

(d) COMMONWEALTH TRIBUNAL.

The Report of the Conference on the Operation of Dominion Legislation contains the following paragraph (paragraph 125) :—

We felt that our work would not be complete unless we gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth. We were impressed with the advantages which might accrue from the establishment of such a tribunal. It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard, first, to the constitution of such a tribunal, and, secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an *ad hoc* body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between Governments. We recommend that the whole subject should be further examined by all the Governments.

This matter was examined by the Conference, and they found themselves able to make certain definite recommendations with regard to it.

Some machinery for the solution of disputes which may arise between the members of the British Commonwealth is desirable. Different methods for providing this machinery were explored, and it was agreed, in order to avoid too much rigidity, not to recommend the constitution of a permanent Court, but to seek a solution along the line of *ad hoc* arbitration proceedings. The Conference thought that this method might be more fruitful than any other in securing the confidence of the Commonwealth.

The next question considered was whether arbitration proceedings should be voluntary or obligatory, in the sense that one party would be under an obligation to submit thereto if the other party wished it. In the absence of general consent to an obligatory system, it was decided to recommend the adoption of a voluntary system.

It was agreed that it was advisable to go further, and to make recommendations as to the competence and the composition of an arbitral tribunal, in order to facilitate resort to it, by providing for the machinery whereby a tribunal could, in any given case, be brought into existence.

As to the competence of the tribunal, no doubt was entertained that this should be limited to differences between Governments. The Conference was also of opinion that the differences should only be such as are justiciable.

As to the composition of the tribunal it was agreed—

(1) The tribunal shall be constituted *ad hoc* in the case of each dispute to be settled.

(2) There shall be five members, one being the Chairman; neither the Chairman nor the members of the tribunal shall be drawn from outside the British Commonwealth of Nations.

(3) The members, other than the Chairman, shall be selected as follows :—

(a) One by each party to the dispute from States members of the Commonwealth other than the parties to the dispute, being persons who hold or have held high judicial office or are distinguished jurists and whose names will carry weight throughout the Commonwealth :

(b) One by each party to the dispute from any part of the Commonwealth, with complete freedom of choice.

(4) The members so chosen by each party shall select another person as Chairman of the tribunal, as to whom they shall have complete freedom of choice.

(5) If the parties to the dispute so desire, the tribunal shall be assisted by the admission as assessors of persons with special knowledge and experience in regard to the case to be brought before the tribunal.

It was thought that the expenses of the tribunal itself in any given case should be borne equally by the parties, but that each party should bear the expense of presenting its own case.

It was felt that details as to which agreement might be necessary might be left for arrangement by the Governments concerned.