

MR. LAPOINTE: We were at paragraph 13, having just finished the consideration of paragraph 12. I understand that Sir Cecil Hurst had to deal with suggestions that have been made and he is to give us an answer this afternoon.

SIR CECIL HURST: The question which was put to me was this. Suppose that the form of treaty—the form of preamble suggested in the second paragraph of paragraph 10—were adopted and the contracting parties named with the King and then the form of signature at the top of page 4 was also adopted, the point was whether it is necessary to insert there the words “British Empire,” or to use the particular formula we have used before, is it necessary to repeat “the umbrella” before the list of signatures with the principle that occurs there in the preamble? I find the question an extremely difficult one to answer, particularly at the present stage. What one has to bear in mind is not merely the impression with which this may be received at Geneva if this question came up for consideration now, but one has really to consider it from the point of view of what could conceivably be the weakest link in the chain, what interpretation could be placed upon the document if it came before some judicial tribunal. Would they hold, on the face of an instrument so prepared, that there was ground for maintaining that the various parts of the Empire had contracted on the basis of there being a special relationship between them different to what existed between them and foreign Powers? I find it extremely difficult to answer that question in the affirmative at the present stage. At any rate, I find it almost impossible to give with confidence a categorical yes or no. What I should prefer, if I may say so, is to suggest to you, when the appropriate moment arrives, a draft model form of treaty which I think we can adopt, and adopt with safety, which excludes the second mention of the “umbrella”; but I only feel it would be safe to leave it out in the way I have done in this draft, which I have got and can give you if you like, if we arrive at some conclusion on two other points on the paper, because I do not think you can take this item and separate it from the context. There is the point that arises in connection with paragraph 12; that is to say, if we have definitely made an announcement to the world that this is the case, that would clearly be a matter which the foreign tribunal or international tribunal, or any tribunal that would have to deal with the matter, would have to take into account. There is the suggestion made to you in paragraph 13, because of the basis on which we all now contract, that a special provision that has been inserted in treaties should be dropped; and there is another suggestion in another paragraph as well. I think it is better that we should come back to this question after we have discussed the rest of Part I of this paper.

MR. LAPOINTE: Then I will read paragraph 13 and we will come back to that later. (Paragraph 13 read.)

GENERAL HERTZOG: “In these circumstances the best course would seem to be to deal with the whole specifically in any resolution on the subject passed at the Imperial Conference . . . .” What does that mean?

SIR CECIL HURST: It means this. It has been already suggested to you in paragraph 12, which we have left for the moment, that the Conference should place on record its view on the principle forming the basis of the international position; so that it really is embodying your idea that we should reiterate to the world at large the fact that they accepted us into the League on a special footing.

MR. FITZGERALD: In that clause was inserted “territories forming part or placed under the protection of the same sovereign State”—that is the sort of thing that makes it all the more necessary for us to insist upon separateness. Is that a proper description of the position of the Dominions, that they form part of or are placed under the protection of the same sovereign State, because obviously any foreign person knows it applies only to the Dominions, because we are the only members of the League of Nations about whom there is any such question? By implication some such people are members, and it is intended to safeguard this relationship between the various parts of the British Commonwealth, and that description which is given there “forming part or placed under the protection of the same sovereign State,” is that, in your view, a correct description of the relationship?

SIR CECIL HURST: I am not the author of that phrase; or do not hold a brief in any way for it. Really what you mean is that the phrase would be much more accurate if one cut out the word “State,” and said “forming part or placed under the protection of the same Sovereign”; but it is obvious we do not form part of the

Sovereign, nor are the Dominions “placed under the protection” of the same Sovereign.

MR. FITZGERALD: A number of things like that have created an impression abroad, and we are very anxious to kill the thing; and I admit that that seems to me to be entirely at variance with what we know amongst ourselves here and is an entire misapprehension, but it puts out, as far as our status abroad is concerned, a wrong impression.

SIR CECIL HURST: You do not suggest that that is the intention?

MR. FITZGERALD: No. I am dealing with impressions only.

SIR CECIL HURST: It may be that the phraseology that has been used in the past is not quite satisfactory. That seems to be an additional reason why we should try to abandon its use in the future.

GENERAL HERTZOG: We are all agreed that we should find a substitute for this.

MR. LAPOINTE: I will now read paragraphs 14 and 15. (Paragraphs read.) I think it should be made clear that we are separate members of the League.

MR. FITZGERALD: There was a suggestion of creating Great Britain a signatory by usage, yet the British Empire is still a signatory.

SIR CECIL HURST: Not a signatory except of this which is only a formal instrument.

MR. FITZGERALD: It is intended according to this clause to retain that name “British Empire.”

SIR FRANCIS BELL: We are all parts of the British Empire.

SIR CECIL HURST: We as a result of this Imperial Conference have clearly got to make changes. We have to get these changes accepted by the foreign people concerned. With regard to treaties it is important to get these changes made, and there we are, I think, in a position for insisting; but as to the mere workaday business of the Assembly of the League it would not be of sufficient importance to render it necessary to try and make a change which may be unwelcome to those in Geneva, because we are making a change which appears to be on the face of it inconsistent with the position in the League. What we felt when we worded that was that we were insisting upon changes that are really important, but these other matters which are dealt with in paragraph 15 are not of sufficient importance to render it necessary to insist. That was the view which we felt on the matter.

DR. SKELTON: It is true that you will have to consider how far changes will be made acceptable to all other members of the League. I am not sure that it would not be easier to make them acceptable if they were made consistent rather than that part should be changed and part left in an anomalous position. If you use the same terminology you may have more ground for getting acceptance.

SIR CECIL HURST: I said just the workaday business of the League at Geneva. This, of course, meant League Conferences and not a meeting of the Assembly. What I had in mind was the fear that if we laid too much stress on these matters of lesser importance we might be told: “Well, you must amend the Covenant.” Amending the Covenant is a process which is such a very slow business that we want to be able to make this change without having to face the ordeal of amending it. Just think what the amendment of the Covenant means. We should have to go to a foreign State, like Italy, and ask them to pass through their Parliament legislative approval of a change of a treaty which did no more than affect the people of what is to them a foreign Power; and what chance is there of getting that through in a reasonable time? It is a very small chance, and we should have to face the possibility for a long time that we might be in a very precarious position, that having been told by somebody that a change in the Covenant was necessary, yet it had not been put forward.

MR. HAVENGA: There is an interpretative resolution.

SIR CECIL HURST: That is a method of solving the difficulty where there may be two alternative meanings, and you decide which you are going to adopt. The actual introduction of the words “Great Britain” into the Annex to the

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