

Commonwealth Declarations and Acts since 1926

For the British Commonwealth and the Commonwealth of Nations

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Section I - Creation of the British Commonwealth

Balfour Declaration, 1926

We were appointed at the meeting of the Imperial Conference on the 25th October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire *inter se*, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we Hope that we may have laid a foundation on which subsequent Conferences may build.

STATUS OF GREAT BRITAIN AND THE DOMINIONS.

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organisation which now exists or has ever yet been tried. There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined:

They are 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.

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy. Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever. But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negotiations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled. Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. But the principles of equality and similarity, appropriate to

status, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.

SPECIAL POSITION OF INDIA.

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

RELATIONS BETWEEN THE VARIOUS PARTS OF THE BRITISH EMPIRE.

Existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position as described in Section II of this Report. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. Our first task then was to examine these forms with special reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause inconvenience in the conduct of Inter-Imperial Relations.

(a.) The Title of His Majesty the King.

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows: — "George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

Some time before the Conference met, it had been recognised that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had been further ascertained that it would be in accordance with His Majesty's wish that any recommendation for change should be submitted to him as the result of the discussion at the Conference. We are unanimously of the opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read:

"George V, by the Grace of God, of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

(b) Position of Governors-General.

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General* as His Majesty's representative in the Dominions. That position, though now generally well recognised, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative. In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His

Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognised official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognised that the existing procedure might be open to criticism and accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after the Conference had completed its work, but it was recognised by the Committee, as an essential feature of any change or development in the channels of communication, that a Governor-General should be supplied with copies of all documents of importance and in general should be kept as fully informed as is His Majesty the King in Great Britain of Cabinet business and public affairs.

* The Governor of Newfoundland is in the same position as the Governor-General of a Dominion.

(c) Operation of Dominion Legislation.

Our attention was also called to various points in connection with the operation of Dominion legislation, which, it was suggested, required clarification. The particular points involved were:

(d)

The present practice under which Acts of the Dominion Parliaments are sent each year to London, and it is intimated, through the Secretary of State for Dominion Affairs, that "His Majesty will not be advised to exercise his powers of disallowance" with regard to them.

(e)

The reservation of Dominion legislation, in certain circumstances, for the signification of His Majesty's pleasure which is signified on advice tendered by His Majesty's Government in Great Britain.

(f)

The difference between the legislative competence of the Parliament at Westminster and of the Dominion Parliaments in that Acts passed by the latter operate, as a general rule, only within the territorial area of the Dominion concerned.

(g)

The operation of legislation passed by the Parliament at Westminster in relation to the Dominions.

In this connection special attention was called to such Statutes as the Colonial Laws Validity Act. It was suggested that in future uniformity of legislation as between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement. We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions. On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that "the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada." On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs.

Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of Members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those Members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned. As already indicated, however, we are of opinion that there are points arising out of these considerations, and in the application of these general principles, which will require detailed examination, and we accordingly recommend that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines:

"To enquire into, report upon, and make recommendations concerning

(i.) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.

(ii.)

(a.)

The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.

(b.)

The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion.

(iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."

SYSTEM OF COMMUNICATION AND CONSULTATION.

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between Conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions *inter se*. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential, and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in section IV (b) of this Report, the Governor-General is no longer the representative of His Majesty's Government in Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in Great Britain. We summed up our conclusions in the following Resolution which is submitted for the consideration of the Conference: —

“The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty’s Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers.”

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries:

His Majesty the King *title of above* for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations) ,

AB. for the Dominion of Canada,

CD. for the Commonwealth of Australia,

EF. for the Dominion of New Zealand,

GH. for the Union of South Africa,

IJ. for the Irish Free State,

KL for India,

MN who, having communicated their full powers, found in good and due form, have agreed as follows:

.....
.....

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

AB......

CD......

EF......

GH......

IJ......

KL......

MN......

(or if the territory for which each Plenipotentiary signs is to be specified:

(for Great Britain, &c.).....*AB.*

(for Canada).....*CD.*

(for Australia).....*EF.*

(for New Zealand).....*GH.*

(for South Africa).....*IJ.*

(for the Irish Free State).....*KL.*

(for India).....*MN.*

Statute Of Westminster, 1931

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930 [11th December, 1931]

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:--

1. In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.
Meaning of "Dominion" in this Act.

2. (1) *The Colonial Laws Validity Act, 1865*, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to

any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

Validity of laws made by Parliament of a Dominion. 28 & 29 Vict. c. 63.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Power of Parliament of Dominion to legislate extra-territorially.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to the enactment thereof.

Parliament of United Kingdom not to legislate for Dominion except by consent.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the *Merchant Shipping Act, 1894*, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

Powers of Dominion Parliaments in relation to merchant shipping. 57 & 58 Vict. c. 60.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the *Colonial Courts of Admiralty Act, 1890* (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

Powers of Dominion Parliaments in relation to Courts of Admiralty. 53 & 54 Vict. c. 27.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the *British North America Acts, 1867 to 1930*, or any order, rule or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

Saving for British North America Acts and application of the Act to Canada.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

Saving for Constitution Acts of Australia and New Zealand.

9. (1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

Saving with respect to States of Australia.

10. (1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted.

11. Notwithstanding anything in the *Interpretation Act, 1889*, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

Meaning of "Colony" in future Acts. 52 & 53 Vict. c. 63.

12. This Act may be cited as the *Statute of Westminster, 1931*.

Section II - Creation of the Commonwealth Of Nations

Indian Independence Act, 1947

An act to make provision for the setting up in India of two Independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions (18th July 1947)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Section 1

(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day".

Section 2

(1) Subject to the provisions of subsections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan.

(2) Subject to the provisions of subsections (3) and (4) of this section, the territories of Pakistan shall be-

(a) the territories which, on the appointed day, are included in the Provinces of East Bengal and Punjab, as constituted under the two following sections;

(b) the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and

(c) if, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that-

(a) no area not forming part of the territories specified in subsection (1) or, as the case may be, subsection (2), of this section shall be included in either Dominions without the consent of that Dominions; and

(b) no area with forms part of the territories specified in the said subsection (1) or, as the case may be, the said subsection (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

(4) Without prejudice to the generality of the provisions of subsection (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

Section 3

(1) As from the appointed day-

(a) the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist; and

(b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.

(2) If, whether before or after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal, then, as from that day, a part of the Province of Assam shall, in accordance with the provisions of subsection (3) of this section, form part of the new Province of East Bengal.

(3) The boundaries of the new Provinces aforesaid and, in the event mentioned in subsection (2) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined-

(a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned in subsection (2) of this section, the Assam District of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal;

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal; and

(c) in the event mentioned in subsection (2) of this section, the District of Sylhet shall be excluded from the Province of Assam.

(4) In this section, the expression "award" means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

Section 4

(1) As from the appointed day-

(a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist; and

(b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.

(2) The boundaries of the said new Provinces shall be as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined-

(a) the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of Punjab; and

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab.

(3) In this section, the expression "award", means, in relation to a boundary commission, the decision of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

Section 5

For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purpose of the government of the Dominion:

Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.

Section 6

(1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation.

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions.

[Words 'In His Majesty's name' from above paragraph omitted by Constitution (Amendment) Act, 1950, Section 2]

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of the Dominion.

(5) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.

(6) The power referred to in subsection (1) of this section extends to the making of laws limiting for the future the powers of the Legislature of the Dominion.

Section 7

(1) As from the appointed day-

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India.

(b) The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and

(c) There lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise:

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "Indiæ Imperator" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

Section 8

(1) In the case of each of the new Dominion, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.

[Constitution (Amendment) Act, 1954, Section 23 inserted at this point:]

In section 8 of the Indian Independence Act, 1947, after subsection (1), the following shall be inserted:-

"Notwithstanding anything contained in this subsection or in the Government of India Act, 1935, the powers of the Constituent Assembly of Pakistan shall include and shall be deemed always to have included power to make constitutional provisions for the whole of the Federation of Pakistan as defined in section 5 of the Government of India Act, 1935, or for any part thereof; and notwithstanding anything contained in section 204 or in any other provision of the Government of India Act, 1935, or of any other law, the power of the Constituent Assembly exercised under this subsection shall not be called in question in any court of law."

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under subsection (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly:

Provided that --

(a) the said provisions shall apply separately in relation to each of the new Dominions and nothing in this subsection shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions;

(b) nothing in this subsection shall be construed as continuing in force on or after the appointed day any form of control by His Majesty's Government in the United Kingdom over the affairs of the new Dominions or of any Province or other part thereof;

(c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgment as respects any matter shall cease to have effect as from the appointed day;

(d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure, and no Provincial Act shall be disallowed by His Majesty thereunder; and

(e) the powers of the Federal Legislature or Indian Legislature under that Act, as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers exercisable by that Assembly under subsection (1) of this section.

(3) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by subsection (2) of this section and the orders therein referred to, operates to limit the power of the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of subsection (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature.

Section 9

(1) The Governor-General shall by order make such provision as appears to him to be necessary or expedient -

- (a) for bringing the provisions of this Act into effective operation;
- (b) for dividing between the new Dominions, and between the new Provinces to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General in Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist;
- (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders in Council, rules and other instruments made thereunder, in their application to the separate new Dominions;
- (d) for removing difficulties arising in connection with the transition to the provisions of this Act;
- (e) for authorizing the carrying on of the business of the Governor-General in Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935;
- (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day;
- (g) for authorizing the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent;
- (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India; and
- (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any legislature, court or other authority in the new Dominions and creating new legislatures, courts or other authorities therein.

(2) The powers conferred by this section on the Governor-General shall, in relation to their respective Provinces, be exercisable also by the Governors of the Provinces which, under this Act, are to cease to exist; and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgment.

(3) This section shall be deemed to have had effect as from the third day of June, nineteenth hundred and forty-seven, and any order of the Governor-General or any Governor made on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date earlier than the said third day of June:

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof.

(4) Any orders made under this section, whether before or after the appointed day, shall have effect - up to the appointed day, (a) in British India; (b) on and after the appointed day, in the new Dominion or Dominions concerned; and (c) outside British India, or, as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law of the Legislature of the Dominion or Dominions concerned would have on or after the appointed day, but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion.

(5) No order shall be made under this section, by the Governor of any Province, after the appointed day, or, by the Governor-General, after the thirty-first day of March, nineteen hundred and forty-nine, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion.

(6) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if, under this

Act, the Province Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province.

Section 10

(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.

(2) Every person who-

(a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or

(b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions, shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respect the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section two hundred and seventy-three of the Government of India Act, 1935, to be governed otherwise than by Orders in Council made (whether before or after the passing of this Act or the appointed day) by His Majesty in Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

Section 10 A

[This section was inserted by Constitution (Amendment) Act, 1951, Section 93, which stated:]

After section 10 of the Indian Independence Act, 1947, the following new section shall be inserted, namely:-

"10A. For the removal of doubts it is hereby declared that, subject to the other provisions of this Act and of the Government of India Act, 1935, the power to alter any order, rule, regulation or other instrument passed or made by the Secretary of State or the Secretary of State in Council and existing immediately before the fifteenth day of August 1947 and continuing on and after that day as part of the law of Pakistan in virtue of section 18 of this Act is vested in the Governor-General and may be exercised by him by order."

Section 11

(1) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions, and for the command and governance of those forces until the division is completed.

(2) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is attached to or serving with any of His Majesty's Indian forces - (a) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his

rank and functions; but (b) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

Section 12

(1) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United Kingdom, or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may, on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which, before the appointed day, were included in India, not being Indian forces.

(2) In its application in relation to His Majesty's military forces, other than Indian forces, the Army Act shall have effect on or after the appointed day- (a) as if His Majesty's Indian forces were not included in the expressions "the forces", "His Majesty's forces" and "the regular forces"; and

(b) subject to the further modifications specified in Parts I and II of the Third Schedule to this Act.

(3) Subject to the provisions of subsection (2) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions, shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces not being Indian forces, the same functions as were, before the appointed day, performed by them, or by the authorities corresponding to them, whether by virtue of the Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces.

(4) The Provisions of subsections (2) and (3) of this section shall apply in relation to the air forces of His Majesty, not being Indian air forces, as they apply in relation to His Majesty's military forces, subject, however, to the necessary adaptations, and, in particular, as if-

(a) for the references to the Army Act there were substituted references to the Air Force Act; and

(b) for the reference to Part II of the Third Schedule to this Act there were substituted a reference to Part III of that Schedule.

Section 13

(1) In the application of the Naval Discipline Act to His Majesty's naval forces, other than Indian naval forces, references to His Majesty's navy and His Majesty's ships shall not, as from the appointed day, include references to His Majesty's Indian navy or the ships thereof.

(2) In the application of the Naval Discipline Act by virtue of any law made in India before the appointed day to Indian naval forces, references to His Majesty's navy and His Majesty's ships shall, as from the appointed day, be deemed to be, and to be only, references to His Majesty's Indian navy and the ships thereof.

(3) In section ninety B of the Naval Discipline Act (which, in certain cases, subjects officers and men of the Royal Navy and Royal Marines to the law and customs of the ships and naval forces of other parts of His Majesty's dominions) the words "or of India" shall be repealed as from the appointed day, wherever those words occur.

Section 14

(1) A Secretary of State, or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, is hereby authorized to continue for the time being the performance, on behalf of whatever government or governments may be concerned, of functions as to the making of payments and other matters similar to the functions which, up to the appointed day, the Secretary of State was performing on behalf of governments constituted or continued under the Government of India Act, 1935.

(2) The functions referred to in subsection (1) of this section include functions as respects the management of, and the making of payments in respect of government debt, and any enactments relating to such debt shall have effect accordingly:

Provided that nothing in this subsection shall be construed as continuing in force so much of any enactment as empowers the Secretary of State to contract sterling loans on behalf of any such Government as aforesaid or as applying to the Government of either of the new Dominions the prohibition imposed on the Governor-General in Council by section three hundred and fifteen of the Government of India Act, 1935, as respects the contracting of sterling loans.

(3) As from the appointed day, there shall not be any such advisers of the Secretary of State as are provided for by section two hundred and seventy-eight of the Government of India Act, 1935, and that section, and any provisions of that Act which require the Secretary of State to obtain the concurrence of his advisers, are hereby repealed as from that day.

(4) The Auditor of Indian Home Accounts is hereby authorised to continue for the time being to exercise his functions as respects the accounts of the Secretary of State or any such other Minister of the Crown as is mentioned in subsection (1) of this section, both in respect of activities before, and in respect of activities after, the appointed day, in the same manner as nearly as may be as he would have done if this Act had not passed.

Section 15

(1) Notwithstanding anything in this Act, and, in particular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment which, but for the passing of this Act, would authorized legal proceedings to be taken, in India or elsewhere, by or against the Secretary of State in respect of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provision on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned.

(2) Subject to the provisions of this subsection, any legal proceedings which, but for the passing of this Act, could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India, shall instead be brought- (a) in the case of proceedings in the United Kingdom, by or against the High Commissioner; (b) in the case of proceedings, by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned, and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately before the appointed day shall be continued by or against the High Commissioner or, as the case may be, the person designated as aforesaid:

Provided that, at any time after the appointed day, the right conferred by this subsection to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner or person designated as aforesaid be withdrawn by a law of the Legislature of either of the new Dominions so far as that Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law.

(3) In this section, the expression "the High Commissioner" means, in relation to each of the new Dominions any such officer as may for the time being be authorized to perform in the United Kingdom, in relation to that Dominion, functions similar to those performed before the appointed day, in relation to the Governor-General in Council, by the High Commissioner referred to in section three hundred and two of the Government of India Act, 1935; and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty in Council, or of a petition for special leave to appeal to His Majesty in Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom.

Section 16

(1) Subsections (2) to (4) of section two hundred and eighty-eight of the Government of India Act, 1935 (which confer on His Majesty power to make by Order in Council provision for the government of Aden) shall cease to have effect and the British Settlements Acts, 1887 and 1945 (which authorize His Majesty to make laws and establish institutions for British Settlements as defined in those Acts) shall apply in relation to Aden as if it were a British Settlement as so defined.

(2) Notwithstanding the repeal of the said subsections (2) to (4), the Orders in Council in force thereunder at the date of the passing of this Act shall continue in force, but the said Orders in Council, any other Orders in Council made under the Government of India Act, 1935, in so far as they apply to Aden, and any enactments applied to Aden or amended in relation to Aden by any such Orders in Council as aforesaid, may be repealed, revoked or amended under the powers of the British Settlements Acts, 1887 and 1945.

(3) Unless and until provision to the contrary is made as respects Aden under the powers of the British Settlements Acts, 1887 and 1945, or, as respects the new Dominion in question, by a law of the Legislature of that Dominion, the provisions of the said Orders in Council and enactments relating to appeals from any courts in Aden to any courts which will, after the appointed day, be in either of the new Dominions, shall continue in force in their application both to Aden and to the Dominion in question, and the last mentioned courts shall exercise their jurisdiction accordingly.

Section 17

(1) No court in either of the new Dominions shall, by virtue of the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940, have jurisdiction in or in relation to any proceedings for a decree for the dissolution of a marriage, unless those proceedings were instituted before the appointed day, but, save as aforesaid and subject to any provision to the contrary which may hereafter be made by any Act of the Parliament of the United Kingdom or by any law of the Legislature of the new Dominion concerned, all courts in the new Dominions shall have the same jurisdiction under the said Acts as they would have had if this Act had not been passed.

(2) Any rules made on or after the appointed day under subsection (4) of section one of the Indian and Colonial Divorce Jurisdiction Act, 1926, for a court in either of the new Dominions shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of the Dominion concerned, and so much of the said subsection and of any rules in force thereunder immediately before the appointed day as require the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect.

(3) The reference in subsection (1) of this section to proceedings for a decree for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of a marriage as is authorized by section eight of the Matrimonial Causes Act, 1937.

(4) Nothing in this section affects any court outside the new Dominions, and the power conferred by section two of the Indian and Colonial Divorce Jurisdiction Act, 1926, to apply certain provisions of that Act to other parts of His Majesty's dominions as they apply to India shall be deemed to be power to apply those provisions as they would have applied to India if this Act had not passed.

Section 18

(1) In so far as any Act of Parliament, Order in Council order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require:

Provided that nothing in this subsection shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this subsection is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provisions of subsection (1) of this section and to any other express provision of this Act, the Orders in Council made under subsection (5) of section three hundred and eleven of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, as far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions.

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

Section 19

(1) References in this Act to the Governor-General shall, in relation to any order to be made or other act done on or after the appointed day, be construed- (a) where the order or other act concerns one only of the new Dominions, as references to the Governor-General of that Dominion; (b) where the order or other act concerns both of the new Dominions and the same person is the Governor-General of both those Dominions, as references to that person; and (c) in any other case, as references to the Governor-General of the new Dominions, acting jointly.

(2) References in this Act to the Governor-General shall, in relation to any order to be made or other act done before the appointed day, be construed as references to the Governor-General of India within the meaning of the Government of India Act, 1935, and so much of that or any other Act as requires references to the Governor-General to be construed as references to the Governor-General in Council shall not apply to references to the Governor-General in this Act.

(3) References in this Act to the Constituent Assembly of a Dominion shall be construed as references- (a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified-

(i) by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan; and (ii) should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province; and

(iii) by the inclusion of members representing West Bengal and East Punjab; and

(iv) should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam and the inclusion of members chosen to represent the remainder of that Province;

(b) in relation to Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan:

Provided that nothing in this subsection shall be construed as affecting the extent to which representatives of the Indian States take part in either of the said Assemblies, or as preventing the filling of casual vacancies in the said Assemblies, or as preventing the participation in either of the said Assemblies, in accordance with such arrangements as may be made in that behalf, of representatives

of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend and be deemed always to have extended to the making of provision for the matters specified in this proviso.

(4) In this Act, except so far as the context otherwise requires- references to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946;

"India", where the reference is to a state of affairs existing before the appointed day or which would have existed but for the passing of this Act, has the meaning assigned to it by section three hundred and eleven of the Government of India Act, 1935;

"Indian forces" includes all His Majesty's Indian forces existing before the appointed day and also any forces of either of the new Dominions;

"pension" means, in relation to any person, a pension whether contributory or not, of any kind whatsoever payable to or in respect of that person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or other additions thereto, of subscriptions to a provident fund;

"Province" means a Governor's Province;

"remuneration" includes leave pay, allowances and the cost of any privileges or facilities provided in kind.

(5) Any power conferred by this Act to make any order includes power to revoke or vary any order previously made in the exercise of that power.

Section 20

This Act may be cited as the Indian Independence Act, 1947.

Schedules

First Schedule

Section 3

Bengal Districts Provisionally Included In The New Province Of East Bengal

In the Chittagong Division, the districts of Chittagong, Noakhali and Tippera.

In the Dacca Division, the districts of Bakarganj, Dacca, Faridpur and Mymensingh.

In the Presidency Division, the districts of Jessore, Murshidabad and Nadia.

In the Rajshahi Division, the districts of Bogra, Dinajpur, Malda, Pabna, Rajshahi and Rangpur.

Second Schedule

Section 4

Districts provisionally included in the new province of West Punjab

In the Lahore Division, the districts of Gujranwala, Gurdaspur, Lahore, Sheikhpura and Sialkot.

In the Rawalpindi Division, the districts of Attock, Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur.

In the Multan Division, the districts of Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh.

Third Schedule

Section 12

Modifications of Army Act and Air Force Act in relation to British Forces

Part 1: Modifications of Army Act applicable also to Air Force Act

1. The proviso to section forty-one (which limits the jurisdiction of courts martial) shall not apply to offences committed in either of the new Dominions or in any of the other territories which were included in India before the appointed day.

2. In section forty-three (which relates to complaints), the words "with the approval of the Governor-General of India in Council" shall be omitted.

3. In subsections (8) and (9) of section fifty-four (which, amongst other things, require certain sentences to be confirmed by the Governor-General in Council), the words "India or" the words "by the Governor-General, or, as the case may be" and the words "in India, by the Governor-General, or, if he has been tried" shall be omitted.
 4. In subsection (3) of section seventy-three (which provides for the nomination of officers with power to dispense with courts martial for desertion and fraudulent enlistment) the words "with the approval of the Governor-General" shall be omitted.
 5. The powers conferred by subsection (5) of section one hundred and thirty (which provides for the removal of insane persons) shall not be exercised except with the consent of the officer commanding the forces in the new Dominions.
 6. In subsection (2) of section one hundred and thirty-two (which relates to rules regulating service prisons and detention barracks) the words "and in India for the Governor-General" and the words "the Governor-General" shall be omitted except as respects rules made before the appointed day.
 7. In the cases specified in subsection (1) of section one hundred and thirty-four inquests shall be held in all cases in accordance with the provisions of subsection (3) of that section.
 8. In section one hundred and thirty-six (which relates to deductions from pay), in subsection (1) the words "India or" and the words "being in the case of India a law of the Indian legislature", and the whole of subsection (2), shall be omitted.
 9. In paragraph (4) of section one hundred and thirty-seven (which relates to penal stoppages from the ordinary pay of officers), the words "or in the case of officers serving in India the Governor-General" the words "India or" and the words "for India or, as the case may be" shall be omitted.
 10. In paragraph (12) of section one hundred and seventy-five and paragraph (11) of section one hundred and seventy-six (which apply the Act to certain members of His Majesty's Indian Forces and to certain other persons) the word "India" shall be omitted wherever it occurs.
 11. In subsection (1) of section one hundred and eighty (which provides for the punishment of misconduct by civilians in relation to courts martial) the words "India or" shall be omitted wherever they occur.
 12. In the provisions of section one hundred and eighty-three relating to the reduction in rank of non-commissioned officers, the words "with the approval of the Governor-General" shall be omitted in both places where they occur.
- Part 2: Modifications of Army Act
- Section 184B (which regulates relations with the Indian Air Force) shall be omitted.
- Part 3: Modifications of Air Force Act
1. In section 179D (which relates to the attachment of officers and airmen to Indian and Burma Air Forces), the words "by the Air Council and the Governor-General of India or, as the case may be", and the words "India or", wherever those words occur, shall be omitted.
 2. In section 184B (which regulates relations with Indian and Burma Air Forces) the words "India or" and the words "by the Air Council and the Governor-General of India or, as the case may be", shall be omitted.
 3. Sub-paragraph (e) of paragraph (4) of section one hundred and ninety (which provides that officers of His Majesty's Indian Air Force are to be officers within the meaning of the Act) shall be omitted.

London Declaration, 1949

"The Government 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 the 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 as the Head of the Commonwealth.

"The Governments of other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise 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."

Section III – Reforming Commonwealth Membership

Harare Declaration, 1991

1. The Heads of Government of the countries of the Commonwealth, meeting in Harare, reaffirm their confidence in the Commonwealth as a voluntary association of sovereign independent states, each responsible for its own policies, consulting and co-operating in the interests of their peoples and in the promotion of international understanding and world peace.
2. Members of the Commonwealth include people of many different races and origins, encompass every state of economic development, and comprise a rich variety of cultures, traditions and institutions.
3. The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law. The Commonwealth way is to seek consensus through consultation and the sharing of experience. It is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation to all in the spirit of the Charter of the United Nations.
4. Its members also share a commitment to certain fundamental principles. These were set out in a Declaration of Commonwealth Principles agreed by our predecessors at their Meeting in Singapore in 1971. Those principles have stood the test of time, and we reaffirm our full and continuing commitment to them today. In particular, no less today than 20 years ago:
 - we believe that international peace and order, global economic development and the rule of international law are essential to the security and prosperity of mankind;
 - we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
 - we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;
 - we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality;
 - we recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst our members.
5. In Harare, our purpose has been to apply those principles in the contemporary situation as the Commonwealth prepares to face the challenges of the 1990s and beyond.
6. Internationally, the world is no longer locked in the iron grip of the Cold War. Totalitarianism is giving way to democracy and justice in many parts of the world. Decolonisation is largely complete. Significant changes are at last under way in South Africa. These changes, so desirable and heartening in themselves, present the world and the Commonwealth with new tasks and challenges.
7. In the last twenty years, several Commonwealth countries have made significant progress in economic and social development. There is increasing recognition that commitment to market principles and openness to international trade and investment can promote economic progress and improve living standards. Many Commonwealth countries are poor and face acute problems, including excessive population growth, crushing poverty, debt burdens and environmental

degradation. More than half our member states are particularly vulnerable because of their very small societies.

8. Only sound and sustainable development can offer these millions the prospect of betterment. Achieving this will require a flow of public and private resources from the developed to the developing world, and domestic and international regimes conducive to the realisation of these goals. Development facilitates the task of tackling a range of problems which affect the whole global community such as environmental degradation, the problems of migration and refugees, the fight against communicable diseases, and drug production and trafficking.
9. Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:
 - o the protection and promotion of the fundamental political values of the Commonwealth:
 - democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government;
 - fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
 - o equality for women, so that they may exercise their full and equal rights;
 - o provision of universal access to education for the population of our countries;
 - o continuing action to bring about the end of apartheid and the establishment of a free, democratic, non-racial and prosperous South Africa;
 - o the promotion of sustainable development and the alleviation of poverty in the countries of the Commonwealth through:
 - a stable international economic framework within which growth can be achieved;
 - sound economic management recognising the central role of the market economy;
 - effective population policies and programmes;
 - sound management of technological change;
 - the freest possible flow of multilateral trade on terms fair and equitable to all, taking account of the special requirements of developing countries;
 - an adequate flow of resources from the developed to developing countries, and action to alleviate the debt burdens of developing countries most in need;
 - the development of human resources, in particular through education, training, health, culture, sport and programmes for strengthening family and community support, paying special attention to the needs of women, youth and children;
 - effective and increasing programmes of bilateral and multilateral co-operation aimed at raising living standards;
 - o extending the benefits of development within a framework of respect for human rights;
 - o the protection of the environment through respect for the principles of sustainable development which we enunciated at Langkawi;
 - o action to combat drug trafficking and abuse and communicable diseases;
 - o help for small Commonwealth states in tackling their particular economic and security problems;
 - o support of the United Nations and other international institutions in the world's search for peace, disarmament and effective arms control; and in the promotion of international consensus on major global political, economic and social issues.
10. To give weight and effectiveness to our commitments we intend to focus and improve Commonwealth co-operation in these areas. This would include strengthening the capacity of the

Commonwealth to respond to requests from members for assistance in entrenching the practices of democracy, accountable administration and the rule of law.

11. We call on all the intergovernmental institutions of the Commonwealth to seize the opportunities presented by these challenges. We pledge ourselves to assist them to develop programmes which harness our shared historical, professional, cultural and linguistic heritage and which complement the work of other international and regional organisations.
12. We invite the Commonwealth Parliamentary Association and non-governmental Commonwealth organisations to play their full part in promoting these objectives, in a spirit of co-operation and mutual support.
13. In reaffirming the principles of the Commonwealth and in committing ourselves to pursue them in policy and action in response to the challenges of the 1990s, in areas where we believe that the Commonwealth has a distinctive contribution to offer, we the Heads of Government express our determination to renew and enhance the value and importance of the Commonwealth as an institution which can and should strengthen and enrich the lives not only of its own members and their peoples but also of the wider community of peoples of which they are a part.

Edinburgh Communiqué, 1997

1. Commonwealth Heads of Government met in Edinburgh from 24-27 October 1997. Of the 51 countries which attended the Meeting, 43 were represented by Heads of State or Prime Ministers. The Meeting was chaired by the British Prime Minister, the Rt. Hon. Tony Blair.
2. The Opening Session of the Meeting was addressed by Her Majesty Queen Elizabeth II, Head of the Commonwealth.
3. Heads of Government expressed satisfaction at the return of Fiji on 1 October 1997 to the Commonwealth, as its 54th member state.
4. Heads of Government congratulated the Governments and peoples of India and Pakistan who have recently celebrated their 50th anniversaries of independence.
5. Heads of Government conveyed their appreciation for the excellent arrangements made for their Meeting and the warm hospitality extended by the British Government and people, as well as for the Chairman's admirable conduct of the Meeting.
6. Heads of Government adopted the Edinburgh Commonwealth Economic Declaration on Promoting Shared Prosperity, which they saw as a fitting complement to the Harare Commonwealth Declaration of 1991.
7. Heads of Government expressed concern about the special problems of the Least Developed Countries (LDCs). To enable them to share the benefits of globalisation, they invited donors to work for the target of 0.15 per cent of GNP for LDCs. They also resolved to promote the role of micro credit in poverty reduction.
8. Heads of Government received with satisfaction the attached Report of the Chairman of the Ministerial Group on Small States. They also welcomed the Report of an Advisory Group, A Future for Small States: Overcoming Vulnerability, as an important Commonwealth contribution towards addressing the particular concerns of small states, and agreed on a package of measures to alleviate these concerns.
9. Heads of Government reaffirmed their commitment to the fundamental values of the Commonwealth, as set out in the Harare Commonwealth Declaration of 1991 and emphasised that democracy, good governance, sustainable development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing. They commended the Commonwealth Parliamentary Association for its work in strengthening the democratic culture and effective parliamentary practices, and its efforts to enhance the participation of women in public life.
10. Heads of Government reaffirmed their support for the valuable role played by the Secretary-General's good offices, at the request of the concerned member governments, to help resolve potential or actual conflicts.
11. Heads of Government received the Report from the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG) covering three countries, viz. The Gambia, Nigeria and Sierra Leone, and accepted its recommendations.
12. They welcomed the completion of the electoral phase of the transition to civilian, democratic and constitutional rule in The Gambia and received the assurances of the Gambian authorities that they would further demonstrate their stated commitment to the Harare principles.
13. Heads of Government observed that the continued existence of a military government in Nigeria was a prime source of Commonwealth concern. They expressed concern about the failure to observe fundamental human rights, in particular the continued detention and imprisonment of many Nigerians, including Chief Mshood Abiola and General Olusegun Obasanjo. Accordingly, they decided that Nigeria should remain suspended from the Commonwealth.

14. They noted the positive contribution which Nigeria has been making to efforts through Economic Community of West African States (ECOWAS) in support of democratic government within the West African region, and expressed the hope that this reflected a determination to comply with the Harare principles in its domestic policies.

15. Heads of Government also empowered CMAG to invoke, in the period before 1 October 1998, Commonwealth-wide implementation of any or all of the measures recommended by CMAG if, in CMAG's view, these would serve to encourage greater integrity of the process of transition and respect for human rights in Nigeria. These included:

- visa restrictions on members of the Nigerian regime and their families;
- the withdrawal of military attachés;
- the cessation of military training;
- an embargo on the export of arms;
- the denial of educational facilities to members of the Nigerian regime and their families;
- a visa-based ban on all sporting contacts;
- a downgrading of cultural links; and
- the downgrading of diplomatic missions.

16. Heads of Government agreed that, following 1 October 1998, CMAG should assess whether Nigeria had satisfactorily completed a credible programme for the restoration of democracy and civilian government. They further agreed that if, in that assessment, Nigeria had completed a credible transition to democratic government and to observance of the Harare principles, then the suspension will be lifted; and if not and it remained in serious violation of the Harare principles, Heads of Government would consider Nigeria's expulsion from the association and the introduction of further measures in consultation with other members of the international community as recommended by CMAG. Such measures would include a mandatory oil embargo, a ban on air-links with Nigeria and the freezing of the financial assets and bank accounts in foreign countries of members of the regime and their families.

17. Heads of Government strongly condemned the military coup in Sierra Leone in May 1997, which resulted in the unconstitutional overthrow of its democratically-elected government, and called for the immediate reinstatement of President Ahmad Tejan Kabbah, whom they welcomed to their Meeting. They endorsed the decision taken by CMAG, in accordance with the provisions of the Millbrook Commonwealth Action Programme, that pending the restoration of the legitimate government, the participation of the illegal regime of Sierra Leone in the councils of the Commonwealth should remain suspended.

18. Heads of Government welcomed UN Security Council Resolution 1132 (1997) imposing petroleum, weapons and travel sanctions on the military junta in Sierra Leone and authorising ECOWAS to impose economic measures against the regime. They urged member governments to co-operate in the implementation of these sanctions, and in ensuring the continued isolation of the regime in Freetown within the Commonwealth and the wider international community. They agreed to assist the victims of the situation in Sierra Leone in their own countries, as well as in other countries of the Commonwealth which may request such assistance. They pledged the support of the Commonwealth for the efforts of ECOWAS to resolve the Sierra Leone crisis, including the provision of technical and logistical support to enable ECOWAS to carry out its responsibilities. They also pledged Commonwealth support for the reconstruction of Sierra Leone upon the resolution of the crisis. In the meantime, they looked forward to further clarification of the reported agreement between the ECOWAS Ministerial delegation and the military junta that the latter would demit office and allow the reinstatement of President Tejan Kabbah in six months' time.

19. Heads of Government reviewed the composition, terms of reference and operation of CMAG. They decided that CMAG should continue its work as a standing ministerial mechanism to address serious and persistent violations of the principles of the Harare Commonwealth Declaration. They agreed that CMAG should, in the two-year period after the Edinburgh CHOGM, consist of the following countries: Barbados, Botswana, Britain, Canada, Ghana, Malaysia, New Zealand and Zimbabwe. They further agreed that in future CMAG's remit should extend to member countries deemed to be in serious or persistent violation of the Harare principles, on the basis of established guidelines. They decided that the Commonwealth Secretary-General, acting on his/her own or at the request of a member government, should bring the situation in question to the attention of the CMAG membership, which would then include it or otherwise in its work programme in the light of its guiding principles.

20. Heads of Government received and endorsed a report from the Intergovernmental Group on Criteria for Commonwealth Membership. They agreed that in order to become a member of the Commonwealth, an applicant country should, as a rule, have had a constitutional association with an existing Commonwealth member; that it should comply with Commonwealth values, principles and priorities as set out in the Harare Declaration; and that it should accept Commonwealth norms and conventions.

21. Recalling Palestine's historic association with the Commonwealth, Heads of Government welcomed the interest expressed by the Palestinian Authority in Commonwealth membership. They recognised that, under the Oslo Accords, Palestine may attain state sovereignty in 1999. Once this was so, the case for membership would be duly determined in accordance with the agreed criteria for Commonwealth membership. Heads of Government also considered applications for membership of the Commonwealth from Rwanda and Yemen and agreed that these should be kept under review in the context of the criteria endorsed by them.

22. Heads of Government reaffirmed their support for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus. They called for the implementation of United Nations resolutions on Cyprus, in particular Security Council Resolutions 365 (1974), 550 (1984) and 939 (1994). They regretted that negotiations on a solution have been at an impasse for too long and strongly supported the process of direct intercommunal talks under the UN Secretary-General's mission of good offices. They expressed concern about recent threats of use of force and integration of the occupied territory by Turkey and reiterated support for President Clerides's demilitarisation proposal. They called for the withdrawal of all Turkish forces and settlers, the return of the refugees to their homes, the restoration of and respect for human rights of all Cypriots and the accounting of all missing persons. They expressed concern and disappointment that progress had been impeded by the efforts of the Turkish Cypriot side to introduce pre-conditions to the talks and called for a co-operative attitude from all sides for the achievement of a comprehensive, just and workable settlement on the basis of a bi-communal and bi-zonal federation. While noting the existence of the Commonwealth Action Group on Cyprus, they welcomed the initiative of the Commonwealth Secretary-General to nominate an observer at the UN-sponsored negotiations. They recognised that Britain as a permanent member of the Security Council and as a guarantor Power has a special position in this matter.

23. Heads of Government reaffirmed their strong support for the territorial integrity, security and sovereignty of Belize. They welcomed the consultations and co-operation between Guatemala and Belize on the implementation of confidence-building measures and called for continued dialogue at the highest levels. They encouraged Guatemala to recognise the constitutional borders of Belize to allow for an early settlement of their outstanding claim. They reiterated their request to the Secretary-General to convene the Commonwealth Ministerial Committee on Belize whenever necessary.

24. Heads of Government reaffirmed their strongest condemnation of acts of terrorism in all its forms and manifestations, which destabilise the political, economic and social order of sovereign states. They

reiterated their determination to combat terrorism, whether perpetrated by individuals, groups or states, by every means possible consistent with human rights and the rule of law. They also recognised the linkages between terrorism, illegal trafficking in drugs and arms, and money laundering. They welcomed the growing international consensus in fighting terrorism, and in particular the steps taken towards a UN Convention on Suppression of Terrorist Bombings, and hope that this would contribute to the development of a comprehensive legal framework. They also called on all states to enact laws to make punishable acts of conspiracy within their jurisdictions to commit terrorist offences.

25. Heads of Government addressed the serious humanitarian crisis caused by anti-personnel mines and noted the negotiation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, adopted in Oslo on 18 September 1997. They invited Commonwealth and other countries in a position to do so to consider joining the original signatories of this Convention when it first opens for signature in Ottawa on 3 December 1997. They stressed that an effective solution to the global problem of anti-personnel mines would only be possible through effective international co-operation in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organisations and groupings and enhanced international assistance for mine clearance and for the care and rehabilitation and economic integration, of mine victims.

26. In acknowledging the multi-faceted problems affecting the Mediterranean, Heads of Government welcomed the Euro-Mediterranean Conference in 1995 and its follow-up conference in Malta in 1997, and affirmed their support to the international and regional institutions committed to the promotion of peace and security in the Mediterranean region.

27. Heads of Government expressed their belief that an International Criminal Court (ICC) would be an important development in the international promotion of the rule of law. They expressed support for the efforts of the UN Preparatory Committee to negotiate a Statute for an ICC and encouraged participation in those negotiations and in the Plenipotentiary Conference next year by as many Commonwealth countries as possible.

28. Heads of Government considered various aspects of Commonwealth functional co-operation, which they reaffirmed as essential for translating the benefits of membership to member states. They endorsed the attached Report of the Committee of the Whole and requested the Secretariat to intensify its efforts to establish priorities in these areas, based on the Commonwealth's comparative advantage.

29. Heads of Government accepted with great pleasure the offer of the Government of South Africa to host their next Meeting in 1999, and the offer of Australia to host their Meeting in 2001.

Patterson Commission Report, 2007

Dr. Victoria te Velde

Introduction

The issue of Commonwealth membership goes right to the very heart and basic values of the organisation. A discussion of membership is not an academic exercise in recalling historic association with the former British Empire. It goes far beyond the rumour mongering among the press about the queue of applicants. It is everything to do with what the Commonwealth stands for and how it adapts to a fast moving globalised world. It should therefore be the preoccupation of everyone who takes an interest in the Commonwealth.

The challenges facing the Commonwealth over the next few decades will include climate change, regional conflicts, social cohesion in urban areas, the threat of terrorism and the rising power of China and India. These issues have direct bearing on Commonwealth membership. Commonwealth members do not exist in isolation but are interdependent on their neighbours for security and on the global economy for their financial wealth. Wider issues surround any applicant state: from the progress in the peace process in Ireland to the pro-democracy uprising in Burma; the alleged al-Qaida cells in Yemen; to the Hamas victory in Palestine; lingering fallout from the 1994 genocide in Rwanda's and Somaliland's peaceful pursuit of independence; these are just some of the issues for consideration when discussing Commonwealth membership. Each country has its own reason for wanting to join and may be more or less eligible than the next, in terms of the 1997 Edinburgh criteria for membership.

In this paper we first provide the context for past and present criteria for Commonwealth membership. We then move on to discuss those countries interested in joining and their eligibility. Next we examine in detail the recommendations of the Patterson Commission Report, with particular reference to criteria and process for accession. Finally, with a view to the medium to long term future of the organisation, we provide a number of options and recommendations relating to the next stage of Commonwealth membership.

Commonwealth membership and eligibility

Commonwealth membership has steadily evolved ever since it emerged from the ashes of empire. It was once unthinkable that a republic would become a member, then the prospect of an African member was a cause for much debate, then Communist states also joined the family of nations. The issue of small and micro states joining the organisation as equal partners also preoccupied many a Commonwealth expert¹ and most recently the membership of Mozambique was hotly debated. Table 1 provides an overview of how membership criteria have evolved over time, with a reluctant tendency towards openness. Yet all these turning points in Commonwealth membership have not thrown the organisation off course. Instead it has slowly adapted to global changes and challenges without compromising its basic values. Indeed a Commonwealth void of small island states or developing countries would be without relevance in the 21st century.

¹ McIntyre, David (1996) 'The admission of Small States to the Commonwealth' *The Journal of Imperial and Commonwealth History*, vol.24, no 2, pp.244-277

Table 1 Commonwealth membership turning points

Date	Country/event	Turning Point
1947	India joined	Republics admitted
1957	Ghana joined	First black/African state
1960	Cyprus joined	Start of micro states forum
1965	Commonwealth Secretariat established	Commonwealth as independent International Observer
1961-1994	South Africa sanctions/pressure	Membership used as carrot & stick
1991	CMAG established	Enforcement body with ability to suspend members
1995	Mozambique joined	First member with no constitutional link to existing member
1997	Edinburgh Criteria	Formalisation & tightening of rules
2003	Zimbabwe withdrawal	CMAG failure
2005	High Level review on membership requested by Heads	Patterson Commission
2007	Kampala membership criteria	Opening of the door?

Source: Own

Commonwealth membership criteria have existed throughout its history, however until recently they were not formalised. They were just “understood”. Following the influx of applicants in the 1990s (Namibia, Cameroon and Mozambique), there was a High Level Review led by Collinge, that led to the criteria being formalised and slightly tightened in 1997². No new members have been admitted since 1995 when Mozambique and Cameroon joined. Some have tried, however, as we discuss next.

The queue for Commonwealth membership

The following countries and nations have all enquired about possible membership since Mozambique joined in 1995; Rwanda, Palestine, Ireland, Yemen, Somaliland, Algeria, East Timor and there are rumours about other countries too.³ Burma (Myanmar) too is a potential member. The recent events there have reminded the world of the repressive nature of the military regime that came to power in 1962. The pro-democracy opposition party, lead by Aung Sung Suu Kyi is said to be in favour of Commonwealth membership. Potentially there are more countries that could come forward to seek membership, but have not expressed an interest. Most of these are Middle Eastern countries⁴.

Not every country seeking membership is as eligible as the next under the 1997 criteria. There are a number of different ways to assess eligibility.

² David McIntyre, (1991) *The significance of the Commonwealth, 1965-90* (London: Macmillan Press).

³ Velde, te Victoria (2005) ‘Commonwealth Membership: time for a review’ *Malta’s Commonwealth Summit: A briefing on issues before the leaders at Valletta in November 2005* pp. 12-19 (London: CPSU)

⁴ Bahrain, Bhutan, Egypt, Iraq, Jordan, Kuwait, Qatar, Sudan and UAE.

Table 2 Eligibility & membership status prior to Kampala CHOGM 2007

Country	Eligibility through constitutional link	Sovereign state	Compliance with Harare Declaration*	Public endorsement**	Membership Status	Year of enquiry
Rwanda	X	√	n/a	n/a	under review	1996-
Palestine	√	X	n/a	n/a	under review	1997-
Yemen	√	√	n/a	n/a	under review	2000-
Somaliland	√	X	n/a	n/a	none	2001-
Algeria	X	√	n/a	n/a	none	2007
Angola	X	√	n/a	n/a	none	n/a
East Timor	X	√	n/a	n/a	none	2002-
Burma	√	√	n/a	n/a	none	1997
Ireland	√	√	n/a	n/a	informal enquiries only	On and off 1994-date

Source: Own

* There is no agreed method of assessing compliance with the Harare Declaration.

** There is currently no mechanism for assessing public endorsement for Commonwealth membership.

Table 2 demonstrates how nations currently seeking membership, differ greatly in terms of eligibility. The membership criteria include the requirement of a “constitutional link with an existing member”, that it be a sovereign state, compliance with the Harare Declaration and public endorsement. This Table highlights the fact that in key areas of the criteria, there is no agreed mechanism for assessing compliance. This is an area where the formal and informal Commonwealth need to collaborate more.

Even though their eligibility and compliance levels differ greatly, if we look at the would-be members through the lens of motivation, we see a number of distinct themes or factors that are common to many of them. The factors influencing aspirant countries to seek membership include the:

- Role of migration and diasporas
- Disintegration of states post Cold war
- Nations seeking international recognition
- Regional organisations are resetting and reinforcing new alliances
- Increase of use of English world wide
- Attempts to “re-write history” by changing alliances

It should be noted that above are push factors driving these nations and states towards various forms of multilateralism. There are also a whole range of pull-factors that pull these nations towards the Commonwealth in particular. Perceived benefits of the Commonwealth membership include opportunities for informal diplomacy, respect when dealing with issues of national concern, economic support, influencing medium/large powers, English speaking market and the focus on small island states⁵.

⁵ For more on the benefits of Commonwealth membership see Velde, te V. (2006) “Membership of the modern Commonwealth(s): Mozambique and beyond”. (London: ICS) PhD thesis

Applicant countries clearly have very strong reasons in their own right for wanting to join the Commonwealth. However, existing Commonwealth members are also increasingly feeling the impact of many of the above forces spilling over from neighbouring (non-member) countries. It is often pure self interest that leads members to support their allies to join the family of nations.

The Patterson Commission Report

At the request of Heads of Government at the 2005 CHOGM in Malta, a High Level Review of Commonwealth membership criteria was set up. The eight member (including chair) Commission was chaired by P.J. Patterson, former Prime Minister of Jamaica. The Patterson Commission Report will be delivered to Commonwealth High Commissions around the world in the run up to the Kampala CHOGM allowing for Presidents and Prime Ministers (and their aides) of the different 53 Commonwealth countries to absorb the findings of the High Level Review Commission ahead of CHOGM. During the two day retreat the Heads of Government will deliberate the recommendations. They will no doubt lobby and twists some arms and they will appeal to their Commonwealth cousins to reason and adopt their respective points of view on Commonwealth membership. When the powers that be re-emerge from the two day retreat, the Commonwealth communiqué will be the first inkling the outside world will get of how the Patterson report has been received. The Heads may have adopted the recommendations *in toto*. They may have rejected them out of hand, or most likely in the Commonwealth context, they will have forged a consensus around a compromised set of recommendations.

The Patterson Report will not be dealing directly with the issue of enlargement or new members. The Commission was not tasked with assessing which states could or could not join. Rather it was mandated to review the membership criteria and procedures. So, those countries and nations that aspire to join, will not have their request dealt with explicitly in this report. They will not be given a ranking or milestones towards membership. What the Patterson Report is recommending is a clearer and more transparent process for attaining membership. It will also reinforce the existing membership criteria, but recommend a slight opening of the door.

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The Patterson Report on criteria for membership

In terms of membership criteria, the Patterson Report will suggest that Commonwealth basic values remain the key aspect of the criteria. In 1997 the following criteria were formalised and are reconfirmed in the Patterson Report. That any successful applicant should

- Endorse the norms, values and principles set out in the Harare Declaration (1991)
- Be a sovereign state
- Enjoy general endorsement of the application from its citizens
- Accept the use of English as the language of Commonwealth communications
- Acknowledge the role of the Queen Elizabeth II as Head of the Commonwealth⁶

⁶ Collinge (1996) 'Criteria for Commonwealth membership' Round Table, 339:279-86

There is however one further and crucial rule that was agreed at the Edinburgh CHOGM in 1997 and this was that aspirant states should:

- As a rule have had a constitutional link with an existing Commonwealth member.

It is this rule that Patterson Report recommends be modified. It recognises that the concept of “constitutional link is rather ill-defined, given for example that Britain has no written constitution. Moreover, there is no time frame set on this requirement, so in theory it could apply as far back as the Roman Empire making most of Western Europe eligible. The Patterson Report suggests that other close relationships between a member state and an applicant should also be considered.

The Patterson Report suggests that other close relationships between a member state and an applicant should be considered.

If this modification to the membership criteria is adopted by the Heads of Government in Kampala, then this will certainly open the door to new applicants. New hope will be given to those who have already expressed an interest and others may now consider applying, given the broader criteria for entry. This move would also turn Mozambique’s accession in 1995 into something of a turning point, rather than an exception as some claimed at the time.

Process for attaining membership

In addition to recommending a broadening of the membership criteria slightly, the Patterson Report also calls for a formalisation of the process of attaining membership. Until now this process has been informal and enquiries and applications have been dealt with inconsistently. The Commission suggests that a number of steps should be put in place. These steps would need to be followed before the country formally be encouraged to apply. These pre-application steps are in many ways the same as before, but the report suggest they be formalised. Each case will still however be considered on its own merits on a case by case basis. The pre-application steps include:

- The country (which needs to be sovereign) will approach the Commonwealth Secretariat to express an interest
- More formal consultation with Heads of government will follow
- Consultation with civil society needs to take place, as popular support needs to be demonstrated
- If Heads are in agreement then the country is encouraged to apply
- At the following CHOGM they will then be admitted

The benefit of this process is that CHOGMs would no longer be dominated by rumours of who may or may not join. The negotiation process will have already occurred and the applicant should join as a matter of procedure (unless political events in the country make it not longer eligible). There are however still a number of shortcomings with the recommendations as they stand.

First, there is a requirement for there to be general endorsement in the applicant country, for joining the Commonwealth. However, there is no mechanism for monitoring this.

Secondly, there remains a general issue with the criteria in the sense that there is no hierarchy. While some NGOs would like to see human rights and compliance with the Harare Declaration as the most important criteria, many states do not.

Thirdly, there are no benchmarks towards membership, and no process for monitoring. The final decision is more one of subjectivity and politics than being transparent and consistent. Shifting the negotiation to pre-CHOGMs, does not in itself make it any more transparent. Also, given the lack of any mechanism for sounding out civil society, there will remain a democratic deficit in this respect.

Fourthly, as the issues of “the queue” of existing applicant states was not addressed by the Patterson Commission, this issue has not gone away. It remains that Heads of Government have to decide whether or not a country will join. Without clear benchmarks for monitoring compliance, the political wranglings will continue. If the recommendations are fully adopted, the emphasis will shift from CHOGM to pre-CHOGM diplomacy and issues such as human rights concerns and civil society participation will continue to be secondary to political manoeuvring.

Options

Presented with the recommendations set out in the Patterson Report, the Heads will have to decide to adopt them, tweak them or throw them out.

- A widening of the Commonwealth may have implications for deepening within the organisation.⁷ What is the optimal number for such a forum or in fact plethora of networks that constitutes the Commonwealth? What are the benefits of taking on particular countries and equally as important, what are the consequences of not doing so? All this and more will no doubt go round the table at Kampala. It may well once again be down to personalities on the day, which way the debate swings.
- There is still the issue of “outstanding applications”. A number of states and nations that have enquired in the past have consistently been told following previous CHOGMs that their applications were being held “under review”. Heads of Government will need to send a clear message to these relevant nations and states as to what their status is post-Kampala.
- Careful consideration will need to be given to how best to communicate the list of enquiries, their progress in terms of the applications process and the eventual “official” applicants in the run up to CHOGM.
- This CHOGM may well see a further formalisation of the procedures for membership, but it may well take another few CHOGMs before a fully open, transparent and inclusive process has evolved. This force for change will continue to come from Commonwealth civil society, who need to play a greater role in the monitoring process.

⁷ Velde, te Victoria (2005) ‘The future of the modern Commonwealth: widening vs. deepening?’ (London: ICS) Aide memoire

- The report does not suggest a joint membership for the Commonwealth Secretariat and the Commonwealth Foundation. Heads should discuss this further. There is currently a growing gap between the two membership lists, with the CF working more closely with the Overseas Territories and potentially in applicant countries ahead of membership. There is no reason the Foundation should not work over the borders of the Commonwealth, but it should at least have all the members of the Secretariat on its books.
- The membership fee from any new members needs to be additional. In the past new members joining has meant that existing members could pay less. It is essential that Commonwealth income increases and that new members' contributions help to grow the organisation, rather than the same amount of money being spread ever more thinly.
- Some of this additional revenue surely should go to Commonwealth Associations. If CA are required to operate in more countries than they are currently doing, they will need additional funding.
- The Commonwealth needs to be seen to be fair and leading by example. It cannot on the one hand keep countries out of the organisation for their lack of democracy and yet do little about existing members who have military rulers. CMAG needs to take a tough stand on these cases and the Commonwealth needs to work more closely with CSOs to bring about change in these countries.

Commonwealth civil society is well placed to reach out to applicant countries, on behalf of the Commonwealth and work towards deepening and strengthening Commonwealth values in these countries. A bottom-up approach could lead to an acceptable method for assessing compliance with Harare Criteria, while improving human rights, democracy and good governance in neighbouring countries. The official Commonwealth would need to support this approach in word and deed.

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