

2. From M. RAPPAUD, Director of Mandates Section, to the Hon. Sir FRANCIS BELL, K.C.M.G., K.C.

DEAR SIR FRANCIS,—

League of Nations, Geneva, 21st September, 1922.

Pray allow me to thank you for your kind letter of the 20th September, which I shall communicate to the members of the Mandates Commission if you have no objection to my doing so.

I am enclosing a copy of the Rules of Procedure of the Commission, approved by the Council on the 10th January, 1922. As you will note, the procedure therein established is less different from the one you suggest than you might possibly believe. You will also notice that in conformity with your suggestion the Permanent Mandates Commission makes a separate report upon each mandate to the Council; that this report is submitted to the duly accredited representative of the mandatory Power, and is communicated to the Council with his comments.

These documents are not, it is true, as you suggest, considered to be confidential once they have reached the Council. They are, on the contrary, printed and communicated by the Council to all the members of the League.

I have naturally no opinion to express as to the relative merits of the procedure adopted and that which you suggest. I would, however, venture to call your attention to two advantages of the present practice. On the one hand, it would seem fair, and is, I believe, in conformity with the wishes of the great majority of the members of the League, that all documents concerning the mandated areas which are administered by the mandatory Powers on behalf of the League as a whole should in due course be brought to the notice of those on whose behalf they are administered—i.e., of all the State members of the League. On the other hand, I think it would be imposing an extremely arduous and delicate task on the Council if it had to revise critically the whole work of the Mandates Commission, and to publish only such parts of its findings as would seem advisable. The Mandates Commission, which, as you know, is composed of nine members appointed by the Council, and chosen on account of their experience and independence, has this year spent eleven very busy days in discussing the reports of the mandatory Powers. Next year, when it will have before it thirteen complete reports, its session will probably last three or four weeks. The Council has never found it possible to devote more than a few hours at the most to the examination of the work of the Permanent Mandates Commission. It has therefore been content to rely on the tact and judgment of the Mandates Commission, and to communicate the reports of the latter to the members of the League without either associating or dissociating itself with all the opinions expressed in their documents.

I would add that the Mandates Section of the Secretariat is but the permanent Secretariat of the Mandates Commission as well as the administrative organ of the Council and of the Assembly for all matters dealing with the application of Article 22 of the Covenant.

Hoping that these brief statements of facts in reply to your interesting letter may clear up any misapprehension which may have been created.

I beg to remain, &c.,

RAPPAUD,

Director of the Mandates Section.

3. From the Hon. Sir FRANCIS BELL, K.C.M.G., K.C., to M. RAPPAUD, Director of the Mandates Section.

DEAR M. RAPPAUD,—

Hotel les Bergues, Geneva, 25th September, 1922.

I beg to acknowledge and to thank you for your letter of the 21st instant.

I agree with you that my letter of the 20th instant and your reply of the 21st instant, and my present letter, should properly be communicated to the members of the Permanent Mandates Commission. But I also think that a copy of the correspondence should be communicated to the members of the Council of the League. It is probable that the Government of New Zealand will adopt the view which I have expressed on its behalf, and in that case the Council should later receive an official communication from the New Zealand Government on the subject.

I thank you for the copy of the Rules of Procedure of the Permanent Mandates Commission covered by your letter, but I was already aware of the terms of those rules. In view of what took place before the Sixth Committee and in the Assembly with regard to my protest, it is necessary that I should avoid the appearance of attempting to advise either the Council or the Commission on the methods which it might adopt to avoid the difficulties which I am satisfied will result if the present procedure is adhered to, and I must for that reason content myself with an attempt to emphasize the distinction between the present procedure and that which the States holding mandates will ultimately insist upon.

Under the present procedure the Permanent Mandates Commission is exalted to the position of a body authorized not merely to inquire and report to the Council, but to publish and report to the world its opinions upon the performance or non-performance by the mandatory Powers of their obligations under the Covenant. The New Zealand Government does not, and in my opinion never will, agree that its acts as a sovereign State shall be the subject of final or authoritative comment by the Mandates Commission. My proposal is that the Permanent Mandates Commission should make its reports to the Council without publication at that point of time to the public or to the members of the League, and that the Council should then invite the comment of the mandatory Powers upon the reports of the Mandates Commission. Having thus received the reports of its Commission and the replies of the mandatory Powers, the Council should then exercise its discretion (not the discretion of the Mandates Commission) as to the extent to which those reports and the replies of the mandatory Powers to the Commission's comments should be published. In general I have no doubt that the Council would direct publication of the whole, but such publication would be an appendix to the Council's own separate report and statement to the Assembly.

I am unable to appreciate that there is any difficulty in the adoption of such procedure. Some official must prepare reports for the Mandates Commission, and the same official, or another official appointed by the Council, could prepare the Council's report for consideration by the Council.

It is not difficult to anticipate cases in which charges by (e.g.) missionaries may be accepted by the Mandates Commission as requiring clear explanation from a mandatory Power. The publication of such charges or exposition of their character before the reply of the Mandatory has been received might produce disastrous effects. Even the publication of the view taken by the Mandates Commission of the sufficiency of the explanation after the publication of both complaint and explanation is undesirable unless such publication is authorized by the Council. It is generally impossible to effectually dispose by explanation of charges which have been published abroad under any countenance of authority.

It must be borne in mind by everybody concerned that in the present year the Council has simply referred the Mandates Commission's reports to the Assembly, that the Assembly has then referred those reports to the Sixth Committee, and that the Sixth Committee has declined to express any opinion of its own, or to recommend the Assembly to form any opinion, upon the merits of any questions which have arisen upon the reports of the Commission, or the sufficiency of the replies of the mandatory Powers. The effect of that process is to substitute for the contractual obligation (of the mandatory Power to the Council and the Assembly) a duty of the Mandatory to administer and legislate in such fashion as to meet the approval and sanction of the Permanent Mandates Commission.

I may be permitted to illustrate one of the dangers which I anticipate. The Government of the United States of America has claimed that no mandatory Power can, under the terms of the Covenant, create preferential duty in favour of any country. That contention is not admitted at present by those British Empire Mandatories which have imposed Customs duties granting preference to the British Empire. The Government of Japan, in order to meet that contention, has declared that the islands which it holds under mandate are treated by Japan as integral portions of its territory, and accordingly that no Customs duties may be imposed upon goods imported into those islands from Japan or exported from those islands to Japan. Can it be supposed that the Empire of Japan will permit the validity of its action in that respect to be determined by the Permanent Mandates Commission, or that the British Empire Mandatories will submit to the Permanent Mandates Commission the determination of their right in a similar respect