

any rate, it is extraordinarily difficult, and a matter to be decided by the Prime Ministers, not by us.

MR. LAPOINTE: Still, I must say it has been referred to us. Document E. 104, paragraph 12, refers to some sort of resolution or statement as suggested by Sir Cecil Hurst. If you read paragraph 12 you will see it is not out of our jurisdiction and province to consider such a resolution or statement. On the point whether it is desirable to make it, I am inclined to agree with Mr. Bruce that it is not.

MR. BRUCE: I did not suggest it was outside our jurisdiction, because as the thing started I think that was the line you had to follow; but things have developed so much, and now we know you are going to have a short introductory paragraph, which will more or less deal with the points raised in paragraph 4 of this draft resolution, I think in this Committee we can concentrate on the more specific job of work we were given, that is, to suggest the form the treaties should take, leaving it to the general covering words to deal with the necessity there may be for defining to the world generally what our actual relations are between ourselves as against the relations existing between different Powers.

MR. HARDING: Might I make a suggestion? It would be most convenient if this Committee could frame any report that it wants to make in a way in which it can be included straight off in the report of Lord Balfour's Committee. It appears to me it might be possible to preface the report of this Committee by saying that a special relationship between the various parts of the British Empire or the British Commonwealth of Nations, as defined in the declaration with which the report will begin, is a fundamental element in their international position. The reason for putting in an introductory sentence of that kind is that it forms a very useful beginning to the statement as to the form of treaty. In fact, I think it is essential.

MR. BRUCE: The only objection to that is, I think, that it is a little difficult to make one Committee fit into another when the personnel are not familiar with the trend of thought on each Committee, but I do not think it wants to have any reference to any declaration which has been made. The way the thing is swinging is that the introductory points come in as a statement of something so obvious and so well known that we are not proceeding to define something new or make a fresh declaration about anything. It is because these things exist and are known by us all to exist that it is necessary we should do certain things. Then we deal with the specific thing. I think it can be dealt with quite well by reaffirming the 1923 Resolutions, which I do not think anybody has any view about except that they are admirable, and add on to them the question of the signature of treaties. It was examined, and it was determined the proper course to adopt was, say, take paragraph 3, leaving out the particular reference to the League of Nations, and make it cover all treaties.

MR. FITZGERALD: I do not see how you can use the word "definition," because we are all quite frankly trying to avoid definition as far as we can. I think, as Mr. Bruce says, we presuppose certain things. That is inherent in what we say later on. What we say later on can only be translated in terms of what we presuppose. We are not beginning now a fresh relationship; it has existed all through. Therefore, we do not need to refer to it except so far as our proposals are based on that assumption, but certainly I understand all through we are avoiding anything in the way of what can be called definition.

SIR CECIL HURST: You must not forget what is the real purpose which we are pursuing. We have got to formulate some treaty form which can be used on occasions when required in the future, and it should be satisfactory from the point of view of ensuring that any international body, such as the Court at The Hague, would hold that upon the face of the treaty the interpretation which we put upon it was the correct interpretation. Now we are all agreed here sitting round this table there is this special relationship between the different parts of the Empire, and in consequence the provisions of the treaty will not operate as between the different parts of the Empire. It is one thing to have that agreed by you members of the Imperial Conference sitting round a table. It is another thing to make sure that the treaty should be so interpreted by any international body which was called upon to interpret it. Now, hitherto,

we have ensured the non-application of a treaty of that sort between the different parts of the Empire by various methods. One has been that of the Central Panel, another has been that which is referred to in paragraph 13 as the Inter-Imperial Clause. Another, which has now only come into being of late, has been partial reliance upon the doctrine enunciated in Geneva in 1925, that it must be an understood thing that such a treaty as the Arms Traffic Convention did not operate as between territories subject to the same sovereignty. Now, if we start upon the footing that we have got to find a treaty formula which is watertight, we must consider it not only from the point of view of past practice, but also with the modifications which it is proposed to make in the practice that we have followed hitherto. Objection has been taken to the principle that has been explained in paragraph 9 of this document before you, that of the Central Panel. The Central Panel was a system that ensured without doubt that the treaty did not operate as between different parts of the Empire because there was one set of signatures which governed the whole. If that system is to go, we must make quite certain that the systems which are to be followed in the future are adequate. One alternative system which has been under consideration is that explained in paragraphs 10 and 11 of this paper, No. E. 104. The system set out there was coupled in paragraph 12 with the proposal as a safeguard that there should be this declaration made at Geneva and that we should make sure that Geneva accepted that view. Well, it may be that for any such declaration to be made at Geneva is undesirable, but, if so, we must make it more certain that the form of the treaty is such as to prevent there being any risk of an international body maintaining that the treaty does operate between the different parts of the British Empire. Mere acceptance of that principle round this table may not be sufficient. I will not say that it will not be sufficient, because one can always urge, and urge very strongly, the argument that, if that was in the minds of the large number of those who signed the treaty, it was made upon a basis which any international tribunal certainly could not ignore, but there could not be perfect safety on the point. If you abandon the idea proposed in paragraph 12 of having this declaration made at Geneva, are you prepared to strengthen in the treaty itself the elements which indicate the special relationship between the various parts of the Empire? You will remember that the more immediate cause of my preparing this document was the question General Hertzog put to me at one of the meetings whether it would be possible, if we adopted the proposals set out in paragraphs 10 and 11, to omit the words "British Empire" at the head of the signature clause at the top of p. 4. There again, if we are going to omit from the treaty some of the elements which tend to show the special relationship, it makes it more dangerous also to omit the idea of pronouncing and securing acceptance at Geneva of this idea that the special relationship has involved as one of its consequences the non-conclusion of the treaty between separate parts of the Empire.

MR. BRUCE: These resolutions you have submitted purport to do that.

SIR CECIL HURST: They do that.

MR. BRUCE: Is it going to be any more difficult to do it by putting in a new clause which would define this position in the sense of laying it down quite definitely that treaties do not apply as between the different nations of the Empire as if they were nations without any sort of relation one to another, and make that applicable not merely to the League treaty, but general, because as this is drawn it would only deal with the League treaty?

SIR CECIL HURST: Paragraph 4 at the top of page 2 is the paragraph which deals with that, and as drawn it covers all treaties.

MR. BRUCE: I hope it is so, but why I did not think it was was because you are talking in 1 and 2 of League matters.

SIR CECIL HURST: Yes, but I think paragraph 3 makes it quite clear that treaties, whether negotiated under the auspices of the League or not, are to be drawn in the form there prepared.

MR. BRUCE: And then 4 says: "The principles laid down in paragraphs 1 and 2 render superfluous the inclusion in a treaty of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King." You would say that "a treaty" would mean all treaties?

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