

*COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION,
COMMONWEALTH LAWYERS' ASSOCIATION,
COMMONWEALTH LEGAL EDUCATION ASSOCIATION*

CONSULTATION ON COMMONWEALTH MEMBERSHIP

ISSUES

1. Criteria for Full Membership

The Commonwealth current membership of 53 may be subject to a modest increase without losing the organisation's special identity, provided that new members comply with existing criteria in terms of having had a constitutional association with an existing member, compliance with Commonwealth values and acceptance of norms and conventions, in particular the use of English as the language of the Commonwealth.

The 'constitutional link' requirement may appear something of an anachronism, but its removal would open the floodgates to numerous states which might satisfy the remaining criteria. On this basis, states which might satisfy the criteria but are not current members would appear to be Zimbabwe and Ireland [former members], a future Palestine state, Israel, Somaliland if and when its independence is recognised, Myanmar, Sudan and Yemen¹ (which did not become members on independence). There are a number of states in the Middle East which had a constitutional connection with the United Kingdom -Egypt, Jordan, Iraq, Oman and the Gulf states. However, candidature from this quarter may seem unlikely. If states which do not satisfy the constitutional link criterion but which have or might apply include Rwanda and Timor Leste. Their candidature, it has been suggested, is based on strong political links with existing members (Uganda and Australia respectively) and regional propinquity to Commonwealth states.

Commonwealth values, principles and priorities should refer to post-Harare declarations, to the commitment to the Millbrook Plan of Action, the Commonwealth (Latimer House) Principles on the Three Branches of Government and other significant declarations adopted by the Commonwealth. Mere acceptance of the values, principles and priorities is not enough. There has to be a real commitment to the implementation of these values and principles.

Acceptance of Commonwealth norms and conventions is a somewhat opaque phrase but would appear to include:

- The convention that a member of which the Queen is Head of State and which wishes to become a Republic requires the acquiescence of the other existing members in the change. This convention has led in the past to the lapse of the Commonwealth membership of South Africa and Fiji (both now rejoined) It appears entirely inappropriate in modern conditions, especially given that it is may arise in a number of cases in the not too distant future (e.g. Australia, New Zealand and Jamaica). That raises the delicate question of the acceptance of the Queen as Head of the Commonwealth. There are few who would seek to deprive Queen Elizabeth of this symbolic role, but it is at least arguable that the convention does not require that the title automatically devolves upon the successor to her Crown . Commonwealth 'norms' would surely require that there should be consultation and consensus about the assumption of this status as 'symbol of the free association'. It is indeed questionable whether there is now a justification for a symbolic head, a unique feature of an international organisation. Any representative functions would presumably be performed by the Chairman-in-Office.² Candidate members who would otherwise be well qualified might find the acceptance of even a symbolic role for a British monarch an inhibiting factor (Ireland in particular).
- Enjoy general endorsement of the application from its citizens. This seems uncontroversial, though presumably the criterion will be met if the application is made by a democratically elected government. Acceptance of the use of English as the language of Commonwealth communications. It is important to retain the convention that Commonwealth discourse takes place without the necessity for translation

Draft membership criteria are attached.

¹Strictly, the reference is to the southern part of Yemen, which became the People's Republic of South Yemen in 1967.

²The precedent of the Queen as Head of the Commonwealth addressing the General Assembly of the United Nations in 1957 is unlikely to be invoked today.

2. Other Categories of Membership

There seems to be a sound case for creating a form of associate membership for certain territories which are part of the Commonwealth, but are not eligible for full membership since they remain the international responsibility of an existing member.

There are precedents which may be relevant if not exactly in point. The Prime Ministers of Southern Rhodesia and subsequently the Federation of Rhodesia and Nyasaland were invited to participate in Commonwealth Prime Ministers' Meetings; Nauru and Tuvalu after independence enjoyed for a time 'special membership' which entitled them to all the privileges of membership *except* participation in CHOGMs.

Associate members would attend ministerial and senior official meetings and would have direct access to the Secretariat including the CFTC. There is merit in these Associate members participating in the CHOGMS in order to make their views known. The status would only be appropriate for territories which enjoyed a measure of self-government so as to enable them to ensure not only compliance with Commonwealth values and principles but also a commitment to implementation of these principles and to sustain an appropriate contribution to the funding of the Commonwealth organisation. Obvious examples of compliance with these criteria are Bermuda, Gibraltar and Cook Islands, Jersey and Guernsey. See draft criteria attached.

As far as international organisations which have strategic partnerships with the Commonwealth are concerned (UN, EU, ASEAN, CARICOM etc), they may be invited (as in the past) as accredited observers to Commonwealth meetings. That would not appear to require a special membership status.

The presence as observers of non-member states would appear to detract from the cohesion of Commonwealth gatherings.

On the other hand the presence of observers of Accredited Commonwealth Associations, whom the Commonwealth considers as partner organizations, does contribute substantially to the effectiveness of the Commonwealth and its ability to respond appropriately to the ever changing needs of the peoples of the Commonwealth.

3. Funding

There seems no justification for the system of capping so that the arrival of new members reduces the contributions of existing members. The formula for the calculation of members' contributions needs drastic revision to reflect current wealth distribution amongst Commonwealth states. Associate members, a number of whom are very wealthy territories in per capita terms, would be expected to make a significant contribution. The proposals will thus pave the way for a significant increase in the Secretariat's financial resources, essential if it is to fulfill the mandates that governments have set out for it.

DRAFT MEMBERSHIP CRITERIA

Full membership

- A sovereign state;
- As a rule, applicant country should have had a constitutional association with an existing Commonwealth member;
- It should comply with the Commonwealth's fundamental values, principles and priorities as set out in the Harare Declaration and subsequent Commonwealth Declarations and statements of principles;
- It should accept the Commonwealth norms and conventions. [query whether these should be spelt out];
- Willingness and capacity to undertake an appropriate share of the financial burdens of membership.

Associate membership

- A territory for the international relations of which an existing Commonwealth member is responsible;
- A constitutional status providing for self-government so as to ensure compliance within the territory with the Commonwealth's fundamental values, principles and priorities set out in the Harare Declaration and subsequent Commonwealth Declarations and statements of principles;
- A willingness and capacity to undertake an appropriate share of the financial burdens of associate membership.

