

1. Any member of the League of Nations or non-member state which is prepared to ratify the convention under the second paragraph of Article 21, or to accede to the convention under Article 22, but desires to be allowed to make reservations with regard to the application of the convention, may so inform the Secretary-General of the League of Nations, who shall forthwith communicate such reservations to all the members of the League and non-member states on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. Should the reservation be formulated within three years from the entry into force of the convention, the same enquiry shall be addressed to members of the League and non-member states whose signature of the convention has not yet been followed by ratification. If, within six months from the date of the Secretary-General's communication, no objection to the reservation has been made, it shall be treated as accepted by the high contracting parties.

2. In the event of any objection being received, the Secretary-General of the League of Nations shall inform the government which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

This provision represents an innovation in setting two time limits: (1) a time limit of three years from the date of the instrument within which signatories which have not proceeded to ratification are nevertheless to be consulted as to proposed reservations; and (2) a time limit of six months within which a negative reply to any consultation may be made. Aside from this innovation, it recognizes the possible interest of signatories which have not proceeded to ratification in the reservations offered by other signatories, and thus clarifies a point on which there has been doubt. It also establishes that when reservations other than those agreed to at the time of signature are proposed, the alternatives are absence of objection from any state consulted, on the one hand, and abstention from proceeding to deposit of a ratification or accession on the other hand. It serves as a needed guide not only to international administrative officials, but also to governments themselves. Many difficulties may be avoided if this or some provision along similar lines should become a standard article for multipartite conventions.

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THE IMPERIAL CONFERENCE OF 1937

The Conference which met in London from May 14 to June 15, 1937, following the coronation, while not marked by any very spectacular achievement, dealt with certain matters which are of some general international significance. The composition of the body was somewhat different from that of previous Conferences. In the absence of representation from the Irish Free State, the group of autonomous units within the Commonwealth was not quite complete. In addition to the representatives of the other self-governing Dominions and India, there were observers from Burma and Southern Rhodesia. Newfoundland was represented by the Secretary of State for

Dominion Affairs, the Colonial Empire by the Secretary of State for the Colonies.

Of the matters discussed, those relating to defense and intra-Commonwealth coöperation, collective security and the preservation of peace, and certain constitutional questions concerning nationality and multilateral treaty-making, are perhaps of chief interest from the point of view of international law.

Defense and foreign policy, rather than the economic matters touched upon (such as shipping policy, civil air commerce, and Empire trade), received major emphasis. There were rather ominous references to "deterioration in the international situation,"¹ "disintegration" in the world,² and the "troubled and harassed world."³ There was, naturally, concern that the associated units should work together for their own safety and best interests. Technical coöperation for purposes of defense may have received even more attention than the official summary of proceedings reveals. To one critic the sections of the report on foreign affairs and defense seem to furnish a "handbook of imperial platitudes" for any future meeting.⁴ But the apparent earnestness with which faith was declared in the method of coöperation within the Commonwealth of Nations cannot be lightly put aside. While no action was taken—beyond a decision for further consultation—on the Australian suggestion of a non-aggression pact in the Pacific, and while the Conference recognized that it was the sole responsibility of the several Parliaments of the Commonwealth to decide the nature and scope of their own defense policy, the Australian Prime Minister could say at the conclusion of the conversations that there was no divergence on fundamental principles concerning international affairs and defense.⁵

In view of the great changes that had occurred in the international situation since the last Conference, and of the probably greater vulnerability of the Empire in its various parts, it was but natural that there should come into the discussions some references to the attitude of Commonwealth members, and particularly the central member, toward collective security. In what was perhaps the most pointed official statement, the Prime Minister of New Zealand, after expressing the belief that the "partner Governments" represented the greatest existent force for peace and justice in the world, hoped that the Conference would not be content with an "innocuous and unhelpful formula."⁶ The spokesman for Australia declared that the Dominions

¹ Imperial Conference, London, 1937, Summary of Proceedings (Cmd. 5482), p. 62 (remarks of Prime Minister Chamberlain).

² *Id.*, p. 65 (remarks of Prime Minister Mackenzie King).

³ *Id.*, p. 70 (remarks of Sir Muhammad Zafrullah Khan, on behalf of the Indian delegation).

⁴ F. H. Soward, "The Imperial Conference of 1937," *Pacific Affairs*, Vol. 10, pp. 441, 444 (Dec., 1937). Cf. John Coatman, "The Imperial Conference," *Political Quarterly*, Vol. 8, pp. 311-325 (July-Sept., 1937); Kingsley Martin, "Is the British Empire in Retreat?" *Yale Review*, Vol. 27, pp. 12-29 (Autumn, 1937).

⁵ Summary of Proceedings, p. 66.

⁶ *Id.*, p. 57.

must play their part in "ensuring the peace of the world," and that from the Conference should issue a statement which would make clear that the countries composing the British Commonwealth of Nations (referred to as a "lesser League within the League") were prepared to act together in support of the maintenance of law and order.⁷ Prime Minister Hertzog, of the Union of South Africa, predicted that the British Commonwealth would become a more potent instrument for peace than the League of Nations.⁸ The difficulties and reverses which had been experienced by makers of British foreign policy during the year just preceding may well be remembered in relation to Prime Minister Chamberlain's declaration, made in the course of the concluding statements, that "The key-note of our policy is . . . the maintenance of peace and the removal of the causes which have so long delayed the restoration of the confidence of the world."⁹

The Statute of Westminster, 1931, had left a number of constitutional questions unsettled. Of these, that relating to creation of an Imperial Court of Appeals as a substitute for the Judicial Committee of the Privy Council, and provision of some machinery for the settlement of inter-Dominion disputes,¹⁰ was not acted upon at this Conference.

Action was taken on certain questions concerning nationality. Before 1914, persons naturalized in a Dominion were considered British subjects while in that particular Dominion's territory, and were accorded British diplomatic protection in foreign countries (at least, in countries other than those of origin). But, when in other parts of the Empire, they might be treated as aliens. Thus a German-born person who had been naturalized in Australia in 1908 was later considered an alien in the United Kingdom.¹¹ The British Nationality and Status of Aliens Act, 1914, as subsequently amended,¹² defined British subjects so as to include anyone born in His Majesty's dominions and owing allegiance. It authorized the granting of naturalization certificates by the government of any "British Possession." Certificates from Dominions whose legislatures adopted the naturalization provisions of statutes passed by the Parliament at Westminster were to be recognized as conferring a status which would be recognized in other parts of

⁷ *Id.*, p. 53, 54. With this may be read the Prime Minister's earlier remarks (at p. 52 of the Summary of Proceedings) on the impracticability, under existing conditions, of fully achieving Covenant ideals, and the desirability of examining the position of the League.

⁸ *Id.*, p. 58.

⁹ *Id.*, p. 62. At the opening of the Conference, Prime Minister Baldwin had referred to British belief in "agreement as the mainspring" and "democratic institutions as the method" of government. He added that the British did not underestimate "the value of that idea to which other ways of government attach supreme importance—the idea of service to the State."

¹⁰ The general problem is summarized in Ch. XVII of *The British Empire* (1937), a volume issued under the auspices of the Royal Institute of International Affairs.

¹¹ *Rex v. Francis. Ex parte Markwald* (1918), 1 K. B. 617; *Markwald v. Attorney-General* (1920), 1 Ch. 348.

¹² 4 & 5 Geo. 5, c. 17; 8 & 9 Geo. 5, c. 38; 12 & 13 Geo. 5, c. 44; 23 & 24 Geo. 5, c. 49.

the Empire, except in those Dominions not adopting the specified part of the Act. At the time of the Imperial Conference of 1937, certificates issued by the self-governing units other than India and the Irish Free State could, under this plan, acquire validity in other parts of the Empire. There still remained considerable diversity. Legislation of the Irish Free State, passed in 1935, had contemplated the abolition of the status of "British subject," in so far as citizens within its territory were concerned.¹³ On the general question, the Conference, while affirming that each member of the Commonwealth could decide what persons should have its distinct nationality, declared that it was desirable to secure, in so far as possible, uniformity in principle and avoidance of the inconveniences which would result from dual or multiple nationality within the Commonwealth. The basis recommended was the following:

Each member of the Commonwealth would in the normal course include as members of its community:—

(a) persons who were born in, or became British subjects by naturalization in, or as a result of the annexation of, its territory and still reside there, and

(b) persons who, coming as British subjects from other parts of the Commonwealth, have identified themselves with the community to which they have come.¹⁴

It was recognized that one member might be interested in the status assigned to a migrant from it to another member's territory. Communication of information, and consultation with other member governments before passage of new legislation on the subject, were therefore recommended. It was thought that any member of the Commonwealth of Nations, when constructing new definitions of its nationals, might well include British subjects not born in, but residing in, the member's territory, and might give such persons the privilege of opting against this nationality. Flexibility was introduced in the suggestion that, even without defining membership of their respective communities, the members might, in their legislation, give effect to some of the "implications" of the principles approved by the Conference, or might consider giving effect to these principles administratively.

Another constitutional question before the Conference had to do with nationality of married women. The Hague Convention of 1930 on Certain Questions Relating to the Conflict of Nationality Laws,¹⁵ had never been formally ratified by those self-governing members of the Commonwealth

¹³ Ch. XX of the volume referred to in note 10, *supra*. The pertinent provisions of the Irish legislation are quoted, and reference is made to the possible bearing upon this of the decision in *Moore and Others v. Attorney-General for the Irish Free State and Others* (1935), A. C. 484. According to the Judicial Committee's decision, the Irish Free State Legislature could, after the Statute of Westminster went into effect, pass an act repugnant to an Imperial Act. See also *Irish Jurist*, Vol. 1 (1935), pp. 2, 10, 23.

¹⁴ Summary of Proceedings, p. 26.

¹⁵ This JOURNAL, Supp., Vol. 24 (1930), pp. 192-200.

which were signatories, but, since 1930, legislation in line with the principles of the Hague Convention, in so far as it related to the nationality of married women, had been passed in the United Kingdom, Canada, Australia, the Irish Free State and New Zealand. It was stated at London that the Union of South Africa contemplated similar legislation. Some Dominions had gone farther than others toward placing the nationality of women on a basis of equality with that of men. By laws of Australia and New Zealand, a woman who, prior to marriage to an alien, was a British subject, could retain within these two Dominions, respectively, political and other rights of a British subject.¹⁶ The Imperial Conference did not find it possible to agree upon any recommendations of change in the existing laws, and the matter was left for further consideration and consultation between the represented governments.

Of the various legal aspects of the evolution of the British Commonwealth of Nations, that concerning treaty-making has been much discussed. Freedom for the Dominions in this matter has usually been regarded as one criterion of autonomy. The Imperial Conference recognized

(1) That each member takes part in a multilateral treaty as an individual entity, and, in the absence of express provision in the treaty to the contrary, is in no way responsible for the obligations undertaken by any other member; and

(2) That the form agreed upon for such treaties at the Imperial Conference of 1926 accords with this position.¹⁷

In general, and without restriction to the specific matters selected for comment here, there appears in the work of the Imperial Conference of 1937 further evidence of the continuing process of emergence, out of a formerly unified Empire, of a group of substantially autonomous but closely associated states. There was no more evidence at this, than at previous Conferences, of a desire to restrict this development by rigid legal formulas.

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THE USE OF THE RADIO AS AN INSTRUMENT OF FOREIGN PROPAGANDA

The development of radio broadcasting has obviously created new problems of international relations not covered by existing law. In the case of the development of aërial navigation old theories of jurisdiction were forced to give way to practical realities. Whether the air beyond a certain height was free, as the seas beyond the marginal strip were free, might be debated by scholars when the airplane was in its experimental stage. Ten years later, when planes were actually capable of sustained flights, the argument was over. Today we are in the presence of a similar need for the adaptation of customary

¹⁶ Summary of Proceedings, p. 28, and volume referred to in note 10, *supra*, pp. 312-313.

¹⁷ Summary of Proceedings, p. 27. For the 1926 form, see Cmd. 2768 of 1926, pertinent parts of the text of which are in this JOURNAL, Supp., Vol. 21 (1927), pp. 29-32, 37-38.