FROM EMPIRE THROUGH COMMONWEALTH TO . . .?*

L. C. GREEN**

The following paper traces, in terms of international law, the history of the once indivisible British Empire to its present status. Professor Green discusses the emergence of the Commonwealth as the pressure for greater independence from the colonial territories renders the divisibility of the Empire and of imperial sovereignty an accepted fact. Today, with the development of the United Nations, the institutional and legal character of the Commonwealth has virtually disappeared.

In classical international law, since sovereignty is regarded as one and indivisible, an imperial power was viewed as possessing its colonial dependencies, regardless of whether, in accordance with local law, those dependencies were regarded as colonies or protectorates—unless they were internationalized by treaty as were the Ionian Islands, Tunis and Morocco—or were given some grandiose name like dominion or commonwealth. In contrast with this, one must bear in mind that a particular imperial power might well choose for its own purposes a definition of its "empire" that is in fact wider than this, including territories which according to international law do not really belong to it, and over which it does not possess sovereignty. Thus, the British Finance Act of 1919 stated:[1]

> For the purpose of this section
>
> 'The British Empire' means any of His Majesty's dominions outside Great Britain and Ireland, and any territories under His Majesty's protection, and includes India:
>
> Provided that, where any territory becomes a territory under His Majesty's protection, or is a territory in respect of which a mandate of the League of Nations is exercised by the Government of any part of His Majesty's dominions, His Majesty may by Order in Council direct that that territory shall be included within the definition of the British Empire for the purposes of this section, and this section shall have effect accordingly.

From the point of view of this paper, discussion will be confined to the British Empire and its development, with references to other empires only made when necessary for the sake of comparison. When Oppenheim published the first edition of his International Law, he stated quite simply:[2]

> Colonies rank as territory of the motherland, although they may enjoy complete self-government and therefore be called Colonial States. Thus, if viewed from the standpoint of the Law of Nations, the Dominion of Canada and the Commonwealth of Australia are British territory. . . . [As a result,] so-called Colonial States, as the Dominion of Canada, can never be parties to international negotiations; any necessary negotiations for a colonial State must be conducted by the mother-State to which it internationally belongs.

As a concomitant of this "belongingness", the inhabitants of a colonial territory were considered as possessing the nationality of the imperial power, so that to this day all citizens of those parts of the former British Empire which have not declared their independence from the

---

* Prepared for Laval University Symposium on "The Commonwealth and La Francophonie: Myth or Reality", April 1977.

** LL.B., LL.D., University Professor, University of Alberta.

1. 9 & 10 Geo. 5, c. 32, s. 8 Cp., *Vermilya-Brown* v. *Connell* (1948) 335 U.S. 377 in which it was held that, while the military base in Bermuda leased to the United States was not within the latter's sovereignty, it was nevertheless a "possession" for the purpose of the Fair Labor Standards Act.

2. Vol. 1 at 219, 506 (1905).

Commonwealth still, by virtue of the British Nationality Act,[3] possess the nationality of the mother country, regardless of the citizenship of a particular Commonwealth country which may be the one that a particular citizen regards as his sole nationality. Traditionally this meant that such persons had an automatic right to the possession of a British passport and a right of entry to the United Kingdom, while foreign states were able to deport any holder of such a passport whom it found to be undesirable to the United Kingdom which was under an international obligation to receive him. Moreover, such persons could no more be deported from the United Kingdom, than could a person born there. This right, however, only belonged to those who were regarded as British by English law and did not extend to persons who came from territories considered by Britain to be under protection,[4] as distinct from colonies or those colonies known as self-governing dominions. Today, however, by virtue of the Commonwealth Immigrants Act, 1962,[5] citizens of the Commonwealth, even though they may be British subjects in the full legal sense of that term, are also liable to deportation. Moreover, by virtue of a series of legislative measures culminating in the Immigration Act of 1971,[6] only those British nationals who are described as "patrials" have the right to enter the United Kingdom, though born within the Empire/Commonwealth, and though a British passport is the only one they possess, and though they may well have been expelled from another Commonwealth country. This problem became important in the case of Asians holding British nationality and passports expelled by Uganda. In *R.* v. *Secretary of State for the Home Dept., ex p. Thakrar*,[7] Lord Denning M.R. made some comments which are completely out of accord with accepted principles of international law and which are destructive of any concept of imperial unity. It must be pointed out that in the instant case the applicant, though of Indian descent, had been born in Uganda when that territory was a protectorate, but which was now independent and refused to regard him as its national. Since he did not possess Indian nationality the only country which would have seemed to carry any international responsibility in so far as he was concerned was Great Britain, and he relied on Oppenheim's statement that:[8]

> The home State of expelled persons cannot refuse to receive them on the home territory, the expelling States having a right to insist upon this.

The Court of Appeal, however, pointed out that this duty was owed to other states, and this rule of international law conferred no rights on the individual.[9]

The Master of the Rolls started from the premise of Lord Atkin's comment in *Chung Chi Cheung* v. *The King*:[10]

> It must always be remembered that, so far, at any rate, as the courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law.

3. (1948) 11 & 12 Geo. 6, c. 56, (as amended) s. 1.

4. *See R.* v. *Ketter* [1940] 1 K.B. 787, regarding a person born in Palestine and carrying a "British Passport: Palestine".

5. 10 & 11 Eliz. 2, c. 21, s. 6.

6. C. 77, s. 3.

7. [1974] 2 W.W.R. 593. For criticism, *see* White, *When is a British Protected Person Not a British Protected Person* (1974) 23 Int'l & Comp. Law Q. 866; Akehurst, *Uganda Asians and the Thakrar Case* (1975) 38 Mod. Law Rev. 72.

8. *Supra*, n. 2 at 465; at 646 (8th ed. 1955).

9. *Supra*, n. 7 at 598 *per* Lord Denning; at 604 *per* Orr LJ.

10. [1939] A.C. 160 at 167-8.

He then continued:[11]

> Test it by reference to the very point we have to consider here: the mass expulsion of Asians from Uganda. International law has never had to cope with such a problem. None of the jurists . . . has considered it. The statement in *Oppenheim* is all very well when one is considering a home state which is a *self-contained* country with no overseas territories or protectorates. If one of its citizens goes to a foreign cointry and is expelled from it, the home state may well be bound to accept him on his home territory if he has nowhere else to go. But that rule does not apply when the home state is an outgoing country with far-flung commitments abroad, such as the United Kingdom has or recently did have. Take the class of persons with whom we are here concerned—British protected persons. They are said to be British nationals, but they are not British subjects. These number, or used to number, many millions. They were not born here. They have never lived here. They live thousands of miles away [hardly true when they have been expelled from the country of their birth and the only country which in the past has been internationally recognized as having rights concerning them is England as the imperial power] in countries which have no connection with England except that they were once British [colonial] protectorates. Is it to be said that by international law every one of them has a right if expelled to come into these small islands? Surely not. This country would not have room for them. It is not as if it was only one or two coming. They come not in single files 'but in battalions'. Mass expulsions have never hitherto come within the cognizance of international law. To my mind there is no rule of international law to which we may have recourse. There is no rule by which we are bound to receive them.

It is perhaps unfortunate that when Lord Denning made his statement as to their being "British nationals but not British subjects" he was not aware of the decision of the Anglo-German Mixed Arbitral Tribunal in *The National Bank of Egypt* v. *Germany*,[12] to the effect that there was no difference in scope between the terms *ressortissants* and *nationals* in the Treaty of Versailles, so that nationals of Egypt, at that time a British international protectorate, were to be treated as British nationals within the meaning of Articles 296 and 297 of the Treaty, concerning the settlement of claims concerning private property, rights and interests in enemy territory. In addition, he might have been interested in the statement of the Anglo-Austrian Mixed Tribunal in *The National Bank of Egypt* v. *The Bank of Austria-Hungary*[13] regarding the legal status of inhabitants of an international protectorate:

> The Tribunal is satisfied that, according to principles recognized in modern international law, a member of a protected nation, while he is not, by reason of the protection of the dominant State, a citizen of the latter for the purposes of its own municipal law, is nevertheless, speaking generally, in regard to foreign Powers and their citizens, in a position analogous to that of the citizen of the Protecting State.

If this is true of the "members" of an international protectorate as Egypt was, it would be even more true of a colonial protectorate, which is denied full colonial status only by reason of the municipal law of the imperial power. Moreover, in *Van Duyn* v. *Home Office*[14] the European Court held that, while in certain circumstances a member country might be allowed to exclude aliens, "it is a principle of international law . . . that a state is precluded from refusing its own nationals the right of entry or residence." It will be interesting to see what happens if and when the European Court of Human Rights applies this same principle on behalf of British/Commonwealth non-patrial excludees, for the United Kingdom is a party to

---

11. *Supra*, n. 9 at 598 (italics in original).
12. (1923/4) 4 M.A.T. 233.
13. (1923) 3 M.A.T. 236 at 239.
14. [1975] 1 C.M.L.R. 1 and at 18; 2 W.L.R. 760 at 772.

the European Convention on Human Rights and is obliged to give effect to the judgments of its Court.

Closely connected with the concept of nationality and of "belongingness" which is its apparent concomitant is the idea of protection. While today all independent members of the former British Empire represent and protect their own nationals, and only make use of the services of the mother country in the event of there not being a diplomat of their own in a particular territory, this was not formerly the case. Passports were issued in the name of the Crown and countersigned on behalf of the British Government, while in the event of disputes between any part of the overseas empire and a foreign state such international action as might have been necessary was the responsibility of the central government. From this point of view, it is perhaps sufficient to mention such cases as the *Behring Sea Arbitration*,[15] the *North Atlantic Coast Fisheries* case,[16] *The Jessie*,[17] *The Wanderer*[18] or *The Argonaut and the Colonel Jonas H. French*,[19] in all of which Great Britain appeared on behalf of Canada against the United States. The British-United States Arbitral Tribunal also heard a variety of cases involving British interests on behalf of an overseas territory, for example, the *Home Missionary Society* case[20] affecting Sierra Leone, the *Hemming* case[21] concerning counterfeiting in India or the *Fijian Land Claims*[22] in a territory over which Great Britain had "possession, full sovereignty and dominion".

Representation by a state of the private interests of its nationals flows from the right of protection enjoyed by that state. As a concomitant of that protection is the duty of allegiance which rests upon those nationals.[23] As a consequence, extradition agreements are not required between an imperial power and its overseas territories. However, arrangements for the rendition of fugitive offenders within the empire are obviously necessary, and in the case of the British Empire this was regulated by the Fugitive Offenders Act.[24] The interesting feature of this measure is the absence of any provision protecting those guilty of "political offences". This was, however, fully in accordance with political realities. Since the entire empire was governed by a single sovereign, an offence directed against the government in any part of that empire was clearly an act of treason against the sovereign as such, and treason was one of the offences specifically listed in the Act. Even after the overseas territory in question had become an independent member of the Commonwealth the same principle applied, as may be seen from *R.* v. *Governor of Brixton Prison, ex p. Enahoro*,[25] in which one of the charges was treason felony, in that the accused:

> formed an intention to levy war against our Sovereign Lady, the Queen, within Nigeria

15. 1 Moore, *Int'l Arb.* 948 (1893).

16. 1 Scott, *Hague Court Reports* 141 (1910).

17. (1921) 6 U.N. Rep. Int'l Arb. Awards 57.

18. *Id.* at 68.

19. *Id.* at 60—this volume contains a number of decisions affecting Canadian interests.

20. *Home Frontier & Foreign Missionary Society of the United Brethren in Christ (U.S.)* v. *Great Britain* (1920) *id.* at 42.

21. (1920) *id.* at 51.

22. (1923) *id.* at 93.

23. *E.g. Calvin's Case* (1608) 7 Co. Rep. 1a; and for the "allegiance" due from a "protected" alien, *Joyce* v. *D.P.P.* [1946] A.C. 347.

24. (1881) 44 & 45 Vict., c. 69; (1915) 5 & 6 Geo. 5, c. 39.

25. The Times (London), 16 Jan. 1963; 8 B.I.L.C. 651.

> in order by force or constraint to compel our Sovereign Lady the Queen to change her measures or counsel and manifested such intention. . . .

While the Divisional Court agreed that treason was a political offence and that the application might not be made in good faith, it declined to release Enahoro on a writ of *habeas corpus*. This decision was supported by the House of Lords, even though there was some evidence to indicate that "the Government Party had intimated that if he were not returned, they would withdraw from the Commonwealth . . . Threats had been made by the Government Party to break off diplomatic relations with Her Majesty's Government in the United Kingdom if he were not returned".[26]

From the point of view of international law proper, the unity of an empire is probably best illustrated during war. Thus, a declaration of war by the imperial power extends to all its territories, other than an international protectorate, for then the question is regulated by the treaty establishing the protectorate. The difference between the position of a protectorate of this kind and a colonial possession at such a time is clearly brought out by the decision of Dr. Lushington in his decision on *The Ionian Ships*:[27]

> . . . [T]he question I have to decide [is] not whether Great Britain has power to declare the Ionian states in hostility with Russia, but whether, Great Britain being at war with Russia, it follows, as an inevitable consequence, that the Ionian states are placed at war with Russia also.
>
> . . . I have not been told on behalf of the Crown . . . that Great Britain has done any act whatever to place the Ionian states in hostility with Russia. So far as my knowledge goes I know of none.
>
> Therefore, . . . I have only to consider . . . whether Great Britain, being at war with Russia, the Ionian states are, *ex necessitate*, at war also, exactly in the same way as Jersey, Guernsey, Jamaica, and Canada would be placed in hostility by a declaration of war against Great Britain by any other power. . . .

Dr. Lushington pointed out that whatever rights Great Britain might have achieved by way of conquest were replaced by the terms of the Treaty of Paris, 1815,[28] and in accordance therewith an express declaration on behalf of the Ionian states was essential. This should be compared with the position concerning Palestine during the Second World War. While it is generally accepted that mandated territories do not belong to the mandatory, and while no express declaration of war was made on behalf of Palestine, there seems little doubt that Palestine and Israel as the successor to Palestine were considered to be at war with Germany. Even though:[29]

> the intention of the mandates system [may have been] that mandated territories should be left outside the reach of hostilities . . . the mandatories did in fact use them as military bases

and Germany treated Palestine as a war theatre bombing both Tel Aviv and Haifa.[30] Moreover, in the *Petition of Ajlouny*[31] the District Court of Michigan expressly held that Palestine was not neutral:

> It was governed by Great Britain as the mandatory power, and Great Britain was at war. . . . The industrial and political life of Palestine was geared to that of Great

---

26. The Times (London), 16 May 1963; 8 B.I.L.C. 672.

27. (1855) 2 Sp. Ecc. & Adm. 212 at 216.

28. 1 Hertslet's Treaties 44; 65 C.T.S. 246.

29. Castren, *The Present Law of War and Neutrality* 139 (1954). *See also* 2 *Oppenheim* s. 71a, esp. 241, nn. 1-3 (1952).

30. Detroit News, 8 Sept. 1940; 28 Jan. 1943; 15 Ann. Dig. 694, n. 1.

31. (1948) F. Supp. 237; 15 Ann. Digest 693.

> Britain as its mandatory in the war effort . . . and [in] December 1943 . . . Palestine was deleted from the [United States] list of neutral countries.

In addition, at the time that the Western Powers proposed in 1950 to integrate Western Germany into NATO, they informed the Government of Israel that they had decided:[32]

> to take the necessary steps in their legislation to terminate the state of war with Germany. . . . [They] hope that other Governments, including that of Israel if it sees fit, will find it possible to take similar action . . . at the same time . . . ,

and the British declaration terminating the state of war with Germany specifically included Israel, as successor to the Palestine mandatory government, among the states subscribing to that decision.[33] Germany, too, was of a similar view, and in the *Palestinian Nationality Case*[34] the Nuremberg Court of Restitution Appeals held:

> The territory of Palestine . . . was under the administration and control of the United Kingdom. That part of Palestine which became the State of Israel took part in the war against Germany, by virtue of the fact that the United Kingdom was at war with Germany.

In so far as imperial possessions, as distinct from protectorates and similar special territories, are concerned, there is no doubt that an imperial declaration of war is effective for the entire empire, and in the third edition of *Oppenheim* prepared by Roxburgh and published just after the termination of the First World War we read:[35]

> Since dominions and colonies are a part of the territory of the empire or mother country, they fall within the region of a war between the latter and another State, whatever their position may be within it. Thus in the World War the whole of Australia, Canada, India, and so on, were included with the British Islands in the region of war.

This comment is reproduced in the fifth edition, the first prepared by Lauterpacht and the last to be published before the Second World War, and there is a footnote:[36]

> [T]here has been a tendency in certain quarters since the World War, in the discussion of documents such as the 'Geneva Protocol' and the 'Locarno Pact', to assume that Great Britain could be at war without the Self-governing Dominions or India being at war. This is, of course, impossible as a matter of law; though circumstances might arise in which a self-governing portion of the Empire which had refused to assent to a particular international obligation would be under no moral obligation to assist the mother-country in the event of its becoming involved in war as a result of that obligation.

During the eighteenth century attempts were made in the interests of commerical activity to evade this "oneness" of empire. Every European power which possessed overseas territories had excluded foreign ships from trading with their colonies. In time of war, however, in an attempt to break the effectiveness of maritime blockades, belligerents sometimes purported to open this colonial trade to neutrals. In accordance with the Rule of 1756 neutral vessels engaged in such trade were liable to capture and condemnation by British Prize Courts, and this rule was applied by the United States and as recently as during the Russo-Japanese War.[37]

Again, based on the indivisibility of sovereignty, it was accepted that the diplomatic representative of the mother country was also representing

32. Rosenne, *6,000,000 Accusers: Israel's Case Against Eichmann* 280 (1961).

33. London Gazette, Supp. 6 Jul. 1951; for Israeli reaction *see* The Times, 10 Jul. 1951.

34. (1951) 18 I.L.R. 55.

35. Vol. II at 93-94.

36. *Id.* at 198, n. 3.

37. Colombos, *International Law of the Sea* 678 (1967); 2 Westlake, *International Law* 294 (1913).

the imperial territories, and a diplomat accredited to the mother country would also be responsible for the welfare of his country's affairs throughout the imperial territories. Similarly, since only the imperial power possessed sovereignty, and as a sovereign state enjoyed international personality, only the mother country was able to enter into treaties. Such treaties, however, extended to all the overseas territories unless it was clear that they were territorial in nature and thus confined in geographic scope, or unless specific overseas territories were excluded. Commercial treaties, on the other hand, did not so extend,[38] but it was part of British practice invariably to preserve the right to add, on notice and on the basis of reciprocity, any specific overseas territory it might wish to add as a beneficiary to the treaty, while, at least in so far as most-favoured-nation treaties were concerned, if such a territory granted such treatment to the other party to the treaty the benefits were to be enjoyed correspondingly.[39]

While it was the mother country that possessed the treaty-making power, there was nothing to prevent the representatives of overseas territories being consulted when the interests of such territories were likely to be affected. Moreover, in such circumstances overseas representatives were occasionally included in the negotiating delegations. Finally, with the agreement of the other state the imperial power sometimes delegated to an overseas government the power to enter into treaties which only affected the particular territory. This was the beginning of the development of treaty-participation and ultimate independence in this field for the self-governing parts of the empire. It also constituted some recognition of the potential divisibility of sovereignty.

During the nineteenth century there was increasing pressure from such colonial territories as Australia, Canada, New Zealand and the Union of South Africa for greater independence in their foreign relations, especially with neighbours. The situation may, perhaps, be most easily summed up in the words of Sir Kenneth Roberts-Wray:[40]

> From about 1886, . . . provisions for separate accession and withdrawal were inserted in non-political multi-lateral treaties. . . . Before the First World War, the Dominions' representatives held full powers from the King to sign Radio-Telegraphy and Safety of Life at Sea Conventions on behalf of their own countries, though the United Kingdom plenipotentiaries had full powers authorizing them to sign for the whole Empire. Within the more general field of foreign affairs, while Empire foreign policy continued to be under the control of the United Kingdom Government, the self-governing Colonies were not silently acquiescent. During the latter half of the nineteenth century they claimed and were accorded the right to be heard, and sometimes took the initiative, on issues which specially concerned them, such as the relations between Canada, Newfoundland and the United States, the interest of Australia and New Zealand in territories in the Pacific, and that of the two African Colonies in relations with the neighbouring Republics and in German penetration in Africa. After the turn of the century, they began to take a more prominent part, some treaties, notably those affecting Canada, containing provisions specially recognizing their separate status. At the Imperial Conference of 1911,[41] a resolution was adopted that the Dominions should have an opportunity to be consulted in the framing of instructions for British delegates at meetings of the Hague Conference and to consider the terms of conventions

38. *E.g.* Instructions by Lord Salisbury to British Minister, Brussels, 28 Jul. 1897, (1877) LXXXVIII Parl. Pap. C. 8442, n. 2, 1 at 83; *see also* McNair, *Law of Treaties* c. 6 (1938); c. 5 (1961), Roberts-Wray, *Commonwealth and Colonial Law* 250 (1966); and editorial, The Times, 29 Oct. 1949.

39. *See* Schwarzenberger, *The Most-Favoured-Nation Standard in British State Practice* (1945) 22 Brit. Y.B. Int'l Law. 96 at 108. *See also*, British treaty with Nepal, 1956, whereby, for most-favoured-nation travel purposes, "nationals of Commonwealth countries and Ireland will be treated in the same way in Nepal as United Kingdom subjects", The Times, 31 Oct. 1956.

40. *Supra*, n. 38 at 250-1.

41. (1911) Cd. 5745.

provisionally assented to; and that (with qualifications) a similar procedure should be adopted when preparing instructions for negotiation of other agreements affecting the Dominions.

Perhaps the clearest recognition that the Dominions had a specific role to play in multilateral treaty-making came with the Treaty of Versailles. Representatives of the self-governing Dominions had been full members of the Imperial War Cabinet and they—and particularly General Smuts—had played a prominent role in the British discussions concerning a future peace treaty and constitution for the proposed world order. They also formed part of the British delegation to the Peace Conference at Versailles, and although the Peace Treaty[42] was described as having been drawn up between the Allied and Associated Powers and Germany, no Dominion was named among the former, but the "British Empire" was. However, when it came to listing the representation of the parties we find:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA,
by . . .
for the DOMINION of CANADA, by . . .
for the COMMONWEALTH of AUSTRALIA, by . . .
for the UNION of SOUTH AFRICA, by . . .
for the DOMINION of NEW ZEALAND, by . . .
for INDIA, by . . .

and the list of original members of the League of Nations annexed to the Covenant, which in itself comprised the first twenty-six articles of the Treaty, was to the same effect:

British Empire
Canada
Australia
South Africa
New Zealand
India

with the British Empire—not the United Kingdom—as one of the Principal Allied and Associated Powers named as a permanent member of the Council, leaving it open for any of the other five named members of the Empire to be elected as non-permanent members.

By 1919, therefore, it is clear that on the international level divisibility of Empire and of imperial sovereignty was an acepted fact. This recognition is reflected by the manner in which the mandates' treaties were drawn up and mandatories named. In so far as mandates territories administered by the British government were concerned, there is no reference in the texts to the governmental authority affected. Thus, the Mandate for Palestine[43] states that the 'Principal Allied and Associated Powers have selected His Britannic Majesty as the Mandatory for Palestine', while that for British Togoland,[44] for example, states that 'a mandate is conferred upon His Britannic Majesty.' On the other hand, when dominions have been designated as mandatories, the form used has been, for example:[45]

a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa (hereinafter called the Mandatory) . . .

42. (1919) 4 U.K.T.S.; (1919) 13 Am. J. Int'l Law, Supp.
43. 1 Hudson, *Int'l Legislation* 109.
44. *Id.* at 66.
45. *Id.* at 57.

Expressed in this form, it becomes easy to understand why the withdrawal of South Africa from the Commonwealth and the consequential abandonment of any relation with the Crown did not affect South Africa's position as a mandatory.[46]

Once it was conceded that certain parts of the British Empire had sufficient importance and international personality to be independent members of the League of Nations and to administer territory, it was obvious that the other aspects of sovereign power would soon be claimed and conceded. Thus:

> [i]n 1920 it was agreed that a Canadian Minister could be appointed at Washington and that in the absence of the [British] Ambassador he would take charge of the Embassy. No appointment was made at the time, and when a Canadian Minister was in fact appointed in 1926 it was arranged, following the precedent established by the Irish Free State in 1924, that he should be entirely independent of the Ambassador.[47] A number of similar appointments were made by Dominions as time went on. In 1943 the Canadian Legation in Washington became an Embassy, and like action was taken in other cases. The practice gradually adopted by foreign countries of having separate Ministers to represent them in Dominions began in 1927 with the appointment of United States Ministers in Ottawa and Dublin.[48]

An attempt by the Irish Free State to set a precedent whereby agreements between a Dominion and the mother country were to be considered as treaties in the international law sense of that word was not successful, even though the agreement in question was described as a treaty. The agreement between Great Britain and the representatives of Southern Ireland establishing the Irish Free State was known as the Anglo-Irish Treaty and formed a Schedule to the Irish Free State (Agreement) Act, 1922,[49] whereby this new overseas territory of the Crown became a dominion as part of "the Community of Nations known as the British Empire" securing "membership of the group of nations forming the British Commonwealth of Nations", and described in the Irish Free State Constitution Act, 1922,[50] as "a co-equal member of the Community of Nations forming the British Commonwealth of Nations". No sooner had the Irish Free State been admitted to the League than it sought, in accordance with Article 18 of the Covenant,[51] to register the Anglo-Irish Treaty with the League Secretariat which published it in the League of Nations Treaty Series.[52] This registration was met by an official protest from the British Government on the ground that:[53]

> Since the Covenant of the League of Nations came into force, His Majesty's Government have consistently taken the view that neither it, nor any conventions concluded under the auspices of the League, are intended to govern the relations *inter se* of the various parts of the British Commonwealth, His Majesty's Government consider, therefore, that the terms of Article 18 do not apply to the 1921 agreement.

While declining to enter into any controversy on this matter, the Irish Free State declared that it abided by its own interpretation of Article 18. This appears to have been the only occasion when such an issue arose,

46. *See* Green, *The United Nations, South West Africa and the World Court* (1967) 7 Indian J. Int'l Law 491 at 505-6.

47. *See* 1 Hackworth, *Digest* 65-6.

48. Roberts-Wray, *supra*, n. 38 at 253.

49. 12 & 13 Geo. 5, c. 4.

50. 13 Geo. 5, c. 1.

51. "Every treaty or international agreement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered."

52. 16 L.N.T.S. 10.

53. 27 L.N.T.S. 449; 1 Toynbee, *Survey of International Affairs 1924* 474 (1928).

and when the United Kingdom and the Dominions made declarations under the "Optional Clause" (Article 36) of the Statute of the World Court accepting its "compulsory" jurisdiction, they excluded from its operation:[54]

> Disputes with the Government of any other Member of the League which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties shall have agreed or shall agree.

This formula was the result of inter-dominion discussion, but was not accepted by the Irish Free State, while South Africa made it clear that while it felt inter-imperial disputes were justifiable by the World Court it preferred to settle them by other means. The attitude reflects the view held at one time that the Judicial Committee of the Privy Council might serve as a tribunal for the settlement of inter-imperial disputes,[55] although it has only been so used to settle the annexation of Cape Breton[56] and the determination of the Labrador Boundary.[57] The suggestion of the Imperial Conference of 1911[58] that there be a special tribunal established for such disputes never bore fruit.

With their entry into the League of Nations and the developments outlined above, it is not surprising that the self-governing dominions would soon demand further independence from the central government and more clearly established international recognition. Moreover, the use of the term Commonwealth of Nations in relation to the Irish Free State would be preferable to the tutelage implied by use of the term British Empire. It is not necessary here to examine the processes by way of intra-imperial conferences which helped the dominions to fuller self-government and independence from the mother country. Rather it is our concern to see the way in which international law gave effect to these developments and enabled the further transition from Empire to Commonwealth. *Inter se* the first significant step was the Imperial Conference of 1926,[59] which changed the status of the Governor-General so that he was no longer a representative of the British Government or any of its Departments, but became instead:

> the representative of the Crown holding in all essential respects the same position in relation to the administration of public affairs in a Dominion as is held by His Majesty the King in Great Britain.

Moreover, High Commissioners were appointed as official representatives of the United Kingdom in the Dominions and *vice versa*. It was further agreed that the United Kingdom would no longer tender advice to the Crown on Dominion matters contrary to the wishes of the relevant Dominion. From the point of view of development, the 1926 Conference defined the status of the United Kingdom and the Dominions, heralding the end of Empire in so far as these overseas colonial possessions were concerned:

> 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.

54. (1929) U.K. Declaration, Cmd. 2768, 75 *et seq.*

55. Normand, *The Judicial Committee of the Privy Council—Retrospect and Prospects* (1950) 3 Current Legal Problems 1 at 10-11.

56. *In re Cape Breton* (1846) 5 Moo. P.C. 299.

57. *In re Labrador Boundary* (1927) 43 T.L.R. 289.

58. *Id.* n. 41.

59. Cmd. 2768.

It was but one step from here to the Statute of Westminster,[60] whereby the British Government through imperial legislation untied the umbilical cord which still subordinated these territories to the central government and opened the door for full recognition as sovereign states by any power that wished to accord such recognition. It is only an anomalous situation, when, for example, as with the British North America Act,[61] a dominion's constitution remains a British statute so that formal independence does not appear to exist—but it must be borne in mind that there is a world of difference between formal and real subordination, for there is no real way in which today the Dominion of Canada, whose constitution this statute is, remains legally subordinate to British parliamentary suzerainty.

Perhaps the clearest evidence that the Commonwealth was a different type of arrangement from the former Empire was shown at the outbreak of war in 1939. As we have seen, when war broke out in 1914 the British declaration was effective for the entire empire, and the empire was a signatory of the Treaty of Versailles even though some of its constituent parts signed the Treaty separately, but within the overall umbrella of the Empire. Moreover, it was the view of Oppenheim and all his editors that if there were a recurrence the same would be true, regardless of the nomenclature of any particular imperial territory. However, when Britain declared war on September 3, 1939, she did so for herself alone, although Australia and New Zealand immediately did likewise, and in so doing both indicated that Great Britain having declared war, it too "is also at war". In December 1941, however, Australia declared war against Japan by a proclamation issued by the Governor-General acting purely on the advice of his Australian ministers. On September 6, after great internal debate during which it appeared even possible that she might enter the war as an ally of Germany, South Africa, having changed her government, voted to enter the war against Germany. It was not until September 10, that Canada declared that a state of war existed as between herself and Germany. The Irish Free State remained neutral throughout the war, with a German ambassador officially accredited to the King as sovereign of that dominion resident in Dublin. If one were driven to classify the type of institution that apparently existed in September 1939, one might be tempted to describe it as a personal union, although this was hardly true of the Irish Free State. By virtue of its 1937 Constitution, the Irish Free State changed its name to Eire and considered itself a republic. This was met by a statement from the Dominions Office to the effect that:[62]

> His Majesty's Government in the United Kingdom . . . are prepared to treat the new Constitution as not effecting a fundamental alteration in the position of the Irish Free State—in future to be described under the new Constitution as 'Eire' or 'Ireland'—as a member of the British Commonwealth of Nations.

Emphasizing the equality created by the Statute of Westminster, the statement went on to point out that the British Government had:

> ascertained that His Majesty's Government of Canada, the Commonwealth of Australia, New Zealand and the Union of South Africa are also prepared so to treat the new Constitution.

---

60. (1931) 27 Geo. V, c. 4.

61. (1867) 30 & 31 Vict., c. 3.

62. 2 Mansergh, *Documents and Speeches on British Commonwealth Affairs 1931-1962* 796 (1953).

In 1945 De Valera, as Prime Minister of Eire, described the position thus:[63]

> The State . . . is . . . demonstrably a republic . . . with a Head of State directly elected by the people for a definite term of office. . . . The External Relations Act [of the Eire parliament] . . . is a simple enabling Act to permit of the carrying out of the external policy of the State in the field of international relations. . . . We are an independent republic, associated as a matter of our external policy with the States of the British Commonwealth. To mark this association, we avail ourselves of the procedure of the External Relations Act . . . by which the King recognized by the States of the British Commonwealth therein named acts for us, under advice, in certain specified matters in the field of our external relations.

Finally, in 1949, by legislation of both the Irish and the British governments, "Eire . . . ceased to be part of His Majesty's dominions", and became an independent sovereign state, although by virtue of the English act it did not become a foreign state, nor did its nationals become aliens.[64] This was not the first imperial territory to become independent, for in 1947, in fulfilment of a promise made on the expulsion of the Japanese, Burma achieved independence outside the Commonwealth contemporaneously with its achievement of self-government. From the point of view of development from Empire to Commonwealth, however, the Irish example is of greater significance since that country was already self-governing while within the Empire.

Since Eire had remained neutral throughout the war, there was no way in which she could attend the San Francisco Conference at which the Charter of the United Nations was drawn up. In so far as the other self-governing dominions were concerned, unlike the situation in 1919 they were present in their own right and with entirely independent delegations. Moreover, the British delegation was no longer described as being that of the Empire. Instead it was present as that of the United Kingdom of Great Britain and Northern Ireland and signed the Charter as such. Australia, Canada, India, New Zealand and South Africa similarly each signed the Charter in its own name and in its own right and in accordance with the alphabetical order in which its name appeared among the totality of delegations. Each of them became a separate original member of the United Nations and the only difference between any of the "colonial" members and the mother country was that the member of the United Nations known as the United Kingdom became a permanent member of the Security Council, but this she did in view of her political significance during the war and as a sponsoring power ranking with China, France, the Soviet Union and the United States, and not as an empire. While it would appear, therefore, that any unity that might have existed prior to 1945 was effectively extinguished by the San Francisco Conference and the constitution of the United Nations, the institutional character of the Commonwealth was revised as an important factor in international politics in connection with the representation on the Security Council of the general membership of the United Nations. In accordance with what is known as the "gentlemen's agreement" concerning the distribution of non-permanent seats,[65] one of these was reserved for the Commonwealth, and the Commonwealth delegations would meet in advance of elections to agree upon their

63. *Id.* at 795.

64. Ireland Act, 12 & 13 Geo. 6, c. 41, s. 2.

65. *See* Green, *Gentlemen's Agreements and the Security Council* (1960) 13 Current Legal Problems 255 at 265 and *Representation in the Security Council—A Survey* (1962) 6 Indian Y.B. Int'l Affairs 48 at 72 and Tables.

candidate. It was accepted practice that this candidate would be elected, although in 1963 the scenario changed. It was understood that Malaya would succeed Ghana as the Commonwealth representative. However, when it came to the election, problems had arisen with regard to East European representation and Indonesia opposed the election of Malaysia, which Malaya had become, and it was ultimately agreed that Czechoslovakia and Malaysia would "split" the remaining two-year term between them. It was not clear whether this was a division of the East European or the Commonwealth seat, for Ghana had been succeeded by the Ivory Coast in order to preserve African representation. Moreover, during the debate, in order to secure sufficient support to ensure election to a half-seat, the Malaysian delegate pointed out that Malaysia was an Asian country and if not elected Asia would be unrepresented when the Philippine term of office terminated.[66] The issue became somewhat historic with the expansion of the non-permanent representation on the Security Council at the end of 1965, for the number of non-permanent members was increased to 10, it being agreed that five would be from African and Asian states, one from Eastern Europe, two from Latin America and the remaining two from western Europe and the rest of the world.[67] From then on, therefore, Commonwealth members of the United Nations would be elected in accordance with this arrangement and not as representatives of the Commonwealth. In fact, at the first election under the revised Charter, Nigeria was elected for a two-year term and New Zealand and Uganda for one year each.

While the Commonwealth might have remained some sort of an institution from the intra-Commonwealth point of view, there is little doubt that with this development in the United Nations any international institutional character to the Commonwealth disappeared, even though Commonwealth members might continue to discuss United Nations matters together and even seek to secure a united front. On the intra-Commonwealth level, new developments were bound to occur with the increasing number of colonial territories achieving dominion status and operating as completely independent states, even, as in the case of India and Pakistan, going to war with each other. The first major development within the Commonwealth casting doubt on its unity in any substantive form, while preserving it in a formal fashion, occurred in 1949 when India intimated its intention to become a republic. At that time a declaration was issued outlining the new arrangement and reaffirming the fact of the equality of the members of the Commonwealth:

> The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, whose countries are united as Members of the British Commonwealth of Nations, and owe a common allegiance to the Crown, which is also a symbol of their free association, have considered the impending constitutional changes in India.
>
> The Government of India have informed the other Governments of the Commonwealth of the intention of the Indian people that under the new Constitution which is about to be adopted India shall become a sovereign independent republic. The Government of India have, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth.
>
> The Governments of the other countries of the Commonwealth, the basis of whose

66. *E.g.* Green, *Malaya/Singapore/Malaysia: Comments on State Competence, Succession and Continuity* (1966) 4 Can. Y.B. Int'l Law 3 at 30-31.

67. Res. 1991 (XVIII).

> membership of the Commonwealth is not hereby changed, accept and recognize India's continuing membership in accordance with the terms of this declaration.
>
> Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, hereby declare that they remain united as free and equal Members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress.

The significance of this statement and its impact, if any, on the status of the Commonwealth was indicated by Prime Minister Nehru in a broadcast to India:

> The Commonwealth is not a superstate in any sense of the term. We have agreed to consider the King as the symbolic Head of this free association. But the King has no function attached to that status in the Commonwealth. So far as the Constitution of India is concerned, the King has no place and we shall owe no allegiance to him.

This view had already been expressed by Prime Minister Malan of South Africa by way of a minute in the records of the Conference at which the new arrangement had been evolved. He pointed out that the use of the term "Head of the Commonwealth" "does not imply that the King discharged any constitutional function by virtue of that headship".[68]

It is clear from this that whatever unity remained to the Commonwealth depended upon the King and not the Crown, so that it would seem that here is a further instance of a type of Personal Union. However, other Commonwealth members became republics, while Malaysia has an elected King in the person of the Yang di-Pertuan Agong, and Tonga enjoys an hereditary monarchy. Nevertheless, for all, regardless of their individual constitutional status, the Queen remains Head of the Commonwealth, a fact which had been clearly recognized at the time of the Queen's accession and the enactment of the Regency Act, and emphasized in 1953 when there was agreement as to the new Royal Style and Titles. Thus, in the case of the United Kingdom:

> Elizabeth II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith,

while in the case of those dominions which have not become republics the name of the dominion in question replaces that of the United Kingdom and there is no reference to the Queen being Defender of the Faith.

A further development regarding the status of the monarch was foreseen by the British government in relation to the attendance at the 1977 Commonwealth Conference in London of President Amin of Uganda. Opposition to his presence in England was strong, but it was pointed out that Britain no longer issues invitations to nor decides upon attendance at such conferences. This is now the responsibility of the Commonwealth Secretariat. It was intimated, however, that he would probably not be invited to any of the functions connected with the Silver Jubilee of the Queen's Accession. Presumably, therefore, what is being celebrated in 1977 is the accession of the Queen of England and some few Commonwealth countries, but not that of the Head of the Commonwealth.

A further development away from the unity of the Crown and perhaps to some extent a denial of the Personal Union concept is to be found in the field of extradition. While some members of the Commonwealth still recognize the validity of the Fugitive Offenders Act,[69] there is a growing

68. Fawcett, *The British Commonwealth in International Law* 82-83 (1963).

69. *Supra*, n. 24.

trend for Commonwealth countries to regulate the rendition of fugitive offenders as among themselves by way of extradition treaties in the same way as is done between independent countries in accordance with international law. But even for those countries which still adhere to the arrangements of the Fugitive Offenders Act there is no longer the possibility of recovering a political offender. At their 1966 meeting the Commonwealth Law Ministers drew up a Scheme relating to the Rendition of Fugitive Offenders within the Commonwealth, which envisaged that:[70]

> The return of a fugitive offender will be precluded by law if the competent judicial or executive authority is satisfied that the offence is an offence of a political character

and the British Fugitive Offenders Act of 1967[71] duly recognizes this fact, so that today it can no longer be argued that an offence directed against the Queen's government in one part of her territories is an offence against her in another part. It would appear, therefore, that it is impossible to commit an offence against the Head of the Commonwealth *eo nomine*.

It should be clear from the developments outlined above on both the international and the intra-Commonwealth planes that it would be a fiction to contend that the Commonwealth today constitutes any form of institution, even though there may be conferences among Prime Ministers, Ministers of Law, Justice and Attorneys General, Ministers of Finance or of Education among Commonwealth representatives rather more frequently than they occur among other states. Moreover, the entry of Britain into the European Common Market with the result, for example, that Europeans now enjoy greater privileges of establishment, residence and enjoyment than do Commonwealth citizens, indicates that the mother country herself is prepared to place regional and "selfish" interests before those of Commonwealth kinship,[72] while the outbreak of hostilities between India and Pakistan leading to the establishment of Bangladesh and the withdrawal of Pakistan from the Commonwealth confirms that the Commonwealth, even through the medium of the Commonwealth Secretariat established in 1965, but lacking real political, administrative or executive power, is no substitute for the United Nations or any other political organization to which individual members of the Commonwealth might belong.[73] In 1976, after the Israeli raid into Entebbe, there was even an instance of one Commonwealth member, Uganda, breaking off diplomatic relations with the mother country.

Perhaps the situation has been best summed up by Sir Kenneth Roberts-Wray:[74]

> The Commonwealth, as such, has no constitution and the community of states collectively known as the Members of the Commonwealth have no written document to describe the relationship of each of them to all the others. But Membership entails legal and other rights and privileges and informal obligations which are known to Members themselves, and even though, as a matter of jurisprudence, we may have to say that, because most of them import no legal rights and obligations, they are not law, that does not mean they are not within the lawyer's province. He may be called upon to advise what Membership involves, and the existence of some of the incidents has a legal basis.
>
> In one word, what membership affords and requires is co-operation. A more informative summary would be consultation, information and mutual assistance.

70. Cmnd. 3008.

71. C. 68, s. 4.

72. For report of ouster of Commonwealth by E.E.C. in British trading relations, *see* The Times, 1 Feb. 1977.

73. *See* text of the Agreed Memorandum on the Commonwealth Secretariat published at the conclusion of 1965 meeting of Commonwealth Heads of Government in London.

74. *Supra*, n. 38 at 92-3.

Despite the reference to legal obligations, there is little law in the examples mentioned by Sir Kenneth and the significance of his reference is reduced somewhat by his including as a "primary principle":[75]

> Save in those exceptional circumstances where there are express agreements (which, naturally, are meant to be carried out) there is no element of specific obligation.

Regardless of all that has been said, it is still possible to say that in strict law there has been little or no change in the legal status of the Commonwealth and that sovereignty remains unified in Britain. Since the Statute of Westminster is a United Kingdom statute, and since so many of the members of the Commonwealth have achieved independence by way of imperial legislation, there is nothing in law to prevent the British parliament from repealing all such statutes and thus re-establishing the Empire in all its pristine glory. However, any such attempt would, from a political point of view, sound the death-knell for whatever remains of the Commonwealth, for there is little doubt that any such action directed against any Commonwealth country would result in the secession of all.[76] This perhaps explains why, as early as 1951, the English Supreme Court was prepared to recognize Pakistan as enjoying the same immunities as any foreign sovereign state.[77]

What of the future? It is clear that the trends of the last few years are towards increasing independence in every sense of that term. It can hardly be said that there is any legal basis to suggest that the Commonwealth constitutes an institution, international or otherwise, and one must search hard for any indication that the legal links—as distinct from any emotional or historic ties—between any members of the Commonwealth or among them and the mother country are any different from those which operate between any two or more foreign states, and this would still be the case if an independent Quebec joined the Commonwealth.

On the other hand, it might be possible if separation does not ensue and Quebec were to acquire a special status within Canada, for the Commonwealth to recognize this fact and confer upon Quebec a type of associate membership somewhere between the present members and the peculiar associate status conferred upon some of the micro-members at present. Equally, a similar line of action might be adopted for Scotland and Wales if and when devolution becomes a fact. Such a development might well be the means to give new life and meaning to the Commonwealth relationship.

Some of the developments to date were foreseen by Lorimer, who seems to have been equally prescient as to what may yet be:[78]

> [T]hough bound together by its ties of blood and speech and historical associations which are strong enough to prove of the utmost importance for international purposes, the English race has already divided itself up into separate political communities which, from the value they attach to political autonomy, from their wide dispersion, and the heterogeneous elements which they have absorbed from other races, it seems impossible should ever amalgamate into a single nation. They can never form a political organism sufficiently consistent to impose one single municipal system on other ethnico-political

75. *Id.* at 94.

76. *See*, however, comments by Murphy of the Australian High Court in *Bistricic* v. *Lokov* (1976) to the effect that such legislation would only be effective within Britain and would lack validity anywhere else, (1977) 3 Commonwealth Law Bulletin 46-8.

77 *Kahan* v. *Pakistan Federation* [1951] 2 K.B. 1003. *See also Sayce* v. *Ameer of Bahawalpur* [1952] 1 All E.R. 326; 2 All E.R. 64; Green, *The Status of Pakistan* (1952) 6 Indian Law Rev. 65.

78. (1883) 1 *The Institutes of the Law of Nations* 130-131; 2 Id. 290-299.

organisms. . . . Each group of our colonies promises to crystallize round a separate centre, and thus to form itself into a composite State. . . . At no distant period each of these composite States will probably send representatives to an imperial council, in place of the imperial government, as at present, sending representatives to them. From the loyalty which they exhibit, not only to their respective central governments, but to the imperial government itself, there seems no prospect of their claiming independence, either of each other or of the mother country. Whilst forming separate States, politically autonomous, they will continue to combine for cosmopolitan purposes; and it is surely not impossible that the idea of combination, with a view to the realization of freedom, not from each other or from the whole, but through each other and through the whole, when exhibited on so great a scale, may extend itself to other ethnico-political groups [although the fate of the shortlived Netherlands-Indonesian Union and the French Union suggest that something more is required]. . . .

. . . As regards our greater and more distant colonies, at all events I am disposed to accept Turgot's dictum, that 'colonies are like fruits, which only hang till they ripen'. It is inconceivable to me that any advances which have as yet been made, or that seem physically possible in locomotion and the transmission of intelligence, can ever convert colonies on the other side of the globe, like Australia and New Zealand, into outlying portions of England; or that communities so much greater, richer, and more powerful than England as they are certain to become, can permanently consent to be political dependencies. They are not ripe as yet; and, till they ripen, I hope they will cling loyally to us, as I am quite sure we shall cling to them. . . . [T]he time will come when the son will grow up, and the father will prove his love for him, not by 'expanding' his own house and household, but by facilitating his son's removal to another house and helping him to become the head of a separate household. . . . Now even if the process of drifing apart should be accelerated by no misunderstanding similar to that which occurred between this country and the United States, as the total change of our colonial policy renders possible, to what changes must we look forward in the next hundred years? Every one who has had to do with colonists knows how very much stronger are the colonial feelings, even of the first generation of native colonists, than those of emigrants ever become; and in a hundred years four, and in some cases five, generations will have sprung from the soil.

It is impossible to fix a period of ripening, because it is dependent on many conditions which may or may not arise. A feeling of injustice like that created by the old colonial system, in which the colonies were regarded as existing, not for their own sake, but for the sake of the mother-country, will . . . certainly hasten it. But assuming matters to take their normal course, and a local self-government to be freely granted, as it is now granted by England to all her colonies of European blood, there is one consideration which I think may help us to guess at what stage of its history a colony will usually cease to cling to the parent stem. Emigrants for the most part do not belong to the historical classes, . . . the classes whose memories of their past are aided by written records . . . and the like. They remember only what they themselves have known, or what their fathers or grandfathers have told them. They feel no inducement to remember more; and in the case of many of them, no small inducement to remember less. After the lapse of 150 years, with the exception of a few cadets of families which have continued to hold their own, there will scarcely be a man or woman in Australia who knows anything of his or her family ties to this country; and as the State rests on the family, when the family link is broken the State link goes along with it, and the political connection ceases to be one for which either the colony or the mother-country will make any sacrifice. All that remains are the ties of race and speech, which are indelible, and cost nothing to maintain. . . . Far from being weakened, these latter ties will be strengthened by the severance of the political link; and I look forward to a growing *rapprochement* between ourselves and our American cousins, now that the relations between our countries are those not of national but international dependence. Whether any international organization, limited to communities of Anglo-Saxon race, and having its centre in London, may grow out of this ethical bond, is one of the most interesting questions which at present occupy the minds of speculative politicians. The chief obstacle to it seems to consist in the attitude which the United States have assumed as the ruling Power in the Western Hemisphere, and entire want of community of interest between colonies so distant from each other as Canada, Australia, and South Africa. For purposes of mutual protection, there can be little doubt that the ethnical bond would suffice to unite them, and that the United States would not be slow to interpose in the event of any colony of Anglo-Saxon race being seriously menaced by a foreign state. But the United States would not enter into any confederation which embraced communities out of America, and, without the United States, an Anglican

confederation would be incomplete as representation of English-speaking states, and would not exhaust the ethnical bond. But what is important for us here to remark is, that this is a colonial and municipal, not an international question. . . .

[W]hatever may be the forms of government which they assume [republican or monarchic], the gradual substitution of ethnical for political bonds of union, both between these new communities themselves and between them and the mother-country, I regard as not only inevitable but desirable. The notion that the progress of the Anglo-Saxon race can take place only by the expansion of England, appears to me to belong to the exclusively English, or rather . . . to the London school of thought. . . . [T]hroughout this work I have represented the freedom of national life and thought as the object of the law of nations; and . . ., as time rolls on, this subject will be more and more fully realized. In the almost entire autonomy in local affairs which has been conceded to the whole of our colonies of European blood, a very important step has already been made in this direction, and so far from the process of assimilation going on even within the three kingdoms, there seems every reason to anticipate that Scotland, at no distant period, will lay claim to that local autonomy for which Ireland has never ceased to cry out, and which her own incapacity for self-government can alone justify us in refusing her. . . . Nothing could be more dreary . . . than one boundless and never-ending London, peopled by a homogeneous though probably by no means a harmonious race. It is contact with variety and originality of character that the enjoyment of life consists, far more than in mere change of physical locality, and, if left to develop along separate lines, there is no reason to doubt that, a hundred years hence, each of our own colonies will afford us this form of enjoyment. . . . New dialects and even physical types, differing from that of the mother-country, will appear. . . . For a time the efforts of young communities in these directions will probably be less successful than those which will continue to be made in old countries; but it by no means follows that it will always be so. . . . No one can tell where God will send His rarest gifts; and the appearance of ten men of genius might, in a single generation, transfer the spiritual hegemony of the Anglo-Saxon race from the mother-country to one of her colonial children.

If the view which I have here presented of the probable future of our colonial empire be correct, it is obvious that the new element with which the international body would have to deal would not be the recognition of greater States, but of a greater number of States. . . .

It is not impossible that the new extra-European States might . . . decline all connection with an international body of which the members must continue to be preponderatingly Europeans. Apart from the scheme of an Anglo-Saxon confederation, it is conceivable that the American and Polynesian groups might form themselves into separate international organisms of their own; but, sprung as they are from European roots, it is inconceivable that they should be independent of the great European organisms, or that it should be independent of them. Most of them contain what Savigny would have called 'particularist' elements, resulting from nationalities which, for several generations, cannot be wholly absorbed by the prevailing colonial type; and very considerable advantages might result from the intervention of an international legislative and judicial body, by which any grievances which they might allege might be considered. . . .

Whether colonies of dependencies of non-European race are destined to reach the stage of national development which will entitle them to international recognition by European States, it is a question that admits of no precise decision. Nor will the decision, at any time, be the same for all of them. . . . [T]he tie of kindred will ultimately be felt to be of a closer kind than the ties of common humanity which bind us to the Mongolian, Polynesian, the Negro, or even the Semitic race. It is time and distance that have held us so long apart; and now that our destinies have brought us together in so marvelous a manner, the natural course seems to be that we should embrace and be friends. . . . When the pupils of the Zenana missions issue from their seclusion, adorned with the graces of the East and the culture of the West they may conquer their conquerors as the Anglo-Saxons conquered the Norman nobles, and a race may spring up not unworthy to inherit an empire which is ruled by a woman.