

No. 28.

New Zealand, Dominions No. 290.

SIR,—

Downing Street, 13th May, 1927.

I have the honour to state, for the information of His Majesty's Government in New Zealand, that His Majesty's Government in Great Britain have had under consideration the application of the recommendations contained in section V (a) of the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 to treaties relating to boundaries with foreign countries.

2. It would appear doubtful whether it would be constitutionally appropriate that a treaty concluded by His Majesty the King under which territory under His Majesty's sovereignty or protection is transferred to the sovereignty or protection of another Power and/or under which he receives territory previously belonging to or protected by another Power should be expressed as made by His Majesty in respect of any of his individual Governments.

3. On the other hand, it can well be understood that any such transfer of territory is likely to be the immediate concern of one such Government only, and that it would be convenient that, in the absence of any objection on the part of other Governments, that Government alone should be responsible for advising His Majesty in the matter.

4. It would seem to follow from the consideration mentioned in paragraph 2 of this despatch that where a treaty effects a transfer of territory (as distinct from merely delimiting a frontier) it should not purport to be made on behalf of any particular part or parts of the Empire, and should be signed under a full power not limited by being expressed as conferring authority to negotiate in respect of any particular part or parts of the Empire. If, however, before the issue of the full power, the Government negotiating the treaty had informed the other Governments of the intention that such a full power should be issued, and had received no observations from any of the other Governments, it is thought that it would be in accordance with the principle referred to in paragraph 3 of this despatch that the negotiating Governments should proceed on the assumption that those Governments were willing that the treaty should be signed under a full power in this form by a plenipotentiary appointed on the advice of the negotiating Government, and would acquiesce in the ratification of the treaty by His Majesty the King in due course on the advice of that Government.

5. If the above procedure is generally acceptable, His Majesty's Government in Great Britain would propose to adopt it in the case of any treaties of the nature referred to which they may negotiate, and they would suggest that it might similarly be adopted in the case of treaties of this nature negotiated by His Majesty's Governments in the Dominions.

6. His Majesty's Government in Great Britain were led to the examination of this question by consideration of the procedure to be adopted in the case of the treaty relating to the boundary between Dutch Borneo and Sarawak (see my despatch, Dominions No. 89, of the 4th February). This treaty would appear to fall within the category mentioned in paragraph 4 of this despatch, and it would accordingly be in accordance with the general principles described above that, in the absence of any observations from His Majesty's Governments in the Dominions, it should in due course be signed under a full power in the form indicated in paragraph 4, and should subsequently be ratified by His Majesty the King on the advice of His Government in Great Britain.

7. I would add that, in cases involving only the delimitation of a frontier and not a transfer of territory, it may not be necessary to embody the arrangement in a formal treaty between Heads of States, and it may be sufficient that it should take the form of an agreement in the name of the particular Government concerned. If, however, for any reason it is considered desirable that a limited arrangement of this nature should be embodied in a treaty between Heads of States, it would appear appropriate that the treaty should be expressed in the preamble as made on behalf of the particular part of the Empire concerned, and that it should be signed under a full power conferring authority to negotiate in respect of that part of the Empire.

I have, &c.,

L. S. AMERY.

Governor-General His Excellency General Sir C. Fergusson, Bart.,
LL.D., G.C.M.G., K.C.B., D.S.O., M.V.O., &c.