

Geneva, November 13th, 1931.

LEAGUE OF NATIONS

PERMANENT MANDATES COMMISSION

TWENTY-FIRST SESSION OF THE COMMISSION

(Geneva, October 26th-November 13th, 1931.)

IRAQ.

SPECIAL REPORT OF THE COMMISSION TO THE COUNCIL ON THE PROPOSAL OF THE BRITISH GOVERNMENT WITH REGARD TO THE EMANCIPATION OF IRAQ.

1. On September 4th, 1931, the Council adopted the following resolution :

“ The Council requests the Permanent Mandates Commission to submit its opinion on the proposal of the British Government for the emancipation of Iraq after consideration of the same in the light of the resolution of the Council of September 4th, 1931, with regard to the general conditions to be fulfilled before a mandate can be brought to an end ”.¹

The Council resolution regarding the general conditions which must be fulfilled before a mandate can be terminated is as follows :

“ The Council notes the conclusions — appended to the present resolution — at which the Permanent Mandates Commission has arrived regarding the general conditions to be fulfilled before the mandate regime can be brought to an end in respect of a country placed under that regime. In view of the responsibilities devolving upon the League of Nations, the Council decides that the degree of maturity of mandated territories which it may in future be proposed to emancipate shall be determined in the light of the principles thus laid down, though only after a searching investigation of each particular case. The Council will naturally have to examine with the utmost care all undertakings given by the countries under mandate to the mandatory Power in order to satisfy itself that they are compatible with the status of an independent State and, more particularly, that the principle of economic equality is safeguarded in accordance with the spirit of the Covenant and with the recommendation of the Mandates Commission. ”²

Iraq is one of those communities which, in the terms of Article 22 of the Covenant, “ have reached a stage of development where their existence as independent nations can be provisionally recognised, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone ”.

The task entrusted by the Council to the Commission consists in giving its opinion as to whether the time for putting an end to the mandatory regime, as contemplated in Article 22 of the Covenant, has arrived in the case of Iraq, a regime which from its inception has possessed certain special features³ and — if the Commission has correctly interpreted the Council's wishes — in defining the guarantees which would in that case be given by Iraq to the League of Nations. ³

2. As the Commission pointed out in its report on its twentieth session, the question whether a people which has hitherto been under the mandatory regime has become fit to stand alone is above all a question of fact. In determining its ability to do so, it is necessary not only to ascertain whether the country desirous of emancipation has at present the essential political institutions and administrative machinery of a modern State, but also whether it gives evidence of such social conditions and civic spirit as would ensure the regular working of these institutions and the effective exercise of the civil and political rights established by law.

¹ See *Official Journal*, November 1931, pages 2058.

² See *Official Journal*, November 1931, pages 2055-2056.

³ See Minutes, pages 154, 175.

The Commission desires to point out that it has had no opportunity of observing at first hand the moral condition and internal policy of Iraq, the degree of efficiency reached by its administrative organisation, the spirit in which its laws are applied and in which its institutions function.

In judging the actual situation in Iraq, the Commission can therefore only endeavour to reach a conclusion on the basis of the annual reports of the mandatory Power and the special report entitled "Progress of Iraq during the Period 1920-1931", together with the explanations furnished year by year by the accredited representatives of the mandatory Power during the examination of these reports and the numerous petitions addressed to the League of Nations by inhabitants of Iraq or by third parties with the observations of the mandatory Power upon them.

The views of the British Government as to the political maturity of Iraq are the views of the guide who has constantly seen and directed the rapid progress made by that country during the mandatory regime. The full significance of these views is recognised when they are considered in conjunction with the declaration made by the accredited representative of that Government at the twentieth session of the Mandates Commission — the great importance of which the Council will certainly have appreciated — to the effect that :

" His Majesty's Government fully realises its responsibility in recommending that Iraq should be admitted to the League, which is, in its view, the only legal way of terminating the mandate. Should Iraq prove herself unworthy of the confidence which has been placed in her, the moral responsibility must rest with His Majesty's Government . . . " ¹

Had it not been for this declaration, the Commission would, for its part, have been unable to contemplate the termination of a regime which appeared some years ago to be necessary in the interest of all sections of the population.

In the report on the "Progress of Iraq during the Period 1920-1931", the Permanent Mandates Commission noted the following passage :

" They (His Majesty's Government) have never regarded the attainment of an ideal standard of administrative efficiency and stability as a necessary condition either of the termination of the mandatory regime or of the admission of Iraq to membership of the League of Nations. Nor has it been their conception that Iraq should from the first be able to challenge comparison with the most highly developed and civilised nations in the modern world." ²

This conception of the requirements which must be insisted upon in emancipating a country hitherto under mandate has appeared to the Commission to be sound.

This was the point of view from which the Commission proceeded when formulating in the present report its opinion as to the existence in Iraq of *de facto* conditions which satisfy the general conditions contained in the Council resolution of September 4th, 1931.

3. Subject to these general *de facto* conditions, the Commission suggested in its report to the Council on the work of its twentieth session that the following conditions must be fulfilled before a mandated territory can be released from the mandatory regime — conditions which must apply to the whole of the territory and its population :

" (a) It must have a settled Government and an administration capable of maintaining the regular operation of essential Government services ;

" (b) It must be capable of maintaining its territorial integrity and political independence ;

" (c) It must be able to maintain the public peace throughout the whole territory ;

" (d) It must have at its disposal adequate financial resources to provide regularly for normal Government requirements ;

" (e) It must possess laws and a judicial organisation which will afford equal and regular justice to all."

The Council took note of these various suggestions.

The Commission endeavoured to determine, with the help of its usual sources of information and to the extent compatible with the nature of its functions and procedure, whether these conditions really existed in Iraq.

It has now arrived at the following opinion, based on the accompanying considerations :

(a) The accredited representative, while not claiming that the administration of Iraq had attained perfection, stated on behalf of the British Government that the first condition was fulfilled in Iraq.³ As the Commission has no information which would justify a contrary opinion, it considers that the assumption may be accepted that Iraq now possesses a settled Government and an administration capable of maintaining the regular operation of essential Government services.

(b) The present military establishment of Iraq is not such that this country can be regarded as capable of maintaining its territorial integrity and political independence against a foreign aggressor by means of its own national forces. ⁴

¹ See Minutes of the twentieth session of the Permanent Mandates Commission (document C.422.M.176.1931.VI), page 134.

² See special report by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to the Council of the League of Nations on the "Progress of Iraq during the Period 1920-1931", pages 10 and 11.

³ See Minutes, page 100.

⁴ See Minutes, page 90.

On the other hand, if Iraq should be admitted to the League of Nations it would enjoy the guarantees of security which all the States Members of the League derive from the Covenant. In the same eventuality the Anglo-Iraqi Treaty of Alliance of June 30th, 1930, would automatically come into force, and under Article 4 of this treaty the contracting parties are bound to afford each other mutual and immediate help in case of war.

In these circumstances, and if the termination of the mandatory regime is accompanied by the admission of Iraq to the League of Nations, the Commission considers that Iraq fulfils the second condition, interpreted in the sense attached to it by the Commission itself.¹

(c) During the present session, the accredited representative of the mandatory Power also stated that the Iraq army and police would be sufficient to cope with anything that could be reasonably foreseen.²

The Commission accepts this judgment, having no information to the contrary. It expresses the opinion that the present situation in Iraq justifies the acceptance of the assumption that the Government is able to maintain the public peace throughout the whole territory.

(d) The Commission does not propose to express an opinion on the solidity of the financial system of a State whose credit has not yet been tested and whose national currency has not yet been put into circulation.³

The present financial situation of Iraq is undoubtedly sound and the latent resources of the country are considerable.⁴ Furthermore, the Commission found nothing in the information supplied by the mandatory Power which might lead it to suppose that Iraq, provided that the public revenues continue to be prudently managed and that steps are taken to encourage economic development, will not have at its disposal adequate financial resources to provide regularly for normal Government requirements.

(e) The Commission is of opinion that Iraq possesses laws and a judicial organisation which, subject to certain readjustment and improvements, the necessity of which was recognised by the accredited representative of the mandatory Power,⁵ and provided that at least the same guarantees be assured as the Anglo-Iraqi Judicial Agreement of March 4th, 1931, will afford uniform justice to all.

4. In its report to the Council on the work of its twentieth session, the Commission suggested that, without prejudice to any supplementary guarantees which might be justified by the special circumstances of certain territories or their recent history, the undertakings of a new State should ensure and guarantee :

(a) The effective protection of racial, linguistic and religious minorities ;

(b) The privileges and immunities of foreigners (in the Near-Eastern territories), including consular jurisdiction and protection as formerly practised in the Ottoman Empire in virtue of the capitulations and usages, unless any other arrangement on this subject has been previously approved by the Council of the League of Nations in concert with the Powers concerned ;

(c) The interests of foreigners in judicial, civil and criminal cases, in so far as these interests are not guaranteed by the capitulations ;

(d) Freedom of conscience and public worship and the free exercise of the religious, educational and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality and effective administration ;

(e) The financial obligations regularly assumed by the former mandatory Power ;

(f) Rights of every kind legally acquired under the mandate regime ;

(g) The maintenance in force for their respective duration and subject to the right of denunciation by the parties concerned of the international conventions, both general and special, to which, during the mandate, the mandatory Power acceded on behalf of the mandated territory.

The Council took note of these suggestions.

(a) In the case of Iraq, the Commission is of opinion that the protection of racial, linguistic and religious minorities should be ensured by means of a series of provisions inserted in a declaration to be made by the Iraqi Government before the Council of the League of Nations and by the acceptance of the rules of procedure laid down by the Council in regard to petitions concerning minorities, according to which, in particular, minorities themselves, as well as any person, association or interested State, have the right to submit petitions to the League of Nations.

(i) This declaration, the text of which would be settled in agreement with the Council, would contain the general provisions relating to the protection of the said minorities accepted by several European States.

In addition, Iraq would accept any special provisions which the Council of the League of Nations, in agreement with the Iraqi Government, might think it necessary to lay down as a temporary or permanent measure to ensure the effective protection of racial, linguistic and religious minorities in Iraq.

¹ See Minutes of the twentieth session of the Permanent Mandates Commission (document C.422.M.176.1931.VI), page 177.

² See Minutes, page 102.

³ See Minutes, page 94.

⁴ See Minutes, page 94-95, 103-105.

⁵ See Minutes, page 106.

Various suggestions as to how practical effect could be given to this protection were made in the course of the Commission's discussion.¹

(ii) Iraq would agree that, in so far as they affected persons belonging to the racial, linguistic or religious minorities, these provisions would constitute obligations of international concern and would be placed under the guarantee of the League of Nations. No modification could be made in them without the assent of a majority of the Council of the League of Nations

Iraq would agree that any Member of the Council of the League of Nations would have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council could thereupon take such action and give such directions as it might deem proper and effective in the circumstances.

Finally Iraq would agree that any difference of opinion as to questions of law or fact arising out of these provisions between Iraq and a Member of the Council of the League of Nations would be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute would, if the other party thereto demanded, be referred to the Permanent Court of International Justice. The decision of the Permanent Court would be final and would have the same force and effect as an award under Article 13 of the Covenant.

(b) As regards more particularly the safeguarding of the interests of foreigners in judicial matters, civil and criminal, the Commission considers that the Iraqi Government should give a solemn pledge to the Council guaranteeing those interests. This pledge, which would take the place of the capitulations which would normally be revived on the expiration of the Judicial Agreement of March 4th, 1931, should be based on that agreement, which has received the approval of the Council and of the Powers concerned, and should be subject to the consent of the said Powers. The majority of the Commission, however, is of opinion that it would be desirable that the foreign judges forming part of the judiciary of Iraq should not be exclusively of British nationality.²

(c) On the other hand, should there be a simple reversion to the system of the capitulations, it would be important to safeguard the interests of the nationals of those of the States Members of the League which did not enjoy capitulatory rights in the Ottoman Empire, or which had renounced them by treaty. In that case, therefore, Iraq should make a declaration to the Council guaranteeing the interests in civil and criminal judicial matters of foreigners who do not enjoy the benefit of the capitulations. The terms of this declaration, which would be determined by agreement between Iraq and the Council, might be based on the considerations outlined in the previous paragraph.

(d) Iraq should formally undertake before the Council in accordance with the resolution of September 4th, 1931, to ensure and guarantee freedom of conscience and public worship, and the free exercise of the religious, educational and medical activities of religious missions of all denominations, whatever their nationality, subject to such measures as may be indispensable for the maintenance of morality and public order.

(e) Iraq should also make a declaration before the Council with regard to the financial obligations assumed in regular form by the mandatory Power. This declaration should provide every guarantee for the application of the principle laid down in the Council's resolution of September 15th, 1925.³

(f) and (g) Iraq should likewise give an undertaking to the Council to respect all rights of every kind legally acquired before and during the mandatory regime and to maintain in force the international Conventions both general and special to which, during the currency of that regime, Iraq or the mandatory Power on its behalf has acceded, for the period of validity provided for in such Conventions subject to any right of denunciation which the parties may possess.

5. The Commission recommended that "the new State, if hitherto subject to the economic equality clause, should consent to secure to all States Members of the League of Nations the most-favoured-nation treatment as a transitory measure on condition of reciprocity".

In its resolution of September 4th, 1931, the Council decided that it would have to satisfy itself that "the principle of economic equality is safeguarded in accordance with the spirit of the Covenant and with the recommendation of the Mandates Commission". The Council therefore held that the concession of this latter advantage should be one of the conditions laid down for the termination of the mandate.

¹ See Minutes, pages 64-68, 112-115, 157-158, 174-175.

² See Minutes, pages 169-170,

³ Extract from the Council's resolution of September 15th, 1925 (see *Official Journal*, October 1925, page 1363):

"The Council,

"In view of the discussion of the Permanent Mandates Commission, in the course of its sixth session, on the subject of loans, advances and investments of public and private capital in mandated territories, and in view of the earlier discussions and enquiries and of the statements of the mandatory Powers on this subject:

"(1) Declares that the validity of financial obligations assumed by a mandatory Power on behalf of a mandated territory in conformity with the provisions of the mandate and all rights regularly acquired under the mandatory regime are in no way impaired by the fact that the territory is administered under mandate;

"(2) Agrees on the following principles:

"(a) That the cessation or transfer of a mandate cannot take place unless the Council has been assured in advance that the financial obligations regularly assumed by the former mandatory Power will be carried out and that all rights regularly acquired under the administration of the former mandatory Power shall be respected, and,

"(b) That, when this change has been effected, the Council will continue to use all its influence to ensure the fulfilment of these obligations".

Iraq should therefore formally accept the obligation to grant most-favoured-nation treatment subject to reciprocity to all States Members of the League of Nations for a transitional period, the duration of which would be determined by negotiations with the Council.

* * *

Except as regards protection of minorities for which the procedure is provided above, the Commission recommends that Iraq should be requested to accept that any difference of opinion arising between Iraq and any Member of the League of Nations relating to the interpretation or the execution of the undertakings assumed before the Council may, by an application by such Member, be submitted to the Permanent Court of International Justice.

* * *

6. Finally the Commission, in conformity with the Council's resolution of September 4th, 1931, examined the undertakings entered into by Iraq with Great Britain from the point of view of their compatibility with the status of an independent State.

After having carefully considered the text of these undertakings and having heard the explanations and information on the subject from the accredited representative, the Commission¹ came to the conclusion that, although certain of the provisions of the Treaty of Alliance of June 30th, 1930, were somewhat unusual in treaties of this kind, the obligations entered into by Iraq towards Great Britain did not explicitly infringe the independence of the new State.²

¹ See Minutes, pages 171, 176, 177-181.

² See Minutes, pages 74-78, 100, 120-122, 171, 176.