

V. THE DOMINIONS AS MANDATORY POWERS.

§ 1. *The Stage as set by Article 22.*

It has sometimes been said that even had the League of Nations done nothing beyond the setting up of the Permanent Court of International Justice, it would have justified its existence, and indeed that this is perhaps the most remarkable thing the League has done. For myself I do not altogether agree. It seems to me that such a Court might so naturally have been set up even without a Geneva organisation to devise the statute and even without recourse to the League organs for the election of the judges, that its existence to-day is only a rather incidental demonstration of the League's value.

To me it seems that a more striking outcome of the League is the existence and active functioning of the mandates system. This without a League would be difficult indeed to conceive of. I hope Professor Rappard will not think it sounds patronising if I say that the members of the Permanent Mandates Commission have a difficult task, one might have thought an impossible task, and that they are doing it worthily and well.

In doing this task they receive a certain amount of assistance from the Mandatory Powers. They receive rather more assistance, I fancy, than some people would at first have expected them to receive. I do not know what were the expectations in this respect of the members themselves, but, had they sometimes felt a little sceptical as to the likelihood of that assistance proving all that it might be, I do not think we could have blamed them. To-day I propose to touch upon some of the grounds I think they may have had for suspecting that the Dominions at any rate might give them a little difficulty in their task.

From the days at the Peace Conference, when President Wilson's desire became known to apply the mandates principle to the government of those 'barbarians' for whom its author, General

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Smuts, had explicitly considered it unsuitable,¹ there had been signs of a certain lack of enthusiasm for it on the part of Dominion leaders. You remember the debate in the Council of Ten to which I referred the other day.² When General Botha then generously declared his belief that the League of Nations "would consist mostly of the same people who were present there that day, who understood the position and who would not make it impossible for any mandatory to govern South West Africa", the implication seems to have been that he would have felt less comfortable about any other set of people. The members of the Permanent Mandates Commission are not mostly, indeed they are not at all, the same set of people who were present there that day.

Correctly or incorrectly there lives among Dutch South Africans a tradition that in past times the "outsider"—and in those times this meant the English Government—was not altogether intelligent, sympathetic or helpful to them in their dealings with the natives of Africa. Was the projected Mandates Commission to assume the mantle of 19th century Downing Street? This query may well have lurked in the back of the minds of some of those whom General Botha was representing in Paris.

He said he felt very strongly about the question of South West Africa.³ He thought that it differed entirely from any question they had to decide at the Peace Conference. And it is true that the problems raised by the creation of a mandate over South West Africa are unique in human history, that they are not exhaustively covered by the wording of Article 22 of the Covenant, and have not been entirely solved even now.

So too the situation in Samoa, where New Zealand holds the mandate, is I feel one without a historical parallel. Anyone who has followed events there in the last two or three years, must readily agree with me.

The mandates exercised by the Dominions belong all of them to the C class, which allow of the government of the country

¹ H.M.II., p. 28 and I, p. 101.

² H.M. II., p. 194.

³ *Ib.*, II, p. 213.

Mandates applied to G. - contrary to Smuts

SA compromise as long as similar in practice

Does see Mandates as necessary to fair mngt.

SWA a unique case, not encompassed by A22 of the Cov.

"as an integral portion" of the territory of the Mandatory Power. On one famous occasion, General Smuts is reported to have spoken of the system as one of "veiled annexation", annexation in all but name. Certainly there seemed to be only a very little bit of difference. The notorious fact that the Dominion delegations in Paris had striven for annexation, and only reluctantly agreed to the 'C' mandate compromise, made it *a priori* reasonable to anticipate that any opportunity that might offer for reducing or eliminating such little bit of difference as might exist between the assumption of a 'C' mandate and outright annexation would not be neglected by the Dominions. The Mandates Commission have made it their concern to deny to the mandatories any opportunity of that kind. They have so to say acted as most vigilant custodians of the little bit of difference.

It is South Africa that has given them most of their anxiety in this respect. There has been more than one clear indication that the Union looks forward to a time when South West Africa will not only be governed *as*, but will *be*, both in form and in substance, an integral portion of its territory.

"Regarding 'integral portion'", Smuts told Parliament, he had taken part in the drafting because he felt that there must be no doubts raised in future: "the Union was not going to give up what it had bled and suffered for."¹

General Smuts, it is true, has declared that actual annexation is unnecessary seeing that the present arrangement gives South Africa all the power she needs. "Such complete power of sovereignty" was the expression he used;² there by doing much to offset the value of his renunciation. For the ideas of annexation and of sovereignty are, in the minds of most people, so difficult to separate, that to Professor Rappard and his colleagues the word "sovereignty", used in relation to a mandate, is like the word "zoology" to a fundamentalist. And other speakers have gone

¹ J.P.E.I.4, p. 743.

² J.P.E. VI.4, p. 873.

C mandate annex?

Mandatory seeks to decrease, PMCs to increase the difference

Smuts on SWA

SWA + sovereignty

further than General Smuts. Colonel Creswell, the leader of the Labour Party, spoke in this behalf of what was "manifestly" the "destiny" of the Union.¹

But you must not suppose that an objection to the machinery of the mandates system means a dislike for the principles of Art. 22. Mr. Merriman, the grand old man of the South African Parliament, pleaded that, in the drafting of the mandate, which he understood was to define the limits and scope of their authority in South West Africa, there should be "as much scope and as little limit as possible", for he wanted to see the country annexed and made part of the Union, "so that they might be free from the shackles of the League of Nations".²

Why did Mr. Merriman object? Was it because he would have wished to arm the natives, to sell them liquor, to subject them to religious persecution? Far from it. As a matter of fact, Mr. Merriman was above all his fellow-countrymen the friend and defender of the natives. The point was that Mr. Merriman, like many another South African, disliked the Treaty of Versailles, confused it with the League, and accordingly looked with profound suspicion upon the League and all its works.

§ 2. The National Status of the Whites in South Africa, 1923.

As matters in relation to which the action of the Union Government has revealed or may have been thought to reveal a policy of ultimate formal incorporation of the territory, we may notice —the national status of its white inhabitants, the granting to it of a constitution, and the question of the sovereignty over it.

In 1923, after discussions extending over many months, some resolutions were adopted by the Council in regard to the defining of the national status of the native inhabitants of the territories under B and C mandates.³ So far so good. Everyone had under-

¹ J.P.E.I.1, p. 209.

² J.P.E.I.3, p. 554.

³ C.24, p. 604.

stood the essentials of the problem and all were at one in its solution. But along with the discussions over the natives there had also been debated in the Mandates Commission and as between it and the South African Government what I think you will judge to have been the distinct problem of the status of the German settlers. At any rate this problem was a distinct one in the view of the Union Government: the Mandates Commission however, it is true, stood for the consideration of the two problems as virtually one.

When the two questions came up to the Council together, there had been circulated a memorandum setting forth the view of the Union Government, a memorandum which it was to be presumed had been studied by the advisers of the various members of the Council.

"The representative of South Africa ventures to bring before the Council the special practical conditions which present themselves in South West Africa.¹ The Government of South Africa has not utilised the right conferred upon it by Art. 122 of the Treaty of Versailles and has not repatriated the German nationals resident in the territory entrusted to it under the mandatory regime. The South African Government is anxious to enable the persons in question to take part in the public life of the territory and is convinced that this object can only be attained in practice by conferring on them the status of British subjects, each individual having, however, the free and unfettered right to decline to accept such status.

"The South African Government considers that the proposed action would be in no way adverse to the interests of the indigenous population, which, in accordance with Art. 22 of the Covenant, it is the special duty of the Council to safeguard . . . The South African Government would be glad to be informed whether the Council sees any objection to the proposed action."

The Council, on the other hand, had also before it the report of M. Unden of Sweden:

"The question of the status of the inhabitants of mandated areas of European origin arises only, I am informed, in South West Africa . . . It is to the interest of the Mandatory Power that the question of the national status of the inhabitants of mandated

¹ *Ib.*, p. 659.

² *Ib.*, p. 658.

nat'l status
of natives
+ of German
settlers
accordg to
M. + S.A.G.
virtually

German
come
under
Versailles
a/22

the natives
a/22 of
the LOAN
!

SA nat'l status
under
mandates, LOAN
+ Versailles

SA annex
①
②

areas should be settled in such a way as to avoid any needless embarrassment to the administration of the territory. The Union of South Africa, which has had considerable experience in the administration of native peoples considers it, I understand, practically impossible to govern the territory without the cooperation of the white colonists. It considers, further, that this administrative cooperation must be dependent on the acceptance by the colonists of the nationality of the Union. It is obvious that the problem would be simpler if all the white inhabitants opted to become citizens of the South African State. On the other hand it seems evident that a legislative measure providing for compulsory naturalisation of these inhabitants *en bloc* would tend to increase their good faith or loyalty to the Government enforcing such legislation. It would not, moreover, be consistent with the interests of the Mandatory Powers, for obvious reasons, to make no distinction between the status of their own subjects and that granted to the inhabitants of their mandated territories, who have privileges which are clearly not compatible with State sovereignty.

"The interests of the League of Nations in connection with this question are indirect but nevertheless very real. Any principle or legislative practice which would assimilate the mandated areas to annexed territories tends to weaken the institution of mandates and, in so far as public opinion judges the League of Nations by its institutions, to weaken also the League as a whole. The right to extend the nationality of a victorious power to the vanquished inhabitants of an annexed territory has been recognised and exercised as a rule in the past only by virtue of provisions expressly inserted in the treaty of cession. As the Treaty of Versailles contains no clauses to this effect and as, moreover, the areas held under mandate are in no sense annexed territories, the argument would appear doubly strong in support of the opinion expressed by the Permanent Mandates Commission that the compulsory naturalisation of the inhabitants of mandated territories would be contrary to the spirit of Art. 22 of the Covenant."

In support of his proposal Sir Edgar Walton made a lucid and, as it seemed to me, a cogent speech.

He wished, he said, to inform the Council that the proposals . . . did not solve the problems with which his Government was faced nor help it in carrying out the duties laid upon it by the League.¹ The problems were largely due to the action which his Government had taken on assuming the mandate. It had been entitled to deport all German subjects . . .

¹ *Ib.*, p. 569.

The South African Government possessed the necessary machinery for governing the natives of South West Africa, by means of trained officials living amongst them and administering the law. There was, however, no machinery for dealing with the civilised people in those districts South Africa . . . would have, therefore, to do one of two things—either to create a bureaucratic organisation or to introduce self-government in that territory, and to admit the German settlers at the earliest possible moment to share in that self-government. In South West Africa there were about 7000 German settlers and 10,000 British, whose interests and occupations were identical. At the moment, however, . . . the 7000 German settlers had no voice whatsoever in the government. They . . . possessed no representation and were in a humiliating position. The South African proposal [for dealing with these settlers had not met with the entire approval of the Permanent Mandates Commission, but he hoped that the proposal which he was about to make . . . would be approved by the Council. He hoped . . . that the League would not be hide-bound in this matter, but that it would show itself sufficiently elastic to be able to meet the different problems that might arise in its history, owing to the different conditions in the various parts of the world, and that it would not be bound by rule which had been laid down before the League itself had had experience regarding those problems.

In order to bring the German settlers within the bounds of South Africa, and to put them on the same level as the British colonists, the South African Government proposed to give them South African nationality . . . It would be difficult for any man, especially after the history of recent years, if, in order to obtain political rights, he were compelled to approach the conquering Power in order to take the oath of allegiance to the British flag and to renounce his previous nationality. The South African Government proposed to inform these German settlers that they would be put under the same Government as the rest of the inhabitants of South Africa by means of a general law which would naturalise them, but that, in order to avoid any injustice, anyone who desired to remain outside and not to avail himself of that law should be allowed to do so. If he did not take advantage of the offer, and did not wish to change his nationality in the proposed conditions, he would not be compelled to do so, and the South African Government would guarantee that he should not suffer any injury or penalty because of his choice. He would remain in the country as an alien resident . . .

The evidence indicated that the German settlers would agree to the proposed procedure.

For myself I must confess that I cannot read into the terms of Article 22 any express indication as to the treatment of German

PMC interprets
SA former as forced
naturalisation of
German settlers
+ statement to
stealing on 10/1

M supports
the following

SA claimed
that
SA nationality
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compulsory

settlers. Their presence in South West Africa renders the situation of that country unique among the mandated territories. The case was one of real difficulty—the conflict between the rather academic desire to keep the theory of the mandate as clear and simple as possible and the practical necessities of a specific governmental problem. The members of the Council began at last, after Sir Edgar's speech, to awaken to the delicacy of the question. So many strong arguments could be found on either side. At first it looked as if there would be a deadlock. M. Hymans complained that the representative of South Africa had . . . raised a new point in connection with naturalisation which was "the exact opposite of that contained in the proposals before the Council".¹

M. Adatci said that

the principle raised was a fundamental one and concerned the Covenant itself.² Art. 22 of the Covenant had established the principle that, because certain peoples were not so advanced along the path of civilisation as others, Mandatory Powers should be called upon to assume a temporary responsibility regarding them. This meant that at some future date more or less distant, these peoples would become independent, and enjoy full political freedom. The League must always keep this distant end in view . . . The proposal of the South African representative was entirely opposed to the spirit of the Covenant.

The Marquis Theodoli, chairman of the Mandates Commission, opined that

anything which tended to create confusion between the institution of mandates and a disputed annexation was likely to bring discredit on the general work of the League, and if the principle proposed in the South African amendment were adopted, it would be equivalent to countenancing an act of annexation.³

M. Hanotaux said that the French experts

had carefully followed the problems raised by these mandates, but that the problem of the German settlers in South West Africa had never been put before them.⁴

¹ *Ib.*, p. 570.

² *Ib.*, p. 571.

³ *Ib.*, p. 571.

⁴ *Ib.*, p. 572.

Eventually a sub-committee was set to work which, after some long deliberations, recommended a resolution whereby the Council, "taking into consideration the special case presented to it and the fact that only the inhabitants of South West Africa alluded to in the Treaty of Versailles" were concerned, took note of the declaration made by the representative of South Africa and saw no objection to the proposed action.¹

M. Branting, always the most uncompromising defender of the League's ideals, felt obliged to reserve his opinion.

"The fact that the Mandatory Powers do not possess full sovereignty over the territories which have been entrusted to them by the League of Nations clearly shows, in my opinion, and in the unanimous opinion of the Permanent Mandates Commission, that the legal situation of the non-native inhabitants is different from that of the population of annexed territory."²

"To my regret I find myself unable to give a definite opinion, in the name of my Government, on the question whether the South African Government's scheme raises difficulties from the point of view of principle."

M. Adatci abstained from voting—being in those days still unable, as he pointed out, to telephone to Tokyo for fresh instructions.³

M. Salandra and most of the other members thought that M. Branting's statement and the resolution were compatible and accordingly voted for the resolution, while agreeing with M. Branting's reservation.⁴

Sir Edgar Walton in conclusion thanked the Council for the sympathetic manner in which it had dealt with so difficult a question; he felt sure that the confidence reposed by the Council in the South African Government would be justified.⁵

Considering the kind of reception given to the South African argument in the earlier stages, it is curious but gratifying to find

¹ *Ib.*, p. 605.

² *Ib.*, p. 605.

³ *Ib.*, p. 605.

⁴ *Ib.*, p. 606.

⁵ *Ib.*, p. 606.

Mrs. Henry of 222 opposed to Govt. practice

No date for less dev't peoples but whites - SWA won't

the chairman of the Mandates Commission remarking to his colleagues at their next session:

"... although this decision of the Council was not precisely that which we had proposed as a result of our discussions last year, it could not possibly be considered as an infraction of the principles of Art. 22 of the Covenant, because it is expressly founded on the definite provisions of another article of the Treaty of Versailles."¹

§ 3. A Temporary Constitution for South West Africa.

It was, I believe, the only statesmanlike solution possible; and it has been applied in the spirit of statesmanship. In one respect the leaders of the Union had an advantage over every other government represented at the Council table that day. They knew from personal experience what it means to be defeated in war and then generously treated in peace. By an Act of Parliament drafted under Smuts and actually passed, without change, under Hertzog his successor as Prime Minister, the Germans were naturalised *en bloc*.² Only a small percentage exercised their privilege of refusing naturalisation.³

And then in due course, after discussions in which these new Union nationals were consulted on every point, there was passed a further Act, setting up what was avowedly only a temporary constitution for South West Africa, temporary because the Union Government looked forward to a day when, by the wish of the settlers themselves, the further step would be taken of associating them directly with the work of the Union Parliament.⁴ Would this be annexation? Or would it be merely a new manner of governing South West Africa "as an integral portion" of the Union's territory? We shall see. But we may be sure that the eyes of the Permanent Mandates Commission will not be closed when the next step is taken. In the meantime they have made no objection to the temporary constitution, for it leaves with the

¹ P.M.C. 3, p. 9.

² J.P.E. V.4, p. 858.

³ J.P.E. VI.4, p. 872.

⁴ *Ib.*, p. 866.

Union Government its full formal responsibilities as mandatory and does not even for practical purposes transfer to a local parliament the custody, for example, of native interests.¹

In all these debates, however, I think you would be particularly struck by one thing, namely, that no matter how seriously the Union leaders may take their duties towards the natives, it seems assumed that what mainly needs explaining to Parliament is the policy as regards the ex-Germans. Time and again there are references to the wishes of "the people of the territory"—meaning not *all* the people, but merely the white ones.² General Hertzog speaks of "the two great sections" into which those people fall—meaning those of German and those of British origin.³ South West Africa is thought of not like a native territory, but like a country similar to the Union itself, where, however kindly they may otherwise be treated, the dark-skinned majority are not commonly conceived of as forming part of the essential South African nation. It is not surprising that a Geneva commission concerned to watch the application of Article 22 should feel that this is a case requiring their eternal vigilance. And the trouble, as we have seen, is that Article 22 says nothing as to what shall be done if a territory under C mandate has a white population ripe for self-government. That is what gives the developments in "South West" their peculiar fascination. When we have to fall back upon appeals to the "spirit" of an article, there is room for so much difference of opinion as to what it involves.

§ 4. The Forbidden Word.

Sovereignty!

So far I have told you of proceedings by the Union Government which seem to me to have had a perfectly straight-forward explanation. I come now to an instance of an official action on their part which I have never been able to explain.

In the preamble to a treaty between South Africa and Portugal,

¹ C.35, p. 1519.

² J.P.E. V.4, p. 860.

³ J.P.E. VI.4, p. 869.

German
British!
white
views of
South Africa

what to
do w/
whites
ready for
self-govt.

SA leaders
experience

SA
Sovereign
over SWA

the Government of the Union included a statement that "subject to the terms of the mandate" the Government of the Union "possesses sovereignty over the territory of South West Africa lately under the sovereignty of Germany".

Questioned in Parliament as to the propriety of this wording, General Hertzog referred his questioner "to the decision of the Supreme Court of South Africa (Appellate Division)" in the now famous case of *Rex v. Christian*, wherein it was laid down that

SA
sov not
anywhere else!

"the majestas or sovereignty over South West Africa resides neither in the Principal Allied and Associated Powers, nor in the League of Nations, nor in the British Empire, but in the Government of the territory of South Africa, which has full powers of administration and legislation etc." ... (only limited in certain definite respects by the mandate).¹

"The Government", said General Hertzog, "entirely adheres to this decision."

SA
municipal
law

Politicians in Parliament are apt to care more about finding sufficient explanations than revealing true ones, and maybe this explanation disarmed the questioner and was in that sense sufficient. But, as was duly pointed out in Geneva, the words relied on by the Prime Minister occur in only one out of a number of judgments delivered in the case²; and, further, though this has not been so emphatically pointed out, words applicable in a municipal court on a point of local criminal law (for the Union governs South West Africa under its *own* laws) may be of doubtful relevance in an instrument negotiated between States, where it will presumably be to public international law that they refer.

But what was the Permanent Mandates Commission to do?

! { If you have an appreciation of subtlety in diplomatic drafting, read and enjoy the series of formulas that emanated from that Commission and from the Council in respect of this affair.

What has become of the sovereignty over South West Africa, renounced by Germany under Art. 119 of the Treaty of Versailles, amongst her other "rights and titles", in favour of the Principal

¹ J.P.E. VIII, 3, p. 460.

² C.46, p. 1262.

and who decides?

Allied and Associated Powers? As between the Council, the Mandates Commission and the Union Government, who is technically competent to furnish an authoritative answer to this highly abstruse, largely academic, and exceedingly controversial question?

First the Mandates Commission takes leave to doubt whether such an expression as that used in the preamble, even when limited by the phrase "subject to the terms of the said mandate" as in this case, "can be held to define correctly... the relations existing between the Mandatory Power and the territory placed under its mandate", and draws the Council's attention to the matter.¹

Next the Council rapporteur suggests that the Council "should not express any opinion on this difficult point as to where sovereignty over a mandated territory resides", but that the Secretary General should simply be instructed to forward this passage of the Mandates Commission's report for the information of the Mandatory Power concerned.²

You notice that the Union Government is not expressly asked to do anything. The Union Government accordingly does not do anything.³

Next the Mandates Commission, "because of the fundamental importance of the question," feels obliged again to bring it to the attention of the Council.⁴

SA
sov
contradictory
to
mandate

"The parallel drawn in the above-mentioned preamble between the sovereignty assumed by the Government of the Union of South Africa over the territory in question and the sovereignty over that territory previously held by Germany, seems to imply a claim to legal relations between the Mandatory Power and the territory it administers under its mandate, which are not in accordance with the fundamental principles of the mandates system"

"The Commission is anxious to know the exact meaning which is to be attributed to the expressions referred to. The Commission notes that the accredited representative of the Mandatory Power was not able to give the opinion of the Government of the Union of South Africa on this question, and it hopes that that Government will be so good as to explain whether, in its view, the term "possesses

¹ C.44, p. 426.

² *Ib.*, p. 424.

³ C.46, p. 1262.

⁴ *Ib.*, p. 1261.

what
has sov
gone?

sovereignty" expresses only the right to exercise full powers of administration and legislation in the territory of South West Africa under the terms of the mandate and subject to its provisions and to those of Art. 22 of the Covenant, or whether it implies that the Government of the Union regards itself as being sovereign over the territory itself".

What does the Council do? Does it associate itself with the hope to which the Permanent Mandates Commission has given expression? Does it feel justified in gratuitously calling upon the Union Government for its opinion as to the meaning of certain words in a certain context? That was evidently what the Permanent Mandates Commission would have desired.

"I appreciate", said the Council rapporteur, "the scrupulous care with which the Mandates Commission has continued its efforts to remove any doubts on a point of this importance.¹ It seems to me that, from all practical points of view, the situation is quite clear. The Covenant, as well as other articles of the Treaty of Versailles, the mandates themselves, and the decisions already adopted by the Council on such points as the national status of the native inhabitants of mandates territories, the extension to mandated territories of international conventions which were applicable to the neighbouring colonies of the mandatory Powers, the question of loans and the investment of public and private capital in mandated territories and that of state lands formerly belonging to the German Government, all have had their part in determining or in giving precision to the legal relationship between the Mandatories and the territories under their mandate. "This relationship, to my mind, is clearly a new one in international law, and for this reason the use of some of the time-honoured terminology in the same way as previously is perhaps sometimes inappropriate to the new conditions. Under these circumstances, the situation seems clear, except perhaps from the formal point of view".

Just so. But was it not precisely on the "formal point of view" that the Mandates Commission was feeling nervous?

Did the Council go on to ask the Government for light on "the formal point of view"?

"As the Union Government... reserved the right to express its views on the matter, this most recent observation . . . should

¹ *Ib.*, p. 1120.

be communicated . . . in the usual way, so that it may add any further comment on the point that it might desire to communicate to the Council".¹

The only response so far as I know that the Union Government has vouchsafed to this shy hint has been its forbearance overtly to dissent from the doctrine of the Council rapporteur. It had, in fact, "no remarks to offer" thereon;² and it sees no value in the official opening up of "academic" questions.³

And there, despite the manifest continued uneasiness of the Mandates Commission, the matter seems in effect to have been allowed to go to sleep.

In case this episode should cause you to infer that the present Nationalist Government is composed of persons careless of international right, there are two quotations I would like you to hear. When, in 1922, the railways harbours and subsidiary undertakings in South West Africa were, by Act of Parliament, being transferred to and vested in the Governor-General of the Union, it was Mr. Havenga, the present Minister of Finance, who, protesting against the principle involved in the words "part and parcel for the Union System of railways"—used in the Bill—submitted that "that was contrary to the letter and spirit of the mandate and that they were merely in the position of trustees and had no right practically to annex or confiscate those railways by incorporating them in their own railway system".⁴ And when, originally, the assumption of the mandate for South West Africa by the Union had happened without consultation of the German colonists, who had been "dragged into the war against their will", the transaction was characterised in parliament by General Hertzog, the present Prime Minister, as "a scandalous piece of international fraud".⁵ Is it to be taken that these men must have left their

¹ *Ib.*, p. 1120.

² C. 56, p. 1654 and C. 58, pp. 70 and 139.

³ *I.A.Pl.*, p. 54.

⁴ *J.P.E.* IV.1, p. 165.

⁵ *J.P.E.* II.4, p. 909.

Mandates =
a new int'l
relationship

LoN

Canal didn't

like Ketem +

left unclear

the formal status
but seem to have left SWA under
SA gov, M thinks

PMC wasn't
happy.

scruples on the opposition benches? *Corruptio optimi pessima*, perhaps?

§ 5. *The Powers of the Permanent Mandates Commission.*

So much for the legal relation between the Power holding a mandate and the territory subject thereto. Let us glance now at some questions that have arisen on the relations between the mandatory government and the organs of the League. The official doctrine on these matters was adopted by the Council in August 1920 on the basis of a report sponsored by M. Hymans of Belgium: in 1922, however, Sir Francis Bell, in the name of New Zealand, took exception in an Assembly speech to the procedure then in vogue.

"New Zealand... is willing and anxious to receive suggestions and advice from either the Permanent Mandates Commission or the Council of the League, but she cannot admit that the Permanent Commission has power to interpret for her the meaning of the Covenant, or to dictate to her what procedure she should adopt in her endeavours to perform her duties to the League."

"I offer two objections to the present procedure. First: the report of the Mandates Commission should, I submit, be a report to the Council and not to the public. And certainly opinions of the Mandates Commission on any subject should be expressed to the Council and not to the public. We have nothing to fear from any investigation and court the fullest enquiry; but we do not court or desire opinions upon our laws or our administration from any body of persons other than the Council or the Assembly."

He went on to deal with a second interesting point of procedure.

We must jump however to the year 1926 for the classic discussion of the proper scope of the Mandates Commission's activities. The Council at its September session was invited to pass upon two suggestions for the more satisfactory functioning of the mandates system. The topics are easy to remember—p's and q's, petitions

¹ 3A.Pl., p. 147.

and questionnaires. It had long been the established practice for the Permanent Mandates Commission to receive and consider suitably worded petitions coming from suitable sources, but not to accord a personal audience to the petitioners themselves. It had long been the established practice for the reports of the mandatory governments to be rendered partly on the basis of a standard questionnaire drawn up by the Mandates Commission in 1921 and approved by the Council. It was now very tentatively suggested that in some cases it might possibly be well that a petitioner should be summoned before the Permanent Mandates Commission;¹ and it was also suggested, with less timidity, that in place of the old form of questionnaire, there might be adopted a new form revised and somewhat enlarged in the light of experience.² To the 'petitioners' proposal the Dominions were solidly opposed: but this is hardly remarkable, seeing that all the other Mandatory Powers made similar objections. And after all it would really have amounted to a pretty drastic innovation. On its merits, or demerits, it might well cause misgivings.

In answer to the 'questionnaire' suggestion it was less easy to make a convincing case: but the Dominions set their faces against this too. So also did the British member, but not the other mandatories. You may even hear it alleged that Sir Austen Chamberlain's leading of the onslaught upon this seemingly innocent idea, was performed rather as a gesture of solidarity with the overseas members of the Commonwealth than for any more avowable reason. Here at last we are vouchsafed an example of concerted action by the British group! Just listen:

First Sir Austen:

The Commission had prepared an immense questionnaire....³ It was a questionnaire infinitely more detailed, infinitely more inquisitorial than the questionnaire which had hitherto been in force with the sanction of the Council; and he thought it raised the question of the true relative position of the mandatory Governments in a mandated territory and the Mandates Commission which examined

¹ C.41, p. 1307.

² *Ib.*, p. 1307.

³ *Ib.*, p. 1233.

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their reports and the Council which took action as guardian under the terms of the Covenant.

It seemed to him, and he knew that this feeling was shared by other Members of the League and of the British Empire who exercised mandatory authority, that there was a tendency on the part of the Commission to extend its authority to a point where the government would no longer be vested in the Mandatory Power but in the Mandates Commission. He was sure that was not the intention of the Covenant.

He saw great objections *prima facie* to the adoption of so detailed and so extensive a questionnaire, and he would beg that it should be submitted to the various mandatory Governments for their consideration and comment before the Council took any decision upon it.

Then Sir Francis Bell said that

Sir Austen Chamberlain had exactly expressed the views of New Zealand as a mandatory Power.¹ He desired to add that New Zealand, which had always received the commendation of the Mandates Commission and of the Council, was becoming impatient at the minute investigation by the Commission of administrative details.

The heaviest blows were struck by Mr. J. S. Smit, of South Africa, whose speech contains some curious phrases and perhaps some still more curious implications. There are streaks of real doctrinal originality in his treatment of the theme.

He had heard with pleasure the remarks of Sir Austen Chamberlain . . .² These remarks would give pleasure not only in the mandated territory but also in the territory of the Mandatory. Gradually, and probably involuntarily, the impression had grown in the mandated territory (and he represented a C territory) that the more it developed constitutionally the greater the assumption by the Permanent Mandates Commission of power to direct the government in the territory. In cases where the mandated territory had its own legislative body, such a body would not like such questions as the hearing of petitioners orally and the questionnaire to be settled without its having been consulted and without having been asked for its observations.

He had the impression that two of the parties most interested in the questions put forward in the report (the Mandatory Power and the legislative body in the mandated territory) had not been

¹ *Ib.*, p. 1235.

² *Ib.*, p. 1235.

consulted and that it was not intended that they should be consulted. Sir Austen Chamberlain had in his remarks brought out the objections which might justly be felt by the Mandatory and in the mandated territories against the questionnaire. . . . He would urge the Council not to overlook the fact that in the very exhaustive questionnaire matters were touched upon which really did not concern the Permanent Mandates Commission and which really constituted an investigation of the policy of the Mandatory in its own territory.

The Council must not overlook the fact that the territories under C Mandates were an integral part of the mandatory's own territory, and some of the questions—Question 54, for example—enquired into the future policy of, for instance, the Union Government. To have such questions put before the Union Government in that way would create a great deal of resentment, and for that reason he strongly supported the proposal made by Sir Austen Chamberlain.

With a little stretching these last sentences can be construed to mean that what happens in South West Africa is no affair of the Permanent Mandates Commission. The speech reminds us once more of the importance of the European settlers as a complicating factor, an importance which seems unlikely to diminish.

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M. van Rees, the vice-chairman of the Permanent Mandates Commission, then entered a dignified protest against the allegations that the Permanent Mandates Commission had gone outside its duties.

In support of this affirmation reference had been made to Art. 22 of the Covenant.¹ He would observe that Art. 22 of the Covenant, and particularly its last paragraph, did not in any way define the competence of the Mandates Commission. At the time when the Commission was constituted, the representative of Belgium, M. Hymans, had explained the duties which were to be entrusted to it, and the Council of the League of Nations had itself declared at that time that the Commission must have as wide as possible a conception of its duties.

M. Hymans had explained absolutely clearly, in a very remarkable report drawn up in August 1920, that the supervision of the Mandates Commission should extend over the whole administration of the Mandatory Power. This was the declaration which had guided the Commission up to the present. He would draw attention to one of the last paragraphs of the constitution of the Commission which

¹ *Ib.*, p. 1235.

the Council had approved. From this it would be seen that the Mandates Commission had the right to bring before the Council any questions regarding the whole of the administration of the mandated territories which might be of interest to the Council.

It would have been just a little late, I think, in 1926, for anybody to question the authority of the Hymans report even if and in so far as it might be thought to contain more than was implied in the Covenant.

Formerly it might perhaps have been morally open for some predecessor of Mr. Smit to point out that to the Council session in 1920 at which M. Hymans's report was adopted, no Dominion mandatory power had been invited to send a representative, and thus to raise the question of the applicability of paragraph 4 of Article 5 of the Covenant in such a case. But after so many years of general acquiescence in the operation of the Commission under that constitution, M. van Rees may, I think, be considered to have disposed of the point put by Mr. Smit.

Several speeches were then made containing "kind words" which "quite reassured" M. van Rees, who in another exquisitely touching little speech referred to "the painful effect" some of the earlier observations could not but have "on all the members of the Mandates Commission".¹ But one notices that M. Briand, even in the midst of his compliments, allowed himself to remark that it would be "rendering a service to the Commission to bring to its notice certain difficulties which might arise from indefinitely increasing its powers".²

The Mandates Commission tactfully took the line that for themselves they did not much care about the questionnaire, their only object having been to make things easier for the mandatory governments.³

Both proposals were eventually abandoned. I mention the incident chiefly as illustrating a certain want of generosity sometimes

¹ *Ib.*, p. 1237.

² *Ib.*, p. 1236.

³ *C.46*, p. 1257.

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displayed by Dominion representatives in referring to the services of the Mandates Commission.

§ 6. Governmental Practice — An Unhappy Incident.

One further basis on which concern has been felt in the Mandates Commission, if not by the Mandates Commission, in regard to the attitude of the Dominions. Seriously as we may view a difference of opinion on a question of constitutional theory or a point of procedure, it would be even more alarming if the Dominions were found at variance with the Mandates Commission in their conception of their duties in relation to the native populations under their charge. Every evidence as to what the attitude of a Dominion in this matter may fundamentally be is therefore of particular interest to the Mandates Commission. Do the Mandates Commission and the Union Government see eye to eye on the question of the proper scale of expenditure on native education in, say, the Ovamboland reserve? If so it should become apparent not merely in the words but also in the deeds of the Union Government!

The story of New Zealand's efforts in Western Samoa is of the utmost interest in this connection: but since it has elsewhere been admirably summarised by Professor Toynbee,¹ I propose here to deal more in detail with another situation in which, though under radically different conditions, there was involved the same basic function of government, namely, the maintenance of law and order.

There have now been a number of instances, both in A and in C mandated territories, of the exercise of force for the preservation of internal peace. Need I recall Syria 1925, Palestine 1929? Every such episode is bound to focus civilised attention upon the general policy and methods of the administration in the mandated territory affected.

¹ S.I.A. 1929, p. 373.

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Such at any rate was the experience on the first such occasion to arise under the system. It happened in May, 1922. The scene was South West Africa. It was, on any view, an extremely shocking affair. To the number apparently of about one hundred and at the hands of the 'trustee' himself, persons, whose well-being was declaredly to form a sacred trust of civilisation, lost their lives. The instrument of their destruction was the aeroplane bomb. Among the wounded, it seems, were several women and children and there were two children killed.¹ Small wonder that the incident excited the misgivings of mankind.

The Union Government—it was the least, though perhaps also the most that it could do—appointed forthwith a commission to inquire into the circumstances of the disaster. And they sent to Geneva the report of the Administrator under whose orders such drastic measures had been taken.

In September Sir Edgar Walton informed the Assembly of the situation and of the action taken by General Smuts, and begged that judgment on the affair should be reserved until the results of the inquiry were available.²

Though one delegate, M. Bellegarde, of Haiti, did then also speak of the affair, the Assembly, while showing its keen concern, consented to await, as suggested, the report of the investigators.³

This, the following spring, was studied, in the presence of two representatives of the Union Government, by the Permanent Mandates Commission, which made to the Council a report whose general character was thus described by M. Branting:

" . . . of the eight members of the Commission present during the session, one abstained from expressing any opinion; another gave a brief opinion which did not seriously implicate the responsible authorities; five members expressed views more or less in agreement with those of the majority of the Commission of Enquiry, and, finally one . . . the President of the Mandates Commission himself, was still more severe in his judgment." ⁴

¹ P.M.C.3, p. 123.

² 3A.Pl., p. 38.

³ *Ib.*, p. 76.

⁴ C.27, p. 392.

Sir Edgar Walton, the accredited representative, exercised in somewhat vehement language his privilege of commenting on the Mandate Commission's report:

" Such criticism as is to be found in the Report of the Mandates Commission, emanating evidently from inexperienced persons, is prejudicial to the successful government of the country concerned."

" I fully realise the difficulties of which the Commission speaks and which it found in making its Report.¹ In my opinion indeed it would be impossible for any such Commission to report satisfactorily upon the events dealt with in this document unless they had such a knowledge of the facts and conditions of the country, and of the character of its people, as only personal residence in the country could give them."

§ 7. *The General Policy of the Administration.*

For our present purposes it will be useful, I think, to examine the episode for the light it throws—first upon the general policy and methods of the Administration, secondly upon the particular action of the Administration in handling the Bondelzwart affair, and thirdly upon the attitude of the Union Government towards its duty to cooperate with the Permanent Mandates Commission in the performance of its task.

As regards the general situation both Major Herbst and Sir Edgar Walton, the latter the High Commissioner in London, the former the Secretary to the South West Africa Administration, laid stress upon the difficulties that situation presented. The relations between black and white in South West Africa were admittedly bad: and the causes of these bad relations appeared to Major Herbst to be permanent.

The Europeans in that part of the world, he said, were intensely anti-native, and there was no difference as regarded races, except in degree, in the feeling shown.² Naturally a German farmer who

¹ Doc. C.550.1923.VI, p. 2.

² *Ib.*, p. 1.

³ P.M.C.3, p. 112.

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affairs

had lived under the German régime was more bitter against the natives than a farmer coming from the Union. . . .

"The ill-treatment experienced by them under the former régime, which gave no redress, has made them (the natives) disinclined to work for German masters, to whom they are now barely civil."¹

Asked if it were not the general feeling of the ignorant farmers that the natives were there chiefly as labourers for themselves, he replied that it was not only the ignorant farmers, "it was also the educated farmers who thought that".² And in justification of an official statement which had seemed to pander to that view, he went on: "If you work in a country where 90 % of the European population is against your policy, you must point out to them any benefits accruing to them indirectly from such a policy".³

On the general policy pursued by the Administration—which of course was essentially a matter of opinion—the majority of the Commission of Enquiry had formed an unfavourable judgment. Major Herbst told the Permanent Mandates Commission:

"The Commission unfortunately, on their arrival, before they had any experience of local native conditions and had heard the criticism of the Administration, took my evidence first . . .⁴ They knew nothing about the administration of the country, and were really not yet in a position to cross-examine me . . . It would have been very much better if they had returned and recalled me thereafter . . . Nobody in the Union knew anything about the Administration in South West Africa. Anybody appointed on a Commission would have had to go up and enquire locally for information . . .

"I think a good deal of the report is based on insufficient information and the want of knowledge of local conditions."⁵

The chairman of the Mandates Commission afterwards expressed it as his conviction that "the officials of the various South West African administrations who came from their civil service" were imbued with a spirit which was not the spirit of the mandates, which required as a fundamental principle the material and moral

¹ *Ib.*, p. 121.

² *Ib.*, p. 120.

³ *Ib.*

⁴ *Ib.*, p. 124.

⁵ *Ib.*, p. 125.

progress of the natives; the white population ought only to be considered in so far as it assisted in achieving this progress.¹

Though his colleagues did not go quite so far, they did report:

"The majority regrets . . . that it has been unable to convince itself that the difficulties, real though they were, justified in a territory under mandate the treatment of the natives as indicated in the evidence and the statements of which the Mandates Commission has taken cognizance."²

Sir Edgar Walton took strong exception to the suggestion which "without any evidence whatever" seemed to run through their report to the effect that the interests and the future of the native races in the country had been entirely overlooked.³ He said that he was afraid the Commission had failed altogether to realise the situation in South West Africa when the Union of South Africa assumed the responsibility of government and organised an administration to take over the rule of that territory.⁴

To cast such immoderate doubt on the insight of the Mandates Commission was perhaps a little ill-judged; I notice however that after Mr. Hofmeyr's subsequent personal visit to Geneva, the Permanent Mandates Commission in reporting its appreciation of

"the exact information which Mr. Hofmeyr was able to supply as a result of his thorough knowledge of the problems of administration and his personal experience", observed that "the Commission was able to obtain a far more exact idea of the position in South West Africa than was possible from the examination of previous reports."⁵

Mr. Hofmeyr, it is true, made no complaint against the Mandates Commission's findings: indeed he told them that, had he been one of them, judging on the documents that they had had to study, he "would probably have pressed for a stronger resolution".⁶ But then Mr. Hofmeyr was a large-hearted, generous,—and I might add, a diplomatic—man, who had come to Geneva not in order to refute

¹ *Ib.*, pp. 203 and 207.

² Doc. C.522.1923.VI, p. 5.

³ Doc. C.550.1923.VI, p. 2.

⁴ *Ib.*, p. 1.

⁵ C.30, p. 1403.

⁶ P.M.C.4, p. 50.

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the criticisms of the Mandates Commission, but in order to seek their cooperation in his difficult task of administering South West Africa. Sir Edgar Walton had said of him:

"Mr. Hofmeyr is known and respected throughout the country.¹ He is a man of the highest possible character who is incapable of an act of wrong or injustice, a man of wide sympathy, and a man who certainly felt to the full his deep responsibility for the well-being of the native races placed under his hand . . ."

After they had made his personal acquaintance and talked with him of his task, I think the Mandates Commission may well have felt that Sir Edgar Walton's description of Mr. Hofmeyr was just.

Sir Edgar Walton also laid stress on the fact that the Permanent Mandates Commission did not seem to have consulted the evidence.

"The first cause of the trouble", they had said, "was the discontent of a people driven to exasperation by grievances which they probably exaggerated and for which they could obtain no redress."

Sir Edgar Walton remarks:

"The Commission seems to me to offer as the first reason for the Rebellion a statement of a somewhat speculative and controversial character—a statement moreover which omits all the necessary details.² These details will be found enumerated in the evidence and cannot be lost sight of if a fair judgment is to be arrived at."

On the merits of this or that administrative measure there is almost always room for disputation, and almost every shade of opinion will be found represented in South Africa itself. But, at any rate, we cannot say that, even with the help of Major Herbst, the mandatory administration on this occasion secured from the Permanent Mandates Commission an unqualified endorsement of its general policy.

¹ Doc. C.550.1923.VI, p. 1.

² Doc. C.522.1923.VI, p. 5.

³ Doc. C.550.1923.VI, p. 3.

§ 8. *The Handling of the Crisis.*

However, you may be sure that it was not in the Government's general policy that the public was mainly interested. Let me read you the essential part of the 1922 Assembly speech of M. Bellegarde.

"I take no responsibility for the accounts which have appeared in the Press; but we know, at any rate, that an expedition, said to be punitive, was made against the Bondels Hottentots, who are under the protection of the League of Nations . . ."

"I do not know how the affair developed, but this is the story as told by the Press, and I repeat that I take no responsibility for it. Although there was no act of rebellion and no attempts against life, an expedition was undertaken with all the materials of modern warfare—machine-guns, artillery, and aeroplanes.

"The natives, who were practically unarmed, were massacred, and as there can be no choice of victims in an air attack, it appears that women and children were killed in great numbers.

"These facts are too important to be passed over by the Assembly, and I am sure that the High Commissioner will agree with us to ask the League, through its Permanent Mandates Commission, to obtain all possible information regarding these events. That women and children should have been massacred in the name of the League of Nations and under its protection is an abominable outrage which we cannot suffer." (*Loud and prolonged applause.*)

Had I, as an outsider, heard the speech of M. Bellegarde, I think I should have formed some such opinion as follows:

"Officially, of course, the League must wait for the result of the inquiry, but there seems to have been a kind of punitive expedition culminating in a systematic aerial bombardment of the villages of ignorant natives living supposedly under the protection of the League." I should have wondered what sort of inquiry there would be, and by whom, and whether any details discreditable to the Government would be sought to be withheld. I should await the Mandates Commission's conclusions not only for the things they might say or imply, but for the things they might leave unsaid. M. Bellegarde, of course, was at a certain disadvantage in that he was confessedly not in possession of the facts; but what the news-

¹ 3 APL., p. 76.

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paper-reading public wants is not facts, but news, and his surmises were first-class news. In a few hours they were in headlines throughout the world.

The Marquis Theodoli, at the Commission's opening meeting, observed that

The Commission must form an accurate idea of the exact gravity of the events which had occurred, and it might perhaps be led to take a less serious view of their gravity than had been assumed by public opinion.¹ In this event, it would do a great service by stating this clearly.

Of Major Herbst the chairman remarked that it was one of the executive officers engaged in repressing the movement whom General Smuts was sending in order to furnish explanations . . .² and in their ultimate report the Commission observed that Major Herbst

had been a member of the Administration of the territory, and, very favourable as was the impression produced by the tone of sincerity and by the spontaneity of his replies, they could only be regarded as one-sided statements on behalf of the local administration.³

However, though you will perhaps accept it with caution, you may be interested in hearing his story.

According to Major Herbst,

" . . . the idea was to surround them with troops and then to bomb them and induce a surrender.⁴ We were afraid that they would follow the same tactics as they did against the Germans, and proceed to the mouth of the Orange River, where they would send out raiding parties to collect arms and keep up a guerilla warfare for a very long time . . . "

" . . . There were women and children present in the laager, only we did not know it; it was the occupied position of the enemy that was bombed . . . "

¹ P.M.C.3, p. 69.

² *Ib.*, p. 66.

³ Doc. C.522.1923.VI, p. 2.

⁴ P.M.C.3, p. 117.

⁵ *Ib.*, p. 123.

" . . . The position should have been seen; it was hardly possible to kill anybody.¹ The position consisted of kopjes and on these kopjes were huge stones. One could not see anything to bomb. It was merely by chance that anyone was killed at all."

And later:

" What is to my mind the principal factor, the main question, in the whole of this discussion is the position as it is presented to the Administrator at the time of those occurrences . . .² In ordinary circumstances, the opinion of an Administrator, where a matter of discretion is involved, is almost always regarded as final. He is the only person who is capable of judging a situation as it is presented at the particular moment . . . "

" Take away all questions of grievances . . . and what do we find? That a number of people had entered the territory of South West Africa with arms in their possession in defiance of the law. . . "

" What would nine out of ten administrators have done in a similar situation? . . . I say that nine out of ten administrators similarly situated would have simply instructed the magistrate to see that the ordinary course of the law was followed, and that was that the arrest of these people should be effected with or without bloodshed . . . "

" Then began these endless negotiations.

" . . . To my mind, the question at that time was not one of rebellion at all; it was the reinforcement of the police to such an extent that they would be able to carry out the ordinary duties entrusted to them . . . "

" . . . Everything possible was done to bring these people to a sense of the danger they were incurring in resisting the Government.

" . . . In South Africa one of the first rudiments of policy is to secure respect for the law from the native population. In South Africa this policy is followed in respect of both white and black. . . "

" . . . The report of the Commission of Enquiry is not unanimous; it is composed of three gentlemen from the Native Affairs Commission of the Union of South Africa . . .³ So far as the Union itself is concerned, no men could be more competent. My opinion refers to all three gentlemen, not only to the majority, and I have not even heard the name of General Lemmer mentioned here . . . his opinion seems to have been entirely ignored.

" . . . I say, with all respect, that the opinion reflected in the minority report should also be given consideration, because, after all, it reflects the opinion of three-fourths of the population of South Africa to-day . . . "

¹ *Ib.*, p. 124.

² *Ib.*, p. 184.

³ *Ib.*

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Sir Edgar Walton said:

"I gather . . . that the Prime Minister considers . . . that the natives were in a very dangerous frame of mind, that if one successful operation had taken place they might have been joined by large numbers of other natives, and that there would have been a great military operation . . ."¹

" . . . In his opinion, the prompt action of the Administrator saved the country from that calamity.² I have no direct and definite instructions from my Government on the point which you have raised, but I gather from the Prime Minister's statement that the findings of the majority of the Commission are not his view at all, that he entirely supports the Administrator and thinks very highly of his action."

M. Freire d'Andrade observed to his colleagues on the Mandates Commission:

The repressive measures had been severe, but one fact, he thought, stood out before all the others.³ The Bondelzwarts had, according to information given by Major Herbst, gone into laager, had been the first to carry out raids and had fired on the Government troops. In view of the danger of the rebellion spreading the Administrator was obliged to take prompt and effective action; it was impossible to tell at the outset where such things would end . . .

And so, in its report, we find the Commission saying:

"It is not disputed that the Administrator, when it became evident that hostilities were inevitable, acted wisely in taking prompt and effective steps to uphold Government and to prevent the spread of disaffection . . . it can express no opinion as to whether these operations were conducted with needless severity or not."⁴

M. Bellegarde, however, had had a long start, and thus we may notice even so fair-minded and painstaking a student as Professor Quincy Wright referring, in his recent important book, to the aerial bombardment of Bondelzwart "villages".⁵ Other less responsible writers stick more closely still to the popular version.

¹ *Ib.*, p. 114.

² *Ib.*, p. 113.

³ *Ib.*, p. 136.

⁴ Doc. C.522.1923.VI, p. 5.

⁵ Q.W., p. 199.

§ 9. The Commission of Enquiry.

Looking now at the conduct of the Mandatory Power in relation to the League, we may ask ourselves, first, did the Union Government do its best to clear up the facts, secondly, did it do its best to bring those facts to the knowledge of the Mandates Commission, thirdly, did it in all other ways do what was reasonably to be expected of it?

The Permanent Mandates Commission reported that it was unanimously of the opinion that a complete and authoritative enquiry had not taken place.¹ One member pointed out that "the Commission" . . . "had no trustworthy information" . . . "the Mandatory did not furnish a statement of the facts which it was prepared to certify as being correct."² (To have expected from the Government a certificate that the facts as found were true would be asking more than is asked of a judge who sentences to death the person convicted by a jury.)

It was impossible, said the Commission, for it to decide which of the contradictory versions which had been supplied was the one which should be regarded as exactly describing the course of events and the measures of the administration.³

"The Commission would naturally have been inclined to regard the version of the majority of the Commission of Enquiry as the official one if Major Herbst had not clearly given the Commission to understand that the enquiry was unsatisfactorily conducted and that it was the work of persons ignorant of local conditions."

It is not clear whether the Mandates Commission had found in the documents contradictory versions only in regard to the attribution of blame and the appraisal of policy, or whether it had found contradictory versions also on simple matters of fact. It is not

¹ Doc. C.522.1923.VI, p. 2.

² *Ib.*, p. 3.

³ *Ib.*, p. 2.

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apparent that Major Herbst actually called in question findings of pure fact recorded by the Commission of Enquiry.

Sir Edgar Walton observes that the Commission had not indicated in what respects the evidence was incomplete or upon what further facts it required the light thrown.¹

M. Beau, at an early meeting, had remarked that if need be the Commission could inform the Council and the Assembly that it had not sufficient information and ask that a further enquiry might be made.²

The fitness of the Commission of Enquiry was questioned also from another angle. Sir F. Lugard said he thought it was "unfortunate that departmental officials had been entrusted with making the enquiry".³ At another point however he thought that "the conclusions of the report of the Commission of Enquiry were so severe for the local administration, that it almost seemed superfluous to hear new witnesses in the case".⁴

Who, by the way, were these "departmental officers"? They were, as we saw, none other than the members of the Native Affairs Commission of the Union, whose whole-time occupation it was to study and advise upon the needs and interests of the natives of South Africa.⁵ As Major Herbst declared, no better commission could have been recruited in the Union.⁶ One may add that if a commission so composed had by any chance been able to report unanimously either for or against the administration, its report would probably have been accepted by every one in the Union; for it represented the leanings of both large schools of thought on native policy. Even if their technique of inquiry is judged to have been insufficient, one can hardly blame General Smuts for his choice of commissioners. The fact that on matters of practical appreciation they should have failed to find unanimity merely goes to suggest

¹ Doc. C.550.1923.VI, p. 2.

² P.M.C.3, p. 66.

³ *Ib.*, p. 72.

⁴ *Ib.*, p. 66.

⁵ *Ib.*, pp. 127, 186.

⁶ *Ib.*, pp. 124, 127, 186.

that no representatively composed commission would have been likely to be more successful.

§ 10. *The Evidence.*

Another point: the evidence. At an early meeting the Marquis Theodoli observed:

"It is not sufficient for the Commission to know that the Government of the Mandatory Power considers that the Administration is not blameworthy.¹ The Commission should have been put in a position to weigh the evidence on which the Mandatory Power based its opinion. The evidence should have been found in the report of the Commission of Enquiry . . ."

And in the final report: "The Permanent Mandates Commission . . . has received the following documents":² Nothing here is said about the evidence.

Was it withheld from the Mandates Commission? At no point do they refer to it: but both Major Herbst and Sir Edgar Walton allude to "the evidence" as bearing out the statements or contentions they are making.³

The Commission of Enquiry in South Africa does not seem to have printed the evidence as part of its report,⁴ but I would not leave you with the impression that General Smuts had deliberately concealed the facts. In a debate in the Union Parliament, I find that Mr. Barlow, a Labour member, expressly asked that the evidence should be sent to Geneva.⁵ And if you read very carefully through the Minutes of the Permanent Mandates Commission, you will find that at an early stage, the chairman put to Major Herbst the question: "Can the Minutes of the evidence taken be laid before the Commission?"⁶ To this Major Herbst replied: "The Minutes are at the disposal of the Commission".

¹ *Ib.*, p. 116.

² Doc. C.522.1923.VI, p. 1.

³ Doc. C.550.1923.VI, p. 3 and P.M.C.3, p. 122.

⁴ P.M.C.3, p. 64.

⁵ J.P.E. IV.3, p. 598.

⁶ P.M.C.3, p. 116.

*M. Beau
defends
SA position*

I do not know whether the chairman expected this answer or had in mind any use the Commission might make of the evidence, if it were available. All we read is: "The chairman said that for the moment he took note of this statement."¹ It is a statement of which I think we ought all to take note, more especially as the matter was never referred to again.

§ 11. *The Reticence of General Smuts.*

But there is a further ground on which you may conclude, as the Permanent Mandates Commission explicitly did, that the behaviour of the Union Government had shown a certain remissness. Here too I am at a loss to see why we should agree with them. Play is made with the fact that General Smuts in transmitting the report of the Commission of Enquiry accompanied it with no expression of his own view on the matters of opinion reported on.²

"After . . . the gravity of the charges made", General Smuts had said in Parliament, "we have a duty and wish to discharge it with all honour, and if there is anything wrong then the League of Nations to whom we are responsible will see what has taken place".³

Sir Edgar Walton told the Mandates Commission he thought General Smuts would probably have regarded it as an act of impertinence to thrust his views on that Commission which was responsible to the League for that enquiry and, as he subsequently wrote, he certainly understood that the explanation he had then given had disposed of the point.⁴ Had the Government been requested to make such a report, it would no doubt have done so but it was not unnatural to suppose that unless such a request had been made the Union Government would hesitate to send comments of its own which might seem to cover a desire to bias the judgment of the Mandates Commission. He was rather surprised therefore that . . . they had not referred the whole case back to the South African Government for a statement of their views. In his opinion

¹ *Ib.*

² *Ib.*, pp. 63, 66, 69, 113; and Doc. C.522.1923.VI, p. 2.

³ J.P.E. IV.3, p. 599.

⁴ P.M.C.3, p. 115.

⁵ Doc. C.550.1923.VI, p. 1.

the Government behaved with perfect propriety in refraining from any report controverting or dealing in any way with the Report of the Commission of Enquiry which it had itself set up . . . There could not be any doubt as to the opinion of the Union Government, and he failed to understand how the task of the Commission was made more difficult in the absence of a written report. . .

To me this explanation, given twice by Sir Edgar Walton, seemed sufficient—both times.

§ 12. *Postscript.*

Now that I have drifted away from discussing the attitude of the Union Government into this petty-fogging attack upon the attitude of the Mandates Commission, I may add my opinion that they were perhaps also a little too hesitant in accepting the statements, say, of Major Herbst. Not only do they take many grains of salt with what he says, but they advise the public to take still more grains of salt with anything favourable they may themselves slip into saying about what he says.¹

M. Freire d'Andrade, the dissenting member of the Mandates Commission, said

he would not venture to explain why their draft report . . . stated several times that the Commission had not made an enquiry, and now submitted conclusions which were definitely unfavourable to the only party which had been heard.² He wondered what would have been the result if the Bondelzwarts or their representatives had been heard by the Commission.

And, later,

he would venture to say that the principal reason for his present attitude was that the report might be summarised as asserting, on the one hand, that the Commission had not sufficient evidence before it and that the enquiry was inadequate, etc., and on the other, that it, nevertheless, passed judgment on a matter on which the evidence was admittedly incomplete.³

¹ Doc.C.522.1923.VI, p. 3.

² P.M.C.3, p. 136.

³ *Ib.*, p. 202.

M
opposes
PMC
on Smuts

ad
accepts
SA reasoning

self
describes
of
his argument
!

There were sundry other points. The Administrator, they said, ought not himself to have gone into the field. Even this criticism I am bound to say I have never fully understood. It was not as if Mr. Hofmeyr had taken technical control of the aeroplane. Was it really his duty, while retaining, as he must, the formal, to offload on to his subordinates the *real*, responsibility for taking action? Was his function properly that of a colonel acting as umpire while his battalion practises skirmishing under his second-in-command? However, as the Council endorsed this criticism, I take it there must be something in it.

In view of the circumstance that, in Major Herbst's words, "the whole point on which they (the Bondelzwarts) went to war was that they refused to deliver up Morris"¹—who "had contravened three laws"²—to the police authorities to stand his trial in a court of justice, there is a certain irony—or perhaps you will say a certain fitness—in the fact that this Mr. Hofmeyr, this first person to use under the League's auspices overwhelming force, in the interests of peace, against those who with violence refused "arbitration", should subsequently, at the 1924 Assembly, have been the first delegate to cast—in the name of "Afrique du Sud"—a solemn vote in favour of the Protocol.

VI. AN ATTEMPTED GENERAL SIZING UP.

§1. A truly "Special" Relationship.

My purpose to-day is to conclude this course with an attempt to sum up in a general way the attitude and policy of the several Dominions as members of the League: but before doing so I think it well to recall to your minds the peculiar, not easily definable character of the "special relationship" recognised as subsisting between the Dominions and Great Britain. A quotation or two may help me. Here, for instance, is Mr. Doherty, Minister of

¹ *Ib.*, p. 121.

² *Ib.*, p. 122.

Justice, explaining to the Canadian House of Commons the concept of Canadian nationality:

The purpose of the Bill was to define what constituted a Canadian national.¹ It did not contemplate in any way to affect the status of any Canadian as a British subject. Notwithstanding its enactment they would all remain, of course, British subjects; and under the definition as proposed nobody would be a Canadian national who was not a British subject. But the purpose of the Bill was to define a particular class of British subject who, in addition to having all the rights and all the obligations of British subjects, had particular rights because of the fact they were Canadians. He thought they had always understood that without a specific statutory definition there had for a long time been such a person as a Canadian.

Or again, listen to the Irish Minister for External Affairs informing the Dail in Dublin of the footing on which the Irish Free State has become a party to the Court Statute:

After further examination of the position with reference to the Court it was decided that as the ratification of the late United Kingdom covered the Statute, and that as they could be held to be bound by it, the League should be notified that they wished to be placed on the list of States that had accepted the Statute.² The League was so informed on 25th August . . . "It is merely a request that our name should be put down as adhering to a Covenant which we were already bound by."

And yet the Irish Free State was not deemed to have become *ipso facto* a member of the League!

How and when did Dominion status originate? This is the South African Premier referring, after the 1926 Imperial Conference, to some by-gone judicial proceedings:

(That was) "previous to the new status. May I correct myself? I should not speak about 'new status', but only the status as stated lately."

When did Dominion nationhood originate? Commenting in the Canadian Parliament, in 1921, on what had been described as the customary procedure in the making of trade-agreements,

¹ J.P.E. II.2, p. 327.

² J.P.E. VIII.1, p. 190.

³ J.P.E. VIII.3, p. 641.

Can
nationality

is M.
right on
Ireland?
Isn't it
merely
state
succession?

Origin of
Dominion
status

accuses
the rebels of
flouting law,
starting the
conflict
Megquates
SA action w/
probable
consequences
of Gen. Protocol

Commonwealth
"special"
relationship

an honourable member observed "that was prior to our becoming a nation".¹ "Oh no," replied the Minister of Trade and Commerce, "it is said that Canada became a nation a long time ago, during Sir William Laurier's time."

Perhaps a still clearer light on the extremely simple constitution of the Commonwealth will be got from the declaration concerning Nauru, made in 1925 by Sir Joseph Cook to the Permanent Mandates Commission. This from the official Minutes:

"Sir Joseph Cook said that in this respect the representatives of the three Powers might be regarded as a trinity in unity.² He represented the British Empire for the simple reason that Australia had been selected by the three sections of the Mandatory Power to govern the island of Nauru."

Last year some confusion had existed in the minds of the Commission as to the functions of the Nauru Phosphate Company, and on the question of how far the exercise of these functions impinged upon the functions of the Administrator. This question, however, had now been made clear by an agreement signed by the three sections of the Mandatory Power, in which it was laid down that:

"All ordinances made by the Administrator shall be subject to confirmation or disallowance in the name of His Majesty, whose pleasure in respect of such confirmation or disallowance shall be signified by one of His Majesty's principal Secretaries of State, or by the Governor-General of the Commonwealth of Australia acting on the advice of the Federal Executive Council of the Commonwealth, or by the Governor-General of the Dominion of New Zealand acting on the advice of the Executive Council of the Dominion, according as the Administrator shall have been appointed by His Majesty's Government in London, or by the Government of the Commonwealth of Australia, or by the Government of the Dominion of New Zealand, as the case may be."

The chairman, we are informed on behalf of the Commission, "took note" of this statement made by Sir Joseph Cook. It was all that he could do, poor man!

As further evidence of the intimacy of the association between the Dominions and England you may notice the appointment in several cases of an English public man to represent a Dominion.

¹ J.B. II.2, p. 346.
² J.M.C.3, p. 177.

at the Assembly. Had Professor Robert Murray, or Lord Robert Cecil, or Sir Arthur Steel-Maitland, been, say, Frenchmen, they would hardly have been picked upon by the Pretoria, or the Wellington, Government. We even find curious instances of a British Empire representative at the Council table being permitted to speak, as it were with a second voice, though not with a second vote, for an absent Dominion. Thus Lord Cecil spoke for Australia in December 1923,¹ and in August 1928 Lord Cusendun, Sir James Parry, Britain having, he supposed, been delayed, assumed, admittedly without any prior authority and yet without exciting any comment, to express before the Council the satisfaction, the gratitude and the good intentions of the Government of New Zealand.²

§ 2. Quot "Dominions" Tot Sententia.

But the crucial question of course is whether in the exercise of their votes the Dominions have thought and decided for themselves or whether they have in effect constituted just so many extra votes for Great Britain. Sir Robert Borden has spoken of the "absolute cooperation and understanding" with which the representatives of Great Britain and the Dominions had worked in Paris.³ Lord Milner had assumed that this tradition of a common front would necessarily be maintained in Geneva. "Anything like dissension between different British States in the Councils of the League would be so overwhelmingly condemned by public opinion that all of them that it should be an easy task for statesmanship to avoid it."⁴ What would have been the effect of such a complete avoidance of dissension? The objection of other nations, said General Hertzog, to the Dominions being members of the League of Nations was on the ground that they were not free.⁵ Gradually, however, the world came to appreciate that

¹ C.27, p. 333.

² C.51, p. 1454.

³ J.P.E.I., p. 88.

⁴ D.H., p. 344.

⁵ J.P.E.I., p. 197.

Englishmen
rep. of Dominions
- even diff. ones
flawlessly
how can
they reflect
Dom independence of
new thought?