Jews tried to repeat it as happened 1925 and this year. Jewish claim to prayers in Buraq has no foundation whatever as registered evidences here totally repudiate it and on the contrary show clearly that Jews were allowed nothing more than others were allowed to merely visit devoid of preachings speeches or worship the Moslem Holy Buraq has never been the place of prayer for Jews. Jews desire acquire prescription rights in this Moslem Holy property by using in it such articles as to make place in their actual possession thus adding great insult to intolerable injury. Government removed part of said articles but although admitting that it is their duty to apply status quo that imposes removal of all said articles they still by reason of Jewish organised turbulent propaganda postponing removal the rest of articles to the detriment of Moslem rights. Request literal application of status quo non-application of which causes great injustice and entails dangerous excitement ends. -- PRESIDENT SUPREME MOSLEM COUNCIL.

C.P.M.837.

(c) *Letter from the Emir Chekib Arslan and M. Ihsan el Djabri and M. Riad el Soulh, dated December 11th, 1928.*

To His Excellency, M. Aristide Briand, President of the Council of the League of Nations, and the Members of the Council, Lugano.

[Translation.]

On behalf of and as representing the Moslem Congress which met recently at Jerusalem, we respectfully appeal to you to intervene, in the interests of justice and peace, in defence of the Moslem rights over the walls of the Great Mosque of Jerusalem and its precincts. The Council of the League is competent, in our view, to assist us, as the circumstances which we are about to report affect international relations and constitute a menace to peace.

Article 11, paragraph 2, of the Covenant of the League of Nations is therefore applicable. The provisions of Article 22 of the Covenant relating to mandates give you full power to act.

At the foot of one of the walls of the Great Mosque of Jerusalem is a space known as Buraq Sharif. This land is undoubtedly Moslem property. It is part of the Abu-Madian Wakf, that is, the pious foundation of the Moorish saint, Abu-Madian. The wall itself belongs, of course, to the Great Mosque, the Haram, the Moslem ownership of which is uncontested. It is the tradition of our faith to respect the religious beliefs of others, and members of our faith have, out of pity for the Jews, always allowed the latter to come and wail at the foot of this wall. This is simply a case of toleration, a mere concession, and has never implied any Jewish right of ownership, usufruct or user. On one occasion, when Mehemet, Viceroy of Egypt, invaded Syria, the Jews took advantage of the change of regime and attempted to establish their ownership by introducing certain changes in the condition of this site. The new authorities immediately intervened, and we have in our possession an order from Cherif Pasha, the Governor-General, prohibiting any such action on the part of the Jews. This order was subsequently confirmed by the Ottoman Empire, by decision of the Administrative Council of Jerusalem.

When the British Government occupied Palestine on the conclusion of the world war, it made a point of maintaining the *status quo*, realising quite rightly that, in delicate matters such as this, any change might easily lead to serious disputes and unforeseen results. It is a matter of common knowledge that the Crimean War owed its origin to a conflict of this kind. In Jerusalem, where so many Churches are represented, only the observance of the established

order of things can ensure religious peace and, at the same time, internal and external peace.

The Jews at first realised the necessity of this, but subsequently began to make friendly overtures with a view to acquiring the ground on which the Wailing Wall is built and offered large sums for this purpose to the Moslem pious foundations. They acted through the intermediary of Mr. Ronald Storrs, then Governor of Jerusalem, who is now Governor of Cyprus. Their offers were categorically refused by the Moslems, and the Jews have since employed every means to secure this site; the ground being adjacent to the Great Mosque, they attach supreme importance to its possession, regarding this as a possible stage in the realisation of their plan for restoring their worship on the Haram area.

In 1926, the Jews brought the matter before the League of Nations, their purpose being to have it dealt with as a necessary consequence of the Jewish National Home. The Moslems have consistently opposed their efforts. The Arabs of Palestine, including those who are Christians, do not wish the site to be handed over to the Jews; the Moslems would regard this as a serious violation, not only of the inviolable right of property, but also of the religious rights of Islam over a site which they consider as sacred and which is mentioned in the Koran.

Quite recently, on September 24th, 1928, the Jews, during one of their festivals, gathered at the foot of the Wailing Wall. They set up various wooden structures, thereby manifesting their firm intention of taking possession of this ground and gradually establishing their claim to peaceful ownership. Their purpose in short was, by means of definite acts, to create the conditions of a veritable usucaption title. The Moslems, having observed these erections, formally notified the British authorities. The latter sent a contingent of police, who removed the objects in question, thus maintaining the *status quo ante*. In acting thus, the British authorities recognised the Moslems' incontestable right to the ground and walls on the site referred to. They also recognised that the western wall of the mosque under which the Jews come and wail forms part of the enclosure of the Great Mosque and constitutes an integral part of the latter. The action of the Jews in coming to wail here is tolerated, but that is all that they can reasonably claim. The Moslems are in possession of

official documents showing that the Jews are not entitled to engage in prayer or in other ceremonies or to erect structures of any description on this site.

Some time later, the Jews made a fresh effort and again set up the various objects which the authorities had removed. The police, on this occasion, showed less decision; they removed some of the structures, but left others. The Moslems are greatly alarmed at the maintenance of these Jewish structures on their ground. It represents a first step towards occupation of the land and there is reason to suppose that the Jews will gradually act as if the place really belonged to them.

In order to divert attention from the real question at issue -- namely, the question of ownership arising out of this case -- the Jewish world is stirring up public opinion and introducing political considerations into what is a purely judicial affair. The Moslems are anxious that the question should be viewed in its true light. In every country, they have realised the importance of the question and are protesting against this Jewish encroachment. The Congress at Jerusalem determined to defend their rights with the utmost energy. The Moslems will allow the Jews, as in the past, to come and wail at the foot of the Haram wall, but never will they cede to the Jews an inch of land which would enable them to do anything beyond what they have been doing up till now. No religious ceremonies can be tolerated.

The Moslem Congress protested energetically to the Office of the British High Commissioner in Palestine against the encroachment of the Jews. The British authorities realised the justice of our claim. The Jewish world then turned against them and endeavoured to create a belief that the representatives of the British Government were making themselves responsible for provoking a religious dispute. The Moslem Congress protests against this and brings this serious question before the League of Nations, regarding it as one of international concern.

The Moslem Congress directs the attention of the League of Nations to the danger to religious peace arising out of the law, promulgated in 1924 by the Palestine Government, authorising expropriation for general utility purposes. It realises the expediency of an expropriation law, like the laws in force in the great European States, for the

purposes of undertakings in the public interest: but it cannot admit that the law in question shall operate in the Holy Places. This particular law has the appearance of a weapon devised for use in a future attack on Moslem pious foundations.

It would allow the Jews, acting in the interests, not of public utility, but of their religion, gradually to lay hands on the Moslem Holy Places and perhaps on those of other religious communities.

The Moslems insist that this expropriation law should be amended so as to embody express reservations on this point.

The Moslems desire to direct your attention to the fact that the supreme judicial authority in Palestine, which is exercised by the Attorney-General, ought not to be in Zionist hands, but should be entrusted to a completely impartial magistrate determined to maintain the principle of absolute neutrality in religious matters.

The Moslem Congress has instructed us, therefore, to request the Council of the League of Nations to take up the question of the rights of Islam over the walls of the Great Mosque of Jerusalem and the land of the Abu-Madian Wakf. It calls upon the Council to consider the questions bound up with this religious dispute and to insist on the principle of the inviolability of property rights. Unless the law relating to landed property in Palestine is strictly observed, Jerusalem, the Holy City of Moslems, Jews and Christians, may become a grave cause of international conflict and constitute a threat to world peace.

(Signed) Emir CHEKIB ARSLAN.

IHSAN EL DJABRI.

RIAD EL SOULH.

Syro-Palestinian Delegation.

(Extract from document C.P.M.830.)

B. Observations of the British Government.

(a) Letter, dated December 8th, 1928, relating to the Petitions from the General Moslem Conference for the Defence of Buraq and from the Supreme Moslem Council.

To the Secretary-General.

I am directed by Secretary Sir Austen Chamberlain to

transmit to you the accompanying copies of two telegrams received from the Officer administering the Government of Palestine conveying messages to the Permanent Mandates Commission of the League of Nations from the General Conference for the Defence of Buraq and the President of the Supreme Moslem Council.

2. In this connection, I am to invite a reference to the memorandum which was enclosed in Foreign Office letter No. E 5148 /4947 /65 of October 29th last regarding a Zionist petition on this subject.4/ The only further comment which His Majesty's Government desire to offer on the present telegrams is that they are unable to accept the statement made therein that, under the *status quo*, Jewish rights in connection with the Wailing Wall are limited to mere rights of access.

(Signed) MONTEAGLE.

(Extract from document C.P.M.831.)

(b) *Letter, dated December 22nd, 1928, relating to the Petition from the General Moslem Conference for the Defence of Buraq.*

To the Secretary-General.

With reference to Foreign Office letter No. E 5693 /4947 /65 of December 8th in regard to the incident which occurred at the "Wailing Wall" in Jerusalem on September 24th, I am directed by Secretary Sir Austen Chamberlain to transmit to you the accompanying copy of a letter which the Officer administering the Government of Palestine has received from the General Moslem Conference, communicating resolutions on this subject passed at a meeting of the Conference held in Jerusalem on November 1st.

2. As this communication is not a petition, but merely a document sent for the information of the League, His Majesty's Government do not propose to comment on it. They wish, however, to express their emphatic dissent from the allegations made paragraph 5 of the letter, without ground or reason, against Mr. Bentwich, the Attorney-General of Palestine.

(Signed) MONTEAGLE.

(C.P.M.859.)

(c) *Letter, dated June 8th, 1929, relating to the Petition from the Emir Chekib Arslan, M. Ihsan el Djabri and M. Riad el Soulh.*

To the Secretary-General.

I am directed by His Majesty's Principal Secretary of State for Foreign Affairs to refer to your letter No. 6A /7929 /224 of March 26th, transmitting a copy of a petition received from the Emir Chekib Arslan, M. Ihsan el Djabri and M. Riad el Soulh concerning the incident at the Wailing Wall of Jerusalem, and to communicate to you the following observations on that petition.

2. His Majesty's Government note that, in the opinion of the Chairman of the Permanent Mandates Commission, this petition raises certain specific points (*e.g.*, the Expropriation Ordinance of 1924), which distinguish it from other petitions on the subject of the Wailing Wall referred to in the report adopted by the Council of the League on March 4th last.

3. The petitioners maintain that the Expropriation Ordinance of 1924 has the appearance of a weapon devised for use in a future attack on Moslem pious foundations, and they ask that the Ordinance should be amended so as to exclude Moslem Holy Places from the buildings, etc., to which the provisions of the Ordinance apply. His Majesty's Government desire to point out that the Ordinance in question merely applies the Ottoman Law of Expropriation of 1332, subject to certain amendments in form necessitated by a change of regime. The 1924 Ordinance and the Ottoman Law have, however, been superseded by the Expropriation of Land Ordinance, 1926, which sets up fresh machinery in the expropriation of land for public purposes. His Majesty's Government desire to state emphatically that there is no foundation for the suggestion that either Ordinance has been devised for use in attacks on Moslem pious foundations, and to point out that, having regard to the responsibility in respect of Holy Places imposed on the Mandatory by Article 13 of the Mandate for Palestine, there can be no question of the compulsory expropriation of any Holy Place. In the circumstances, the suggested amendment of the Ordinance appears unnecessary. In this connection, the attention of the Permanent Mandates Commission is

invited to the statement which was issued in Jerusalem by the Palestine Zionist Executive on November 6th, 1928, in which the Zionist Organisation reaffirmed its repeated declarations unreservedly recognising the inviolability of Moslem Holy Places.

4. On page 4 of the petition appears a statement to the effect that the Moslems are in possession of official documents showing that the Jews are not entitled to engage in prayer, or in other ceremonies, or to erect structures of any description on the site in front of the Wailing Wall. His Majesty's Government would invite attention to the comment which they made in paragraph 2 of the letter addressed to you on December 8th, 1928, transmitting copies of telegrams from the Officer administering the Government of Palestine conveying messages from the General Moslem Conference for the defence of Buraq and the President of the Supreme Moslem Council. His Majesty's Government desire to reaffirm that they are unable to accept the view that Jewish rights in connection with the Wailing Wall are limited to mere rights of access.

5. His Majesty's Government also desire to take this opportunity to record their emphatic dissent from implied allegations against Mr. Bentwich, the Attorney-General for Palestine, in the penultimate paragraph of the petition. They would also point out that the supreme judicial authority in Palestine is not, as alleged in the petition, exercised by the Attorney-General. This officer exercises no judicial functions, but is simply the Government's Legal Adviser.

(Signed) MONTEAGLE.

C.P.M.880 (1).

C. Report by M. Rappard.

Since our last session we have received from various sources a number of communications relating to the Wailing Wall at Jerusalem.

As Rapporteur on the Zionist Organisation's petition, I have been asked by the Chairman to report to the Commission on these new communications. I propose to begin by briefly summarising them, and then to suggest what action I think should be taken.

1. *Resolutions of the General Moslem Conference and the Supreme Moslem Council* (documents C.P.M. 830 and 831), transmitted by the British Government in Letters dated December 8th and 22nd, 1928.

The petitioners complain:

(a) That the British Government has broken the rule of the *status quo* in favour of the Jewish Community and to the detriment of the Moslem Community.

(b) That the Expropriation of Land Ordinance, 1924, which is intended to permit of the expropriation of Wakf property for the benefit of the Jewish Community, threatens a breach of the provisions of the mandate. The petitioners ask that the Ordinance should be repealed or that an official announcement should be issued declaring "that the Expropriation of Land Ordinance does not apply to Moslem religious places and that no Moslem Wakf shall be expropriated to meet the wishes of any other religious community, and also that Moslem Wakfs could only be expropriated by following the Sharia procedure . . . through a Moslem Sharia Court and in accordance with the Moslem Sharia Law".

(c) That the presence of Mr. Norman Bentwich, Attorney-General, in the Palestine Administration constitutes a serious threat to the Moslem population. The petitioners ask that he should be relieved of his office.

The mandatory Power has made no observations except on this last point; and in its letter of December 22nd, 1928, it formally denies the petitioners' allegations. In its observations on the petition from the Emir Chekib Arslan, M. Ihsan el Djabri and M. Riad el Souhl, to which reference is made below, the British Government confirms this denial and adds the official in question, who occupies the post of Legal Adviser to the Government, discharges no judicial functions.

2. *Petition dated October 14th, 1928, from the General Council (Va'ad Leumi) of the Jewish Community of Palestine (document C.P.M. 838).5/*

In its letter of February 25th, 1929, forwarding this petition, the British Government states that it is in every respect similar to the Zionist Organisation's petition. I think, however, that a distinction must be drawn between the two.

The principal, if not the exclusive, subject, of the Zionist Organisation's petition was the incidents that occurred at the Wailing Wall on September 24th, 1928. The General Council's petition, on the other hand, deals with the Wailing Wall question generally, and asks the League to secure for the Jewish people the fundamental rights to this site. It is made clear in the petition that the petitioners do not share the British Government's view as to the definition of the status quo, but claim the establishment in their favour of a legal system much more extensive than at present obtains.

3. *Petition from the Emir M. Chekib Arslan, M. Ihsan el Djabri and M. Riad el Souhl, dated December 11th, 1928 (document C.P.M.837).*

This petition was communicated to the mandatory Power, in accordance with the usual procedure, on March 26th, 1929. We have now received the British Government's observations upon it (document C.P.M. 859).

The petition is addressed to the President of the Council of the League of Nations in the name of the Moslem Congress, from which one of the petitions referred to above proceeds.

It contains, however, a fresh allegation. It is asserted that the Expropriation Ordinance of 1924 is "a weapon devised for use in a future attack on Moslem pious foundations". In the view of the petitioners, the Ordinance would allow hands to be laid gradually on the Moslem Holy Places and perhaps on those of other religious communities. They demand that the ordinance should be "amended" and that in its new form it should "embody express reservations on this point".

In my opinion, all the complaints made in these various petitions relate to two separate questions:6/

1. The definition of the *status quo* in regard to the Holy Places.

2. The alleged danger of an infraction of the mandate constituted by the Expropriation of Land Ordinance of 1924.

As regards the *status quo*, the Commission can, I think, only repeat its former recommendations. Failing agreement between the representatives of the different religions which submit conflicting claims to the Holy Places, the mandatory Power can merely ensure respect for the existing situation as established by use and tradition. The precise definition of this situation is obviously a matter outside the competence of the Commission.

As regards the second point, i.e., the Expropriation of Land Ordinance of 1924, there can be no doubt as to the Commission's powers. This is a legislative enactment, of which the Commission can take cognisance for the purpose of deciding whether it is in conformity with the principles of the mandate.

It should be noted that the petitioners do not explicitly state that the Ordinance is not in conformity with the mandate, but merely express the fear that the application of the Ordinance may violate acquired rights. They are apprehensive that public utility may be put forward as a reason for unduly favouring the rights of one religious community at the expense of another.

The point we have therefore to consider is the alleged danger of an infringement of Article 2 of the mandate for Palestine, which guarantees the safeguarding of "the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion", and of Article 9, which guarantees "respect for the personal status of the various peoples and communities and for their religious interests".

In its observations, the British Government indicates the actual position of the law on this question. From these statements it appears that the existing Expropriation Law is not at variance with Moslem traditions. The British Government, further, formally denies that the law in

question is directed against the Moslem pious foundations and that there could be question of expropriating any Holy Place. It does not, indeed, declare that the law can in no case be applied to the property of the Moslem pious foundations. The necessity of expropriating Wakf immovable property on grounds of public utility is conceivable, but obviously the authorities could not plead public utility as a reason for dispossessing one religious community for the benefit of another. It would seem desirable to trust to the impartiality of the mandatory Power on this point and to reassure the petitioners.

I would therefore propose that the Commission should adopt the following conclusions:

1. The Commission refers to its previous recommendations as to the advantages of an agreement freely entered into under the auspices of the mandatory Power in regard to the rights of the Jewish and Moslem Communities over the precincts of the Wailing Wall, and, failing such an agreement, it has no option but to approve the scrupulous maintenance of the *status quo*. The Commission considers that it has no authority to give the suggested definition of this *status quo*.

2. The Commission, noting the statements submitted by the mandatory Power on the existing legal enactments regarding expropriation on grounds of public utility, considers that, in view of these statements, it is in a position to declare that the fears of the petitioners are groundless.

/...

TWENTY-SEVENTH MEETING.

Held on Friday, November 22nd, 1929, at 10 a.m.

1131. **Palestine: Article 14 of the Mandate; Communication from the British Government, dated November 18th, 1929**
(continuation).

Mr. Clauson, of the Colonial Office, came to the table of the Commission.

The CHAIRMAN recalled that the Secretariat had already distributed to the members of the Commission the communication from the British Government, dated November 18th, 1929, relating to the question of the Wailing Wall (Annex 11).

He asked Mr. Clauson to be so good as to give any explanations or comments which he might wish to offer on the memorandum.

Mr. CLAUSON had nothing particular to add; but he would, if the Commission so desired, make a brief commentary on the memorandum, explaining what, in his opinion, were the reasons for the appearance of this document.

The High Commissioner for Palestine had said that the situation in respect of the Wailing Wall, which was the immediate cause of the troubles, was getting worse. The parties concerned were drifting away from each other. The Jews were becoming more and more confirmed in their opinion that the present situation was not what they had the right to expect; and the longer the present situation lasted, the more difficult it would be to come to a definite settlement on the question of the Wailing Wall. The Arabs, on the other hand, were becoming more insistent on what they considered to be their rights.

In a colony the situation could be dealt with by special legislation. After all other steps had been taken, probably one of the parties interested, or the two parties, would make a petition to the King. If the King were to declare that he was not prepared to give any directions in the matter, then the matter would be closed. Palestine, however, was not a colony, and the mandates system was especially adapted for appeals against the decision of a mandatory Power, for parties aggrieved by any decision of the Government could, and did, appeal against it to the Mandates Commission and to the Council.

In addition, in the present case, there arose the question of the Holy Places Commission. Article 14 of the mandate declared that all questions concerning the holy places should be dealt with by a special Commission, called the Holy Places Commission, and no decision regarding the holy

places could be regarded as final until it had been approved by that Commission. As the Mandates Commission knew, the Holy Places Commission had never been set up. Consequently, the British Government proposed the establishment of a Commission which would be, so to speak, an instalment of the Holy Places Commission. Its decision would be final and not subject to revision or appeal of any sort. To set up this *ad hoc* Commission, the British Government had to obtain the consent of the Council; but he felt sure that the Council would wish to have the opinion of the Mandates Commission in such a matter.

Time was the actual factor to be taken into account. It was necessary to come to a rapid decision; and it was because of this necessity that the British Government had followed the rather unusual procedure of asking the Mandates Commission to deal with this question, as if it had already been referred to it by the Council. On the other hand, Mr. Clauson thought that, if the Commission felt diffident in tendering unsought advice to the Council, his Government would be satisfied if the Mandates Commission told the Council that it had studied the matter and formed certain opinions on it, which would be at the disposal of the Council if that body desired them. That would facilitate the task of the British Government; but the question of procedure was one for the Mandates Commission to settle. The wish of the British Government was to clear up the problem of the Wailing Wall as quickly as possible.

Mr. Clauson added that his Government had given him instructions to ask whether the Mandates Commission proposed to publish any decision that might be taken. If it proposed to publish its decision, the British Government would like to be informed of it as soon as possible, so that the High Commissioner for Palestine might be warned in time to publish it there with the smallest delay possible.

The CHAIRMAN replied that the Mandates Commission would discuss the question of the communication from the British Government with the greatest care. On its side, the Mandates Commission would like to know if the British Government would publish its communication of November 18th.

Mr. CLAUSON replied that he was quite certain that the memorandum had not been published.

Lord LUGARD said that Mr. Clauson, in saying that the British Government did not wish to act without the advice of the Commission, seemed to have gone somewhat further than the text of the letter, which only asked the Permanent Mandates Commission to "command the proposal" to the Council.

Mr. CLAUSON admitted that he had spoken a little loosely. He had meant to say that the Government could not proceed without the approval of the Council and he presumed that the Council would wish to have the opinion of the Mandates Commission.

Mr. ORTS wished to ask two questions: Since the Mandates Commission was an advisory body to the Council, the normal way of asking it for an opinion was to approach the Council. In this case, the mandatory Power had applied direct to the Mandates Commission and asked it to give the Council its opinion. He would like to know why this procedure had been adopted.

Mr. CLAUSON explained that if the ordinary procedure were followed, the Council would not be able to deal with the matter before January. It would then come before the Mandates Commission in March or in July. At the best there would be a loss of time of two or three months and, at the worst, the loss of six or seven.

The CHAIRMAN asked Mr. Clauson if he had received instructions to act as the accredited representative for the purpose of the present discussion.

Mr. CLAUSON thought he could say that he was an accredited representative with certain instructions. If it were necessary for him to go beyond his instructions, he would inform the Commission that anything he might say was his personal opinion.

Mr. ORTS, in continuation, pointed out that under the terms of Article 14 of the Palestine mandate, the Holy Places Commission was to be appointed by the mandatory Power, after which the nominations would be submitted to the Council for approval. In the present instance, it was stated in the memorandum that:

"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."

He asked what the reason was for this departure from the procedure outlined in Article 14 of the mandate.

Mr. CLAUSON replied that he was unable to say why the mandatory Power should have put the proposal in that form. He thought, however, that the meaning was not necessarily that the President of the Council should select the actual members of the Commission but that he should at least lay down a general basis for its composition. Concerning the point whether Jews and Moslems would take part in this Commission, the mandatory Power would ask advice of the Council on this point, but he thought that its own view was that the Commission should be quite impartial.

M. RAPPARD referred to paragraph 2 of the memorandum:

"Pending the report of the Commission of Enquiry into the recent disturbances in Palestine, it is not possible for His Majesty's Government in the United Kingdom to express an opinion on the causes of those disturbances."

He expressed the hope that by March 1930 the Mandates Commission would be in possession of the report of the Commission of Enquiry or of some other report from the mandatory Power.

The CHAIRMAN remarked that that was the wish of all the members of the Commission.

Mr. CLAUSON stated that this wish had already been brought to the notice of the British Government.

The CHAIRMAN thanked Mr. Clauson and said that the members of the Commission were glad to know that, should they wish to ask further questions, he would be available.

(Mr. Clauson withdrew.)

The CHAIRMAN said that he need hardly emphasise the importance of the document that had just arrived from the British Government. He thought, however, that it would be useful to remind the Commission that it was Article 14 of the Palestine mandate which made the nomination of the

members of the Holy Places Commission, its composition and functions subject to the approval of the Council. It was therefore Article 14 which settled that the Council was fully competent in this matter.

In 1922, the Council had attempted to set up the Holy Places Commission on the basis of a proposal by Lord Balfour, which suggested that the Commission should consist of nineteen members with an American Chairman, and should be divided into three Sub-Commissions: one Christian containing ten members, one Moslem with four members and one Jewish with four members.

The Mandates Commission was aware of the reasons which had prevented the Council from agreeing to that proposal as well as to all the other proposals that had been submitted at the time.

The Chairman thought, in any case, that the first question to be discussed was whether the opinion of the Mandates Commission could be asked for by a mandatory Power, unless the request was seconded by the Council. If this preliminary question were answered in the affirmative, the Commission must decide whether it was competent to give an opinion on the British proposal, that was to say, whether and from what point of view it should examine it.

M. PALACIOS said that, in his view, in spite of the anomalies which existed in the procedure followed, the Commission should examine, discuss and take a decision on the proposal made by Great Britain in its communication to the Secretary-General of the League of Nations, dated London, November 18th, 1929. The anomaly existing as a result of the despatch of this urgent communication did not infringe any of the essential principles on which the duties of the Commission, as the advisory organ of the Council, were based.

As regards the competence of the Mandates Commission in the question of the holy places, M. Palacios stated that it was clearly based on Article 13 of the Palestine mandate in which it was said that the mandatory Power assumed all responsibility in connection with the holy places. The list of questions which had been drawn up in order to facilitate the examination of the annual reports, as well as the questions which the accredited representative had been asked on different occasions regarding this matter were

abundant proof of the competence of the Commission. So long as the structure and existing texts of the mandate were preserved by giving effect to Article 14 of the mandate, which up to the present had not been operative, so long would the competence of the Commission to act as an advisory body in these matters exist. It would exist as long as the responsibility of the mandatory Power itself.

Count DE PENHA GARCIA said that the first point was for the Mandates Commission to decide whether it was competent to deal with the matter without waiting for the opinion of the Council. If it were decided in the negative, there would be no need for further discussion.

M. VAN REES pointed out that Mr. Clauson had admitted that the procedure followed by Great Britain was unusual. In this special case, however, he thought the Mandates Commission would be taking too narrow a view of its duties if it refused to deal with the matter, because the Council had not officially referred the matter to it. It was obvious that Great Britain wished to waste no time, and the Commission ought not to be responsible for delaying the matter.

The CHAIRMAN pointed out, in the first place, that it must be remembered that the mandatory Power was solely responsible for the administration of the territory and that no part of that responsibility should be allowed to fall on the Mandates Commission. On the other hand, the Commission, by offering the Council advice for which it had not asked, must not appear to be forcing its hand, above all, if the Commission felt it could express an opinion on the substance of the question of the holy places, which, in his view, it was not competent to do. Seeing that the situation was serious, this would not prevent the Commission, in accordance with M. Van Rees' opinion, from considering the question which the mandatory Power had submitted to it.

M. RAPPARD said that, in his view, there were two possible methods of procedure: (1) Either the Commission could form an opinion and communicate it to the Council, prefaced by some polite formula, or (2) the Commission could advise the Council that it had discussed the question and formed an opinion which it would not communicate to the Council until asked to do so. On the whole, he thought that the latter method showed excessive prudence and that the first course

was the better. If the question had arisen at a time when an annual report on Palestine was under examination, the Commission would never have hesitated to express an opinion on it.

M. CATASTINI pointed out that if the question had come up in an annual report, the Commission would have been in a similar situation and it would have had to settle the same previous question.

Count DE PENHA GARCIA thought the Commission should bear in mind its threefold responsibility: To safeguard the interests of the mandated territory and its inhabitants, to assist the mandatory Power, and to advise the Council. He asked if the despatch of the British Government had been communicated to the Council.

M. CATASTINI explained that it had been addressed to the Secretary-General with the request that it should be communicated to the Chairman of the Mandates Commission. The Secretary-General had naturally carried out the request of the mandatory Power.

M. RAPPARD pointed out that, no doubt, the Secretary-General was not obliged to communicate to the Council every document that came to him, but that on the other hand every communication addressed to the Secretary-General of the League, who was at the same time Secretary-General of the Council, was always liable to be submitted to the latter.

He emphasised his point that, as the Secretary-General was Secretary-General of the Council also, it could not be claimed that the mandatory Power in this case had wished or had appeared to ignore the Council.

M. PALACIOS said that by its communication to the Secretary-General the British Government had *ipso facto* informed the Council and the Commission.

The CHAIRMAN remarked that the previous question he had put had been answered in the affirmative.

The Commission had now to examine the question put by M. Palacios whether the Mandates Commission was competent to deal with the Holy Places Commission as set forth in Article 14 of the mandate.

M. PALACIOS said that, to prove the competence of the Commission, it would be sufficient for him to repeat his previous declarations. In order, however, to be still more clear, he would read the beginning of Article 13 of the mandate:

"All responsibility in connection with the holy places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the holy places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum is assumed by the Mandatory . . ."

There was no doubt that, in view of the responsibility assumed by Great Britain in its capacity as mandatory Power, the Mandates Commission was competent to examine its governmental and administrative policy in this matter and to present to the Council the necessary observations. The list of questions relating to the mandate for Palestine, which had been approved by the Council and had been in force since then, confirmed this point of view.

As regards the exercise of this competence in the matter of Article 14, M. Palacios recalled that he had been the member of the Commission who had reminded the mandatory Power that the provisions of the said article had not been observed. Thus, in the Minutes of the session held in June 1928 (page 56) his remarks were recorded as follows:

"M. Palacios pointed out in regard to the holy places that the Commission provided for in Article 14 of the mandate had not yet been appointed".

It was true that Lieut.-Colonel Stewart Symes had replied to this observation "No news is good news", a very short time before the unfortunate incident of the Wailing Wall.

During the session of the Commission which had taken place in July 1929, M. Palacios had returned to this question and had said (page 200 of the Minutes of the fifteenth session) that he did not wish

". . . that the satisfaction expressed by the Commission . . . should in any way prejudge the question of the appointment of the Holy Places

Commission--which was still non-existent--
required under Article 14 of the mandate".

Finally, last September, at the Sixth Committee of the Assembly of the League of Nations, *apropos* of the serious events which had occurred in Palestine between the Jews and the Arabs, M. Palacios had said:

"Article 14 of the mandate for Palestine provided for the appointment of a special Commission for the Holy Places. It had not been possible to appoint this Commission" (see *Journal of the Assembly*).

M. Palacios had recognised on that occasion that the non-existence of this Commission was not to be imputed only to the mandatory Power, but also to the other interested States which in 1922, at the time when Lord Balfour's proposal had been made, had not been able to agree upon the action to be taken regarding it.

M. VAN REES remarked, concerning the question of the competence of the Mandates Commission, that the British Government wished to set up a special *ad hoc* Commission on the basis of Article 14 of the mandate. This special Commission would assume part of the task of the Holy Places Commission and its decisions regarding the Wailing Wall were to be final and not subject to revision by the Holy Places Commission, should that Commission ever be formed.

In accordance with the terms of Article 14 of the mandate, the mandatory Power was called upon to appoint this Commission and it was also stated that the method of nomination of its members, its composition and its functions would be submitted to the Council for its approval. This Article therefore provided for the establishment of a new organism, the composition and duties of which would be settled by two authorities only, namely, the mandatory Power and the Council. The Mandates Commission, therefore, had nothing to do with the execution of Article 14 in whole or in part.

M. PALACIOS said that, in his view, the opinion put forward by M. Van Rees as regards the British proposal was correct. It only served, however, to confirm the statement already made by M. Palacios regarding the competence of the Mandates Commission. While he recognised that the

Commission was competent to examine the question of the establishment of what might be called the fragmentary Holy Places Commission and to recommend or not to recommend that this Commission should be set up, M. Van Rees was of the opinion that the Commission should not make this recommendation.

M. Palacios was, in principle, in agreement with his colleague. For what reason? Because the mandatory Power had not formulated a proposal based on Article 13, nor on any other article of the mandate except Article 14. This latter Article, however, was an international compromise based on historical interests and age-long traditions and was of such importance that even in November, 1922, it had already given rise to all kinds of difficulties of principle which Lord Balfour himself had recognised at that time in his speech to the Council of the League of Nations. This Article therefore must be interpreted in a restrictive manner.

The Holy Places Commission, for which provision was made under Article 14 of the mandate, was a single unit with precise instructions to study, define and settle all the rights and claims arising in connection with the holy places. It was an "organ" and not a "group" of parts. The Commission, which was now proposed by the mandatory Power was not a "germ" in which the plenary Commission (as it was called in the British communication) would be represented in a more or less developed form, but it claimed to be a "part" of that Commission. It was not even a part, for a "part" of an organ was only part of a "whole" and that "whole" did not exist.

Further, what was the general plan of the mandatory Power, apart from the reference made in its communication to what it called "the Plenary Commission"? Nothing was said of this plan. It might be supposed, and not without reason, that it was the plan to which reference had already been made, a plan prepared by the Colonial Office and presented to the Council by Lord Balfour; a plan of which its illustrious defender had said that although it had not been successful, it contained elements which would one day certainly serve as a basis for the final solution. No other solution was known than this.

The new British proposal, however, was diametrically opposed to this plan. It was sufficient to compare the

proposal of 1929 with that of 1922. According to the terms of the Balfour proposal, the Sub-Commissions would work separately; they could, however, meet to deal with general affairs subject to the approval of the supreme body constituted by the Commission sitting in plenary session. Nothing of this kind was possible under the present fragmentary plan. The proposed commission would not even be one of the local Committees for which provision was made in paragraph 11 of the first draft.

To accept the proposal that the decisions of this fragmentary Commission should be definitive and not subject to revision by the hypothetical plenary Commission, was equivalent to restricting the competence of the latter, to reducing its attributes, and to "mediatise" it to a considerable extent.

Other details of the new proposal as, for example, the appointment of the ad hoc Commission by the President of the Council--which were contrary to the terms of Article 14--were not, in M. Palacios' view, of such great importance. If the mandatory Power had the right to appoint the Holy Places Commission and if it proposed or agreed that this Commission should be appointed by the President of the Council, any inconvenience which might result should the Council accept this suggestion would not legally be of any great importance, provided the mandatory Power continued to assume, in every case, the responsibility for its obligations.

To sum up, M. Palacios considered that the Commission could not, on the basis of Article 14 of the mandate, recommend to the Council that the proposal of the British Government should be adopted; in the first place, because the proposed Commission was not the Holy Places Commission, nor even the germ of that organisation, which by a process of evolution and differentiation would produce the organs necessary to carry out its different functions. Neither was this proposed Commission one part of the Holy Places Commission, since the latter did not exist, even in a draft. In the second place, the British proposal could not be supported because, as at present contemplated, the organism could be nothing more than an *ad hoc* Commission, necessarily essentially different from the single Commission for which provision was made in the mandate, and this *ad hoc* Commission would therefore be contrary to the terms of that mandate.

"Let us not take any decision" said Lord Balfour to the Council, "before the Powers have expressed their opinions". These words prove the existence of the compromise to which M. Palacios had referred. The Mandates Commission could not do otherwise, in dealing with such a delicate point, than follow the interpretation of Article 14 given by such an eminent authority. The Council which had other obligations and other responsibilities, another mission, other means of forming an opinion, could always and in every case, take the decision which seemed to it the best.

M. RAPPARD drew from the speech of M. Van Rees the conclusion that, since the Council was the only competent body to settle this question, and since the duty of the Mandates Commission was to give advice to the Council on all matters relating to the observance of the mandates, the Commission was fully competent to examine this question. The Mandates Commission could certainly express its opinion, but, naturally, the Council alone would take the final decisions.

M. ORTS said that the Mandates Commission would be competent to deal with this question from the moment when the Council asked it to do so. He thought that the Mandates Commission should, in view of the circumstances and urgency of the case, immediately set down in writing the result of its discussions and inform the Council that it was prepared to express its opinion if required to do so.

M. PALACIOS said that, as regards the question of Iraq, he had on previous occasions held an opinion which differed from that of M. Orts. He regretted that he was not in agreement with his Belgian colleague, but the constitutional basis on which the Mandates Commission was able to intervene in this affair was provided in the last part of Article 22 of the Covenant. It said:

"A Permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates."

The mandatory Power itself had stated that its proposal was intended to give effect to Article 14 of the mandate. The Commission, therefore, should give its advice to the Council on this subject just as if the mandatory Power had

included its proposal in its annual report. What more was required, since the accredited representative himself had appeared before the Commission?

Lord LUGARD said that the mandatory Power was faced with a serious situation largely arising from the fact that it had not been possible to appoint the Holy Places Commission. It had, therefore, been compelled to adopt an emergency measure. He thought the Mandates Commission would incur heavy responsibility if, by its action, it caused delay and if it refused to deal with the memorandum.

There was no need for the Commission to express an opinion on matters of detail. It could agree to the *ad hoc* Commission while leaving the Council to define its powers and scope and to decide as to the finality of its decisions.

M. PALACIOS did not see any objection to the proposal of the mandatory Power to set up this *ad hoc* Commission in accordance with the terms of the Article which might authorise it, but the Mandates Commission should make it quite clear that this Commission was not to be confused with the Holy Places Commission, referred to in Article 14.

Lord LUGARD pointed out that the mandatory Power did not propose to set up the *ad hoc* Commission until it had obtained the agreement of the Council.

M. PALACIOS said that the Mandates Commission, in any case, was only responsible for the advisory opinion it gave to the Council.

M. VAN REES was astonished that M. Rappard had been able to draw from the statement of his point of view inferences leading to conclusions that were completely opposed to his own. M. Van Rees had said that the constitution of a Holy Places Commission was a matter solely for Great Britain and the Council. Had the Council in 1922 thought of consulting the Mandates Commission before putting Article 14 into execution? Clearly not. There was no reason therefore to suppose that the Council would first have consulted the Mandates Commission if the British Government's proposal had been addressed to the Council. This did not mean that it was prohibited from consulting the Commission. There was no doubt that it could do so, and in any case the Mandates Commission would be required to give its opinion even

though, constitutionally speaking, the execution of Article 14 was none of its concern.

Lord LUGARD pointed out that the opinion of the Mandates Commission could not have been asked in August 1922 because at that date the mandate had not yet come into force.

M. VAN REES replied that the Mandates Commission had existed since 1921.

M. KASTL considered that, as the communication received from the British Government dealt with the execution of the mandate, the Mandates Commission was entitled and obliged to give an answer and to form an opinion. The mandatory Power had a perfect right to create any *ad hoc* Commission it might judge useful, but it should be pointed out that the *ad hoc* Commission suggested in the memorandum from the British Government had no connection with the Commission referred to in Article 14 of the mandate. Such a Commission could study the question involved and make some proposals, but could not take a final decision. He thought that the opinion of the Mandates Commission on this point should be given to the Secretary-General and through him transmitted to the Council. He drew the attention to the fact that the situation required an immediate decision.

Mlle. DANNEVIG wished to express the same opinion as M. Kastl. She wondered whether the Jews and Moslems would consider the decisions of such an *ad hoc* Commission as final, and whether they would not feel themselves justified in not doing so, as the scheme was not in conformity with the provision in the mandate concerning the Holy Places Commission.

Count DE PENHA GARCIA drew attention to the necessity of an immediate decision, since the British Government wished to form the *ad hoc* Commission before the next session of the Council and, consequently, the decision would have to be taken by the President of the Council. It was certain that Great Britain had always the right to form such an *ad hoc* Commission, but he feared that there might be an appeal from this Commission to the Holy Places Commission, which had never been nominated. He thought that the Mandates Commission was faced by the following question: Was it possible to change the stipulations of the mandate? As it was impossible for the Mandates Commission to do this, its only action could be to reply in the negative to the

memorandum from the British Government.

M. RAPPARD recalled that the discussion had been divided into three parts--preliminary discussion, examination of the competence of the Commission, and the reply to be made to the mandatory Power. M. Van Rees had stopped at the question of the competence of the Mandates Commission. This did not imply that the Mandates Commission would be prohibited from drawing the attention of the Council to the incompatibility of the British proposal with Article 14 of the mandate for Palestine.

The CHAIRMAN pointed out that M. Van Rees and himself were in agreement that the Mandates Commission should express its opinion.

M. MERLIN pointed out that the proposed procedure, that the Mandates Commission should advise the Council before being asked for its opinion, was completely without precedent. Until the present moment a mandatory Power had never approached the Mandates Commission directly and before approaching the Council.

The present situation presented several anomalies. Seven years ago the mandatory Power had failed to set up the Holy Places Commission. He did not see how the British Government could now proceed to the formation of an *ad hoc* Commission which would be set up as part of the Holy Places Commission, since the latter Commission itself did not exist. The proposal of the British Government presented a second anomaly, since the *ad hoc* Commission would be granted final powers which would not be subject to review by the full Commission contemplated by Article 14 of the mandate; consequently, should ever the Holy Places Commission be brought into being it would be unable in any way to modify the decisions of the *ad hoc* Commission.

The proposal of the British Government, if accepted, would constitute a breach of Article 14 of the mandate, and the fact that the decisions of the *ad hoc* Commission would be final presented serious inconveniences.

Moreover, the demand for the President of the Council of the League of Nations to decide upon the composition of this *ad hoc* Commission was also a breach of Article 14 of the mandate, since it would transfer responsibility for the step from the mandatory Power to the League of Nations

itself.

Lord Lugard had said that the matter was urgent, but M. Merlin would like to point out that the events in question had happened in the previous August. In those circumstances, why had the proposal not been made to the Council in September and not at the very end of the present session of the Mandates Commission? There seemed to be no reason why the communication could not have been made earlier, and in that case it could have been examined more at leisure and by the proper authorities. M. Merlin thought that the Mandates Commission ought to give its opinion quite freely, since the question that confronted it was an extremely delicate one. He would agree, if necessary, though somewhat reluctantly, with M. Orts' suggestion that the Mandates Commission should express its opinion, but reserve it and only communicate it to the Council of the League when the Council asked for it.

The CHAIRMAN wished to remind the Mandates Commission that it had frequently questioned the accredited representative about the situation in Palestine and urged the mandatory Power to establish the Holy Places Commission. Moreover, a definite question regarding the Holy Places Commission had appeared in one of those questionnaires, which had received special criticism from one of the mandatory Powers. Consequently, it was by no means the Mandates Commission which was responsible for the present situation.

Lord LUGARD said that, whether the decision reached by the Commission was kept in reserve until the Council asked for it or not was a matter which could be discussed later. The Commission appeared to be unanimous that it should arrive at a decision in either case. He suggested, therefore, that it would be advisable to discuss a definite text, and he submitted that it might be on the following lines:

"The Commission desires to point out that the request of the mandatory Power that the Commission should commend its proposal to the Council is contrary to the role imposed upon it by its constitution, since it is an advisory body to the Council and only gives its advice when asked to do so by the Council. It recognises, however, that the present situation is very exceptional and that the reason of the request is in order to arrive at a solution which may prevent further bloodshed. In these

circumstances, it believes it to be its duty to express an opinion, and that it would not be exceeding its proper role in doing so.

"It considers that the course proposed is the best in the circumstances, but it desires to emphasise the fact that the *ad hoc* Commission proposed will not be the Holy Places Commission mentioned in Article 14 of the mandate, and its composition and powers must necessarily be subject to the decisions of the Council."

M. RAPPARD had also been struck by the anomalies in the demand of the mandatory Power. On the other hand, the Commission ought to take into account, not only its own responsibility, but that which would fall on the League of Nations. Had Palestine been entrusted, in full sovereignty, to Great Britain, the present difficulties would not exist; the matter would have been settled by Government action or entrusted to a Commission with sovereign powers. All the present difficulties were caused by the mandate and could not be called the fault of the mandatory Power, since Great Britain had wished to set up the Holy Places Commission and had proposed several forms of procedure on which the Council of the League of Nations had been unable to agree. The responsibility, therefore, rested with the Council or with the mandate itself, since Article 14 of the Mandate contemplated an agreement between the Council and the mandatory Power which the Council had not been able to realise. It would be very serious if it were stated that the massacres in Palestine continued because the mandatory Power, charged to put them down, found itself hampered by the mandate. Under these circumstances, the Mandates Commission although, naturally, it could not recommend any solution contrary to the Covenant, should, nevertheless, do all in its power to help the Mandatory to overcome the difficulties caused by the mandate. The Commission might agree to a formula recommending a solution which was in conformity with the mandate and capable of restoring order according to the principles of justice.

The CHAIRMAN wished to refer to one point raised by M. Rappard, namely, the responsibility of the League of Nations for the gap occurring as a result of the non-existence of the special Commission for the holy places provided for under Article 14 of the mandate for Palestine. The criticism made by M. Rappard affected at the same time,

the Council and the Mandates Commission. As regards the Council, this criticism was not well founded for, since 1922, the mandatory Power had presented no further proposal for the composition of the Commission, as was required under Article 14 of the mandate. The Mandates Commission, on the other hand, had dealt with the question of this gap and had raised it several times with the accredited representative of the mandatory Power. The question of the holy places was included amongst others appearing in the list of questions prepared by the Mandates Commission and approved by the Council.

Further, it was not correct, in his view, to regard the question of the Wailing Wall as the pivot of the situation in Palestine. This question was one of numerous causes of trouble in Palestine and it would be more exact to state that it was only one manifestation of the real causes of the difficult situation there, causes which were much more profound.

Once the Mandates Commission had been freed from responsibility, the Chairman noted that the large majority of the Commission were in favour of its competence. The first point to be decided was whether the proposal of Great Britain was in accordance with or contrary to Article 14 of the mandate, which was the code of the Commission.

M. RAPPARD had already spoken on this point. In his opinion, the proposal of the British Government in its actual form did not conform to Article 14 of the mandate. It would be extremely disagreeable for the Mandates Commission merely to make that statement. He realised that the affair of the Wailing Wall was only one of the many troubles in Palestine. But these incidents were not unconnected with the fact that Palestine was placed under a mandate. That meant that responsibility rested either on the persons who drew up the mandate or on the Council, that was to say, upon the League of Nations.

The CHAIRMAN pointed out that it was not for the Commission to pronounce a judgment on the mandates system.

M. RAPPARD was only concerned with the unfortunate results for the League to which this matter might give rise as regards public opinion.

The CHAIRMAN thought that it was the duty of the Mandates

Commission to safeguard this point in its conclusions.

M. ORTS persisted in the view he had already expressed, that the Mandates Commission ought only to give its opinion when it was asked to do so by the Council. M. Palacios had quoted certain precedents, for example the "Hilton-Young" report and the communication of the draft Treaty between Great Britain and Iraq. Under such circumstances, M. Orts had always maintained that, when a mandatory Power communicated such a document to the Mandates Commission, it was evidently in order that the Commission should take note of it and express an opinion. In making such communications, the aim of the mandatory Power was to ascertain what objections the Commission might have.

It was no use to quote these precedents on the present occasion, for the situation was not one where the mandatory Power wished to discover the opinion of the Mandates Commission. The Commission was asked to take the initiative as regards the Council. Under these circumstances, and with regard to the procedure that had been employed, the Mandates Commission would be making a mistake if it gave an opinion for which the Council had not asked.

The solution would be that already indicated, namely, that the Commission should study the request of the British Government and inform the Council that, if it wished to receive an opinion on the matter, the Commission was at its disposal. If the Council did not ask for one, the discussion which had taken place in the Commission would be considered as non-existent.

The CHAIRMAN sympathised with the difficulties of M. Orts, but he thought there was a contradiction between these difficulties and his solution. If the reply of the Commission to the Council was in the negative the mandatory Power, when it had received this reply, would be able more rapidly to consider other means of finding a solution, whereas according to the system proposed by M. Orts it would have to wait for results until the Council session in January.

M. PALACIOS stated that he always much appreciated the arguments put forward by M. Orts, but he had already explained why this time, those arguments had not convinced him. He had not referred to other cases in which he had also found himself in disagreement, during the present

session, with his Belgian colleague. As regards Iraq, M. Orts also thought that it was necessary to wait until the Commission had been seized of the matter by the Council. The force of the reasons brought forward by M. Palacios lay in the provision of the last paragraph of Article 22 of the Covenant.

Neither did he think that the mandatory Power was asking the Commission to exercise moral pressure on the Council. This Power, as a matter of fact, had greater influence in the Council than the Mandates Commission. In its communication it had based its demand--and the justice of its reasoning seemed evident--on the gravity and urgency of the situation.

Moreover, the moral pressure of an advisory organ on an executive organ was always very limited. This was proved by precedent. On several occasions, when dealing with questions which had been brought directly before the Council by the Commission, the former had taken a decision which was contrary to the unanimous recommendation of the Commission. He would quote as examples the affair of the visit on the spot to the territories under mandate raised indirectly by an Arab petition, the question of the extension of the questionnaire, the question of the official hearing of petitioners, the question of the Treaty with Trans-Jordan. Why had not the members of the Commission felt incensed by these decisions? Because the possibility of such divergencies of view was to be expected. In the presence of an opinion expressed by an advisory organ, the executive organ could take a contrary decision for reasons which were not within the province of the author of the opinion. The essence of the system was the obligation to obtain the opinion. It was not obligatory to accept it. On the contrary, if the Commission, on which Article 22 of the Covenant imposed the obligation to express an opinion, waited for the Council to take the initiative and to ask it for that opinion, and if the Council for any reason did not seek its advice on an affair of such great importance, the Commission would be in such a humiliating position that it might perhaps result in the resignation of its members.

M. KASTL was of the same opinion as M. Palacios. It was not necessary for the Commission to wait for the Council to ask for its opinion before actually making it known, and there was no reason why the Commission should not give it immediately, especially since the situation was extremely

serious and the British Government ought to be put in a position to modify its proposal as quickly as possible, if it thought it necessary.

The CHAIRMAN made a rapid summary of the present situation. The Commission was competent to deal with the matter; it could leave out of account the anomalies that had been raised by the procedure followed by the mandatory Power and could reply to the Council. He asked if M. Orts insisted that a new course should be followed, or if he agreed that the ordinary procedure was sufficient in drawing up a reply to the Council which would be communicated to it immediately. The Commission would discuss, at the next meeting, whether the demand of the British Government was contrary to Article 14 of the mandate or not.

1132. Palestine: Article 14 of the Mandate: Communication from the British Government, dated November 18th, 1929 (continuation).

The CHAIRMAN asked if the members of the Commission agreed with the summary of the discussion which he had submitted at the end of the previous meeting: (1) To ignore the anomalies arising from the procedure followed by the British Government; (2) to recognise the competence of the Commission (he would recall that, on this point, M. Orts had made a reservation); (3) to consider whether the proposal of the mandatory Power was in conformity with the mandate or contrary thereto; (4) to define the grounds on which the Commission based its opinion or to refer to the Minutes.

M. ORTS thought that there was no objection to the Commission examining the substance of the question, subject to the opinion he had expressed regarding the desirability of an immediate communication to the Council.

M. VAN REES, passing over the first two points, said that the British Government's proposal was undoubtedly contrary to Article 14 of the mandate. It should be remembered, however, that the article was not immutable and that the Council would be entitled, if necessary, to modify it in order to allow of the adoption of the British proposal. The Commission could not say therefore that the proposal could not be carried out because Article 14 would not permit it, since it might be argued in reply that Article 14 could be

modified if the Council, at the suggestion of the British Government, decided to do this. He wondered whether the Commission ought, in its recommendation, to refer to that point.

M. PALACIOS agreed with M. Van Rees; the British Government's proposal to appoint an *ad hoc* commission was contrary to the terms of Article 14 of the mandate. He would not, however, go so far as to support M. Van Rees' conclusion. He thought the Commission was competent to deal with the matter but that it would be exceeding its powers in making such a suggestion.

M. VAN REES observed that he had not been making a suggestion but was merely giving his opinion for the benefit of the Mandates Commission.

M. PALACIOS said, without hesitation, that if he had to reply, point by point, to the brief questionnaire which had been outlined by the Chairman, his reply would be somewhat as follows:

The Permanent Mandates Commission had examined, with all the attention and urgency required by the gravity of the situation, the proposal which the mandatory Power had made in its letter of November 18th, 1929, to the Secretary-General of the League, in which it was suggested that a recommendation should be made to the Council for the appointment, under Article 14 of the Palestine mandate, of a special *ad hoc* Commission, whose task it would be to define and settle the rights and claims of the Jews and Moslems with regard to the Wailing Wall at Jerusalem.

He thought that the Commission, while noting that there were certain anomalies in the procedure suggested in the British proposal, should consider that these anomalies were merely incidental and did not affect its functions or its competence at any essential point.

After having thoroughly examined the substance of the problem, the Permanent Mandates Commission should, he thought, decide not to make any recommendation to the Council for the creation of a Commission such as that proposed by the mandatory Power. Although its terms of reference would be narrow and limited to the question of the Wailing Wall, the decisions of this Commission, which

would have been appointed by the President of the Council of the League, would nevertheless be final and would, consequently, be binding upon the plenary Commission which was to be set up, whose work in this connection would thus have been anticipated. An *ad hoc* Commission of this kind, far from being in conformity with the terms of Article 14 of the mandate, would be in direct opposition to the terms of that article, and would be essentially opposed to those terms as regards an extremely delicate matter.

As regards the proposal that the mandatory Power should, on its own responsibility and outside the terms of Article 14, appoint an *ad hoc* Commission for this purpose (which, however, it had not proposed to do), M. Palacios would have certain reservations to make, since he held that the spirit and the letter of the article in question should be strictly observed.

Nevertheless, the Permanent Mandates Commission, fully recognising that, as the mandatory Power had pointed out, the situation was a grave one and action was urgently necessary, and bearing in mind the fact that, even before the occurrence of the incident at the Wailing Wall, it had reminded the accredited representative that the Commission for which provision had been made had not yet been appointed, might perhaps recommend the Council to make every effort to induce the mandatory Power to set up at once the Holy Places Commission provided for by Article 14 of the Palestine mandate, and to ask the Council for its final approval.

It was indeed conceivable that the preliminary agreement between the nations concerned, to which Lord Balfour had referred in the scheme and in the speech which had been recalled by the mandatory Power, might now be realised, in view of the gravity of the situation and the urgent need for action. During the two months before the next session of the Council, the mandatory Power might perhaps take some step in this direction, and the Council might base its decision upon the results of this fresh effort.

M. ORTS said his only objection to M. Palacios' suggestion was that, as everyone was aware, the mandatory Power had hitherto not succeeded in carrying out the provisions of Article 14.

The CHAIRMAN asked how M. Orts could state that, since the

establishment of the mandate, the mandatory Power had endeavoured to put Article 14 into effect.

M. RAPPARD reminded the Commission of the lengthy discussions which had taken place in 1922 in the Council, the outcome of which had been Lord Balfour's statement. At that time there had been a great deal of negotiation and several successive proposals had been put forward none of which had been approved by the Council. That was why the mandatory Power had not put them into effect. He wondered therefore whether the Mandates Commission would be well advised to insist on the immediate application of Article 14. The League of Nations must not be exposed to the reproach that some people might be tempted to make, by saying: "If it has been found impossible to establish the Holy Places Commission, it is because the proposal has encountered difficulties caused neither by Jew nor Moslem, but by the representatives of the various Christian nations".

M. ORTS, in reply to the Chairman, said that he had only referred to a fact of which everyone was aware: because of international opposition it had not been possible to set up the Holy Places Commission.

The CHAIRMAN, reverting to the third point of his summary, asked the Commission whether it thought that the proposal before it was in conformity with the mandate and more particularly with Article 14 thereof.

Lord LUGARD agreed that it was contrary to the letter of the article but in his judgment it was not contrary to its spirit, because, in order to carry out the mandate the mandatory Power must take the measures it thought necessary to avoid disturbances and possible further bloodshed. It considered that the appointment of this *ad hoc* Commission was necessary for this purpose.

In reply to M. Palacios, who said that, on the contrary, the proposal was not in keeping with the spirit of Article 14, Lord Lugard maintained his point of view and his reservation.

The CHAIRMAN, after consulting his colleagues, noted that the Commission recognised the British proposal to be contrary to Article 14 of the mandate, except Lord Lugard, who held that it was contrary to the letter and not to the

spirit of that article.

M. RAPPARD thought it would be better, for the sake of clear discussion, to say that the Commission unanimously agreed that the proposal was contrary to the terms of Article 14.

In reply to several members who thought that the proposal was contrary to Article 14, both in the letter and in the spirit, and with a view to reconciling the various points of view, he proposed to say: "Contrary to the terms of the article".

Lord LUGARD admitted that the British proposal was contrary to the terms of Article 14, but as the aim of the proposal was to prevent the shedding of blood and every form of disturbance, he thought that it was not contrary to the mandate and therefore maintained his reservation.

The Commission, with the exception of Lord Lugard, decided that the British Government's recommendation was contrary to the terms of Article 14 of the mandate for Palestine.

The CHAIRMAN then read the first part of a text which he had prepared:

"The Permanent Mandates Commission thanks the mandatory Power for its communication, dated November 18th, 1929. It appreciates the efforts of the mandatory Power to settle equitably the difficulties with which it is confronted at Jerusalem, to reconcile all the conflicting interests, to calm perturbed minds and ensure public tranquillity, order and peace in Palestine. The Commission, however, which, in accordance with the terms of Article 22 of the Covenant and of the mandate is merely a supervisory body, cannot act in the place of the mandatory Power and advise it as to the methods it should follow and the steps it should take to attain the twofold aim it has in view. It must reserve to the mandatory Power, with the exclusive exercise of its mandate, full freedom of action."

It would then be sufficient to say that the Commission had declared that the proposal was not in keeping with the terms of Article 14 of the mandate.

M. RAPPARD thanked the Chairman for transferring the discussion from generalities to a definite text, but he was not at all sure that the first part of the text would meet the situation. The Commission's recommendation should, to a certain extent, reflect the doubts which it had felt.

The CHAIRMAN replied that the Minutes would do that.

M. RAPPARD went on to point out that the text proposed by the Chairman said that it was not the Commission's duty to advise the mandatory Power. The mandatory Power was not asking for advice; it was simply asking the Mandates Commission to support its proposal before the Council.

The CHAIRMAN warned the Commission of the consequences of supporting such a proposal; if it did so, it would be sharing the responsibility for the proposal.

M. RAPPARD thought that in opposing the British proposal the Mandates Commission would also be assuming a certain responsibility.

The CHAIRMAN, reverting to the substance of the problem, said that one point had been settled: the proposal was contrary to the terms of the mandate. The Commission now had merely to agree as to the statement to be made to the Council; this was a matter of drafting.

M. ORTS said he thought that this statement made all further action unnecessary and brought the discussion to an end. He therefore proposed the following text:

"The Permanent Mandates Commission has carefully considered the memorandum received from the mandatory Power. As a result of this examination, it has come to the conclusion that a Commission, whose duty it is to review the manner in which the mandates are applied, could not recommend to the Council a solution which would be contrary to the terms of Article 14 of the mandate for Palestine."

Count DE PENHA GARCIA agreed with M. Orts. The Commission should confine itself to the juridical point, on which it was unanimous.

The mandatory Power had sent a document to the Mandates

Commission, dated November 18th, asking the Commission to give an urgent opinion concerning the creation of an *ad hoc* Commission to settle the Wailing Wall incident. That procedure was abnormal since it ought first to have been submitted to the Council which could take a decision without consulting the Mandates Commission.

Moreover, he did not quite see why it was only now that the question of appointing a Commission to deal with the Wailing Wall problem arose with such urgency. The problem had existed for years. The latest regrettable conflicts in Palestine had occurred as far back as August.

However that might be, the mandatory Power was asking the Commission to give its opinion to the Council on the proposal it intended to put forward in January.

The Commission was not competent to take a decision in this matter. It could, however, regard the document as throwing light on the administration of the mandatory Power. From that point of view, the Commission was competent to inform the Council of its opinion in view of the argument of urgency and of the fact that the case was an exceptional one.

The mandatory Power proposed to set up a Commission on the basis of Article 14 of the mandate to settle the Wailing Wall problem. Unfortunately, Article 14 did not allow of the creation of a Commission for the Wailing Wall but only of a Holy Places Commission. The latter would always have the final decision in all that concerned the study, definition, codification and settlement of rights and claims concerning the holy places.

The mandatory Power could, however, appoint, under Articles 1, 2, 13 and 15, the Wailing Wall Commission as a Commission *ad hoc* to meet on the spot. That Commission would be able to settle all disputes but there would always be the possibility of an appeal to the Holy Places Commission. As the latter Commission was not yet in existence, the possibility of appeal would be temporarily non-existent.

The mandatory Power might also put Article 14 into effect, that was to say, create the Holy Places Commission. It would then possess a body which could take decisions, without appeal, on the question of the Wailing Wall.

As the mandatory Power alone was able to judge the respective difficulties and disadvantages of either policy, the Commission could not express an opinion. Of one thing alone he felt certain, and that was that the proposal of the mandatory Power was contrary to Article 14 of the mandate. The Commission therefore could only regard the proposal as an infringement of that article. Article 14 provided for a Commission to deal with all questions connected with the holy places and to settle these problems finally. Any other Commission which took final decisions on those points would be contrary to Article 14 of the mandate. The Mandates Commission could not advise an alteration in the definite terms of an article of the mandate. That was not its task. He thought that other methods might be tried in an endeavour to solve the problem which might help to restore tranquillity in Palestine.

Nevertheless, the causes of the strife and disagreement, in which the conflict had their origin, seemed to be deeper than that. They seemed to be more complex and were of a racial, religious, moral, social and psychological character. He would be glad to read a report submitted by the mandatory Power on those questions as a whole. That Power had, in no less serious situations, always been able to discover some means of conciliation and thoroughly common-sense solutions.

M. PALACIOS said that the Mandates Commission was faced with the fact that Article 14 had not been put into effect. It was, therefore, an inoperative instrument. After declaring the *ad hoc* Commission to be contrary to Article 14, the Mandates Commission might then ask the mandatory Power if it still found it impossible to put Article 14 into effect. It might be the duty of the Mandates Commission to recommend its execution, with a view to helping to obtain the very agreement in question.

The CHAIRMAN observed that, in other mandates, also, there were articles which had not yet been applied--for instance, in Syria, the provision concerning the Organic Law. Similarly, the Holy Places Commission had not been established, but it must not be concluded from that that the mandate was not working. In any case, the Council would take cognisance of the Mandates Commission's discussions, as set out in the Minutes, and could refer to them in taking its own decisions.

M. RAPPARD saw two main advantages in M. Orts' proposal: the first, the registration of the Commission's unanimity on one point, and the second, the complete absolution, from a formal standpoint, of the Mandates Commission from all responsibility.

The proposal, however, might not prove to be entirely satisfactory. The mandatory Power had to contend with great difficulties and was asking the Commission to approve a given procedure to enable it to solve those difficulties. If the Commission replied: "Your proposal is contrary to Article 14; consequently we cannot recommend it to the Council", without adding anything further, would it have fulfilled its duties as an advisory body?

M. PALACIOS thought that the negative decision of the Commission should be accompanied by a positive one. It might be possible to recommend a solution which was not contrary to the terms of the mandate.

M. ORTS said he would certainly have completed the text he had proposed, if he had not feared that certain of his colleagues would be opposed to this addition.

The CHAIRMAN said that, judging from his own experience in the East, he was afraid that the precedent of setting up an *ad hoc* Commission might complicate and prejudice the future. The British proposal suggested the appointment of a Commission to consider a dispute between Jews and Moslems, but with no Jewish or Moslem members. There were a dozen questions concerning the holy places that were in dispute between the various religions, so that in order to settle all the disputes between the various denominations, almost thirty such Commissions would be required.

M. ORTS read again the first part of his proposal:

"The Permanent Mandates Commission has carefully considered the memorandum of the mandatory Power. As a result of this examination it has come to the conclusion that a Commission, whose duty it is to review the manner in which the Mandates are applied, could not recommend to the Council a solution which would be contrary to the terms of Article 14 of the Palestine Mandate."

M. Orts then--at the request of certain members--read the

second part of his proposal, which he had not previously read, fearing that it might evoke opposition:

"The Permanent Mandates Commission is of opinion, on the other hand, that the solution proposed by the mandatory Power merits consideration by the Council if the latter feels that Article 14 of the Palestine mandate might, in agreement with the mandatory Power, be revised."

Lord LUGARD accepted M. Orts' proposal.

A vote was taken and *the first part of M. Orts' proposal was adopted by the Commission; the second part was rejected by 7 votes to 4.*

M. MERLIN suggested that, in order to meet the considerations put forward by M. Rappard, a phrase on the following lines might be inserted:

nevertheless suggests that the Council should consider any proposal which, without being contrary to the terms of the mandate, would be likely to solve the outstanding disputes between Jews and Moslems, calm the population and consolidate tranquillity and order in Palestine. It will follow with sympathetic interest all efforts made by the mandatory Power to attain this object."

M. PALACIOS thought that it was the Commission's duty to encourage the mandatory Power to put Article 14 into effect and warn it against any decision which would be incompatible with that article. He would agree with M. Merlin's proposal if the Commission did not approve his own, but he insisted on his point of view.

M. RAPPARD thought it would be unwise to adopt the course indicated by M. Palacios. If the mandatory Power had not proposed a solution in keeping with Article 14, it was because it had reasons for not doing so. The difficulty might perhaps be solved if the Commission accepted the following addition to M. Merlin's text, to which M. Palacios might agree: "... If the mandatory Power and the Council considered it impracticable to put Article 14 into force immediately . . ."

M. PALACIOS said he could not accept that text. As a member of the Mandates Commission he felt bound to advise that

Article 14 should be put into operation. If the Council wished to modify that article it could do so; but the suggestion ought not to come from the Commission.

M. RAPPARD pointed out that if it were shown that Article 14 could not be applied the Commission could not insist upon its application.

M. MERLIN said that in spite of his desire to meet M. Palacios' wishes he thought it would be unwise to adopt his suggestion. Many diverse interests which were what might be styled "hypersensitive", were involved.

Care for the mission with which it was entrusted obliged the Commission to state that it could not accept the proposal of the mandatory Power since that proposal was contrary to the terms of the mandate, it being the Commission's duty to see that the mandate was applied. Nevertheless, as M. Rappard had said, the Commission could not confine itself to a mere refusal. It must show its concern for the difficulties encountered by the mandatory Power and endeavour to assist that Power by stating that it was ready to recommend to the Council any proposal which would not be contrary to the terms of the mandate. He did not think the Commission ought to go further than that. When the Commission held its extraordinary session M. Palacios, who was Rapporteur on this question, would be able to point out to the mandatory Power the consequences of its not having established the Holy Places Commission. At present it would be unwise to go too far.

M. ORTS noted that the Commission was still in agreement regarding the first sentence which he had proposed. It was also of opinion that the matter should not be left there, but it did not seem to be satisfied with M. Merlin's proposal.

Why therefore should the Commission not merely note that two solutions were possible.
stating for instance that:

"The Permanent Mandates Commission considers that a solution of the present difficulties should be sought either in applying Article 14 or revising the article in such a way as to allow of the procedure proposed by the mandatory Power."

M. RAPPARD said he would agree with M. Orts' proposal if

the Commission decided to accept it.

Count DE PENHA GARCIA said he thought that M. Orts' proposal went further than any decision the Commission was called upon to take. The mandatory Power asked the Commission to support a certain proposal before the Council. The Commission had declared that it could not do so. The mandatory Power had not asked the Commission to make fresh suggestions. For his part he would prefer merely to adopt the first section of M. Orts' proposal.

M. ORTS apologised for his insistence, but he wished to make clear that his suggestion need not conflict with the convictions of anyone. Those members of the Commission who thought that the solution should be sought in Article 14 would not have anything further to say if the Council, as it had the power to do without consulting the Commission, revised that article. His text merely noted two facts to which the Commission must surely agree: the only two possible solutions were either to apply Article 14 or to revise the article in such a way as to admit of the procedure proposed by the mandatory Power. In acting thus the Mandates Commission would avoid a purely negative attitude. Its proposal would, of course, not be a constructive one--because it was not called upon to make a constructive proposal--but, in the second part of its resolution, it did give what might be a useful indication.

Lord LUGARD and M. VAN REES supported M. Orts' proposal.

M. PALACIOS was opposed to any proposal tending towards the revision of an article of the mandate, particularly the Palestine mandate which was itself a compromise. As soon as the mandate was touched in any way it would be necessary to revise it from beginning to end. The Commission was therefore incurring enormous responsibility. If it accepted the proposed text, public opinion would think it had itself suggested revision. For his part, he did not relish the thought of incurring such responsibility, and preferred M. Merlin's proposal.

M. MERLIN noted that what he had foreseen had actually occurred as soon as these subjects came to be discussed. The Commission had seemed to be near to an agreement but its opinion had immediately become divided as soon as it came to touch on definite points. That was why he had submitted a proposal which, though rather vague, could be

accepted by all the members of the Commission and which at the same time showed that the Commission was favourably disposed towards the mandatory Power.

Count DE PENHA GARCIA insisted that M. Orts' suggestion was a very dangerous one. It was not for the Commission to make proposals. That was the prerogative of the mandatory Power or the Council. For his part, he could not assume the responsibility of advising the mandatory Power to raise in the Council the whole question of the Holy Places Commission. The mandatory Power thought that the only solution lay in the appointment of a Commission which would settle disputes definitively, but it had only recently formed that opinion. Conditions might change and, moreover, experience had shown that the British Government was very skilled in discovering conciliatory formulæ.

M. KASTL said he entirely agreed with M. Merlin. The Commission could not give a merely negative reply. In his opinion, M. Orts' proposal was still negative because what it actually said was: "You will either put Article 14 into effect or propose to modify it". Everyone, however, was aware that the mandatory Power was not in a position to apply Article 14. If it had wished to modify that article it would have asked that such modification should be effected. Everyone knew, however, that a discussion on the question of modifying Article 14 would take a long time and would not perhaps result in a decision at one session of the Council. On the other hand, M. Kastl thought that the Permanent Mandates Commission should be very careful in making proposals for amending the terms of Article 14 of the mandate without having had sufficient experience to be quite sure that the article concerned was not at all workable. Article 14 had not yet been put into effect and no experience existed with regard to it. M. Orts' proposal therefore must be considered as a very restricted method of getting out of the difficulties. It was not possible therefore for the Commission to suggest that course.

He accepted M. Merlin's proposal with M. Rappard's amendment thereto.

M. RAPPARD would have preferred M. Orts' formula but noted that it had aroused considerable opposition. He ventured to suggest that M. Palacios had no good grounds for opposing M. Orts' proposal. M. Palacios had proposed that the Commission should merely inform the mandatory Power that it

ought to put Article 14 into effect. M. Rappard thought there were very good reasons for not doing this, but in any case could not M. Palacios agree to a formula which stated that, if the mandatory Power and the Council concluded that it was impossible to put Article 14 into effect immediately. the Commission hoped another solution would be found. In that way the Commission would not be departing from its proper role.

The CHAIRMAN noted that, having had the greatest difficulty in agreeing to reply to the British Government, the Commission wished now to go further and to make concrete proposals for which it had not been asked. He would warn the Commission, moreover, that the mandatory Power, if obliged to set up the Commission contemplated in Article 14, might justify, by the application of that measure, the delay that such a measure might entail in the presentation of a report regarding the events in Palestine. The Commission had just decided that this report ought to be submitted to it within a certain time.

M. ORTS said he did not think the Chairman's argument was quite convincing. At the extraordinary session, when the Commission asked the mandatory Power what steps it had taken to prevent a renewal of disturbances, the latter might reply that amongst other things it had set up the Commission to which the present draft referred. It would not be necessary for the Mandates Commission to await the setting up of the *ad hoc* Commission before considering the recent events and present situation in Palestine.

The CHAIRMAN repeated that the situation to which he had referred might cause some complications--but his principal object was to reconcile the various tendencies. The question was so important that every possible endeavour should be made to reach a solution which would be satisfactory both to the Commission and to the mandatory Power. He therefore called on M. Merlin, M. Palacios, M. Rappard and M. Orts to meet and try to reach an agreement which would secure unanimous approval.

(The meeting was adjourned.)

M. MERLIN read the following text drawn up by him in consultation with M. Palacios, M. Rappard and M. Orts.

"Should the Council recognise that it is impracticable to put the provisions of Article 14

of the mandate into operation immediately or in the near future, the Commission is quite prepared to consider, with a view to a possible recommendation to the Council, any proposals which may be laid before it and which, without being incompatible with the terms of the mandate, might be calculated to settle the disputes outstanding between Jews and Moslems with reference to the Wailing Wall, to soothe ruffled feelings and to restore tranquillity and order permanently in Palestine.

"The Commission will watch with interest and sympathy all the mandatory Power's efforts to attain this goal, since it fully realises the difficulties with which the mandatory Power has to contend in this extremely delicate matter, where feeling still runs high". (A discussion took place on this text.)

The CHAIRMAN said that he agreed with M. Kastl, M. Palacios, Count de Penha Garcia and M. Van Rees in asking that the first three lines of M. Merlin's text should be omitted. He further proposed that the words: "and the necessity of finding in the near future an unquestionably impartial solution" should be added at the end of the text.

M. PALACIOS agreed with the Chairman.

M. RAPPARD pointed out that this amendment needed to be adjusted to the original text.

M. ORTS read again the first part of his proposal, which was as follows:

"The Permanent Mandates Commission has carefully considered the memorandum appended to the British Government's communication of the 18th of this month. The Commission has reached the conclusion that since its duty is to supervise the operation of the Mandates it cannot recommend to the Council a solution incompatible with the terms of Article 14 of the Mandate for Palestine."

M. RAPPARD said that the addition proposed by the Chairman did not make it sufficiently clear by whom the impartiality of the eventual solution could not be questioned.

M. MERLIN agreed with M. Rappard. He thought the following wording might be adopted: ". . . a solution of which the impartiality will be clear to all".

He further proposed that the addition proposed by the Chairman should be placed in the middle of the text. He then read his proposal with the various amendments proposed:

"The Commission is fully prepared to consider, with a view to a future recommendation to the Council, any proposal which may be submitted to it and which, without being contrary to the terms of the mandate, might settle the differences at present existing between Jews and Moslems with regard to the Wailing Wall, calm strong feelings, and permanently ensure peace and order in Palestine.

"The Commission will follow with interest and sympathy all efforts made by the mandatory Power to reach, in the near future, a solution, the impartiality of which will be unquestioned, for it realises the difficulties with which the mandatory Power has had to contend, in dealing with extremely difficult questions on which feeling runs high."

The text submitted by M. Merlin was adopted.

1133. Palestine: Article 14 of the Mandate: Question of the Publication of the Communication from the British Government, dated November 18th, 1929, and of the Conclusions adopted by the Commission.

The CHAIRMAN read the following telegram from the British Government, dated November 21st.:

"Understand Mandates Commission will consider our communication regarding Palestine tomorrow morning. We have no objection in principle to publication of our memorandum, but Commission might consider whether it would be desirable or possible to defer publication until it can publish its own conclusions with it. We should be glad to have early as possible intimation when publication will be made."

He added that if the Commission was in agreement with the Secretariat, the British memorandum and the resolution that had just been passed would be communicated to the Press.

M. CATASTINI said that the British Government wished these texts to be communicated to the Press simultaneously at Geneva and in London.

M. RAPPARD observed that this was essential. Moreover, before the Commission could think of communicating anything it must have before it the text both in English and in French. He would raise a third point. He personally was much surprised at the idea that a recommendation to the Council should be communicated to the Press before it was made known to the Council.

M. CATASTINI said there were precedents for this, and recalled as an example the Commission's decision as to the increase in its membership.

M. RAPPARD pointed out that in that case the Council had asked for an opinion.

M. CATASTINI wished to inform the Commission of something which he had heard. Certain journalists at Geneva were already familiar with this question. It seemed that some leakage of information had occurred, and that the newspapers knew that a document had been received from London and they knew, roughly, its contents.

M. RAPPARD said that it seemed inadmissible to him to ask for the publication of a document merely because there had been leakages.

M. CATASTINI pointed out that if leakages had occurred, the question was of such a nature that it would be better to state the truth in order to avoid the spread of false and therefore dangerous information.

Count DE PENHA GARCIA thought the Commission might leave it to the British Government to decide whether it was desirable or not to publish its own communication or the Mandates Commission's reply.

M. RAPPARD observed that hitherto the Commission had refrained from communicating even to States Members of the League any information, however neutral in character, on

its reports and opinions. Now that it was dealing with a particularly delicate matter it was proposed that important documents should be published immediately, even before the Council had been put in a position to take note of them.

M. ORTS agreed with M. Rappard. He wished to put forward another argument--that as soon as a recommendation was addressed to the Council it was out of the hands both of the Commission and of the mandatory Power, and thenceforward it was for the Council to decide whether it was to be published.

Count DE PENHA GARCIA thought that the mandatory Power was entitled to publish the document it had sent to the Commission. As for the Commission, its decision must be communicated to the Council. On the other hand, since it was the Commission's duty to further the settlement of serious incidents, there was no reason why the decisions reached should not be made known to the mandatory Power.

M. RAPPARD replied that the mandatory Power was represented on the Council.

Count DE PENHA GARCIA pointed out that the Council was not meeting at the moment.

Lord LUGARD said that the British Government's letter had been addressed to the Secretary-General, and it was the Secretary-General who would receive the Commission's reply. It was for him, therefore, to decide whether he would publish those documents or not.

M. CATASTINI disagreed. The Mandates Commission's reply would be sent to the Council through the intermediary of the Secretary-General, who was merely the transmitting agent.

M. RAPPARD said it would be the first time that the Commission had given to the Press an opinion addressed to the Council, and this very serious change in the usual procedure was to be made in connection with a particularly delicate matter. He was inclined to wonder what the Commission meant by it.

Count DE PENHA GARCIA said he understood that the mandatory Power did not ask for publication, but simply asked the Commission to consider whether the British memorandum could be published simultaneously with the Commission's

conclusions. The Commission could simply reply that it had no intention of publishing its conclusions at present.

M. MERLIN thought that the text of the telegram from the British Government suggested a certain feeling of apprehension on its part, but, on the other hand, he thought the telegram left the Commission entirely free to judge. He was sure it would be extremely unwise to agree to publication. If, in due course, the mandatory Power wished to publish its memorandum, it would do so; the Mandates Commission's conclusions, however, had to be addressed to the Council. In his view, the only wise thing to do was to maintain an attitude of complete reserve. Consequently, the only reply to make to the telegram would be simply to say that, out of deference to the Council, publication could not take place until the Council itself had received the Commission's decision.

The CHAIRMAN concluded from the discussion that the resolution would be sent to the Council through the usual channels, and that it was not for the Commission to decide whether publication was desirable or not.

M. RAPPARD asked that it should be definitely placed on record that, if publication did take place, it was not the Mandates Commission that had decided upon this procedure.

Count DE PENHA GARCIA asked whether the President of the Council could communicate such a decision to his colleagues at once, or whether he could only do it when the Council was in session.

M. CATASTINI answered that the report of the Mandates Commission containing the conclusions on this particular matter would be communicated to all the members of the Council as soon as the Minutes were printed, which would not be before Christmas. The decision of the Commission would be sent to the mandatory Power as soon as the Commission had finished its work.

M. RAPPARD urged that the usual procedure should be followed in this matter--that the Commission's observations should be communicated to the Council and to the Power concerned as soon as possible. The only consideration that could lead the Commission to order immediate publication would be anxiety to make the opinion of the Mandates Commission known in Palestine. On the other hand, the

mandatory Power would receive the Commission's reply within a week; it would rest with that Power to decide as to publication, but the Commission should do nothing to encourage it.

M. ORTS reminded the Commission of the position he had taken up at the morning meeting with regard to the undesirability of giving an opinion to the Council when it had not asked for one. Nevertheless, the majority of the Commission had decided to give a reply.

The CHAIRMAN said it was quite understood that the Commission was not in any way authorising the publication of the documents which were at present in its possession. The usual procedure would be followed. If the mandatory Power, or the Secretariat, thought it should publish the documents, they would do so without reference to the Commission.

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C.P.M.977.

ANNEX 11.

PALESTINE.

ARTICLE 14 OF THE MANDATE. -- MEMORANDUM FROM THE BRITISH GOVERNMENT.

Letter to the Secretary-General.

London, November 18th, 1929.

I am directed by Mr. Secretary Henderson to transmit the accompanying memorandum containing a proposal of His Majesty's Government that, for reasons set out therein, a special *ad hoc* Commission should be appointed forthwith, under the terms of Article 14 of the Palestine mandate, to study, define and determine finally the rights and claims of Jews and Moslems at the Western or Wailing Wall at Jerusalem. The memorandum concludes with the earnest hope that the Permanent Mandates Commission will be able at the present session to commend this proposal to the Council, whose approval is necessary under Article 14 of the Mandate.

Mr. Henderson will be glad if you will be so good as to communicate the memorandum to the Chairman of the Permanent Mandates Commission in the course of their present session.

(Signed) MONTEAGLE.

MEMORANDUM ON THE JEWISH AND MOSLEM RIGHTS AND CLAIMS AT
THE WESTERN
OR WAILING WALL. JERUSALEM.

1. When Sir John Chancellor, the High Commissioner for Palestine, appeared before the Permanent Mandates Commission at the fifteenth Session of that body in July last he described the recent developments and the existing situation in regard to the question of Jewish and Moslem rights and claims at the Western or Wailing Wall. Sir John Chancellor explained, on that occasion, that his efforts to facilitate an agreement between the Jews and Moslems which would minimise the risk of disputes and incidents at the Wall in the future had not met with success, and that it had consequently become necessary to define and determine the rights and claims of the parties concerned in this connection.

2. Subsequent events in Palestine have accentuated the need for a final and early settlement of this question. Pending the report of the Commission of Enquiry into the recent disturbances in Palestine, it is not possible for His Majesty's Government in the United Kingdom to express an opinion on the causes of those disturbances. Whatever part questions relating to the Wall may have played in the disturbances themselves, recent reports received from the High Commissioner indicate that the absence of a final ruling on Jewish and Moslems rights and claims at the Wall constitutes a definite danger to future peace and good order in Palestine. In this connection it should be stated that in September last it was deemed necessary, in the interests of good order and decorum, to issue temporary instructions setting out the facilities which would be accorded to Jewish worshippers at the Wailing Wall, pending the final determination of Jewish and Moslem rights and claims there. Since these instructions were issued, there have been no disturbing incidents of importance at the Wall, and this temporary measure thus appears to have fulfilled, so far, the special purpose for which it was designed. The instructions themselves, however, were met

with vigorous protests on the part of both the Jewish and Moslem authorities, in spite of an explicit assurance to the effect that they were provisional and that they would not prejudice the existing rights and claims of Jews and Moslems at the Wall. It is evident that the present position is viewed with great dissatisfaction by both parties, and the temporary instructions, which were undoubtedly necessary, have rendered the need for an early and final settlement of the question still more urgent.

3. Article 14 of the Palestine mandate provides for the appointment of a Commission 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 text of that Article reads as follows:

"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 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."

4. The Holy Places Commission contemplated in the Article has never in fact been set up. Proposals for its constitution were drawn up by the British Government in 1922, but they were found to be unacceptable to certain of the powers represented on the Council of the League of Nations, and were subsequently withdrawn by His Majesty's Government. Lord Balfour, at a meeting of the Council held on the 4th of October, 1922, referred to the difficulties which had arisen on account of disagreement between those powers themselves, and expressed the view that he was not capable of suggesting a remedy for those difficulties. He then appealed to his colleagues in the following terms:

"We ask for the co-operation of our colleagues around this table to help us to solve their own difficulties, and to arrive at a solution of the whole question which shall be regarded as equitable over all the world, whether it be Catholic, whether it be Orthodox, whether it be Protestant, or whether it be indifferent to all

these religions, but only desirous that justice shall be done, that peace, order and decorum be preserved within the limits of Palestine."

Unfortunately, Lord Balfour's appeal has not so far borne any fruit, and the position still remains as described by him in 1922.

5. His Majesty's Government in the United Kingdom hold the view that, as the mandatory Power responsible for the maintenance of peace, order and good government in Palestine, they would not be justified in taking the risk of deferring the settlement of the question pending the solution of the difficulties referred to by Lord Balfour, and the appointment of the Holy Places Commission as contemplated by Article 14 of the mandate. On the other hand, His Majesty's Government are assured that the situation calls for the appointment of an authoritative body to deal with the question. It is, moreover, highly desirable that the findings of the body to be appointed shall have the finality attaching to a decision by the Holy Places Commission contemplated by Article 14 of the mandate, and that there shall be no question of these findings being subject to review.

6. On a full consideration of the question in all its aspects, having regard especially to the considerations set forth in the foregoing paragraph, 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.

7. In conclusion, His Majesty's Government in the United Kingdom desire again to emphasise that an early and final settlement of the question is 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. His Majesty's Government in the United Kingdom earnestly trust that their proposals outlined in the foregoing paragraph, which are formulated after the fullest consideration, will be commended by the permanent Mandates Commission for the early approval of the Council of the League of Nations.

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Notes

1/ The sub-headings have been introduced by the Secretariat for Convenience of reference.

2/ Mandate for Palestine, Washington, 1927.

3/ See Annex 9 C.

4/ See Minutes of the Fourteenth Session (document C.568.M.179.1928.VI), page 250.

5/ The accredited representative of the British Government for Palestine stated, in the course of the eleventh meeting of the session, that the authors of the petition had asked for postponement of its consideration.

6/ I consider it unnecessary to deal here with the personal reference to Mr. Bentwich, the Attorney-General. The Commission will no doubt merely desire to take note of the British Government's declaration on this particular point.