

It is not clear from Viscount Monsell's statement whether he suggested the possibility of the extension of the common upper limit to the Dominions as " Powers represented here " or as " countries with navies." Admiral Nagano immediately seized on both aspects of the statement, and asked:— (1) Whether the Dominions were independent states, (2) whether they participated in the Treaty as such: and (3) whether, consequently, the Conference was one of five or more Powers. From the way in which he put these questions it can reasonably be concluded that, in his mind, there was no room for a Dominion as a separate independent state.

The Chairman, Viscount Monsell, to whom these pertinent questions were put, not only abstained from answering them, but also acquiesced in the Delegate of the United States creating the impression, and the Delegate of Australia expressly emphasising it, that the constitutional relationship between the different parts of the Commonwealth of Nations rendered it difficult to give a clear reply to the questions put by Japan.

His Majesty's Government in the Union wish me to observe that, in the absence of any notification to the world at large that the resolutions of the Imperial Conference of 1926 were never intended to embody any principle in regard to the relationship between such Members of the Commonwealth, the views expressed by the Japanese Delegate are not surprising.

These resolutions, it will be recalled, laid down the form of treaty to be adopted when Members of the Commonwealth participating in such treaty have no intention of contracting with each other. These resolutions, as His Majesty's Government in the United Kingdom are aware, were fully discussed at the Imperial Conference of 1930, and it was then accepted by all the Members of the Commonwealth that they could not in any way be used to detract from the status of the Dominions as international units individually in the fullest sense of the words, and that there was no longer room in the British Empire for a super-state, of which the Dominions would be constituent parts.

It should not, therefore, have been difficult for the representative of His Majesty's Government in the United Kingdom to give the necessary reply to the question whether or not the Dominions were independent states. His Majesty's Government in the Union feel that this was incumbent on Viscount Monsell, not only because he was responsible for raising the question as to the status of the Dominions, but also because of the special position of prominence occupied by the United Kingdom amongst the Members of the British Commonwealth at the Conference. His Lordship, however, after bringing up the question of the participation of the Dominions in such a form as to leave their independent status in doubt, took no step thereafter to correct any erroneous or doubtful opinion expressed. The Union Government cannot but feel that in this incident the interests of the Dominions have not been observed by His Majesty's Government in the United Kingdom in a manner conducive to collective co-operation amongst the Members of the Commonwealth in future.

Now that it has become clear that the resolutions of the Imperial Conference of 1926, on the point under consideration, have given rise to erroneous conceptions as to the international status of the Dominions in the minds not only of writers on international law, but also in the minds of foreign Governments, I am instructed to say that His Majesty's Government in the Union are firmly of the opinion that the time has arrived for the real position to be published to the world, so as to prevent a repetition of such a humiliating incident as that to which reference has been made above. This, they suggest, could appropriately be done by a public declaration, approved by Members of the Commonwealth, to the following effect:—

" The passage of the Report of the Imperial Conference of 1926 which deals with the application of the provisions of a treaty between Members of the British Commonwealth of Nations when several Members participate therein (see Report of Inter-Imperial Relations Committee, Chapter VI, Section V (a), " Form of Treaty," Cmd. 2768, pp. 22 and 23), having given rise to erroneous impressions as to the status of the Dominions under international law, it is deemed advisable to make the following declaration:—

It was decided in 1926, as a matter of practical convenience, to adopt the Heads of States form of treaty whenever it was intended that the provisions of a treaty should not be regarded as applying between the Members of the Commonwealth participating therein. This arrangement should not be linked in any way with legal theories.

Neither the passage referred to above nor the practice based upon it was intended to detract from the position of the several Members of the British Commonwealth of Nations as international units individually in the fullest sense of the term."

My Government wish me to submit their opinion that a declaration in the foregoing terms would be of the utmost assistance to any leader of a Commonwealth Delegation who may be called upon to deal with circumstances such as arose at the London Naval Conference, to which attention has been drawn. It would enable him to meet any doubt or question which may arise as to the status of a Dominion with an immediate and authoritative reply, and His Majesty's Government in the Union would accordingly appreciate being informed whether His Majesty's Government in the United Kingdom are prepared to co-operate with them with a view to the publication of a declaration in the form suggested.

I have, etc.,

(Signed) C. T. TE WATER.

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P.S. 18/13.

17th June, 1936.

SIR,

Under instructions from His Majesty's Government in the Union, I have the honour to transmit herewith, for the information of His Majesty's Government in the United Kingdom, a memorandum dealing with the effect of the draft Naval Treaty of 1936 on the liabilities of signatories, Members of the British Commonwealth of Nations.

2. In doing so, I am to refer to the unsatisfactory results of the use of the collective form of treaty at present in use and to the impossibility of its use in future if, as happened in the case of the Naval Treaty, Members of the Commonwealth taking part in a treaty, fail to make clear in the treaty itself the basis on which they are participating. His Majesty's Government in the Union feel that, before making use of this form of treaty in the future, the Members of the Commonwealth participating therein should, in each particular case, first discuss and consider on what basis they intend to contract, with a view to arriving at a decision as to the appropriate form and wording to be adopted.

3. His Majesty's Government in the Union are unable to see any advantage in adopting the collective form when the object of the treaty is merely the creation of a *vinculum juris* between one foreign country and each of the Members of the Commonwealth individually. In such cases the obvious procedure should be separate treaties entered into between each Member of the Commonwealth individually and the foreign country. Only in the case of a multilateral treaty, such as a treaty generally concluded under the auspices of the League, should there arise any question of the adoption of the collective form. If, in that case, the Members of the Commonwealth, after due consideration, find that they are not prepared to apply the provisions of the treaty *inter se*, then the " Heads of States " form should be adopted. If they come to a different conclusion, the form of treaty between countries should be held the appropriate procedure.

4. However, in all cases in which the " Heads of States " form is adopted, the further question arises as to whether the Members of the Commonwealth intend to contract as one party, thus rendering themselves liable each for the fulfilment of the provisions of the treaty by the other members, or whether they intend merely to create a separate *vinculum juris* between each of the Members of the Commonwealth and each of the foreign states participating in the treaty, without assuming any liability for each other. The experience at the last Naval Conference compels His Majesty's Government in the Union to the view that it is necessary to devise means to make this clear, whenever the collective form is adopted.

5. I am to say that whether this should be made clear in the preamble or in the body of the treaty or in some other manner appears not to be of great moment, though it is suggested that this could most suitably be effected in the preamble.

6. If it is intended to create a *vinculum juris* between each of the foreign states and each of the Members of the Commonwealth only, without any liability for each other, it is suggested that this could be effected by inserting, after the King's titles, in brackets, the words:—

" in respect of the Members of the British Commonwealth of Nations enumerated below, each contracting for itself and assuming no liability for the other ".

7. If, however, it is intended that the Members should contract as a group and assume liability for each other, the concluding words could be:—

" contracting as a group and assuming liability for each other ".

8. In the case of Members of the Commonwealth contracting as a group, but assuming no liability in regard to any particular matter undertaken by one of them, the clause could be amplified by the following addition:—

" except in regard to any liability specifically undertaken by one of them ".

9. The full forms of the several clauses suggested are annexed.

10. In soliciting the consideration of His Majesty's Government in the United Kingdom of the foregoing, I am desired by His Majesty's Government in the Union to add that, in their view, the adoption of their suggestions would remove any difficulty in giving a reply to such questions as were raised by Admiral Nagano at the Naval Conference and indicate with precision the status of Members of the British Commonwealth of Nations participating in any future treaty.

I have, etc.,

(Signed) C. T. TE WATER.

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