

SIR CECIL HURST: I don't know that I can follow you in this respect. Hitherto, the treaties which have been concluded under the auspices of the League have all been made in the form of treaties between named countries. We now want to introduce a system of making them between Heads of States.

SIR FRANCIS BELL: We can give one reason, and that is that the expression "British Empire" as used in the Covenant of the League leads to misinterpretation, and that is the sole reason why we want to use the Heads of States, so that the name of the State which is used in the Covenant may not be so used as to lead to misinterpretation that it covers the whole of the States which form the Empire. We can give that as a reason, and that reason will be quite sufficient, as it seems to me, speaking with great respect to you, because I have throughout spoken and thought with real respect for your difficulties and for any dictum of yours; but I do not see why that is not quite sufficient, that the phrase "British Empire" is used in the Covenant and is open to misinterpretation and misleading, and for that reason we want for our Commonwealth of Nations to adopt in our treaties the form of treaty by Head, and not of treaty by State.

DR. SKELTON: I absolutely agree with Sir Francis Bell that, if we can agree upon a form, that is the gist of the whole matter; if it is substituted by declaration, then that introduces a very difficult question of how that is going to be framed.

SIR FRANCIS BELL: If you will agree with me to avoid using it as a vehicle for something more, you will find me only too ready in giving any help I can; but I cannot agree in the formula, because I know that anything that will satisfy me will not satisfy you. I have always wanted to stop at the point from which you start.

MR. FITZGERALD: At present I am all for putting the brake on.

SIR FRANCIS BELL: I think, if Sir Cecil would mould his form on that principle, and give us a form which is desirable and the reasons that actuate us, we could put this about the separate relations, if you like, but it will have to be put in language that will satisfy Mr. Fitzgerald and the General; but if Sir Cecil would mould his resolutions on that principle, then I do not think we shall be five minutes in agreeing.

SIR CECIL HURST: Then, in that case, it is quite clear that we must come back to having in the treaty itself everything that is to safeguard our position. Are we to go back to maintaining the position of the central panel? We seem to be going round in a circle.

DR. SKELTON: We have already in the form, without any addition of a declaration as indicating the special relation between the different parts of the Empire, the mention of the King, with the names grouped together, at least in the preamble, and possibly in the signatures. I think we would probably agree to that form in the signature as well as in the preamble. We have, further, the practice laid down in 1925 at the League. Are not these sufficient indications of that special relationship without some general clause?

SIR CECIL HURST: A general clause in the treaty?

DR. SKELTON: Yes, or the general statement now.

SIR CECIL HURST: The two things are very different.

DR. SKELTON: There is something to be said, perhaps, for making a specific statement at the time of concluding a treaty for or against application between ourselves; conceivably there might be treaties which we should desire should apply between different parts of the Empire.

SIR CECIL HURST: Paragraph 6 of this draft deals with that.

DR. SKELTON: There might be a League treaty as distinct from an administrative arrangement which we might wish to apply among ourselves. I have mentioned the Opium Convention, and there might be others; so, if it is thought that it is necessary to safeguard the position further, it is question of whether a clause in the specific treaty might not be inserted at the time. At the same time, I am bound to say that the reference to the King and the practice since 1925 do seem to avoid any misinterpretation.

SIR CECIL HURST: The point is that we can safeguard our position by making it abundantly clear that that is the footing upon which we open negotiations. That was the purpose of the proposed declaration in paragraph 1.

DR. SKELTON: That raises the question, as Mr. Fitzgerald has stated, whether we should state the other half, to make clear the emphasis that is required in each direction.

SIR CECIL HURST: The purpose of the declaration is to make the special relationship clearer.

DR. SKELTON: Still, I am simply raising the question whether it is necessary after the other indications to have an additional declaration to that effect.

MR. FITZGERALD: What is the purpose of it, to make clear the special representation, or is it to prevent the treaties applying among ourselves? There is a slight difference. When Sir Francis Bell was speaking, he said we want the form changed to bring in the name of the King. Something can be done, possibly, by the mere insistence of doing it on each occasion, or by indicating to the League of Nations. Supposing, as Sir Francis Bell said—I am only thinking this aloud at the moment—we indicate to the League of Nations that, as the use of the phrase "British Empire" in the Covenant is misleading or may conceivably mislead, we desire a change in the form of treaties; henceforth all those States, members of the League of Nations, who are also members of the British Commonwealth of Nations, inasmuch as a special relationship exists between them, all having the one King, desire that the King's name be placed at the beginning. That is not a good form of words.

SIR FRANCIS BELL: That would do it. I am speaking for myself—if the League of Nations did not like it, I would tell them to go to blazes; I would not bother with them.

MR. HARDING: Possibly we are rather in difficulty on this account. There are two ways in which it can be done, one by means of a formal resolution of the Committee, and the other by way of what you might call a declaratory report. Sir Cecil Hurst's draft is based on a resolution and Dr. Skelton's on the supposition of a report. It occurred to me that it might be possible to meet the two views by putting the special relationship doctrine in the form not of a resolution but of a piece of a report, and then go on, basing yourself on the report, to consider the form of the treaty.

MR. COSTELLO: You are up against the question of the form that declaration would take.

SIR FRANCIS BELL: You can say quite properly, inasmuch as the present position is misleading, that it is a cardinal principle that no treaty made by His Majesty binds any part of the Empire that does not agree to it and ratify it—any of the self-governing Dominions, and so on. Now that can be put in; there is no objection to that because it is obvious. Then say, for that purpose and for those reasons this form is adopted. Then you have it all there; you have the King, the appointed plenipotentiaries, and it might be well to insert some words such as "contracting herein only," but that is for the Foreign Office language. I feel sure we can get to an agreement in a quarter of an hour, if Mr. Fitzgerald is willing to yield it, if we do not want to utilize it for any purpose which is quite foreign to that which we have been appointed to consider. I think Mr. Bruce's suggestion of beginning with paragraph 3 shows exactly the same principle. You can go on after that and put in the language that Sir Cecil wants, and I am sure that would satisfy both the General and Mr. Fitzgerald and satisfy recalcitrants like myself.

SIR CECIL HURST: Could not we have a little clearer indication from Mr. Fitzgerald of the change of it. He says that the drafts would leave a wrong element

MR. FITZGERALD: No.

SIR CECIL HURST: You said you could not indicate

MR. FITZGERALD: If I take p. 2, on the one hand you want to safeguard your position and on the other hand I am anxious that there can be nothing in this to make us equal to Jamaica. That statement does not leave any opening for

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