EDITORIAL COMMENT

INTERNATIONAL LAW AND THE COMMONWEALTH, 1907–1967

At the time the American Society of International Law came into being, there existed no grouping of independent states exactly resembling the present-day Commonwealth. Even before that time, however, some British statesmen and publicists had the conception of such a grouping. Speaking in 1884, for example, the fifth Lord Rosebery, who was to become British Prime Minister a decade later but who at that time was addressing a private meeting at Adelaide, Australia, used the term "Commonwealth of Nations" to describe the British Empire.[1] In following years the expression was to come into fairly frequent use. Several decades were to pass, however, before conditions exactly fitting such a description were to exist. It was natural that, in the meantime, there should be rather frequent examination of what was called a "Commonwealth" in the light of public international law. That law has proved capable of some adaptation to the changing relationship between the associated states.[2]

The record is one of much more than a mere changing terminology. It is one of progress toward a co-operative plan ultimately involving completely independent states. For the present purpose the element of international law involved may be viewed without attempt to assess the significance of the law's application by courts in the respective states, important as such decisions unquestionably are. If there is justification for a kind of overview for a period of six decades, a high measure of selectivity is unavoidable. It is relevant to note briefly (1) the international legal unity of the Empire, (2) autonomy under conditions of colonialism, (3) some legal aspects of "dominion" status, (4) types of conferences utilized in the Empire and later Commonwealth, (5) Commonwealth states in relation to public international organizations, and (6) some illustrative working arrangements that remain peculiar to the now independent states composing the Commonwealth.

I

Throughout the first decade of the existence of the American Society of International Law relations between communities collectively comprising the British Empire rested essentially upon constitutional rather than international legal principles. Imperial authority was, in theory, undivided. That authority, as expressed toward Canada in the British

[1] See statement on uses of the term "Commonwealth" in Commonwealth Relations Office Year Book, 1966, p. 1.

[2] Some selected features of the general relationship are examined in Robert R. Wilson (ed.), The International Law Standard and Commonwealth Developments (1966), passim.

North America Act and toward other communities in later enactments, did not create new legal persons in the ordinary international law sense. Extensive experience in self-government was to facilitate the later emergence of new "international persons."

Adaptation to local situations and needs was apparent in Parliamentary enactments concerning local law—a matter of historical interest to Americans, whose Continental Congress in the eighteenth century had declared in a resolution the colonists' rights to have the common law apply to them.[3] During the colonial period the Parliament at Westminster had extended the common law to various overseas territories; in others, the existing system of Roman-Dutch law continued to be the principal base. In the case of either type of territory, statutory enactments could supplement whatever system of private law had existed prior to a territory's coming under the Imperial authority. The question of whether the common law comprised rules of the law of nations was to be a matter of disagreement among publicists in the twentieth century.

It was inevitable that questions should sooner or later arise, particularly in the more advanced units of the Empire, concerning the international legal status of natural persons with respect to their nationality. These questions could be very practical in their nature, although one publicist could express the view that, as far as British subjects going abroad from the British Isles were concerned, British nationality was of little advantage in the overseas Dominions of the Crown.[4] With respect to naturalization in a dominion, there were judicial holdings during the World-War-I period to the effect that naturalization in Australia would not necessarily change the status of a person concerned as an alien enemy under the law of Great Britain.[5]

Official relations between self-governing communities within the Empire of course existed before attainment of Dominion status. As early as 1846, for example, there was appointment (for certain purposes) of "Her Majesty's High Commissioner at the Cape of Good Hope."[6] In the 1880's there came to be a system of Canadian representation in Great Britain.[7]

[3] Volume cited in note 8 below, p. 187.

[4] A. B. Keith, Imperial Unity and the Dominions 175, 299 (1916).

[5] Ex parte Markwald, [1918] 1 K.B. 617; Ex parte Lan You Fat, 9 N.S.W. Rep. 269. See criticism of such rulings, in E. F. W. Gey van Pittius, Nationality within the British Commonwealth of Nations 207, 210 (1930). On the policy involved, see also Paul Knaplund, The British Empire, 1815–1939 at 715 (1942).

[6] See W. P. M. Kennedy and H. J. Scholsberg, The Law and Custom of the South African Constitution 39 (1935). The authors point out that the office of High Commissioner in and for South Africa was created by letters patent in 1878, and that in the following year there was an appointment of a second high commissioner, who was assigned to South Eastern Africa, the assignment including Zululand. The commission is in Command Papers, 1881, Vol. 66, p. 137.

[7] Sir Alexander Galt, High Commissioner from Canada to England, had been designated by the Canadian Government, with the consent of the Imperial Government, as High Commissioner and Representative Agent. He was apparently empowered to discuss with the Imperial authorities legal questions relative to the defenses and territory. See Alpheus Todd, Parliamentary Government in the British Colonies 234–238

One of the best-known devices of the Empire was the system of appeals from decisions of colonial courts to the King in Council, a system which has not entirely disappeared even with the evolution to the present-day Commonwealth.

Large questions of foreign policy (especially those of war and peace) continued to be within the authority of the British Government. A declaration of war by the central government had the legal effect of putting all parts of the Empire on a war basis. Forms of judicial assistance that were operative reflected the theory of an undivided Empire. The rendition of accused persons, for example, proceeded upon the idea, as incorporated in the Fugitive Offenders Act, 1881, that there should be rendition of persons accused of crime, and without exception for "political" offenders, under the theory that the far-flung Empire was a unity for the purpose of apprehending accused persons and bringing them to trial under the authority of the Crown.[8]

The theory of legal unity of the Empire in the international legal sense did not preclude the practice of self-government in local, provincial and larger units of the system. The further development of self-government was to affect markedly the pace of progress toward a system of completely independent but associated states.

II

Toward the end of the first decade here under review, a writer whose name has come to be associated with the transformation of Empire into Commonwealth observed that even those who were "most British in their blood and traditions," if forced to choose between the Commonwealth and self-government, would renounce the former rather than the latter; he referred to their belief that the Commonwealth was the "greatest institution in the world for enabling men to realize the duty of governing themselves."[9] At least from the time of Lord Durham's *Report on the Affairs of British North America,* there had been a process of deciding what matters properly fell within the authority of non-sovereign entities within the system. One field in which there was to be diversity was that of immigration control. In the central unit of the Commonwealth there was to be, until well into the 1960's, no policy of restriction with respect to migration from other units within the Commonwealth, but this was not true of some of the other self-governing units, whose policies became a cause of friction within the Commonwealth. International law has traditionally left it to each state to decide who should become its residents, and within the Commonwealth system the practice was no more favorable to states which might normally have desired opportunities for their people to emigrate.

(2nd ed., 1894). On the subject of representation, see also New Zealand, Parl. Pap., Sess. II, 1879, D. 3.

[8] On some recent developments with respect to the substitution of a more modern system of rendition, see W. B. Hamilton, Kenneth Robinson and C. D. W. Goodwin (eds.), A Decade of the Commonwealth, 1955–1964, pp. 185–186 (1965).

[9] Lionel Curtis, The Problem of the Commonwealth 4 (1916).

With foreign states, of course, Great Britain could conclude treaties containing entry and establishment provisions affecting the separate communities within the Empire.

Another field in which customary international law allows wide discretion to be exercised by individual states is that of commercial relations. In the Commonwealth, even before full independence of its members, there came to be considerable leeway within which constituent parts could influence policy. In an effort to justify Great Britain's allowing wide autonomy in this area, one view expressed was that by its nature the Commonwealth was different from the collectivity of states that might comprise a federal system, and that in tariff matters autonomy could be allowed to members without its resulting in a break-up of the Commonwealth. It was perhaps inevitable that there should come to be preferential tariffs within the system of associated states which, even before they were full states in the international legal sense, were in a large measure interdependent.

Constitution-making for separate units of the Commonwealth could proceed with considerable local self-determination, although the form might be an Act of the Imperial Parliament. The latter body could reflect the will of the particular communities involved.

Mere matters of terminology have never seemed to be serious impediments to Commonwealth progress. Australia itself is a "Commonwealth." The latter term was reportedly not used very commonly in New Zealand, at least before 1927.[10] Canada could adopt for itself in 1952 the descriptive title of "Realm." That mere terminology would not necessarily assume major importance for the great body of the citizenry is suggested by the result of a poll in Great Britain in 1949.[11] The very term "dominion," however, had a degree of importance in the evolution of the Commonwealth which would seem to merit more than a passing mention.

III

At the outbreak of the First World War the Dominions then existent had not attained statehood in the full international law sense. Their peoples came to be in a state of war not by virtue of individual declarations but on the basis of Great Britain's declaration. Quite apart from the practical consideration of dependence upon British naval power, it would have been less natural for the dominions to exercise individual judgments in this sphere than it was for them to have a large measure of control of their commercial and other peacetime policies.

The term "dominion" was to have significance, for practical purposes, for a relatively short period of time. A resolution of the Imperial War

[10] J. B. Condliffe, "The Attitude of New Zealand on Imperial and Foreign Affairs," in Great Britain and the Dominions, Harris Foundation Lectures, 1927, at pp. 364–365.

[11] "Cross-questioning of a representative section of the population then showed that over half were unable to recall one single colony by name, that three-quarters did not know the difference between colonial and dominion status, and that 3 per cent thought America was still a colony." The Times (London), June 22, 1949, p. 4.

Conference in April, 1917, set forth that the dominions were fully recognized as autonomous units of the Imperial Commonwealth. The British Empire, as General Smuts described it, was "more than a State," it was, he said, "a system of nations, a community of States." In contrast to empires that had been known in the past, he said, it did not stand for standardization, but for "the more various life of all nations that are comprised in it."[12] Apparently there was still no legal definition of "Commonwealth," although the term appeared in such an Act of Parliament as the Irish Free State (Agreement) Act, 1922.[13]

The Balfour formula of 1926 and the Statute of Westminster, 1931, seemed to rest upon the concept of substantial autonomy but, as the term "dominion" itself perhaps suggested a status less than independent states would have in the international law sense, it was not to remain for very long as the central descriptive word.[14] A well-known treatise on international law has noted, however, an element of irrelevance in the contention that "the British Commonwealth of Nations provides an instructive example to be followed for the purpose of a more general or even universal association of states."[15]

The having of a monarchical form of government was not to be a permanent requisite for Commonwealth membership. Ireland, upon adopting a republican form, ceased officially to be a member, but citizens of Eire retain many of the advantages which they would have if Eire were a member of the Commonwealth. Within a few years there were to be a number of republics as members. A community that was formerly a part of the Empire may elect not to join, as did Burma; optionality of continued membership is indicated in South Africa's withdrawal in 1961. Nomenclature has changed to accord with changing relationships. The Colonial Office gave place in 1947 to a Commonwealth Relations Office; in 1965 a Commonwealth Secretariat, with members drawn from various Commonwealth states, came into being. In 1966 the Commonwealth Relations Office and the Colonial Office were merged into a new Commonwealth Relations Office. Newly-emergent states become members of an association that is no longer labeled "British."

Between member states are applicable, in place of the older system of *inter se* rules, the ordinary rules of international law.[16] This does not

[12] Address to the two Houses of the British Parliament, May 15, 1917. See also V. Kenneth Johnston, "Dominion Status in International Law," 21 A.J.I.L. 481–489 (1927).

[13] 12 & 13 Geo. 5, c. 4, p. 1.

[14] On the elasticity of conventions and the use of old forms under new conditions, see W. M. Hughes, The Splendid Adventure 47, 48 (1929).

On some of the new factors with which new African states are identified as Commonwealth members, see C. W. Newberry, The West African Commonwealth, *passim* (1964).

[15] L. Oppenheim, International Law 211 (8th ed., 1955). There is reference (p. 212) to the utility of British practice, but as a matter of constitutional and national importance rather than of wider utility.

[16] See J. E. S. Fawcett, The Inter Se Doctrine in Commonwealth Relations (1958), and the same writer's discussion of changes from such rules in The British Common-

preclude such arrangements as have continued in the sterling area.[17] As to nationality, there is leeway within which each of the associated states may regulate the acquisition and loss of its own nationality, while the possibility is left open of any state's recognizing a Commonwealth citizenship, the latter being comparable with what had been the status of British subject.[18] What was once identifiable as "dominion" status, however, seems to have become a matter of essentially historical interest and importance.

IV

One of the striking usages of the Commonwealth has been the utilization of conferences. In the form of these there has been adaptation to changing situations with respect to self-government and the replacement of colonialism with new nationalism. The meetings have provided opportunity for periodical consideration of mutual needs and interests, as well as reflection upon status, including legal status.[19]

First in chronological order for the period under consideration were the colonial conferences. Historically, these have presented more questions of constitutional law and practice than of international legal rights, and ceremonialism seems to have had considerable emphasis.

The so-called "colonial conferences" came at intervals from 1881 through the first decade of the twentieth century. The one in 1907, the first year of the period here under review, lasted from April 15 to 26 and provided occasion for emphasis upon the essential nature of the meetings and the type of questions that might properly be considered. Topics on the agenda touched immigration, naturalization, double taxation of incomes, a decimal system of currency, a metric system, an imperial court of appeals, preferential trade, commercial treaties, and fisheries. The Prime Minister of the United Kingdom said, in part, at the opening meeting:

> We have no power here in this room . . . to arrive at any binding decisions. His Majesty's Government cannot go behind the declared opinions of this country and of our Parliament. No more can you go beyond the opinions and wishes of your communities and Parliaments; but, subject to this governing limitation, there remain . . . many matters of great moment in which there is room for arrangement and advance. These Conferences were formerly more or less identified

wealth and International Law (1963). In the latter volume the author emphasizes, *inter alia*, that non-discrimination in racial matters has come to be a requisite for Commonwealth membership.

[17] See, generally, Brinley Thomas, "The Evolution of the Sterling Area and Its Prospects," in Nicholas Mansergh *et al.*, Commonwealth Perspectives 175–207 (1958); and J. S. G. Wilson, "The Changing Role of Sterling," in volume cited in note 8 above, pp. 503–526.

[18] Robert R. Wilson and Robert E. Clute, "Commonwealth Citizenship and Common Status," 57 A.J.I.L. 566–587 (1963).

[19] On the first two types of conferences to be mentioned in the present comment, see the three-volume compilation by Maurice Ollivier (ed.), The Colonial and Imperial Conferences from 1887 to 1937 (1954).

> with great ceremonial occasions. This is, I believe, the first that has been specifically summoned for the purpose of business.[20]

The Canadian Prime Minister (Laurier) expressed his personal view that the gathering was not simply a conference of prime ministers of the self-governing colonies meeting with the Secretary of State, but was a conference between the Imperial Government and the self-governing colonies of England.[21] That questions of constitutional right which at the same time touched the Empire's external relations were not to be excluded from discussion was suggested by the reaction to the idea of the Empire's agreeing to arbitration of matters in which some of the represented colonies had special interests, as, for example, in fisheries. Thus a spokesman for Canada (Bond) at one stage in the discussion said:

> If . . . it is intended to submit Colonial statutes to arbitration, then I respectfully contend that it would be derogatory to the Crown, and in direct contravention to the constitutional right of the self-governing Colonies, to submit their statutes to the arbitrament of any foreign Power or of any person or body of men.[22]

"Colonial" conferences, such as those of 1887, 1894, 1902 and 1907, were to be followed, toward the end of the first decade of the twentieth century, by "Imperial" conferences. Held at intervals between 1909 and 1937, these were in addition to specialized conferences, such as the Imperial War Conference in the period of the First World War,[23] the Imperial Economic Conference at Ottawa in 1932, and the British Commonwealth Scientific Conference at London in 1936.

Of the "Imperial" Conferences, that of 1926 seems to have attracted special attention because of the report of the (Balfour) Committee on Inter-Imperial Relations. In language that has subsequently been much quoted, the report described Great Britain and the Dominions as

> autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.[24]

The Imperial Conference of 1930 considered and approved the Report of the Conference on the Operation of Overseas Legislation. In the following year the British Parliament enacted the Statute of Westminster, which is commonly regarded as a "landmark" in the evolution of the British community. The Imperial Conference of 1937 met amid growing uneasiness in view of what Neville Chamberlain described (perhaps in an understatement) as "deterioration in the international situation." [25]

[20] Cd. 3404, p. 5.

[21] *Ibid.*, p. 6.

[22] Cd. 3523, p. 600.

[23] Cd. 8566. On the point in development that had been reached by the early post-war period, see Hughes' speech at the (1921) Conference on status of the dominions, Cmd. 1474, at pp. 22–23. A discussion of the nature and utility of conferences is in the same document at pp. 11–39.

[24] Cmd. 2768, at p. 14.

[25] For a brief comment on matters considered at this conference, see 32 A.J.I.L. 335–339 (1938).

Since 1937 the principal gatherings of states that are associated in the Commonwealth have been the Prime Ministers' Conferences. The states that have preferred republican to monarchical government (and that recognize the Queen as the "Head of the Commonwealth" rather than as sovereign) send Presidents or other executive officers. During the period of World War II there were apparently efforts looking to general conference discussions by Commonwealth leaders. From a meeting in May, 1944, there came a declaration by the Prime Ministers of five Commonwealth states affirming intention to achieve victory over the common enemy.[26] There was anticipation of postwar effort looking to an international organization with the objective of preventing aggression. In the period immediately following the cessation of hostilities there was more urgent need for relieving Great Britain's economic distress than for immediate resumption of the prewar conference effort within the Commonwealth.[27]

In the fifth and sixth decades of the existence of the American Society of International Law, meetings of Commonwealth Prime Ministers' Conferences have come with relative frequency. There has been a rapid increase in the number of independent states represented. An assertive new nationalism, denunciation of colonialism and of racial discrimination and, in the recent past, some resort to sanctions have marked relations between communities in the Commonwealth. By the time of the first general conference in the postwar period (that of 1948), India, Pakistan and Ceylon had emerged as independent states. The agenda for this (1948) conference was a lengthy one; action taken included support of Ceylon's application for admission to the United Nations and approval of India's remaining in the Commonwealth after her change from a monarchical to a republican form of government.

In the 1950's, Prime Ministers' Conferences welcomed a number of new members and some of the topics which came under discussion touched upon matters of wide international importance. The 1951 meeting, for example, gave attention to peace settlements in the Far East, the growing danger from development of nuclear weapons, and commitments of two of the Commonwealth states by reason of their membership in the North Atlantic Treaty Organization. At their 1953 meeting the Prime Ministers considered, among other matters, the international importance of the Suez Canal in relation to peace and security in the Middle East. Discussion at the 1955 conference touched, *inter alia,* upon tensions in the Far East, the acceptance of the Federal Republic of Germany into the community of Western nations, and Pakistan's continuance (as a republic) in the Commonwealth fold. The problem of Cyprus also came under discussion in this period. At the 1957 conference Ghana had representation for the first time as an independent state; the Prime Ministers also took notice of Malaya's progress toward independence.

[26] See statement in Commonwealth Relations Office List, 1955, at p. 76.

[27] On the situation in Great Britain at the beginning of the launching of the Marshall Plan, see Robert H. Ferrell, George C. Marshall as Secretary of State 100 (1966).

The final decade of the period here under consideration has seen a great increase in the number of members (Asian, African and Caribbean) in the Commonwealth, the withdrawal of South Africa (a move which may have precluded that state's expulsion from the group because of its racial policies), and anticipation of the emergence of still other independent states which will presumably become Commonweath members.[28] More novel from the point of view of Commonwealth solidarity has been action by two African states of the Commonwealth in breaking off diplomatic relations with the United Kingdom because of the latter state's failure to carry out more speedily (specifically, by December 15, 1965) drastic action against the ruling regime in Rhodesia. Following this has been a reported statement of President Kaunda of Zambia (in May of 1966) that he would propose Britain's expulsion from the Commonwealth if she did not bring down the regime in Rhodesia before the next Prime Ministers' meeting.[29]

V

Leaders of Commonwealth states may not have been in complete agreement as to the legal implications of their respective states' becoming separate signatories of peace treaties at the end of World War I.[30] There was soon to be evidence, however, of these states' influence upon action taken through the League of Nations.[31] In the matter of commitments for the keeping of the peace, such a state as Canada could urge that geography should be considered when states were called upon to assist in peace-enforcement action. Before their legal status had been given the definition which the Balfour Declaration and the Statute of Westminster supplied, the Dominions had recognized the need for their own separate nationality statutes when there was to be an election of judges for the new Permanent Court of International Justice. On such substantive matters as the concept of "domestic jurisdiction" in the League Covenant and in the later United Nations Charter, Commonwealth states were to have a very considerable influence.[32]

Under the United Nations Charter the Commonwealth states have comprised a distinct group which has figured in such matters as the choice of non-permanent members of the Security Council. There has been opportunity for these states to compare views through meetings of their own group, for which meetings the chairmanship has reportedly rotated among

[28] See list of these as reported at the Prime Ministers' Conference of 1964, British Information Service, Final Communiqué, Reference and Library Division T. 18 (July 16, 1964), and comment in 59 A.J.I.L. 570–573 (1965).

[29] New York Times, May 23, 1966, p. 10.

[30] Illustrated in Prime Minister Massey's describing as "absolute nonsense" the view that in signing the Peace Treaty the Dominions became independent nations. New Zealand, Parl. Deb., Vol. 196 (Aug. 3–Sept. 12, 1922), pp. 480–481.

[31] See, generally, C. A. W. Manning, The Policies of the British Dominions in the League of Nations (1932).

[32] See John M. Howell, in volume referred to in note 2 above, Ch. VIII.

the member states. This does not imply common voting, and Commonwealth ties have not, for example, prevented African and Asian members from registering, on occasion, their opposition to the United Kingdom. Thus in a General Assembly discussion in 1965, representatives of Commonwealth states in Mediterranean, Asian, African and Caribbean areas (with the exception of Malawi) reportedly left the room when Prime Minister Wilson began to speak on British policy concerning Rhodesia.[33] The British resolution on peacekeeping was shelved by a vote of 48 to 27. On another occasion in 1965 when a crucial legal question concerning the Commonwealth state of Cyprus was under consideration,[34] specifically the question of whether that state was "entitled to enjoy and did enjoy full sovereignty and complete independence without any foreign intervention or interference," the Commonwealth states were sharply divided.[35]

In the Western Hemisphere there has been a continuing question as to the possible entry of Commonwealth states into the Organization of American States. Canada, although included within the geographical area which the associated American republics are committed to protect against aggression, remains a non-member. The two Caribbean Commonwealth states also remain out of the regional organization; there has been some speculation as to whether old boundary disputes involving Great Britain may have influenced decisions by these two states in this matter.[36]

To a Commonwealth (Canadian) statesman is usually ascribed credit for proposing the United Nations Emergency Force at the time of the Suez crisis—a crisis in which Commonwealth states were ranged on different sides. From a Commonwealth state (India) came the first commander of the United Nations peacekeeping force in Cyprus.[37] As to defense problems in the Commonwealth in general, there has been warning against complacent suggestion of Great Britain's capacity to provide adequate aid to her Commonwealth partners in a situation of serious aggression.[38]

Nothing in the commitments which Commonwealth states accept as toward each other precludes individual members from following the policy

[33] See discussion in Valentine Blakeney, "The Commonwealth in the United Nations," 9 Commonwealth Journal 11–12, 24 (1966).

[34] On the background, including the 1960 agreements, see Thomas Ehrlich, "Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis," 18 Stanford Law Review 1021–1077 (May, 1966).

[35] The resolution (A/6166) was passed on Dec. 18, 1965, by a vote of 47 for (including, in addition to Cyprus, twelve Commonwealth states, all of them being in Asia, Africa, or the Caribbean) to 5 (including Pakistan), with 54 abstaining (including the United Kingdom, Canada, Australia, New Zealand and Malawi).

[36] On Canada's position with respect to the Organization of American States, see W. R. Irwin, "Should Canada Join the Organization of American States?" 72 Queens Quarterly 289–303 (1965); and for an opposing view, David Edward Smith, in 73 *ibid.* 100–114 (1966).

[37] On possible advantage of Commonwealth co-operation in this field, see Alastair Buchan, in volume cited in note 8 above, at p. 206.

[38] Alastair Buchan, "Military Fabrics of the Commonwealth," 7 Commonwealth Journal 251–258 (December, 1964).

which Australia and New Zealand have chosen in their limited assistance to the United States in the latter country's military effort in South Viet-Nam. On the other hand, there is nothing in the design of the Commonwealth that is incompatible with the step taken in 1965 at the Prime Ministers' Conference when it appointed from its body a peace mission with a view of assisting toward re-establishment of peace in Viet-Nam. Appointed on behalf of the Commonwealth as a whole, and with officials of Britain, Ghana, Nigeria, and of Trinidad and Tobago composing it, the mission achieved no immediate success. Its second published statement (as of June 24, 1965), included the following paragraph:

> The Commonwealth as such is in no way committed to either side of the conflict in Vietnam and has formed no collective view except on the urgency of re-establishing conditions in which the people of Vietnam may be able to live in peace. Although within the Commonwealth there is diversity of opinion on the Vietnam problem, there is complete unanimity as to the need to find a peaceful solution.[39]

VI

It seems clear that the great body of legal relationships existing between member states of the Commonwealth now rest upon international law.[40] In areas wherein there are no prohibiting rules of customary international law, these states continue to follow procedures (and to transact certain types of business) with each other in a manner not inconsistent with international law. Illustrative of this is the system of trade preferences, the benefits of which have come increasingly into question when Britain's policy with respect to the European Common Market is under consideration.[41] There is no rule of customary international law that requires a state to accord non-discriminatory treatment to every other state, either in commercial matters or in most establishment matters, however desirable a more general practice of non-discrimination would seem to be in the general interest.

In certain other areas of international relations the members of the Commonwealth continue to follow procedures with each other which they (or some of them) do not follow with non-Commonwealth states. These areas are ones in which states may follow different policies without violation of customary international law. In the matter of extradition there would seem to be a trend toward placing rendition upon the generally customary basis which makes a distinction between "political" and other offenses. Commonwealth states have, through agreement to which Commonwealth states or provinces thereof may accede, made considerable progress toward a system for the recognition and enforcement of foreign judgments.[42]

[39] Statement as reproduced in the Year Book cited in note 1 above at p. 24.

[40] See studies cited in note 16 above.

[41] *Cf.* Herman Walker in Ch. VII of volume cited in note 2 above.

[42] See Don C. Piper in Ch. IX of volume cited in note 2 above.

In fields such as nationality and immigration, Commonwealth states, and states generally, regulate on the basis of policy considerations without encountering restraints of international law. That law does not prohibit discriminatory treatment in these matters. Nor does it prevent a state from according to citizens of other Commonwealth states, in various educational, cultural and employment fields, treatment more favorable than that accorded persons from non-Commonwealth states. The latter may, of course, invoke for their nationals such rights of establishment as treaties with individual Commonwealth states provide. Some effective plans for co-operation within the Commonwealth, such as the Colombo Plan, have not precluded participation by non-Commonwealth states.

The point reached in Commonwealth relations with respect to official representation in other states enables Commonwealth members to exchange high commissioners with other Commonwealth states while recognizing that the rights and duties involved are substantially the same as those of diplomatic missions sent to or received from non-Commonwealth states.[43] The purpose served for all the Commonwealth states by the recently created Commonwealth Secretariat implies no departure from the substantive rules of international law with respect to diplomatic privileges and immunities. The first Secretary to the Commonwealth has described the latter as comprising "a whole series of channels for influence, understanding and adjustment and for *ad hoc* cooperation"; he regards the Commonwealth as a reminder that the national sovereignties involved are "inevitably and inextricably bound up with those of others throughout the world."[44]

To conclude that Commonwealth practice in general has had some effect upon the development of international law, or at least upon certain of its rules, is not to minimize the problems which now confront the multiracial group of states that compose the Commonwealth. These problems have seemed to some observers to threaten the continued existence of this association of states. Mere sentiment concerning the Commonwealth is less likely to command respect than the belief that such ties as exist may conceivably enhance respect for law in the greater society of states. The evolution of the Empire-Commonwealth over the past six decades would seem to suggest that a grouping of co-operating states such as those composing the Commonwealth need not hinder and may in some ways promote the rule of law between states in general. The better understanding, the critical re-examination and the strengthening of that law remain as basic objectives of the American Society of International Law as it enters upon its seventh decade.

ROBERT R. WILSON

[43] See, for example, Canadian Government practice as described in 1 External Affairs (1949) and reproduced in J. G. Castel (ed.), International Law Chiefly as Interpreted and Applied in Canada, at 708, 710–711 (1965).

[44] Arnold Smith, "The Commonwealth and Its Global Purpose," 9 Commonwealth Journal 53–58, at 58 (April, 1966).