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THE TREATY OF LAUSANNE.

Note by the Secretary-General

and

Memorandum by Dr. Van Hamel.

I think all Sections will be interested to see the memorandum which is being prepared by the Legal Section on the subject of the work of the League in connection with the Treaty of Lausanne.

I consider it desirable that the Political and Administrative Sections should for the time being see all papers connected with work falling to the League under the Treaty of Lausanne. I think therefore that the following rules should be adopted:-

1. that work arising out of the Treaty of Lausanne should go to the Section concerned, but that the Political and Administrative Commissions Sections should be kept fully informed and see all papers connected with the work.
2. Papers which do not appear to fall within the competence of any particular Section should go in the first place to the Political Section, who, in the same way, will keep the Administrative Section informed.

5. That the first report of the Straits Commission should go to the Political Section, who will send copies of the various parts of the report to the Sections which may be particularly interested therein.

It would, I think, be premature to come to any decision as to the correspondence relating to the report of the Straits Commission. It would surely be wisest to wait till we receive the first report, and then be able to take a definite decision on the various points connected with it with full knowledge of its contents.

(Signed) E.D.

19th February, 1924.

THE TREATIES OF LAUSANNE VI.

MEMORANDUM ON THE WORK INCUMBENT ON THE LEAGUE.

The Secretary-General asked the Legal Section to make a study of the organisation of the work of the League in connection with the Treaty of Lausanne. A draft was prepared and submitted to the various Sections concerned for their comments. These having now been received, the Legal Section has prepared a final Memorandum which is hereby submitted to the Secretary-General.

Special notes are added in view of the organisation in the Secretariat of the work connected with the matter.

1. INCIDENTAL AND OCCASIONAL FUNCTIONS.

The work of the League, provided for by the Treaty of Lausanne, is partly incidental and occasional and partly of a standing nature.

The incidental and occasional functions given to the League consist mostly in arbitration cases of difference, decisions in case of points that may be raised by States, nomination of commissioners, and so on. In such cases the League will only have to take action on the initiative of one of the parties concerned. There is, therefore, no need for any preliminary organisation, apart from the fact that every Section should be aware of the possibilities which may arise.

The functions thus envisaged have been enumerated in Annex I according to the various categories:

(a) Political and Military (e.g. fixation of the Mosul frontier; reclamations about the demilitarisation of the Thracian frontier); (b) Finance (e.g. the Ottoman Debt); (c) Transit (e.g. Frontier railways); (d) Minorities; (e) Legal (e.g. Mixed Tribunal; Amnesty).

2. STANDING WORK OF THE LEAGUE.

This work, which may require preparation from the very beginning, comprises three categories; (a) minorities, (b) health, and (c) Regime of the Straits. It will be seen that the latter comprises various points of view: (1) political, (2) military, (3) transit, and (4) health.

I will now deal with the various subjects separately.

1. MINORITIES.

The Treaty of Lausanne has organised the protection of minorities in Turkey much on the same lines that were laid down by the Minorities Treaties. The stipulations are contained in Articles 37 to 45.

Article 44 states that, as far as non-Moslem nationals of Turkey are concerned, the provisions shall be placed under the guarantee of the League of Nations.

At the same time, the Treaty between the Principal Allied and Associated Powers and Greece, of August 10th, 1920 (Sevres), has been brought into force. By this Treaty the Minorities in Greece are, on the same lines, placed under the protection of the League of Nations. Article 45 of the Treaty of Lausanne moreover stipulates that the rights extended to non-Moslem minorities of Turkey will be similarly conferred by Greece on her Moslem minorities.

The coming into force of the Treaty of Lausanne and its additional Conventions, thereby establishes the

League's protection of minorities in Greece.

2. HEALTH.

Regular communications are established between the Health Committee of the League and health interests in Turkey. The Health Committee will receive reports on the work of the Pilgrimage Co-ordination Commission (which reports also have to be sent to the International Office of Public Health and to each of the Governments concerned).

The League may ask the Pilgrimage Co-ordination Commission for its opinion on questions in which it is concerned. (These arrangements have been laid down in Article 118).

Moreover, the Annex to the Straits Convention, paragraph 6, contains special rules as to the quarantine and prophylactic measures for warships and merchant ships, with or without a doctor on board. In so far as these provisions may come under the Straits Commission, whose work is under the auspices of the League, the League may be connected with these matters.

(On this subject, please see the next chapter concerning the Straits Regime).

3. STRAITS REGIME.

The regime of the Straits has been laid down in the special Convention of Lausanne, of 24th July, 1923, which will come into force with the Treaty of Lausanne.

The Convention is based on Article 23 of the Peace Treaty, by which the High Contracting Parties have agreed to recognise and declare the principle of freedom of transit and of navigation, by sea and by air, in time of peace and in time of war, in the strait of the Dardanelles, the Sea of Marmora and the Bosphorus.

The Preamble to the Convention states that the maintenance of that freedom of transit and navigation is necessary to the general peace and commerce of the world.

This makes it clear that the regime of the Straits is partly of political and military concern, and partly of commercial importance.

The League of Nations is chiefly concerned by the fact that Article 15 of the Convention says, that the Straits Commission which will be set up, will carry out its functions under the auspices of the League of Nations and will address to the League an annual report, giving an account of its activities and furnishing all information which may be useful in the interests of commerce and navigation.

The scope of the standing duties of the League in connection with the regime of the Straits is, therefore, dependent on the work of the Straits Commission.

In addition, the League is directly interested because the High Contracting Parties, "desiring to secure that the demilitarisation of the Straits and of the contiguous zones shall not constitute an unjustifiable danger to the military security of Turkey, and that no act of war should imperil the freedom of the Straits or the safety of the demilitarised zones", have agreed that, "should the freedom of navigation of the Straits or the security of the demilitarised zones be imperilled by a violation of the provisions relating to freedom of passage, or by a surprise attack or some act of war or threat of war", they will meet such "violation, attack, or other act of war or threat of war, by all the means that the Council of the League may decide for this purpose."

Moreover, the general rights and obligations of the Contracting Parties under the Covenant of the League have been explicitly maintained - which means that the League might, if the necessity arise, have to take action under Articles 10 and 11 and 3 and 4 of the Covenant. (See Article 18 of the Straits Convention.)

Coming now to the question as to the specific action which may fall to the League in connection with the Straits regime, it has already been said that, in the first place, this is determined by the action of the Straits Commission. To a great extent the action of this Commission will have to be developed in practice. The stipulations contained in the Convention determining its action are not at all clear, and it will depend on the practice which the Commission sets up and on the relations which it forms with the Turkish Government. The Commission is composed of a Turkish President, and representatives of France, Great Britain, Italy, Japan, Bulgaria, Greece, Roumania, Russia, the Serb-Croate-Slovene State, and also of the United States of America and the independent littoral States of the Black Sea if they accede to the Convention. These Representatives will be paid by their respective Governments.

The work of the Commission is described as follows:-

Article 11 of the Convention.

"The Commission will exercise its functions over the waters of the Straits."

Article 14 of the Convention.

"It will be the duty of the Commission to see that the provisions relating to the passage of warships and military aircraft are carried out; these provisions are laid down in paragraphs 2, 3 and 4 of the Annex to Article 2".

Article 15 of the Convention.

"The Straits Commission will carry out its functions under the auspices of the League of Nations, and will address to the League an annual report giving an account of its activities, and furnishing all information which may be useful in the interests of commerce and navigation; with this object in view the Commission will place itself in touch with the departments of the Turkish Government dealing with navigation through the Straits."

Article 15 of the Convention.

"It will be the duty of the Commission to prescribe such regulations as may be necessary for the accomplishment of its task."

Strictly speaking it seems that only the provision of Article 14 lays a direct duty on the Commission, or gives direct rights to it, namely: to supervise the application of the provisions laid down in paragraphs 2, 3 and 4 of the Annex to Article 2. It will be seen that these paragraphs only form a part of the Straits Regime, and do not, for instance, comprise the question of the demilitarisation of the zones regulated in Articles 4 to 6, or the provisions as to the limitation of time and transit for warships (No. 4 of the Annex to Article 2), to stay in the ports of the Straits and of the Black Sea (No. 5) and the special provisions relating to sanitary protection.

On a strict interpretation, these latter subjects would not come within the scope of activity of the Straits Commission, and, consequently, not under the auspices of the League of Nations.

In the same way it is not quite clear how far the right of the Commission to prescribe regulations, such as those mentioned in Article 15, may go. On the other hand, however, Article 15 obliges the Commission to report to the League annually all information which may be useful in the interests of commerce and navigation, which seems to widen its scope from the reporting point of view rather considerably.

It may therefore be said that the work of the Commission, such as will be carried on under the auspices of the League, will, to a great extent, depend on its practical development. Legally, however, it would seem that the whole matter of merchant navigation, and that of demilitarisation does not come within its sphere of action. The supervision as to

the carrying out of the provisions laid down by the Annex for that purpose rests automatically with the interested Governments, which, in practice, may on course, if the Commission consists of diplomatic representatives, mean that the matter will come back to the Commission itself in that form.

I will now give a summary of the Straits Regime which has been laid down in the Convention.

Certain rules are laid down for the transit and navigation of commercial vessels and aircraft and of war vessels and aircraft, through the Straits, in time of peace and in time of war.

The Regime is the following:

I. TIME OF PEACE.

(a) Merchant Vessels.

Complete freedom of navigation and passage by day and by night under any flag and with any kind of cargo, without any formalities, or tax, or charge, unless for services directly rendered.

Obligation: communication to "Flag Stations" appointed by the Turkish Government.

(b) Military Vessels and Aircraft.

Complete freedom of passage by day and by night under any flag, without any formalities or tax, but subject to certain restrictions as to the total force:

The Maximum force which any Power may send through the Straits into the Black Sea, not to be greater than that of the most powerful fleet of the littoral Powers on the Black Sea existing in that sea at the time of passage; with the proviso that the Powers reserve to themselves the right to send into the Black Sea, at all times, a force of not more than 3 ships, of which no individual ship shall exceed 10,000 tons.

Turkey has no responsibility with regard to the number of war vessels which pass through the Straits.

For the observation of this rule the Straits Commission will enquire of each Black Sea littoral Power the number of its war vessels; and will then inform the Powers concerned of the position of the strongest naval force in the Black Sea.

The Commission will also inform the Powers concerned of any alterations in that strongest force.

Aircraft to have the liberty of forced landing and of flying over a strip of territory of 5 km. on each side of the Narrows.

- (c) Submarines of Powers at peace with Turkey must pass the Straits on the surface.
- (d) Foreign naval forces to report to a signal station at the entrance to the Dardanelles or the Bosphorus.
- (e) Warships in transit not to remain in the Straits beyond the time which is necessary to effect the passage; except in the event of damage or peril.
- (f) The above rules will not apply to the staying in Turkish ports of naval forces visiting such ports.
- (g) Warships with cases of plague, cholera or typhus on board, or coming from infected ports must pass the Straits in quarantine.

The same to apply to merchant vessels having a doctor on board and passing through the Straits. Warships and merchant vessels, calling at one of the ports, and all merchant ships not having a doctor on board, shall be obliged to comply with the international sanitary regulations.

II. SPECIAL PROVISIONS FOR

TIME OF WAR

TURKEY BEING NEUTRAL.

(a) MERCHANT VESSELS

Same provisions as for I (a). The duties and rights of a neutral cannot authorise Turkey to take any measure of interference.

(b) MILITARY VESSELS AND AIRCRAFT

Complete freedom of passage by day and by night under any flag, without any formalities or tax, under the limitations mentioned under I (b-g) these limitations will not, however, be applicable to belligerent Powers.

The duties of Turkey as a neutral cannot authorise her to interfere with navigation through the Straits.

Capture, visit and search, or any hostile act, is forbidden in the Straits to the belligerents.

Revictimalling and carrying out of repairs to war vessels subject to the Thirteenth Hague Convention of 1907.

III. TIME OF WAR.

TURKEY BEING A BELLIGERENT.

(a) MERCHANT NAVIGATION.

Freedom of navigation for neutral vessels and aircraft, if not assisting the enemy.

Turkey to have the right to visit and search.

Turkish measures to prevent the enemy vessels from using the Straits may not prevent the free passage of neutral vessels, and Turkey will provide such vessels with either the necessary instructions or with pilots.

(b) MILITARY VESSELS AND AIRCRAFT.

The same freedom for neutral warships as described under II (b). Turkish measures against enemy ships and aircraft may not prevent the free passage of neutral ships.

With a view to maintaining the Straits free from any obstacle to free passage and navigation, the zones and islands indicated in Article 4 of the Convention shall be demilitarised. No fortifications, no permanent Artillery organisation, no submarine engines of war, no military aerial organisation and no naval base shall be allowed, and no armed forces shall be stationed. The Turks retain the right to place police and gendarmerie in these zones and islands, and to transport their armed forces through them. They may observe by means of balloons and aeroplanes the surface and the bottom of the sea, and Turkish aeroplanes will be able to fly over the waters of the zones. This also comprises Greek territory, Turkey and Greece having the right to organise in their territories any system of observation and communication.

(See Article 6 of the Convention).

No submarine engines of war in the waters of the Sea of Marmora, no Turkish permanent Battery, capable of interfering with the passage of the Straits, in the coastal zone, shall be allowed. (Article 7).

At Constantinople, there may be maintained for the requirements of the capital, a garrison with a maximum strength of 15,000 men, an arsenal and a naval base.

If we try to trace the work of the Straits Commission as prescribed in the above-quoted articles, it will be found that the Commission is in charge of seeing to the fulfilment of the provisions relating to the free passage of military vessels and aircraft, in time of peace and in time of war (Paragraphs 2, 3 & 4 of the Annex to Article 2). Other subjects, such as the free passage of merchant vessels and the demilitarisation are not mentioned.

As the Straits Commission will have to report annually to the League all information which may be useful in the interests of commerce and navigation, it may be held that the Commission should watch all nautical measures and keep acquainted with all administrative measures taken by Turkey and interesting the free passage of merchant vessels.

As far as the work to be undertaken by the League under these provisions, is concerned, it may be held that for the moment the League should merely allow the Straits Commission to get to work and await attentively the first report of the Commission.

As the work has to be carried on under the auspices of the League, the latter may eventually address the Commission and ask it for information, or make advisory recommendations to it. It may also make suggestions as to the possible difficulties of the Straits Regime.

For all these purposes Members of the Council and of the Assembly may take the initiative in discussion on the subject.

The Report of the Straits Commission should be communicated to the Members of the League and be mentioned on the agenda of the Council amongst the other documents which are listed there as communicated to the Members.

It can of course be discussed at the request of one Member. The Report should also be referred to in the General Report of the Council to the Assembly.

4. ORGANISATION OF THE WORK IN THE SECRETARIAT.

Considering the matter now from the point of view of the organisation of the work in the Secretariat, I submit the following suggestions:

- (1) Minority questions will, of course, as usual come within the sphere of action of the Minorities Section.
- (2) Health matters will go to the Health Section.
- (3) As far as the Straits Regime is concerned the report of the competent Straits Commission must be awaited, and, when it comes, it should probably be considered by the Political and Transit Sections. It may be found desirable to consult the Permanent Military Commission.

(4) In all cases where incidental questions arise they will have to go to the competent Sections (Health, Transit, Political, Minorities, Disarmament and Legal.)

In most of these cases the Council will have to act in view of the settlement of a dispute of some kind or at the request of some Member of the League; and in these cases use will be made of such advisory organisations as the Health Committee, the Advisory Transit Committee, the Permanent Military Commission, or even the Permanent Court of International Justice.

5. Some discussion has been carried on between the various Directors as to whether a particular Section should, perhaps, be designated to be, so to speak, the central channel through which matters connected with the general execution of the Treaty of Lausanne and of the Turkish situation should pass in the first place. This suggestion would seem not to apply to particular cases such as minorities or health matters, but it would apply when general questions of a political, legal or economic nature come up.

It would seem from the papers received from M. Attolico, Colban, Mantoux, Rajchman, Salter and Haas that general agreement exists on the following arrangements:

(a) The Annual Report of the Straits Commission to go in the first place to the Political Section, and all correspondence relating to such Reports to be conducted by the same Section, which Section will consult and send copies of the Report to the Minorities and Transit Sections, and, should it be necessary, to the Disarmament Section.

(b) Odd questions should only go to the Political Section in the first instance if they are of a political nature; if they are of a technical character, they should go to the respective Technical Sections.

(c) This division of work is, of course, a question on which the Legal Section can only transmit the opinions expressed by the various Directors and has no personal opinion to proffer.

The Secretary-General will naturally have to decide whether one particular Section should also be instructed to exercise a kind of general supervision over all such odd questions connected with the Treaty - apart from the Sections which are dealing with the matters. (See Professor Attolico's note of 15th November 1923, of which a copy is attached).

Van Hamel.

Director,
Legal Section.

1st February 1924.

A N N E X E .

ARTICLES DU TRAITE DE LAUSANNE
(24 juillet 1923)

qui ont trait à la Société des Nations.

QUESTIONS EVENTUELLES.

1. POLITIQUE .

Article 3 .- 2° : A défaut d'accord entre la Turquie et la Grande Bretagne la fixation est déferée à la Société des Nations. (Voir aussi Protocole XIV: Article VII) .

(Militaire)

Convention concernant la frontière de la Thrace.

Article 4 .- Toute réclamation concernant la demilitarisation des zones sur la frontière de Thrace doit être portée devant la Société des Nations.

Traité entre les Principales Puissances Alliées et la Grèce, relatif à la Thrace, signé le 10 août 1920 à Sèvres.

Article 5 .- La Société des Nations intervient dans la fixation de la durée du bail, concédé à la Bulgarie, d'un terrain dans le port de Dédéagatch, et dans la délimitation de ce terrain.

Article 15.- La Société des Nations est chargée de régler tout différend venant à s'élever à propos des articles 4 à 14 du présent Traité.

Article 16 .- Sur la demande de la Bulgarie, la Société des Nations nomme une commission internationale chargée du port de Dédéagatch. La Société des Nations statue en dernier ressort sur les décisions de cette Commission.

2.

FINANCES.

Article 47 : Arbitrage de la Société des Nations sur tout différend entre le Conseil de la Dette publique ottomane et les Etats successeurs de l'Empire ottoman.

Article 48 : Intervention de la Société des Nations dans la perception des revenus donnés en gage.

Article 49 : Désignation par la Société des Nations d'un arbitre pour départager la Commission de la Dette.

3.

TRANSIT.

Article 107 : La Société des Nations choisit le commissaire qui assure le transit; - Le Conseil statue en dernier ressort sur toute difficulté à ce sujet et décide de la durée du contrôle stipulé par ledit article.

Traité entre les Principales Puissances Alliées et la Grèce, signé le 10 août 1920 à Sévres.

Article 19 : Au cas où la Convention générale ci-dessus prévue n'aurait pas été conclue sous les auspices de la Société des Nations, la Grèce doit donner un préavis de douze mois au Secrétaire général avant de se départir des obligations de l'article 19.

4.

HYGIENE.

Article 116 : La Société des Nations statue en dernier ressort sur la liquidation de l'ancienne administration sanitaire de Constantinople.

Déclaration relative aux questions sanitaires.

Le Comité d'Hygiène de la Société des Nations concourt à la nomination des conseillers de l'administration sanitaire ottomane.

5. MINORITES .

Article 42 .- La Société des Nations nomme, en cas de divergence, le surarbitre des commissions spéciales chargées de régler les questions propres aux minorités.

Convention concernant l'échange des populations grecques et turques .

Article 11 .- La Société des Nations nomme trois membres dans la Commission mixte prévue pour l'émigration des populations et la liquidation de leurs biens .

Article 14 .- La Société des Nations fixe, le cas échéant, les gages de l'emprunt décidé par la Commission mixte.

6. JURIDIQUE .

Tribunal Arbitral Mixte .

Article 92 .- A défaut par un gouvernement de nommer un membre le représentant devant ce Tribunal, la Société des Nations le nomme .

Déclaration relative à l'amnistie .

Article VI .- La Société des Nations nomme, le cas échéant, un surarbitre à la Commission prévue pour les opérations relatives à l'amnistie .