

The Changing Norms in Commonwealth Consular Relations: From Quasi to Formal Arrangement (1963-1972)

Radziah Abdul Rahim

Abstract

The conduct of intra-Commonwealth “consular relations” prior to the 1963 Vienna Convention on Consular Relations was unique in that the relations were dissimilar to that established between foreign states. The former had traditionally conducted theirs on a “host” convention, and with the assistance of British missions. The codification of the VCCR, which introduced an element of uniformity of consular rules and procedures, had posed a challenge to intra-Commonwealth quasi-consular practices. This came in a most difficult period in the Commonwealth relations - in what Harold Macmillan described as the “wind of change” that proved to be uncomfortable for Her Majesty’s Government, not to mention Britain’s application to join the European Economic Community. The paper examines the impact of the VCCR on the Commonwealth’s long-standing arrangement in consular relations. It looks at the British Government’s efforts, vis-à-vis, the Commonwealth Relations Office to maintain the status quo and the factors that had influenced some member states to look towards formalising their consular relations. This desire to move away from the traditional norm indicated the coming of age of member states: to determine the direction of their governments’ foreign affairs machinery rather than to be free from the vestiges of the British heritage. The paper also looks at why, after nine years, member states finally got together to address this issue and the implication of the 1972 London Conference on the Commonwealth’s consular practices.

Introduction

Consular relations are an ancient aspect of international relations – older, indeed, than relations of a diplomatic kind – and more complex because of the absence of uniformity in consular jurisdiction, immunities and privileges until the adoption of the 1963 Vienna Convention on Consular Relations (hereinafter, VCCR). It is not the kind of relations that states would dismiss lightly, certainly not the Commonwealth whose early singularity had contributed to the unique form of “consular” relations unlike those established between foreign states. The intra-Commonwealth “quasi-consular” relations had withstood the change of time as the Empire evolved into the Commonwealth and each member state became responsible for their own international affairs.

Nevertheless, as the common bonds that held the Commonwealth became more and more diluted and as the relationship of member states became no different from any other sovereign states, the members began to question the wisdom of their traditional practices. The paper examines how the VCCR changed the outlook of the Commonwealth's long-standing quasi-consular arrangements, particularly during the period from 1963 to 1972 when many former British colonies started diversifying their diplomatic relations. In doing so, it looks at the British Government's efforts, *vis-à-vis*, the Commonwealth Relations Office (hereinafter, CRO) to maintain the status quo and the factors that influenced some member states to look towards formalising their consular relations after almost a decade.

The Commonwealth Quasi-Consular Practices

The Commonwealth "consular" arrangements were deeply rooted in the group's association with the United Kingdom long before the dominions and colonies achieved statehood. The dominions and colonies were not able to exchange consuls for the same reason that they could not exchange ambassadors – indivisibility of the Crown and common citizenship. Moreover, as dependent entities, they could not establish consular relations with each other as the ability to do so 'belongs *ipso jure* to sovereign states'.¹ Hence, Britain's extensive network of diplomatic and consular services was put at the disposal of the dominions and the colonies. The consular protection and assistance of British subjects were facilitated by two principles: the British representation system and the "host" convention.

The British representation system was established by the Imperial Conference of 1930 that made consular protection and assistance available to far-reaching Dominions and their nationals. It stated that:

any member country of the Commonwealth without diplomatic representatives of its own in a foreign country can use the United Kingdom diplomatic representatives as its channel of communication with the foreign government. The Commonwealth Government may communicate directly with the United Kingdom representative, though in matters of general and political concern the United Kingdom Government would expect to be consulted before the United Kingdom representative took action. In the reverse direction the same would apply, i.e., the foreign country presumably could communicate with the Commonwealth Government directly through the United Kingdom representative in the foreign country.²

¹ R. Bernhardt, ed., *Encyclopaedia of Public International Law: International Relations and Legal Cooperation in General, Diplomacy and Consular Relations*, (Netherlands: North-Holland, 1986), p. 35. For the characteristics of sovereign statehood see Alan James, *Sovereign Statehood: The Basis of International Society*, (Allen & Unwin, 1986).

² G. W. St. J. Chadwick (CRO) to T. L. Crosthwait (Office of the High Commissioner for the United Kingdom, Colombo, Sri Lanka), CON. 190/18/1, 6 March 1959, The National Archives

The British representatives were, however, allowed to act on behalf of the Commonwealth citizens without prior instructions in cases of emergency. This right to consular assistance from the British diplomatic and consular institutions did not diminish even after the dilution of Commonwealth bonds due to various developments – the introduction of citizenship, the creation of independent Foreign Services, the variation in the ‘Royal Styles and Titles’ and the decision of India to become a republic years later.

The British Government’s continuing consular support was documented in the 1953 memorandum on ‘Representation by United Kingdom Missions of Other Members of the Commonwealth in Foreign Countries Where They Themselves are not Represented’.³ The assurance of continuing consular protection and assistance following the changes in Commonwealth relations showed the flexibility of the Commonwealth in meeting the needs of the day, especially that of newly decolonised Afro-Asian states such as Ghana, Malaysia, Nigeria, Sierra Leone and Malta.

The “host” convention operated along similar lines, with each Commonwealth country accepting responsibility to look after Commonwealth citizens within its boundaries. The so-called “host” convention is believed to originate from a practice among the “old” Commonwealth members although it has not been possible to identify an exact date. How the convention developed, how it was defined and to what extent it was accepted by Commonwealth Governments was a mystery even to the CRO.⁴ In an attempt to answer this baffling question the most knowledgeable of all CRO officials, Sir Charles Dixon,⁵ said that it was never formerly defined or discussed to any extent with other members of the Commonwealth, old or new. However, its foundation pointed to the common status.

(hereinafter, TNA), DO161/181. In 1953, the Foreign Office (hereinafter, FO) felt that British diplomatic missions should represent the interest of the Commonwealth governments that had no representation overseas with their expressed consent, either generally or *ad hoc*, and that notification to the effect communicated to the state concerned. They proposed to draft some instructions on the subject and sought the assistance of the CRO to make preliminary enquiries to Commonwealth governments whether they wish the British missions to take up the function of protecting the interests of their citizens and representing theirs. The CRO, however, did not favour the line of action and saw no reason for the FO to maintain and defend a difference of opinion with the Office on the issue. See the following letters from T. H. Glasse (FO) to J. A. Molyneux (CRO), 3 September 1953; A. F. Morley to Glasse, 24 November 1953, and M. Cheke (CRO), minute, 19 February 1954, TNA, DO161/180.

³ CON 190/18/1, 5 November 1953, TNA, DO161/180.

⁴ L. J. D. Wakely (CRO) to Sir Charles Dixon (Adviser, Constitutional Department, CRO), minute, 14 June 1962, TNA, DO161/141.

⁵ According to Garner, Sir Charles was regarded as so indispensable that when he retired in 1948, he was re-employed as Constitutional Adviser by successive Permanent-Under-Secretaries until 1968 when he was nearly 80. See Joe Garner, *The Commonwealth Office, 1925-68*, (London: Heinemann Educational Books Ltd., 1978), p. 54.

Even when the “old” members introduced their citizenship legislation, the “host” convention was maintained for domestic reasons, if nothing else. The only occasion when it assumed any importance besides the right to impose entry, residence and voting on the citizens of other Commonwealth countries, was in connection with responsibility for dealing with distressed British subjects.⁶ The British government was against the idea that they should be responsible if UK citizens got into difficulties overseas. Such person should, they thought, be treated in the same manner as any other inhabitant in the said country.⁷

Despite this, it was generally accepted that the “host” convention operates on the premise that Commonwealth government ‘A’ would perform some quasi-consular work in its territory on behalf of Commonwealth country ‘B’, when ‘B’ had no mission there whether on a resident or non-resident basis.⁸ The two parties would determine the nature of any quasi-consular work but consular functions were not as extensive as those in foreign countries. The Commonwealth “consular” officers’ duties were mostly focused on issuing passports or visas, assisting distressed Commonwealth nationals or representing their governments’ interests besides certain specific activities like trade and information. In addition, these quasi-consular representatives did not require an exequatur for the implementation of their functions.

It had been the normal practice for the Colonial Office (and its successors) to despatch to the newly-independent Commonwealth members a note to inform them of this principle, and to assure them that British missions would continue to undertake “consular” functions on their behalf whilst they set up their foreign department and posts overseas.⁹ They were expected, as soon as possible, to take over the responsibility of looking after the interests of other Commonwealth members and their nationals not represented in the former’s territory from the British missions. After a reasonable period in which to put their ‘house’ in order, the British government would send a reminder about making arrangements with unrepresented Commonwealth governments.

This exercise was as much to discourage new members from dragging their feet as to lighten the workload of the British missions at important locations. Nevertheless, the principle was often flouted. For example, in 1966 the British High Commission (hereinafter, BHC) in Pakistan was still responsible for the citizens of Cyprus, Kenya, Malawi, Zambia, Gambia, Guyana, Botswana, Lesotho, Barbados and even New Zealand!¹⁰ And although Ireland was no longer in the Commonwealth, the British

⁶ Sir Charles Dixon, minute, 14 June 1962, TNA, DO161/180.

⁷ Ibid.

⁸ R. C. Cox (Commonwealth Policy and Planning Depart) to R. Walker (Commonwealth Co-ordination Department), 30 September 1968, FCO47/110.

⁹ A. W. C. Culbert, “Quasi-consular functions in and on behalf of Commonwealth Countries”, Reference R09/543/1, 2 July 1968, TNA, FCO47/110.

¹⁰ Chancery (BHC, Rawalpindi) to Nationality and Treaty Department, 9 October 1966, FCO47/110.

Government had rendered consular assistance to Irish citizens in Commonwealth countries where Ireland had no representation.¹¹

Commonwealth “Consular” Officers or Representatives

As the Commonwealth did not exchange consuls, the officers engaged in quasi-consular work were known by a variant of the term “commissioner” (which was commonly used for Commonwealth representatives in colonies performing “consular” functions) such as “assistant high commissioner”, “deputy high commissioner” and “trade commissioner”. The use of “assistant high commissioner” was less frequent and faded away before the end of the 1970s. Sir Robert Hutchings who was appointed to fill the post of “assistant high commissioner” in Calcutta in 1947 said of the title: “In Indian ears the title ‘Assistant High Commissioner’ [might] not be fortunate’, as in the Indian official circles the grades of the Secretariat hierarchy were “Additional”, “Joint”, “Deputy” and “Assistant Secretary”.¹²

The title “deputy high commissioner”, which was often used in outposts in Commonwealth countries in the 1960s, was first adopted in India in 1947. There were three such officers each heading an “Office of Deputy High Commissioner” in Calcutta, Madras and Bombay. These officers were members of the Commonwealth Service and their outposts ‘were regarded as an extension of the High Commission’.¹³ Meanwhile, the trade commissioners appointed to colonies and dominions were equal in rank with commercial secretaries and consuls general, with the exception of the senior trade commissioner in India. The latter had the rank of commercial counsellor.¹⁴

¹¹ “Consular Protection of Irish Citizens by British Representatives Abroad”, Annex 1, 6 March 1967, TNA, FCO47/101.

¹² Sir Robert Hutchings to G. P. Humphreys-Davies ((Treasury Chambers), 27 July 1947, TNA, DO142/561.

¹³ “Nomenclature at UK Posts and Outposts in Other Commonwealth Countries”. 9 May 1971, TNA, FCO47/630.

¹⁴ The trade commissioners who have a long history in Britain were assimilated into the Board of Trade (hereinafter, BOT). In 1963, they were styled Senior Trade Commissioner, Principal Trade Commissioner, Trade Commissioner, Assistant Trade Commissioner and Trade Correspondent. When trade commissioners were also economic advisers, they were referred to as Economic Adviser and Senior Trade Commissioner, Principal Trade Commissioner or Trade Commissioner. In diplomatic capitals these officers generally held a diplomatic position as follows: Principal Trade Commissioner/Counsellor (Commercial), Trade Commissioner/First Secretary (Commercial), and Assistant Trade Commissioner/Second Secretary (Commercial). A Principle Trade Commissioner who did not hold an Assistant Secretary post would be restyled First Secretary (Commercial). In some outposts (that is, locations outside the capital, normally provincial or state capitals), like India, the officers held dual Trade Commission/Diplomatic titles although in consular lists they might have “with the rank of consul general, vice-consul or consul” attached to their position (with the agreement of the High Commissioner). For the functions and privileges, see letter from R. K. McKenzie (BOT) to W. J. V. Evans (now Sir, FO), 22 February 1963, TNA, FO369/5658

Besides this group of officers, there were also information and immigration officers who fell under the supervision of the high commissioner or deputy high commissioner, depending on where they were located. There were no strict rules regarding the names of outposts and the title of the heads of outpost. The style adopted depended on the agreement between two states involved. Another characteristic of the intra-Commonwealth “consular” practice was the non-appointment or exchange of honorary consuls.

The 1963 VCCR

The VCCR was the culmination of eight years of work (beginning 1955) on the part of the International Law Commission (hereinafter, ILC) to encourage the progressive development of international law on the subject of consular relations.¹⁵ In particular, the convention was aimed at contributing to ‘the development of friendly relations among nations, irrespective of their differing constitutional and social system’ apart from bringing some form of uniformity to existing consular practices.¹⁶ The ILC’s work that eventually led to the Vienna Convention on Diplomatic Relation (hereinafter, VCDR), in 1961 had undoubtedly influenced the codification of consular intercourse and immunities.¹⁷

The provisional draft articles of a convention on consular relations were completed in 1960 and distributed to governments for comments. The ILC adopted the final text of the draft articles the following year after taking into account the governments’ feedbacks. In 1961, the General Assembly decided to convene a United Nations Conference on Consular Relations (hereinafter, UNCCR) from 4 March to 22 April of the following year in Neue Hofburg, Vienna, at the invitation of the Austrian Government. The Conference adopted the 1963 VCCR, which contains 79 articles plus an Optional Protocol Concerning Acquisition of Nationality and another, Optional Protocol Concerning the Compulsory Settlement of Disputes.

¹⁵ It was among one of 14 topics. Other topics include recognition of states and governments; succession of states and governments; jurisdictional immunities of states and their property; jurisdiction with regard to crimes committed outside national territory; regime of high seas; regime of territorial waters; nationality, including statelessness; treatment of aliens, right of asylum; law of treaties; diplomatic intercourse and immunities; state responsibility; and arbitral procedure. See *The Work of the International Law Commissions*. (New York: The United Nations, 2004). 6th edn. vol 1, p. 30.

¹⁶ See the Preamble of the VCCR.

¹⁷ Lee observes that the adoption of the diplomatic draft in 1958 did not only accord top priority to the codification of consular intercourse and immunities but harmonised it as much as possible with that of the diplomatic practice. See Luke T. Lee, *Consular Law and Practice*, (London: Stevens and Sons Ltd., 1961), p. 325.

More than 40 years into its adoption, 170 states have become parties to the Convention compared to the initial 48 signatories at the end of March 1964.¹⁸ Among the Commonwealth countries, Ghana was the first to sign the Convention on 24 April 1963 and the first UN and Commonwealth member to ratify it six months later.¹⁹ Other Commonwealth countries that had ratified the VCCR were Australia (1973), Cameroon (1967) and the UK (1972) while the rest became parties by accession or succession to the Convention.

The effect of the VCCR on Intra-Commonwealth Practice

The influence of the VCCR on Commonwealth “consular relations” was not immediately noticeable nor was it certain. Before the international conference, the Commonwealth representatives had agreed that the proposed Convention should have enough flexibility to allow members to continue with their existing informal arrangements. However, during the conference, it became clear that Commonwealth delegates were personally inclined towards applying the Convention to intra-Commonwealth relations. Thus, it was agreed that the CRO should circulate a memorandum summarising British views on the advantages and disadvantages of applying the VCCR and the necessary modifications required if it were to be applied.²⁰

For many of these participating countries it was necessary to introduce the appropriate legislation before they could ratify the Convention. Legislation was the next course of action to take before the VCCR could be put into action locally. This can be a tedious and time-consuming exercise, as the British experience showed, requiring close scrutiny of the convention. The Foreign Office (hereinafter, FO) considered it disadvantageous for the protection and promotion of British interests abroad.²¹ The principal disenchantment of the FO was the issue of inviolability of consular premises (Article 31); the personal inviolability of consular officers (Article 41); the liability of consular personnel to provide evidence (Article 44); and communications between consuls and their nationals, especially those detained by the authorities of the receiving country (Article 36).

¹⁸ The membership of the UN as of 2003 was 191. March 31st, 1964, was the dateline for the UN member states to put their signature on their international instrument in accordance to Article 74 of the VCCR.

¹⁹ Other countries that had signed the VCCR on the same date were Argentina, Austria, Benin, Brazil, Central African Republic, Chile, Colombia, Congo, Côte d’Ivoire, Cuba, Democratic Republic of Congo, Denmark, Dominican Republic, France, Gabon, Iran, Ireland, Lebanon, Liberia, Liechtenstein, Niger, Norway, Peru, Philippines, USA, Uruguay and Venezuela. The Holy See, which had representatives at in the VCCR Conference, also signed the Convention on the same date.

²⁰ Commonwealth Relations Office (hereinafter, CRO) Report on the Vienna Convention on Consular Relations, (unsigned), The National Archives, Kew (hereinafter, TNA), FO369/5661.

²¹ Vienna Convention on Consular Relation, (unsigned), TNA, FO369/5661.

They claimed that the first three articles accorded greater immunity than was usually granted under the British law, and the last Article contained qualifications which were not found in the corresponding provisions of Britain's bilateral consular agreements.²² Towards the end of 1963 the CRO learnt that the Australians, Canadians and one or two other of the newer members of the Commonwealth (whose identity was not disclosed) had met to discuss the implications of the Convention.²³ The BHC in Canberra believed that the event took place because the anticipated post-conference consultations had failed to materialise. The BHC did not know how far the discussions had gotten but there was a danger that 'some sort of bilateral propositions which would cut across current intra-Commonwealth practice, and set what could for us be an undesirable precedent' might materialise. Therefore, Britain should despatch her promised memorandum to Commonwealth Governments immediately.²⁴

Accordingly, in December 1963, the CRO sounded out the BHCs about the attitudes of Commonwealth Governments on the degree of application of the VCCR locally.²⁵ Surveys conducted by the BHCs in respective Commonwealth countries following the directive revealed that while Australia and Ghana had signed the Convention as of July 1964, only seven other countries – Canada, India, Pakistan, Malaysia, Nigeria, Sierra Leone, and Jamaica – had expressed their intention to sign. New Zealand preferred to maintain the *status quo* while a majority of the others showed no indication of adhering. Among those who had signed or intended to sign, slightly more than half favoured applying the VCCR universally, while others preferred the existing arrangements or wanted to apply the provision of the Convention selectively.

On the part of the BHCs themselves, most of them saw no advantage in applying the VCCR between Commonwealth states. This is because it would mean heavier workload for consular staff and the need to employ more workers if they were to undertake all the functions listed in Article 5 of the VCCR.²⁶ With respect to consular nomenclature, Canada was in favour of a standard, or international, practice. This was, to a certain extent, consistent with a pre-conference sounding carried out by the BHC in Canada. She was inclined towards the draft Convention as the Canadians felt that the VCCR 'could

²² R. A. Butler (Secretary of State for Foreign Affairs, FO) on Vienna Convention on Consular Relations, 20 December 1963, TNA, FO369/5662.

²³ AE Huttly (BHC, Canberra) to JM Dutton (Constitutional & Protocol Department), 22 November 1963, TNA, DO161/146.

²⁴ Ibid.

²⁵ Outward Telegram from CRO, W. No.344 Saving, 3 December 1963, TNA, DO161/316.

²⁶ As it was, the Plowden Report of 1964, was strongly for placing British consular representation in Commonwealth countries on a more regular basis. Moreover, 'in all non-capital Commonwealth cities where there is official British representation, one officer, under the High Commission, should be appointed to take charge of all aspects of the work, trade, representation and consular'. B. T. Gilmore (CRO) to E. L. Sykes, February 1964, TNA, DO170/103.

give to Canadians representatives doing work of a consular nature in Commonwealth countries, the standing and power Canadian consuls enjoy in foreign countries'.²⁷

The same cannot be said of Australia. To the British Government's total surprise, Australia was in favour of a universal practice. At the London meeting of February 1963, she had given the assurance that 'Australia wished to see intra-Commonwealth arrangements maintained as informally and as flexibly as possible', and her Government had no intention of changing the titles of her representatives within the Commonwealth.²⁸ Likewise, there was no doubt that Sri Lanka would not hesitate to make a change as 'the concept of the Commonwealth and what it [stood] for [had] no particular sentimental or practical appeal in the eyes of most [Sri Lankan] politicians and officials'.²⁹

However, this was not the case with New Zealand, Pakistan, Sierra Leone and Nigeria. New Zealand's position had been consistent with that expressed in February 1963. Like the new Commonwealth countries, she was unlikely to initiate the change without first listening to Britain. Nevertheless, one thing was clear to the UK Government at that stage. It could not rely on member countries to maintain existing Commonwealth arrangements. But it was very keen to do so, the CRO being unanimous that:

if possible, we should retain the nomenclature of Deputy High Commissions at outposts and that we should make bilateral agreements continuing the present informal procedure, which often accomplishes as much, if not more, than the more formal channels open to a Consul. ... we should endeavour to avoid the title Consul for the simple reason that this would give people the impression that we were able to perform more functions than, in fact, would be possible.³⁰

In this the CRO had the support of the FO. In a move to come up with something that would be acceptable and convincing to all Commonwealth governments, and as an initial step towards wider Commonwealth consultation, the UK had, in May 1965, instructed its posts at Ottawa, Canberra and Wellington to inform the respective Governments of her views.³¹ Britain, they were to say, thought there was 'no need for Commonwealth countries to apply the Convention between themselves, that formal consular arrangements were impractical and that the present informal arrangements, modified if

²⁷ B. J. Greenhill (BHC, Ottawa) to G. Morgan (CRO), 16 October 1962, TNA, DO161/145. There was no record of any comments from the Canadian representative, A. C. E. Joly de Lotbiniere, at the London meeting in February 1963.

²⁸ A. J. Eastman, Minute, Meeting of Representatives from Commonwealth High Commissions in London held in the India Office Council Chamber on 19 February 1963, TNA, DO161/146.

²⁹ Outward saving telegram from the BHC (Sri Lanka) to Secretary of State for Commonwealth Relations, 27 April 1964, TNA, DO211/35.

³⁰ D. M. R. Skinner (CRO) to R. M. Hunt (CRO) and L. E. T. Storar (CRO), 5 August 1964, TNA, DO170/103.

³¹ Britain was in the habit of consulting the "old" Commonwealth members which, until 1965, constituted 'a special "club" (in the commonly used soubriquet) within the Commonwealth'.

necessary, were adequate'.³² Unlike Canada, neither Australia nor New Zealand responded formally.

The British Government did, however, informally established that Australia thought in terms of varying "consular" arrangements and that it was inclined towards consular relations as such. Although for the time being New Zealand wanted no change, she had begun to incline in the same direction as Australia and Canada. Thus, in May 1965, the country expressed an interest in introducing changes to its consular nomenclature with other Commonwealth countries. However, New Zealand wished to maintain existing arrangements with the UK.

Canada, which favoured a uniformed consular practice two years earlier, had completely changed her position by the time the Canadian Department of External Affairs (hereinafter, DEA) completed its study of the subject in 1966. It concurred with the British viewpoint that the informal relationship had proven effective, flexible and in harmony with the unique relationship which characterises the Commonwealth association of sovereign states.³³ The DEA's stand had much to do with the fact that the establishment of formal consular relations would necessitate extensive amendment which Canada was not prepared to consider at that time. Moreover, Canada doubted that her Trade Commissioners would be in a position to perform the full range of consular functions outlined in Article 5 of the VCCR. Canada was also not ready to consider acceding to the Convention.³⁴

Thus, between 1964-66, it was roughly possible to see in which direction the Commonwealth Governments were heading in respect of the application of the Vienna Convention. This is based on the four types of relationship that the UK Government foresaw emerging from the Convention:

- (a) A uniform consular relationship under which each Commonwealth country would agree to apply the provisions of the Vienna Convention [which, in the opinion of the writer, reflected India and Ghana's wish].
- (b) A series of bilateral agreements between individual Commonwealth countries of the kind envisaged in Article 73 of the Convention [Pakistan, Malaysia and Sierra Leone].
- (c) An arrangement whereby each Commonwealth country would opt to belong to an informal or formal group; existing arrangements would operate in one case and the Vienna Convention would be applied in the other [Australia, Canada, New Zealand, Nigeria, Jamaica]

³² Nationality and Consular Department, *The Vienna Convention on Consular Relations: Its Effect on a Commonwealth Context*, November 1966, TNA, DO211/40.

³³ Canadian DEA, Memorandum, Vienna Consular Convention, 14 March 1966, TNA, DO211/43.

³⁴ Ibid.

- (d) A continuation by agreement of the present arrangements for as long as possible, but with any necessary amendments of nomenclature. It might also be agreed under this arrangement to apply such sections of the Vienna Convention, e.g. on immunities and privileges, as would be appropriate [The UK, Tobago & Trinidad, Zimbabwe]³⁵.

For tactical reasons connected with the consular relations legislation, the British Government did not prepare the memorandum that they had promised. At the same time, an absence of archival material on the progress of consular legislation in other Commonwealth countries suggested no further development on the intra-Commonwealth level for the rest of the decade.

Commonwealth consular norms after the Singapore Seminar, 1970

At the beginning of the 1970s the question of consular relations within the Commonwealth cropped up again as a result of wider discussions about diplomatic services and foreign relations. The March 1970 Singapore Conference on “The Changing Patterns in the Organisation and Conduct of Foreign Policy” came at a time when many countries were actively reviewing the structure of their diplomatic services; when Commonwealth links were steadily diluting; and the British Government was turning to Europe and away from the Commonwealth with whom trade links were declining and which had caused her so much trouble over the Suez crisis, immigration, Rhodesia and South Africa.³⁶

The Singapore Seminar was essentially intended to benefit small developing countries within the Commonwealth who had limited skilled manpower and financial resources to expand on international affairs.³⁷ This being so, it was unsurprising that one of the issues brought up at the seminar was “honorary” consuls. Although it was uncommon in the Commonwealth to appoint this type of *consules electi*, in practice, a number of member countries did so by calling them commissioners or liaison officers.³⁸

³⁵ Vienna Consular Convention, 3 May 1965, TNA, DO161/316.

³⁶ Sir Saville (Joe) Garner, Future of the Commonwealth, TNA, DO161/262. See also Philip Alexander, “A Tale of Two Smiths: Labour Party Politics and the Changing Concept of Commonwealth”, in Glen O’Hara and Helen Parr, eds., *The Wilson Governments 1964-1970 Reconsidered*, (Routledge, forthcoming publication). The author is grateful to the writer for permission to use his article.

³⁷ The main discussions and results of the seminar were published in *Diplomatic Service: Formation and Operation*. (London: Longman, 1971). Also available in the form of conference papers at the library of the Commonwealth Secretariat.

³⁸ One of the member countries that appoint “honorary” consuls was Cyprus. According to the Cypriot representative, Mr C. Veniamin, this method would enable a presence to be established in a wider area than would be possible if full representation were used. He said that the honorary consuls appointed either from among Cypriots or nationals of the receiving country, were not engaged in contacts with the government of the country in which they resided nor were they used

This led to the seminar concluding that if a Commonwealth Secretariat (hereinafter, CS) study established that there was a case for appointing honorary consuls, it should be put on the agenda of the next Heads of Government Meeting the following year.³⁹ And this, in turn, led to a New Zealand call to consider consular representation as a whole. For, they said, it was time to abandon the 'outmoded [Commonwealth] convention' and to adopt the 'more convenient and sensible ... [consular] designations which related most appropriately to their duties, together with the status, privileges and immunities which go with them in accordance with the Vienna Convention'.⁴⁰

New Zealand had wanted to pursue this subject at the Commonwealth Heads of Government Meeting (hereinafter, CHOGM) in January 1971 but did not get the necessary support.⁴¹ Nonetheless, New Zealand's representative at a meeting of Senior Commonwealth Officials held in conjunction with CHOGM reiterated the view that consular titles should be adopted and consular functions be carried out in the same way as with foreign countries.⁴² The old "consular" practice was deemed effective when all Commonwealth citizens were British subjects. However, the adoption of specific citizenships had made the traditional practice impractical.

New Zealand claimed that the practice had not only resulted in several anomalies, but it had led to some confusion among the general public and it often created administrative difficulties for both the conveying and the host countries.⁴³ In some Commonwealth countries, officers performing consular functions were given diplomatic status and privileges, even though they did not perform any diplomatic functions. In others, they were given consular titles and privileges.⁴⁴

to elicit political information. Refer to the Commonwealth Seminar on "The Changing Patterns in the Organisation and Conduct of Foreign Policy", Singapore, 9-14 March, 1970, Commonwealth Secretariat (hereinafter, CS), PAD/MISC2481.

³⁹ For the summary of the main points and conclusions of the Commonwealth Seminar on "The Changing Patterns in the Organisation and Conduct of Foreign Policy", refer to Document CSS(70)27, TNA, FCO68/249.

⁴⁰ Malcolm Templeton (New Zealand Ministry of Foreign Affairs) to W. Peters (Commonwealth Secretariat), 30 Jun 1970, CS, C176.

⁴¹ Tina McLauchlan. "May 1972 Commonwealth Conference on Consular Relations." Ottawa: Department of Foreign Affairs and International Trade, Communications Programs and Outreach, Historical Section, (undated).

⁴² G. R. Laking (New Zealand), Minutes of the Meeting of Senior Officials held in Singapore, 13 January 1972, TNA, CAB164/813.

⁴³ The Report and record of meeting of Commonwealth Officials on "Consular Relations within the Commonwealth," 16-18 May 1972, National Archives of Canada (hereinafter, NAC), RG, 3132, 1-1972/2. See Appendix B.

⁴⁴ New Zealand is one of those countries whose "consular" officers were given diplomatic or specific "trade" designations by some Commonwealth Governments and consular status by others. Likewise, she had accorded consular status to officers from other Commonwealth countries located outside Wellington but allowed to use diplomatic titles. The British outpost staffs in Australia, Pakistan, Malaysia, Nigeria and Kenya was also considered part of the High

This irregularity and the accompanying confusion arising from it could be avoided if they were to adopt the VCCR with its widely understood designations of consuls-general, consuls and vice-consuls. The Senior Officials meeting agreed to New Zealand's wish that the CS should take up the issue and pursue it in the light of their views of Commonwealth Governments' comments.⁴⁵ Following this decision, the CS consulted Commonwealth Governments in February 1971 of the need to pursue discussion on the subject of consular representation in Commonwealth countries. The Secretariat received favourable reply from many of the member-states - Trinidad and Tobago, Fiji, Canada, New Zealand, Singapore, Uganda, Tonga, Cyprus, Mauritius, the UK, Kenya and Lesotho - although, they were divided over how the issue should be pursued.

As a result of this response, the CS decided to convene a meeting of Commonwealth officials to discuss, among other things, existing arrangements for consular functions within the Commonwealth; the suitability and inadequacy of these arrangements; the desirability of preserving existing nomenclature; and proposals for changes where necessary.

The London Meeting, 16-18 May 1972

The views that came out from the London meeting in 1972 were unsurprisingly varied.⁴⁶ In general, Governments had hardly changed their views although there was a slight twist to New Zealand's proposal at the end of the meeting. Four categories of views can be identified from the discussions: those who wanted change; those who supported change but with some form of compromise; those who were satisfied with existing arrangements but would not mind some modifications; and those who did not wish any changes to be made to the Commonwealth "convention".

New Zealand, Canada, Australia, Tanzania, Uganda and Trinidad and Tobago fell into the first category, while Lesotho, Malta, Cyprus, Jamaica, Nigeria and Guyana fell into the second. India, Bangladesh, Fiji, Tonga and Kenya identified with the third category.⁴⁷ Singapore, Malaysia and the UK fell into the last. However, the UK was willing to compromise. As for the other 12 member countries, one would assume that they were more than happy to follow the voice of the majority.⁴⁸

Commission staff and, therefore, enjoyed diplomatic status unlike those in Canada and New Zealand.

⁴⁵ Minutes of the Meeting of Senior Officials, Singapore, 13 January 1972, TNA, CAB164/813.

⁴⁶ All 32 Commonwealth members were represented at the meeting.

⁴⁷ The views of Fiji, Tonga and Kenya, as well as Uganda, had been made known in written comments submitted to the CS prior to the meeting.

⁴⁸ The countries were Barbados, Botswana, Ceylon, Gambia, Ghana, Malawi, Mauritius, Nauru, Sierra Leone, Swaziland, Western Samoa and Zambia. In addition, New Zealand held a watching brief for the Western Samoan Government. Refer to letters from Grace Thornton (Consular Department) to various Commonwealth BHCs in TNA, FCO47/630 for comments about the

New Zealand had made it clear in the meeting that her proposal was not intended to imply an increase in the workload of consular officers. She simply wanted to establish the uniformity in consular designations which would help the public to understand the institution and its related functions, especially the work of outposts. It was up to the conveying countries to define the scope of consular work to be carried out by their consular representatives.

In addition, although New Zealand had wanted the right to send consuls to other Commonwealth countries, she wanted to do so with the full consent of its members. And, in so doing, she also wanted to avoid eroding the Commonwealth "convention",⁴⁹ especially given the constraints faced by small states. At the same time, she did not care for the impression that the adoption of consular designations was a matter for bilateral arrangement between member countries.

New Zealand's views were shared by Australia who thought that the real problem lay in the 'vast amount of confusion caused by nomenclature and the 24 different titles within the Commonwealth used for officers-in-charge of "outposts"'.⁵⁰ The meeting then attempted to identify the barriers to giving to Commonwealth consular officers a uniform status and whether they were insurmountable. Australia, like New Zealand, did not believe that applying consular status would affect the close official access enjoyed by consular representatives of Commonwealth countries. In fact, Australia had already taken legislative steps to give consular status to "outposts" in her territory by the end of 1972.

Conference, and to L. E. T. Storar's (Commonwealth Coordination Department) letter dated 5 June 1972 to K. A. East (BHC, Lagos) on the Nigerian proposal. TNA, FCO47/630.

⁴⁹ In clarifying what the Commonwealth "convention" was, the British explained it as: a practice whereby as a general rule, but to a varying extent, Commonwealth countries rendered on behalf of the citizens of other Commonwealth countries assistance of a consular kind which they did not extend to the nationals of foreign countries within their borders. ... at its fullest extent the Commonwealth "convention" was almost co-terminus with Article 5 of the Vienna Convention excluding sub-paragraphs (b), (c) and the last paragraph. However, owing to similarity of Commonwealth legislation many of the protection functions listed in Article 5 were unnecessary in Commonwealth countries.

See the report and record of Commonwealth Officials meeting on "Consular Relations within the Commonwealth," 16-18 May 1972, NAC, RG, 3132, 1-1972/2, Minute of the Third Session.

⁵⁰ Ibid. Some of the titles that the Australian representative referred to included Immigration Officer, Trade Commissioner, Counsellor (Commercial), Deputy High Commissioner, Assistant High Commissioner, Honorary Consul, Nauru Representative, First Secretary (Commercial) and Trade Commissioner, Third Secretary (Consular), Minister (Commercial) and Senior Trade Commissioner, Regional Information Officer and Head of Post, Principal Trade Commissioner and Head of Post, Honorary British Representative, Counsellor in Charge, Migration Officer, Honorary Commissioner, Welfare Officer and Chief Agent. In Australia, consular officers of Commonwealth countries were not listed in the list of Consular Representatives but that of the Trade Representatives' list.

However, Malaysia thought it would be illogical to adopt consular designations without extending the work of consuls in outposts. As far as that country was concerned an officer who had been designated a consul would be expected to perform the full range of consular functions. Moreover, Article 9 of the VCCR leaves little 'room for manoeuvre' and, as such, Malaysia was not willing to embrace the change.⁵¹ Canada allayed Malaysia's fear by pointing out that the Article 'did not specify that all representatives outside the capital city should be located in consular posts' and that it 'indicated a restriction only with regard to the title used for the Head of a Consular Post'.⁵²

Canada's federal system of government made her more cautious in her approach. The jurisdictional relationship between the federal and provincial governments meant that Ottawa could not conclude any bilateral consular conventions. However, Canada felt that 'there would be considerable advantage in relation to both federal and provincial authorities if there were a consistent and recognizable consular "regime" in its system of Government'.⁵³ Canada believed that any difficulty arising from documentary and procedural requirements covering the appointment and recognition of consuls could be avoided if Commonwealth consular representatives were given the same privileges and immunities as those in foreign countries.⁵⁴

Moreover, the fact that there had already been an exchange of consuls and bilateral agreements between member countries (Trinidad and Tobago and Guyana, in the first instance, and Lesotho and Zambia, in the second) showed that 'the decision had already been taken de facto'.⁵⁵ It was, observed the Chairman, up to other Commonwealth countries to follow suit.⁵⁶ He added that Articles 11 and 12 of the Vienna Convention showed that 'the procedure for the appointment of consular officers was a flexible one which would place no obstacle in the way of the exchange of consuls between Commonwealth countries'.⁵⁷

Although she had not ratified the VCCR, Tanzania was set to venture in that direction. She had based her consular practice on the Convention and would welcome an agreement based on it. Nor would Nigeria hesitate to 'associate itself with the majority of members of even the old Commonwealth who thought that the time had come for a change on the

⁵¹ Ibid, minutes of Fourth Session and Third Session respectively.

⁵² Ibid, minutes of Third Session. Article 9 lists the four classes of Heads of Consular Posts as consuls-general, consuls, vice-consuls and consular agents.

⁵³ Ibid, minutes of the First Session.

⁵⁴ Ibid, minutes of Third Session.

⁵⁵ Ibid, minutes of the Fourth Session.

⁵⁶ The Commonwealth Representatives had elected the Australian Ambassador to Ireland, Keith Brennan, to preside over the meeting.

⁵⁷ The report and record of meeting of Commonwealth Officials on "Consular Relations within the Commonwealth," 16-18 May 1972, NAC, RG, 3132, 1-1972/2. See minutes of Third Session. Article 11 covers the procedure for consular commission and notification of appointment of the head of consular post while Article 12 provides guideline for the authorization of an exequatur.

present consular arrangements'.⁵⁸ However, she felt that there was still hope for the Commonwealth "convention". It would be an alternative for smaller member countries that would certainly be saddled with exorbitant expenditure if they were to 'embark upon the full paraphernalia of consular accreditation to other Commonwealth countries'.⁵⁹

As many Commonwealth Third World countries had done, smaller countries could negotiate reciprocal bilateral arrangements with one another for the performance of consular functions. The other choice would be to open honorary consulates. Jamaica believed that Article 73(2) gave Commonwealth countries the leeway to carry out the necessary modifications to achieve standardization in consular practice and to enable member countries to reach some form of agreement. Jamaica also lamented the lack of clarity regarding the dispensation of consular services to immigrants.⁶⁰

So far the meeting had only considered the position of visiting nationals or nationals residing in Commonwealth states. Like Canada, Jamaica often found that the Commonwealth "convention" did not work and that she had to undertake the responsibility for providing consular services to Jamaicans. Guyana, which still relied on the Commonwealth "convention" for practical reasons, also saw administrative advantages in rationalising the existing system. So did Malta, which did not, however, wish to see the existing relationship damaged as a result of rationalisation.

On the other hand, Bangladesh, which had joined the Commonwealth in 1972 following its secession from Pakistan, found that the flexibility and informality that characterised the Commonwealth "convention" served her well. Likewise India, which did not have a separate consular service, found no fault with the existing system. But she was receptive to the idea of extending the provisions of the VCCR to Commonwealth practices. Singapore, however, did not want to have a separate consular service until warranted by the volume of its consular traffic.

Throughout the discussion, the UK had continued to provide clarifications and to reiterate her unwavering stand. Regarding outposts, the UK admitted that 'no formal rules had been worked out' and that 'titles have been selected as seemed best to describe the functions of a particular post'.⁶¹ There had been no evidence to suggest that the titles of UK outposts had been an obstacle to consular work, which she construed as also involving reporting, gathering information and commercial work, although *stricto sensu*

⁵⁸ Ibid, minutes of Third session.

⁵⁹ Ibid.

⁶⁰ Jamaica had a large number of immigrants in Britain and Canada and had established "outposts" in Birmingham and Manchester in Britain, and in Toronto, Canada, which she claimed performed many of the functions listed in Article 5 of the Vienna Convention.

⁶¹ The report and record of meeting of Commonwealth Officials on "Consular Relations within the Commonwealth," 16-18 May 1972, NAC, RG, 3132, 1-1972/2. See minute of third session.

it entailed protection and quasi-legal matters that fell within the Commonwealth “convention”.⁶²

Nor had local authorities been averse to cooperating with British consular officials at such outposts. The bestowing on outposts of diplomatic privileges and immunities or the consular equivalent was up to both the sending and receiving parties. For her part, Britain ‘had always taken the traditional view ... that once designated [as consular] they cannot qualify for privileges or immunities of a diplomatic kind. This was in line with international practice.’⁶³

On the issue of accreditation, the UK preferred a simple method of notifying the appointment of heads of consular posts (if adopted) rather than through the exchange of commissions and exequaturs. On the “host” convention, the UK was willing to concede to member countries appointing a third Commonwealth government (or even a foreign government) to look after the interests of nationals of Commonwealth states without representation. It would not, perhaps, be wrong to deduce that the concession was driven by the flexibility that, Britain claimed, is characteristic of the Commonwealth convention and where consultation provides the best solution to solving problems.

At the last of the four meetings, the Chairman noted that the deliberations had revealed three distinctive ways in which Commonwealth countries would have liked to dispense consular services. They were:

- (1) the Commonwealth “convention”,
- (2) the widely practiced bilateral agreements for the reciprocal discharge of Commonwealth functions, and
- (3) in Commonwealth countries, outposts frequently undertaking consular functions [despite not being given consular designation as would be the case outside the Commonwealth.]⁶⁴

Given this disparity of practice and views, it did not seem likely, therefore, that any consensus could be reached about adopting a universal form and how “consular” relations between Commonwealth countries might be realised.

This was echoed by Cyprus, who called on the representatives to look at the deliberations in the light of the evolution of the Commonwealth, that is, from ‘a mother and child relationship to a family of sovereign States bound together by a common interest’.⁶⁵ The Cypriot representative felt that in reality, the term “Commonwealth convention” did not exist. What had really existed was:

⁶² Ibid, minutes of Second Session.

⁶³ Ibid.

⁶⁴ Ibid, minutes of the Fourth Session.

⁶⁵ Ibid.

a state of affairs, as set by circumstances, fitting in the relations between countries and serving, to some extent, their mutual interest and that these were subject to modification and could even be removed altogether without affecting the Commonwealth as an institution which all Representatives wanted to protect.⁶⁶

He, therefore, urged them to embrace positive changes without eroding the useful practices that had existed over the years and that had become embedded in the family relations of the Commonwealth. In addition, the Cypriot representative asked the meeting to face up to the challenge to ‘modernise and rationalize [Commonwealth] “consular relations and designations in conformity with the Vienna Convention without sacrificing the flexibility and, to a great extent, the informality of these relations”’.⁶⁷

New Zealand then tried to bridge diverging views with a draft a statement containing a compromise that she hoped would bring a satisfactory solution to all concerned. She would no longer press for an across-the-board agreement for the adoption of consular designations. Instead, she proposed that:

- (a) in the light of the modification over the years of the manner in which consular functions are performed within the Commonwealth, the exchange of consular representatives, including honorary consuls, between Commonwealth countries should in future be regarded as an acceptable Commonwealth practice; and
- (b) where a Commonwealth country lacks its own representation in another Commonwealth country it should be free to make whatever arrangements are administratively most satisfactory, both from its own point of view and that of the “host” Government, for the performance of consular work in respect of its citizens in that country, including reliance on the representative of a third Commonwealth country.⁶⁸

New Zealand’s latest proposal offered a way out for the Commonwealth representatives who would have otherwise been caught in an impasse. They agreed in principle with New Zealand’s new proposal and it was adopted in the final report of the Conference with a slight modification to sub-paragraph (a) above. This involved replacing ‘the exchange of consular representatives’ with the phrase ‘taking into account international practice and the provisions of the 1963 Vienna Convention on Consular Relations, the appointment of consular representatives’. This was so as decision was reached to cover countries, like

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ New Zealand Statement made at the “Consular Relations within the Commonwealth” Conference, 16-18 May 1972, TNA, FCO 47/632, (undated).

Tanzania and India, which had not become parties to the Convention but had followed international practice.⁶⁹

In essence, the Conference agreed that the flexible and informal characteristics of existing Commonwealth arrangements left ample room for adopting consular services where required. It would not deprive smaller member countries of alternatives and would, at the same time, continue to facilitate the conclusion of bilateral agreements between members. Any rationalisation of the existing arrangements would be with a view to 'achieving a greater degree of convenience to the public, ease of administration and, where desirable, consistency'.⁷⁰

One area that could be rationalised was the designation of establishments and officials responsible for carrying out consular functions.⁷¹ Meanwhile, those arrangements that had served member countries well would be maintained. The practice whereby the "host" country carried out consular functions⁷² was still viable and Commonwealth nationals could not only look to "host" governments for consular services but could approach the government of a third Commonwealth country (provided that such an arrangement had been agreed by the governments concerned).⁷³

Where states found it inconvenient to establish full consular representation, honorary consuls or other honorary officials would be an acceptable feature. Moreover, Articles 11 and 12 of the VCCR would allow for flexibility in the notification of consular appointments, thus eliminating any possible barriers envisaged in the exchange of consular representatives between Commonwealth states. These understandings were forwarded to CHOGM held in Ottawa the following year and approved as the "1973 understandings" which were understood to:

⁶⁹ At the time of the Conference, India had seven "outposts" in five countries – Canada, Ceylon, Australia, Kenya and Britain. Tanzania and India had acceded to the VCCR on the 18 April and 28 November 1977 respectively.

⁷⁰ The report and record of meeting of Commonwealth Officials on "Consular Relations within the Commonwealth," 16-18 May 1972, NAC, RG, 3132, 1-1972/2. See provisional record submitted with the Fifth Session.

⁷¹ In her letters to several BHCs written after the Conference, British Head of the Consular Department, Grace Thornton, said 'the phrase "could facilitate" was deliberately used in preference to "would facilitate" ... to cover the position of those Governments such as the UK who considered that current designations are not by and large an impediment to the satisfactory discharge of quasi-consular functions and those others such as New Zealand who considered there was advantage in adopting consular titles'. See Grace Thornton (Consular Department) to J. R. W. Parker (BHC, Bathurst, Gambia), TNA, FCO47/630, 1 June 1972.

⁷² Listed in Article 5 of the VCCR, with exception to Articles 5(b), (c) and (m).

⁷³ Although the final report specifically mentioned that a Commonwealth country could enlist the help of a third Commonwealth country to perform consular functions on behalf of her citizens, it did not preclude the said country from engaging a foreign country to look after her interests.

reflect a consensus view that the various practices and arrangements implied in the informal convention on relations between a host government and other Commonwealth countries should automatically apply between all member states, unless an individual government officially notified the governments of the Commonwealth countries to which it was not accredited that it wished instead to nominate a third party to represent it there.⁷⁴

Despite these understandings, there was no great concern amongst Commonwealth countries that any members would jump to establish consular relations too soon after the 1972 Conference. This is not surprising given that before doing so states had to consider the legal implications, processes and costs of going into formal consular relations. The UK Government, for one, did not intend to take any initiative in that direction until, and unless a member country approached her with such a request. This was because she was reluctant to 'appear to be taking the lead in what might be labelled as a weakening of Commonwealth ties and Ministers will probably wish to be assured that they are acting in good company if they adopt consular titles'.⁷⁵ Although it was New Zealand that had persistently championed uniformity in consular practice, the country that took the first step towards rationalising its consular practice was Australia.

The implementation of Australia's Consular Privileges and Immunities Act 1972 meant Commonwealth missions located outside the capital would be required to adopt normal consular designation and privileges.⁷⁶ However, the Australians had no objection to the Commonwealth governments' using "head of post" for their outposts. In addition, the governments were still allowed to operate their "trade commission offices" and for trade commissioners to continue to receive a range of privileges under existing arrangements. The Australian Department of Foreign Affairs had also made it clear that Commonwealth missions located outside the capital would cease to enjoy diplomatic status after January 1, 1973.⁷⁷ Only those officers located and residing in Canberra would continue to be given diplomatic privileges and immunities.

After much discussion with the various FCO departments and for practical reasons, the British decided to re-style their outposts and officials within the purview of Australia's 1972 Act. Thus it was Britain which decided to call their Australian outposts "Consulate-Generals", the heads of outposts, "Consuls-General", and subordinate officials as

⁷⁴ *Manual of Consular Relations in the Commonwealth*. London: Commonwealth Secretariat, 1988. As the *Manual* has not been released for public viewing and anything in this thesis about, and quoted from the handbook, must not be reproduced.

⁷⁵ Thornton (Head, Consular Department, FCO) in a telegram to the BHCs in Ottawa, Wellington, New Delhi, Canberra, Kuala Lumpur, Valetta and Singapore, 29 November 1972, TNA, FCO47/632.

⁷⁶ The legislation was proposed and debated a year earlier and was passed on 31 August 1972.

⁷⁷ L. H. Border (Deputy Secretary, Department of Foreign Affairs, hereinafter, DFA) to Sir Morrice James (BHC, Canberra), 9 October 1972, TNA, FCO47/631.

“Consuls”, “Vice-Consuls” and other titles appropriate to their respective position the following year.⁷⁸ Likewise, other Commonwealth countries with outposts in Australia – New Zealand, Canada, India, Malaysia, Singapore and Malta – had to take the necessary steps to comply with the Australian legislation. These they did at their own pace and with the agreement of the Australian government, thus lending a formal tone to what was once considered a quasi-consular arrangement. Over the years, the formal practice was also adopted by other member countries.

Conclusion

Intra-Commonwealth consular practices have matured beyond the exclusivity of the Commonwealth circle. Despite there being only 16 full Commonwealth members before the 1963 VCCR, and the existence of special consular arrangements between Commonwealth countries, newer member countries have become parties to the VCCR. While many member countries have been benefitting from the quasi-consular arrangements that characterised the Commonwealth relations for many years, the London Conference on “Consular Relations within the Commonwealth” in May 1972 revealed that the time had come for the Commonwealth to rationalise and formalise these relations.

The call for change was not so much a move to shake off the remnants of the legacy of the Empire by many member states. Nor was it a move by the British Government to control the way the Commonwealth conduct their “consular” relations. Instead, it was more in keeping with the changes and growth of individual members and their relationships with each other. The London conference also showed that where disagreement existed, there was sufficient goodwill and flexibility for a compromise to be achieved. Hence, it became possible for Commonwealth countries to establish some form of formality in their consular relations with each other; to appoint honorary consuls (a once uncommon feature in Commonwealth practice) or other honorary officials if the situation warranted; or to conclude bilateral consular agreement where desirable.

The underlying factor, however, was that there should be room for flexibility to allow for the adaptation of consular services, where necessary, within the Commonwealth. Although New Zealand had paved the way for a uniform consular practice between Commonwealth countries, Australia was the first to embrace such practices through the enactment of her 1972 Consular Privileges and Immunities Act. Although Britain had preferred to maintain the traditional consular nomenclature, the legislation of the Act meant that she, as well as other Commonwealth countries, had to comply with the laws of the host country. Thus, 1973, marked a new era in Commonwealth consular relations as member states begun to embrace formal consular nomenclature as laid down by the VCCR 10 years earlier.

⁷⁸ These changes were registered in the 1973 British *Diplomatic Service List*.