

*Proposed Joint Statement to League.*

19. If the recommendations contained in this part are adopted by the Imperial Conference it will be desirable that a joint statement should be made to the League explaining the practice which it is proposed to adopt in future.

II.—*Non-League Treaties.*‡

20. The negotiation of these treaties is governed by paragraph 1 (1) of the 1923 Resolution, under which every Government of the Empire which may be concerned is to be informed of the proposal to open negotiations and to have the opportunity of participating in the negotiations, should it desire to do so. This principle underlies all the recommendations which follow.

It is proposed to consider these treaties under the following heads:—

(A.) *Multilateral*:—

- (1.) Political.
- (2.) Technical.

(B.) *Bilateral*:—

- (1.) Political.
- (2.) Technical and Commercial.

(A.) *Multilateral*.(1.) *Political*.

21. Except in the case of the Peace Treaties and certain instruments subsidiary thereto, the usual practice is that treaties of this description are made in the names of Heads of States, and accordingly do not (as in the case of League treaties) begin with a list of the contracting States. This is the more convenient practice and should be adopted so far as possible.

22. Multilateral political treaties imposing active obligations on all parts of the Empire (*e.g.*, the Treaty of Versailles and the Washington Naval Disarmament Treaty) should be signed by a plenipotentiary or plenipotentiaries on behalf of all the Governments concerned. Whether such signature is effected by a plenipotentiary or body of plenipotentiaries acting on behalf of all the Governments, or by plenipotentiaries acting on behalf of each Government separately, is a matter which can be settled in each case as may be convenient, but there must be uniformity; if the treaty is signed separately on behalf of some Governments, it should be signed separately on behalf of all.

A specimen of the form of preamble at present employed in the case of treaties signed separately on behalf of each Government is given in Annex III (A). If the procedure indicated in paragraph 10 is adopted as regards League treaties, it would naturally be adopted in these cases also as regards the form of preamble and full powers. As regards signature, no question normally arises, as it is not the practice in such cases to print the names of the countries represented against the signatures.

Should the treaty be signed by a plenipotentiary or body of plenipotentiaries on behalf of all the Governments their full powers should in any case be unlimited.

23. The case of multilateral political treaties not imposing active obligations on all parts of the Empire is more complicated. Speaking generally, where active obligations have in the past been imposed at all under such treaties, the obligations have been imposed on one part of the Empire only, *viz.*, Great Britain. The treaties have, however, affected the whole Empire in that the fact of their conclusion on behalf of the King entails recognition by all parts of the Empire of the state of affairs arising from them, and particularly of any resulting changes in the position of British subjects generally. An instance of such a treaty is the Tangier Convention, which defined the status of the Tangier territory and set up a special form of government therein, and at the same time imposed active obligations on Great Britain only. The practice has been for such treaties to be signed on behalf of the King by one or more plenipotentiaries appointed on the advice of the London Government and holding unlimited full powers.\* No mention of any of the different parts of the Empire is made in the

‡ In this section the word "treaty" is used to denote any international agreement in conventional form other than Governmental agreements, which are dealt with in Section III.

\* See Annex III (a) for the form of preamble used in such cases.

preamble, the active obligations it imposes being made clear in the text of the treaty. This practice has proved convenient, and its continuance is desirable, especially as it is hoped that the proposals to be made for improving the methods of inter-Imperial consultation in foreign affairs will facilitate the settlement of any points that may arise.

24. Although in the past the active obligations under such treaties, so far as the British Empire is concerned, have rested with Great Britain, it by no means follows that this will always be the case in future. Thus, in the case of multilateral political treaties imposing active obligations on any part of the Empire, situations may arise—

- (a.) in which active obligations will only fall upon a part of the Empire other than Great Britain;
- (b.) in which active obligations will fall on two or more parts of the Empire, one of which may or may not be Great Britain;
- (c.) in which other parts of the Empire are for special reasons interested, even though they may have no active obligations.

Further, in the case of multilateral political treaties not imposing active obligations on any part of the Empire, more than one part may be interested for special reasons in their conclusion.

In all the above cases the whole Empire would be concerned in the sense explained above, *i.e.*, to the extent of recognising the state of affairs arising from the treaty.

It does not seem desirable to attempt to lay down rules designed to cover every conceivable case, and it would appear that it should be possible, without difficulty, to adapt the proposals made in this memorandum as regards the form of full powers and preamble to meet such cases as arise. The criterion as regards separate signature should be whether or not any part of the Empire has an active obligation, in which case the treaty should be signed on its behalf, or such practical interest that it may desire separate signature on its behalf.

(2.) *Technical*.

25. These are generally made in the names of Heads of States, and this is the more convenient practice. Such treaties differ from political treaties in that they may well be, and often are, signed on behalf of parts only of the British Empire. It is therefore important that the preamble and text of the treaty should make plain the parts of the Empire to which it applies.

26. Where such a treaty is to apply to Great Britain or to any of the Dominions it should be signed by separate plenipotentiaries on their behalf. If the procedure indicated in paragraph 10 is adopted as regards League treaties it would naturally be adopted in these cases as regards the form of preamble and full powers and also as regards the list of signatures (if the names of the countries signed for are printed alongside of the signatures).

A special feature of multilateral technical treaties is that (unlike multilateral political treaties) they often make provision by which portions of the territory of the contracting parties (*viz.*, Colonies, Protectorates and Mandated Territories) are not included unless by subsequent accession. Where such provision is not made, any necessary excluding declarations should be made by the plenipotentiaries of Great Britain and the Dominions in regard to the territories with which they are respectively concerned at the time of signature.

The parts of the Empire to which a multilateral technical treaty is to apply will accordingly be shown—

- (1.) by the list of plenipotentiaries in the preamble;
- (2.) by any excluding declarations made at the time of signature;
- (3.) by the form of the Colonial exclusion clause, if any, and by any action taken thereunder;
- (4.) in some cases by the text of the treaty itself.

27. In cases where the treaty begins with a list of the names of the contracting States, the position will be much the same as in the case of League treaties, and the forms adopted for use in the preamble of such treaties should be used (see paragraphs 3, 4 and 19, and Annex II).

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