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INSTITUTE OF COMMONWEALTH STUDIES

VOICE FILE NAME: COHP Peter Slinn

Key:

SO: Sue Onslow (Interviewer)

PS: Peter Slinn (Respondent)

s.l.: sounds like

SO: This is Sue Onslow interviewing Dr Peter Slinn at Senate House on Tuesday 5th February 2013. Peter, thank you very much indeed for coming to Senate House to talk today. I wonder if you could begin, by saying please, how did you get interested and involved in the Commonwealth and Commonwealth activities, in the first place?

PS: It's rather curious because most people who have an interest in Africa often had some kind of family connection. I had none of that. I was brought up in the English Midlands and went to the local university in Oxford as it were, but when I was choosing special subjects, we had a little bit of freedom in the third year. There was one on constitutional documents of the modern Commonwealth and what appealed to me about it was it actually went up to 1953. As this was 1962, most Oxford history courses stopped at 1914!

SO: Because that's when history comes to 'a full stop'!

PS: I was intrigued and I was very fortunate that my tutor was a very distinguished Commonwealth scholar, David Fieldhouse, who was then teaching at Queen Elizabeth House. So this gave me a chance not only to read all the classic Commonwealth texts such as Berriedale Keith, getting right back to the Durham Report and the evolution of responsible government; but it also involved looking at some legal cases. The cases which were then very much in people's minds in the Commonwealth were the vote cases in South Africa whereby the National Party government which had come to power in 1948 eventually, during the course of a tortured litigation during the 1950s, managed to get all non-whites off the voters rolls with some opposition from the judiciary; but subsequently the judiciary was effectively packed in favour of the government.

So, I got interested in these legal cases so as a result of that I decided that I would enter solicitor's articles which I did in 1963. It so happened that my principal in this very small firm in the West End was a gentleman called

James Lemkin, who was one of the founding members of Bow Group of Liberal Conservatives of the Iain MacLeod persuasion, and also I think of Capricorn Africa. And again I think it was purely chance in Lemkin's case - he came from Manchester Jewish business stock but he'd done part of his National Service in the Navy at Simonstown *[laughs]* so I think his interest in Africa was as adventitious as mine!

SO: Yes.

PS: And he was instructed by the then Northern Rhodesian government in the great dispute they were having with the British South Africa Company over the ownership of the royalties to the mines, the great copper mines of the Northern Rhodesian Copper Belt. So, as an articled clerk, instead of conveyancing houses in Harrow, I found myself exploring treaties between the agents of the British South Africa Company and the local chiefs in the area of the Copper Belt.

SO: So, this was investigating the 'nuts and bolts' of empire?

PS: Indeed so, yes. And also one of the interesting aspects is that we were fighting what I suppose we would now call a PR campaign in order to convince investors and the City that the Northern Rhodesian government was not a gang of communists, but had a legitimate case that the British South Africa Company did not actually own the rights; so one of our great achievements, I remember, was a big headline in the Financial Times saying, "Doubts Cast on Company's Title".

SO: Was this just at the time when Northern Rhodesia was starting to negotiate its exit from the Central African Federation?

PS: Well, it's a bit later than that. The Central African Federation had had it by the end of '63 so what we're talking about is the run up to independence of what became Zambia, on the 24th October 1964. I wasn't directly involved in the negotiations but if you read the accounts at the time you'll discover there was a famous meeting between the government and the company's representatives in a tent a few hours before independence, and eventually a settlement was reached.

SO: What you're describing then is the Commonwealth that you knew and came to love at Oxford under Professor David Fieldhouse, the 'Nehru Commonwealth', the Commonwealth of 1949, including India as a republic.

PS: That's right, yes.

SO: But the Commonwealth by the early 1960s was already becoming a very different entity with decolonisation and the admission of newly independent African states.

PS: Yes, that's right. It was of course a tremendous rush from Ghana in 1957 and most of the rest of East and West Africa following by 1964. By 1964 Zambia was almost a little bit behind, leaving only Botswana, Swaziland and Lesotho. By the end of the '60s, the old empire in Africa had disappeared except of course for the problem of Rhodesia! *[Laughs]*

SO: Please could we talk a little more about the problem of Rhodesia because I know that your professional background is very much one of being involved in advising the Foreign Office on Rhodesia.

PS: Well exactly. So, with this interest in Africa, instead of entering what you might call the respectable branch of the legal profession I saw this advertisement for an assistant legal adviser in the Diplomatic Service and they were recruiting for the then Commonwealth Office. I'm not sure exactly about the dates but the Colonial Office was merged with the Commonwealth Relations Office I think in '66, and of course the Commonwealth Office was merged with the Foreign Office in '68 to form the Foreign and Commonwealth Office. So, I took up my post in May 1967 in the Commonwealth Office. It's disgraceful actually, this is really just purely an anecdote, but you know how well people prepare for interviews these days,? Well, I thought I know about the Commonwealth, so the legal adviser said, "But what about international law? We also have to advise departments on matters of international law. Do you know any international law?" I said, "Well no, not really, I've never studied international law but I understand that all you have to do is look it all up in a book by some foreign sounding chap called Schwarzenberger"!

SO: You didn't!

PS: I did! And I thought, "Well, that's done that!" But surprisingly I think they obviously thought I really did know. I suppose probably I was the only candidate who really knew much about the Commonwealth so they thought, "Well, he can pick up the foreign international law" *[laughs]*.

SO: It's deeply humbling when you think of how rigorously students are now interviewed.

PS: Exactly so. Well, that was it, yes. Perhaps in those days I think they probably thought, "Well, the chap's been honest about it. I'm sure he's good enough to mug up".

SO: Right. So obviously you passed your interview with flying colours!

PS: *[Laughs]* Yes, that's right.

SO: But you had a particular view then on Rhodesia's IDI?

PS: Well, the thing was that I was assigned as a junior legal adviser who was responsible for a department in those days. As you probably know, legal advice was given to geographical and functional departments, and because of the nature of the crisis there were actually two departments devoted wholly to Rhodesia; Rhodesia (Economic) which was responsible for enforcing sanctions, or not as the case may be, and Rhodesia (Political). It really was a fascinating time because a lot of the issues were related to what I call the theology of the Illegal Declaration of Independence, which we were careful to call it, rather than the UDI as it's generally known. In our theology it was IDI and a lot of the questions related to whether in our terms a particular officeholder or a particular action could be regarded as lawful within our terms, as opposed to being hopelessly tainted with illegal regime.

You'll remember the Governor: when Smith declared UDI as he called it *[laughs]* the Governor of Rhodesia, Sir Humphrey Gibbs, remained holed out in Government House for some years. In fact I did, at the end of the '60s after I'd left the office, pay my respects and sign the visitors book at Government House; it was very strange, and the whole thing was slightly surreal. So, a lot of our work consisted, as I say, in deciding what was lawful and what was not and whether we could recognise this or recognise that. I remember one official from another government department saying to me after a meeting, "I suppose you chaps go home and read Alice in Wonderland every night!" *[Laughs]*

I remember once having the distinction of an extract of a letter which I had written appearing in a very prominent place in an article in I think The Guardian newspaper, because one of the issues we had to deal with was whether the United Kingdom government was liable to pay the interest on Rhodesian government stock which the Smith regime had repudiated. And I remember this: according to the doctrine, the government of Southern Rhodesia remains an entity distinct from that of the United Kingdom government for legal purposes, even though of course the Secretary of State directed the government insofar as it exists as a lawful entity. Not surprisingly, we eventually I think lost in the courts. But the other very interesting negotiation I was closely involved with was the financing of the building of the North Bank of the Kariba Dam.

You may remember that when the Kariba Dam was first built by the Federation, it was considered to be a vanity project which would produce more power than anybody would ever need. But in fact by about '68, '67, '68, if the North Bank Power Station could be built it would give Zambia an independent power supply; it would be totally independent from the South Bank.

SO: So this is after the emergency coal lift to Zambia by the British and the Americans?

PS: That's right, yes. And it's very interesting. There's been a great deal of controversy in recent years about the role of legal advisers and the interface between law and policy. I remember I drew up this very elaborate memorandum which may, for all I know, still be lurking in the archives somewhere, explaining that in fact there was no way this could be done without imposing additional obligations on the United Kingdom government, whereas the United Kingdom government's position was, 'yes, well we can do this without a further burden on the taxpayer.' And I always remember the then Assistant Under-Secretary of State saying, "Well, I can see what you say is entirely accurate from a legal point of view and you've done the most admirable analysis, but for policy reasons we're going to go ahead". I can't remember what the details were, but what I do remember, and this is quite interesting, is that I actually sat in the bilateral negotiations with the Zambian government, and the Zambian government delegation was led by the Secretary for Finance, Ken Knaggs; he was an official who had stayed on having been a colonial civil servant. And my goodness me, if anybody suggests "Oh well, these chaps were British stooges", it would be quite wrong. He fought in the interests of the Zambian government very effectively. So I think that those people who stayed on did naturally play an important role.

SO: Peter, just from your position as a legal adviser within Rhodesia (Political), what was your view of the Commonwealth on Rhodesia?

PS: Well, the interesting thing is that at the time I don't really remember. I may be quite wrong about this but, apart from being a background noise and a nuisance, we did not regard the Commonwealth as a very important element in the equation at that stage. We certainly didn't see the Commonwealth as an active participant in resolving the situation. We were of course embarrassed by criticism particularly from the African Commonwealth, and if you remember in Nigeria they actually took assets of British Petroleum.

SO: They did that just before the Lusaka CHOGM in 1979.

PS: Yes, so that was later on. Yes later on, exactly, you're right, yes.

SO: But at the time, just thinking in the late '60s, Tanzania and Ghana withdrew their diplomatic representation in London, there was the whole furore around the Lagos CHOGM in January of 1966, there was talk of the Commonwealth breaking up. You're talking from the point of view of an official that this is really just 'noises off'.

PS: Yes, at my level certainly. As I think I wrote in one article many years ago, we were trying to prove that the pen was mightier than the sword and that through legal processes and legal sanctions and denying the legality of everything that the illegal regime did, we would play a real part in eventually perhaps bringing the Rhodesia Front government down.

SO: Do you remember any general discussion at the time on the question of the British use of force; was that ever anything that percolated through to your department?

PS: No, but then I was not privy.

SO: Obviously you weren't privy to the top level policy discussions, was there in any way a generalised debate about whether Britain should have used force that you were aware of?

PS: No, I don't really remember there was. One of the problems, as it turned out later of course, was that the oil sanctions were actually being undermined and we didn't know that *[laughs]* not at my level, at any rate.

SO: No. I was going to say, they knew higher up.

PS: They must have known higher up.

SO: Yes, by '67, '68 they were certainly aware.

PS: I think George Thomson, the Secretary of State, was aware.

SO: Yes he was.

PS: But that's, as I said, that was above my pay grade in those days! *[Laughs]*

SO: That only really hit the fan by the Bingham Report in '77.

PS: Yes exactly. Yes, that was a very interesting document, the Bingham Report, because it was produced at a time when Her Majesty's Stationery Office was on strike. I used to have a copy of it somewhere but it was not easily available.

SO: I've got a copy of it in that cupboard actually. So, you offered advice to the Foreign Office on Rhodesian IDI until 1969?

PS: Yes.

SO: Were you providing any of the legal advice behind the Fearless and Tiger talks?

PS: No, that was my boss Henry Steel, who I think I mentioned to you. As far as I'm aware he's still alive; at least I haven't seen reports of his death, but he would be able to tell you all about that because I think he was on - which one came first, it was Tiger wasn't it?

SO: It was Tiger.

PS: I think it was during that period, yes.

SO: 1966 and then Fearless was '68.

PS: That's right yes, so maybe it was Fearless. I only remember him commenting on the then Chief Justice who was sitting on the fence legally. Sir Hugh Beadle, who had been of course appointed lawfully, slipped down the companionway and ripped his back: I remember Henry saying, "That's rather a curious thing to happen to a man with no backbone!" *[Laughs]*

SO: Ouch!

PS: But you remember the background, the rather strange grey area remember we were operating in was that the Governor had issued this statement immediately after UDI saying, officials, armed forces should carry on with their normal tasks. Do you remember?

SO: Ah, yes I do.

PS: So that meant that, so we would make a distinction, again rather a difficult distinction, perhaps between acts in furtherance of the rebellion and acts which were merely concerned with keeping the country going.

SO: I was going to say, administration and law and order.

PS: Exactly yes, so you can see what I mean about theology, can't you, the book as it were was quite abstruse. *[laughs]*.

SO: Yes, the contortions that they must have put themselves through.

PS: Yes.

SO: How did your professional career develop after that in terms of the Commonwealth?

PS: What happened was that I left, I decided rather rashly that I wanted to become an academic. I thought this mineral rights business would be an ideal thesis, so that's what I did. I left in order to take up a PhD candidature at SOAS where I was supervised by Richard Gray who was a very distinguished, sadly no longer with us, historian of Africa. I then took up a consultancy with my old firm, with James Lemkin's firm, and a certain amount of work; he acted for the Reverend Michael Scott; we instructed Dingle Foot on issues relating to ownership of minerals in what was still then South West Africa. This was quite an interesting area of activity. If you remember, The UN got round the 1966 decision that the ICJ had no jurisdiction by seeking the advisory opinion of the International Court of Justice on the consequences for states of the Security Council Resolution, relating to the legality of South African rule. In fact, this is an aside but that earlier decision, in which they went back on the idea that they had standing, did enormous damage to the court in the eyes of developing countries, which meant they made no use of the Court at all during that period.

SO: Because of that ruling?

PS: Because of that ruling, yes. I think it did have a considerable impact.

SO: You were talking about doing your thesis at SOAS and that you acted as a consultant to James Lemkin's firm. Did you have any formal involvement with the Commonwealth then in the 1970s?

PS: No, I don't think I did really at that stage. It must have developed in the '80s and '90s. In 1977 I got a job as a Lecturer in Law at SOAS and I taught, jointly with Professor James Read, the LLM subject in Commonwealth Constitutional Law. There were two Commonwealth Constitutional Law LLM options; one about what you might call the old Commonwealth and one about the developing Commonwealth, so I taught the latter and that led me to a certain amount of involvement with current Commonwealth issues - I honestly can't remember when I first really got into the habit of being a regular visitor to the Legal Division at the Commonwealth Secretariat but I think it was probably a bit later.

Funnily enough, this is an aside, but one of the areas I specialised in in my consultancy was immigration law, the development of which was of enormous significance. I was actually in the Commonwealth Office, which was still an independent office, during the passage of the Commonwealth Immigrants Act in 1968. That was the one which for the first time imposed restrictions on British citizens from Commonwealth countries, and eventually the government had to back down and say, "Well, actually we can't exclude". And I remember very vividly, we actually looked up in the famous Oppenheim textbook and found this sentence saying, "A state in international law is under an obligation not to exclude its own citizens from its territory". I think perhaps the significance of that is, as far as British government circles are concerned, the loss of the independent voice of the Commonwealth Relations or Commonwealth Office with the Secretary of State in the Cabinet purely devoted to Commonwealth issues.

SO: So, at that particular point then in your view - you're talking 1968 – there was a demotion of the Commonwealth?

PS: Yes. Well, we were deprived of that because the Secretary of State for Commonwealth Affairs in the Cabinet had been able to present a Commonwealth view of the impact of the proposed Bill. So of course once the merger had taken place -

SO: There wasn't a separate voice in Cabinet?

PS: - that independent voice was lost, yes.

SO: Was that a source of concern or indifference in practice that you recall among officials?

PS: Well *[laughs]* the main issue which I remember was it was customary then for legal advisers in the Commonwealth Office and in the Foreign Office to meet for tea in the afternoon but they met separately and the big question was, once the amalgamation had taken place, would we have to tea with the Foreign Office people! *[Laughs]* Sorry, that's a trivial point but it does illustrate that we former CO types had to advise on matters on foreign relations generally. I had the exciting task, I remember, of advising on road transport agreements with other European countries so that their lorries could come across to Dover. So I remember we had relatively cordial relations with Romania: we had a treaty with the Romanians - this was in Ceausescu's time - and you had to wheel in a minister to sign the treaty with the Ambassador and have a champagne toast. We had a very cordial meeting with the Romanians. The following week there was the signing of a similar treaty with our French 'allies'. Lord Chalfont, the minister of state said rather tactlessly, "I thought this might be our entry into the Common Market"! Anyway, that's really nothing to do with the Commonwealth is it, but I'm trying to illustrate how obviously we became in a sense merged into the general run of foreign affairs.

SO: Rather than there being this distinctive administrative, legal, political voice of the Commonwealth?

PS: It would be interesting to look at that actually because as I said this was way above my pay grade but you may find people who can comment more constructively on the impact at the time of the disappearance of the independent office.

SO: You talk about the disappearance, but there you are as a Professor teaching Commonwealth Constitutional Law at SOAS; did you feel it had immediate policy relevance or were you teaching it effectively from a historical point of view?

PS: Oh no, what we were looking at were the problems of constitutional governments in the developing Commonwealth countries. So a big issue for example was the question of the one party state and its implications for democratic governance. Obviously we had students from such countries who were actively engaged in research on those topics, from countries like Zambia, for example. We looked at the contemporary problems of small states, which the Commonwealth of course has a large number.

SO: Was this a forerunner of political, economic and human rights?

PS: Well the independent Commonwealth countries had all been equipped with Bills of Rights. We used to call it 'the Westminster export model' because really there were some very fundamental differences between the Westminster model as practised in Westminster and the model that was exported. The fundamental notion of the new Commonwealth countries that the constitution is the supreme law and that legislation inconsistent with the constitution can be struck down, was then at any rate total anathema to the British constitution that was still wedded to the notion of parliamentary sovereignty. What was interesting was studying the impact of those Commonwealth countries; it was almost a particularly African model which adopted this one party state.

SO: To avoid politicised ethnicity?

PS: Well yes, but also of course to avoid in a sense of party politics of any kind. Nyerere said, "look, we haven't got an opposition in this country. So, the only way we're going to get competition for membership of Parliament is to have competition to represent the party". That was the essential idea. So, you did have in a sense, particularly in Tanzania, a reasonably democratic order. It's quite interesting, the International Commission of Jurists had a sort of seminar in the late '70s where Sonny Ramphal, of all people, actually wrote an introduction to the published volume saying perhaps the best way that democratic accountability can be realised in these countries is through the medium of the one party state.

SO: Well, this is very much the era in developmental economics of the state as the engine of development? And you had to focus on the politics of nation building.

PS: Exactly so, that's what Kenneth Kaunda believed: the One Zambia, One Nation. And we can't afford the luxury of opposition. We can't waste talent sitting on the opposition benches.

SO: So the political culture of adversarial politics that has evolved in Westminster is inappropriate?

PS: Exactly so, but it was based on this idea of the supremacy of the party. If you look at the Zambian constitution in 1973, the one party constitution, you'll see it talks about 'the party and its government'. So, in other words, the party is the principal organ of state and the government is the agent of the party in carrying out the party's objectives.

SO: Peter, as a British academic teaching Commonwealth Constitutional Law, what was your viewpoint then on one party states in the Commonwealth - because that positions the party as the supreme authority rather than acting within the structures of the state, and responsible and accountable to law?

PS: Exactly yes. Well, it depended of course on restraint and if you look at the countries of Eastern Africa that practiced it, Kenya was what we used to call a de facto one party state. They never prohibited formally, as far as the

constitution was concerned, and the Kenyan constitution remained nominally pluralist. But if you look at the ones where the formal changes were made, it led to the appalling tyranny of Banda in Malawi, the appalling tyranny of Obote and then Amin in Uganda. Things didn't go terribly well in Sierra Leone although it perhaps wasn't quite as bad. But in Tanzania a relatively benign process did permit genuine popular participation. Zambia went into a slow decline. When I used to visit Lusaka in the late '70s, '80s, the last decade of Kaunda's rule, you could see the UNIP fat cats lounging around the pool in the Ridgeway Hotel and your taxi driver would say, "What we want to do is get rid of the one party state"! *[Laughs]* So, I think, and you talk about development, it became terribly inefficient because Kaunda used to pack those great parastatals which ran the mines and pretty well everything else, with UNIP cronies - he wasn't personally corrupt but undoubtedly a number in his circle were and they were very glad to have these jobs.

SO: Well, absolutely, the bloated public sector and government pay roll.

PS: Exactly. And also one of the basic principles of the old Westminster system was the independence and impartiality of the civil service and that went completely by the board. The civil service and even the judiciary to some extent. So, I wouldn't say that there wasn't a degree of independence. In every day judicial work I'm sure there was, but as a Nigerian judge famously remarked during the Nigerian military rule, "In times of military rule the judges have to speak about human rights with muted trumpets" or a phrase of that sort!

[Laughter]

For example I knew Annel Silungwe, the long, long serving Chief Justice of Zambia very well. In fact at one stage he was registered to do a PhD at SOAS. He was a close friend of the president, they played golf together. I don't remember him ever entering a judgement which was critical of government.

SO: I've got two questions coming out of this. One of which is you've emphasised very much the African Commonwealth, but of course this is also in the '70s, the era of the Asian Commonwealth and also the emerging Pacific Commonwealth.

PS: Well exactly yes, and of course the period of decolonisation in the Pacific is really a phenomenon of the 1970s. I'm not sure that the locals were desperately keen on independence which meant that they would become as they are now, rather isolated, vulnerable states.

SO: Well, the small states have a particular agenda dictated by their small population, their vulnerability to climate change -

PS: Exactly so, yes.

SO: - challenge of questions of access to natural sea resources and -

PS: But I always remember my, I think it must have been just after I had left the office, I was talking to one of my, still is, close friends, who went on in fact to remain throughout his career and ended up as deputy legal adviser, he was

drafting the constitution of Fiji and I remember him saying, "Well, actually they want to be called the Dominion of Fiji". And you know they still keep the union flag even though they are a Republic! *[Laughs]*

SO: I do. Fiji had applied to join the empire in 1874 because of repeated attacks from Tonga in the first place, so that was a very unusual case.

PS: Yes, but 1970 when they became independent, they wanted to be the Dominion of Fiji. The Fijian independence constitution was enormously complicated, and some of these constitutions were enormously complicated. Going back to my experience of Northern Rhodesia, I think they reckoned the 1962 constitution in Rhodesia, with its extraordinary complex franchise arrangements, was about the most complicated document ever invented!

Anyway, in the '70s really at that stage certainly my awareness of the Commonwealth was very much focused on Africa. I did many years later go to Tonga on a mission for the Commonwealth Secretariat but that's another story. I remember going to Salisbury as then it was, to do research in the National Archives of Rhodesia in furtherance of my PhD research, and again the people I was staying with took me on a sort of Rhodes and Founders weekend trip to Umtali and then right round the Mozambique border. In fact we did actually go over to Mozambique, Portuguese East Africa as then it was, right down to the low belt Chiredzi via Fort Victoria, and that was before there was any insurrection of any kind.

SO: Those were the 'glory days' of the Republic of Rhodesia!

PS: And I remember sitting, because I was still, as I say, working for James Lemkin - he used to send me out there on other occasions, and I remember I went to Cold Comfort Farm, Guy Cluttonbrock. Under the 1961 constitution there was a Constitutional Council which was non-racial and that was still meeting before the repudiation of the '61 constitution, and introduction of the 1969 constitution which was the full Rhodesian Republic and of course the Governor was sitting in Government House.

SO: In glorious isolation.

PS: In glorious isolation. But I remember James saying, "You ought to have a weekend off" so I went to spend a weekend in the Victoria Falls Hotel and I remember sitting on the veranda there - this must have been after the Republic because they were flying the Republican flag, so I suppose this was about '71 - thinking, "How on earth are we ever going to get to a situation where that flag comes down", and it did seem, in 1971 it seemed that that would never happen. You remember there were all these talks about talks about talks and there was the Pearce Commission and the Test of Acceptability that Douglas-Home attempted.

SO: And after all, this was also the era in which white immigration into Rhodesia was rising, and as you say successfully sanctions busting, seeming peace; the civilian insurrection seemed to have been dealt with, although there were occasional, isolated incursions at that particular point.

PS: They were very isolated, and your point about white immigration is well taken. One of the most instructive evenings I've spent, I think it was in the public bar, the white working class bar of the Victoria Hotel in Bulawayo, and these were men who after all in this country would be living in a council house and cycling to work, and there they were in a nice bungalow supervising African labour in various factories or whether they were in the construction industry, there was no way those people were going to, like turkeys, vote for Christmas.

SO: Lower middle and working class aspirational times.

PS: Into the lower middle classes, yes that's right.

SO: My father used to say Kenya was known as the Officers' mess and Rhodesia as the Sergeants' mess!

PS: That's right, the NCOs mess yes. I did notice however that quite a number of them slipped off at the end of the evening to meet their coloured mistresses!
[Laughs]

SO: Yes, but that wouldn't have been talked about.

PS: No, no.

SO: No. As you say, the hypocrisy of it was embedded within that society. By the latter part of the 1970s though, the whole Rhodesia issue is becoming increasingly problematic for the Commonwealth because growing violence boiling into a civil war. Did you have any particular professional involvement or insights in that? In the run up to the Lusaka conference in August of 1979.

PS: '79 yes.

SO: And the constitution of Southern Rhodesia, Zimbabwe -

PS: No, I didn't, but I think that's where the Commonwealth suddenly I think (made a difference). British government policymakers could probably throw light on that, but Mrs Thatcher who as later was not particularly sympathetic to the Commonwealth. Later on over South Africa she was constantly getting herself into a minority of one, but I suspect that there was suddenly an awareness on the part of the British government that the Commonwealth might actually help. And it did; I was very interested from the legal point of view in the mechanics of the return to lawful government, which was quite fascinating. I did quite a lot, I wrote an article about it which the Secretariat published in the Commonwealth Law Bulletin but my role was purely from the outside. But the Legal Division was heavily involved and Jeremy Pope played a key role in the whole process.

SO: You weren't acting as an adviser at ComSec in these times?

PS: No, I wasn't, no, but I was very interested. As I say, I did no more really than write an article to explain in considerable tedious detail the whole mechanics of the restoration of lawful government. I only mention it because it might be forgotten, but I think in some ways it was a unique exercise because it was all done. It was a complicated locking mechanism so that the Parliament of

Rhodesia, of the Republic, solemnly met and adopted legislation dissolving itself and saying, "As from the appointed day Rhodesia shall become the Colony of Southern Rhodesia".

SO: Which reinstated the position of the Governor.

PS: Exactly and Henry Steel, the chap I mentioned had been my boss in the Commonwealth Office, in the FCO, was Christopher Soames's legal adviser in the transition period. My first visit after independence I remember was in the autumn of 1980; I remember driving with Reg Austin who later became Head of the Legal Division of ComSec and was taking over as Head of the Law School in the University of Zimbabwe as it is now. We drove from Lusaka to Salisbury, as it was still called, through empty roads. I think people hadn't quite got used to the idea that the war was over, the roads were very quiet. I remember when I went to Salisbury I interviewed a number of ministers in the new government. I went to a big conference: I remember Mugabe was there promoting foreign investment and a very able finance minister who'd been a UN civil servant.

SO: So, what you're saying as somebody who was interested in the Commonwealth in Africa, that this was the time when the Commonwealth really had made a difference?

PS: Yes, well you could say that it had shown the utility of the Lusaka Commonwealth Conference in achieving the Lusaka Accord, but also it meant that in some ways the whole process was being monitored and overseen by the Commonwealth.

SO: Through the Commonwealth contribution to the Monitoring Force, to the armistice, the Commonwealth Observer Group to monitor elections and to report outcomes.

PS: Exactly yes and of course Ramphal himself was an enormously influential figure. So I think you could say in a way that the Commonwealth was holding Britain to account; but of course this also, to some extent, suited Britain to say, well, we're doing this through the mediation of the Commonwealth. Suddenly the Commonwealth now became a positive force as opposed to that long period of confrontation where the Commonwealth, as I say, seemed a rather tiresome nuisance with African countries playing hell about Zimbabwe and the rumours of breaches of oil sanctions. So I think, in many ways, I would still think looking back on it that '79, '80 was the high point in the Commonwealth as an instrument of policy.

SO: But what about South Africa, because a story has emerged on the Commonwealth's contribution to the end of apartheid in South Africa, again calling the British government to account, urging Mrs Thatcher in the '80s to institute sanctions, the creation of the Eminent Persons Group of 1986.

PS: Yes, and again it's a real tragedy that Jeremy Pope has died because he was the Head of the Legal Division at the time and he could have thrown wonderful light on this whole business from the inside, getting involved with the design and execution of the Eminent Persons Group. On the one hand you had the Vancouver CHOGM in 1987 where you have these extraordinary

communicate with the repetition of 'except for Britain'... So that as far as Britain was concerned the Commonwealth was I suppose an isolating factor; after all we joined the EEC and I suppose - again this is above my pay grade really at the time, but when Britain joined the European Community, well, it's just had its anniversary hasn't it, we joined on 1st January 1973 - there had been to a certain extent the feeling that we were turning our back on the Commonwealth. And of course quite elaborate transition arrangements were made for the traditional imports from the Commonwealth countries, remember the Caribbean sugar and New Zealand butter. So there was a fairly serious attempt, but I suppose quite a lot of Conservatives must have thought, well, it's Europe, Europe in a sense is our destiny, rather than their traditional view of the value of the Commonwealth link.

SO: But also on this point, how much do you remember discussion or observation that here is the Commonwealth calling Britain to account for failing to rally round the Commonwealth flag, failing to push sanctions on South Africa, to push for universal franchise in South Africa and black majority rule, but this criticism is coming from Commonwealth countries who themselves were undemocratic, practicing one party rule, and, in constitutional and pragmatic terms, were ignoring human rights?

PS: Yes, well I think to some extent one has to remember that the modern Commonwealth, whatever one thinks in terms of the actual record of performance, has been very much an organisation which is committed to the promotion of human rights and the rule of law. At least that's what they keep saying all the time!

SO: Particularly since Harare 1991.

PS: Well, it started in Singapore in '71. So there was the Declaration of Commonwealth Principles ironically at the time when Britain was in most trouble over supply of arms to South Africa. That was a very interesting exercise in the sense that it led the Heath government to publish the full opinion of the Law Officers on the basis that we had an obligation under the treaties with South Africa to supply them with upgrades for their warships. But I don't remember the Singapore Declaration having a great resonance at the time. But then came Harare - and again I think that was very much the kind of initiative that was developed from the Secretariat and the Legal Division. Ramphal and Jeremy Pope wanted to make the Commonwealth mean something. But there wasn't much in the locker until, as you say really up until Harare.

SO: Right. Peter, by this point you had become involved in the Commonwealth Legal Education Association by the early '90s?

PS: Yes.

SO: So you had association with the Commonwealth Human Rights Initiative, the Commonwealth Lawyers' Association and affiliation with the Commonwealth Magistrates' and Judges' Association by this point?

PS: Yes.

SO: I'm just thinking of your own professional involvement in these Commonwealth civil society associations and quasi-governmental organisations, how much do you think that has also changed the face of the Commonwealth through the 90s?

PS: Yes, I think it has and I think the growth of that sort of civil society which in a sense one could say it's one of the things. One of the interesting questions which we might talk about is, what do international lawyers make of the Commonwealth and its rules and its system? But I think one of the particular features of the Commonwealth is the way in which the non-governmental societies do play a key role in Commonwealth activities. We can talk about Latimer House later on, but that's obviously a prime example. These organisations are of many types: the Commonwealth Human Rights Initiative, although the lawyers and I think, the CPA, the Parliamentarians, were original sponsors of the organisation, is very much a campaigning organisation; in other words it has an agenda and it produces regular reports which it introduces at each Heads of Government meeting on issues relating to police conduct and reform or gender issues and so on.

There are obviously others, whether they are campaigning on environmental issues or whatever, but then there's this corpus of professional organisations. Although, for example, the Commonwealth Lawyers' Association, sometimes together with the Commonwealth Magistrates and Judges and the Commonwealth Legal Education Association, issues statements on matters of public concern. I think our view would be that what we're trying to do here is promote the fundamental values of the Commonwealth. In other words, not promoting our own interests, although in part they are associations of particular interest groups of lawyers or nurses or journalists or beekeepers or whatever.

SO: So taking Harare as your foundational document?

PS: That's right, yes and in a sense that's how the Latimer House process began.

SO: So, what do international lawyers make of the Commonwealth, before we come onto talking about Latimer House?

PS: Well, it's quite interesting. For the purposes of writing an article on The Commonwealth and the Law, for the Round Table Centenary volume, I did actually go through the index of standard textbooks on international law, and see what reference they made to the Commonwealth. Now, some make no reference at all, some refer even in books published in the 21st century to the British Commonwealth *[laughs]*.

SO: Do they really?

PS: But others do admit that the Commonwealth is clearly an international organisation in the sense that it's an association of states with lawfully defined purposes and organs to carry them out, the Heads of Government and the Secretariat of course; but unlike most international organisations it doesn't have its own international personality in the way that the United Nations does or the European Union does or ASEAN or ECOWAS or NATO. They're all international organisations which have their own legal personality because they're based on a founding treaty; in other words, the member states are

bound together in the manner which international lawyers would recognise as creating legal obligations to each other on the international plain. One can't say this of the Commonwealth as clearly the Commonwealth doesn't have the treaty. There is no 'treaty of Commonwealth cooperation'. There could be; the Commonwealth is a flexible organisation, but it's never likely to have that. Nevertheless it does have principles to which all members subscribe.

SO: Or 'aspire'?

PS: Aspire, yes, aspire perhaps. It does have a system of monitoring in the sense that the Millbrook Declaration does contain quite a detailed formula if you like, to put it that way, as to what happens when a state is in breach or 'is failing to observe' if one likes to use a slightly more legalistic expression, the principles of the Commonwealth. Of course in practice this is usually meant when a constitutional government has been overthrown by a coup. So, for example, the only member fully suspended at the moment is Fiji which is still under military rule. But nevertheless you could say therefore that there is a peer review mechanism to oversee the observance of Commonwealth principles; and I would say too that international lawyers do not always draw a clear line between what is a legal obligation and what is merely an aspiration, as you put it, or a principle. One very distinguished French international lawyer said that between the darkness and the light there is a twilight zone, so I think perhaps Commonwealth obligations for lawyers fall into what is sometimes called soft law. Nevertheless I think if you look, going right back to 1977 and the Gleneagles Agreement (of course it wasn't an agreement; it was the Commonwealth statement on apartheid in sport) it did clearly use quite obligatory language. When there was the famous spat between Muldoon and Ramphal over a South African rugby tour of New Zealand, the Commonwealth finance ministers cancelled their meeting in Auckland. *[Laughs]*. It was hardly an earth shattering sanction but it does imply doesn't it a certain sense of obligation. Now, interestingly enough, and most recently one of the things I have been involved with is the crisis over the Chief Justice of Sri Lanka. When we issued a statement - that is the CMJA, the CLA, and the CLEA issued a joint statement - condemning the process by which they were seeking to remove Chief Justice Bandaranaike, (who happens to be an old student of mine), it was very noticeable that that stirred up in the electronic media responses from persons who were clearly speaking on behalf of or sympathetic to the Sri Lankan government saying, "Well, we're not bound by these Latimer House Principles, they're just a" -

SO: A bit like the pirate code, these are 'guidelines'?

PS: Yes exactly, yes. In fact Sri Lanka after all, as a full member of the Commonwealth, has subscribed to all these principles which Heads of Government have always reiterated, but that indicates perhaps the way in which this is the twilight zone.

SO: Peter, just to backtrack, you talked of the Millbrook Declaration of 1995 and you made reference to the Latimer House Principles. Were you involved in the diplomacy of the process behind the Latimer House Principles in 1998 and their move to formalisation in Abuja?

PS: Well, I think it is an interesting story because it illustrates some of the points that I have been making. I believe you've interviewed Dr Karen Brewer, haven't you?

SO: Yes I have.

PS: Who I'm sure has told you quite a lot about what started as an informal committee of representatives of the CLA, the CLEA, the CMJA and the Commonwealth Parliamentary Association, who were very important at the time because the then Secretary General, Art Donahue of the CPA, was very active in promoting the idea that we ought to hold a joint colloquial on the relationship between the three branches of government and we had some support from the Commonwealth Secretariat. Richard Nzerem and The Legal Division were supportive and in fact provided us with some money. I think that we got some money possibly from the Commonwealth Foundation as well to hold a conference at Latimer House, which is a conference centre in Buckinghamshire. And we met and the leading promoters felt that we ought to get something concrete out of the meeting. So overnight, we thought, why don't we draw up a series of guidelines?

Anyway, so on the last morning Art Donahue, the Secretary-General of the CPA, and I chaired a session at which we brought the various bits of the documents together and adopted essentially the text of the Latimer House Guidelines. It was an interesting gathering because it was a gathering of academics, parliamentarians including I think the current prime minister of one of the Caribbean Commonwealth states, judges and one or two others like Derek Ingram and Richard Bourne. So it was a representative gathering I suppose of the principal stakeholders. It wasn't an elective group; it was simply people who'd been invited to come to the conference, so we can't pretend it was a representative body in a formal sense, but it did represent our organisations certainly. We came up therefore with this text and again I think with the assistance of the Secretariat we were able to publish it. I'm sure you've got a copy of it haven't you?

SO: Is that the Joint Colloquium publication?

PS: Yes, it's the Latimer House Guidelines and then we agreed that we would do our best to promote them and the Secretariat likewise. I think they found them quite helpful. Anyway, the question was what could we do with what a purely unofficial document? It had no status other than the fact that it represented, if you like, the views of members of these organisations. But then it went before law ministers who said, "Well, we couldn't subscribe to the guidelines as they stand" - because they suggested the governments might actually be called to account - "but nevertheless we would like to set up a committee of ministers who would 'refine'" was the word used *[laughs]* "the guidelines", and we were invited to attend as observers.

It was a small committee and so in practice we sat round the table, so I can honestly say that the representatives of the CMJA, the CPA and the CLEA and the CLA played a constructive and real part in this process whereby the guidelines were eventually transmuted into Commonwealth Principles which might be adopted, as it were, through what I used to call the red channel. In other words, the green channel is the informal channel but this was actually going through the red channel of law ministers. And then, I'm not sure that we

entirely expected it to happen, but the Abuja Commonwealth Heads of Government meeting was the very difficult one in 2003 when effectively Zimbabwe withdrew. I suspect we always understood that the then Secretary General of the Commonwealth thought, "Oh well we've got to have something out of this", a bit like the Singapore Declaration in '71. So, Heads of Government adopted the Commonwealth Latimer House Principles on the relationship between the three branches of government.

SO: So, you're suggesting that your professional associations were acting as establishment figures, giving law ministers support, rather than acting as below-the-radar pressure groups?

PS: I think what we were trying to do is to find a way of articulating the Commonwealth's fundamental values in a specific form in terms of those vital relationships between governments, parliaments and judiciaries and we did work together with ministers.

SO: But at the final point, Peter, what you're suggesting is that because of the disaster of Robert Mugabe withdrawing Zimbabwe from the Commonwealth, that there was a sense of the Commonwealth Heads of Government looking around for something positive to come out of the CHOGM?

PS: Well I suspect, I don't know, I'm sure if you interviewed Don McKinnon, you are -

SO: I'm going to, yes.

PS: I'm sure he will throw light on it. So, we had now the Latimer House Principles enshrined forever as part of the fundamental values of the Commonwealth as was reiterated at the Malta CHOGM two years later.

SO: Had you moved by this point into having quasi-governmental representation? Did you have delegate standing at CHOGM meetings by this point or not?

PS: No. The only organisation which has a special status at CHOGM really is the CPA. We would be an accredited observer, you know, we would have that.

SO: So lawyers are accredited observers?

PS: Yes, whatever the phrase is, we had accreditation for the CHOGM but that didn't really mean very much apart from the fact that we were invited to the Secretary General's reception which the Queen attends at the very beginning of the conference; and of course you could I suppose lobby delegates to a very limited extent. I think I attended Edinburgh, Durban and Malta. In the case of Malta I went as part of the CHRI delegation but I didn't myself feel that there was useful interaction. I don't think there is to this day, very effective interaction between us as the partners and the conference as a whole.

SO: So you don't feel CHOGMs are actually very useful?

PS: From our point of view, no. Mind you, of course you can say that they have this civil society forum or whatever they call it, the 'People's Commonwealth', and that can be quite useful. I went to some of the meetings in Valetta and they were quite interesting but in a sense it's just coinciding with the Heads of Government meetings as a gathering of Commonwealth societies.

SO: So you feel that the Commonwealth Law Ministers Meetings are more effective?

PS: Well, for us, yes. Again, it's a little bit difficult because we do sit in to the actual sessions of senior officials and law ministers as observers, so we are, as it were, present in the room and from time to time we are invited to submit papers.

SO: Are you allowed to make oral submissions or are these just written submissions?

PS: Well, obviously if one of our representatives is submitting a paper then we do have that opportunity and traditionally we've had a reporting session where each partner organisation has been able to say something about its work and invite questions from delegates, but that's not usually very productive quite frankly. (a) we don't get any questions, and (b) usually it's squashed in at the end, so the actual time available to promote dialogue is rather limited.

If there's an area where obviously we have a relevant expertise or there is a discussion of the role of judges or anything like that, Karen Brewer as the General Secretary of CMJA, might be invited purely ad hoc to make a brief intervention, but it is fairly limited. One of the problems is that law ministers are understandably very wary of having pressure groups having direct access to their meetings. Particularly always the delegate from Singapore makes this point. There was a proposal which was discussed at the last law ministers for civil society to have access to almost half a day when they could raise issues with law ministers and that was not at all well received. But then we would like to think that we are in a special position because we do have this relationship which is typified by the Latimer House process which means that we are trying to be partners with the Commonwealth Secretariat in the achievement of Commonwealth goals.

SO: In your experience then from three CHOGMs, Edinburgh, Durban and Malta, you feel that Heads of Government Meetings are not that useful, but Law Ministers Meetings are?

PS: Well, they are because we get much closer obviously to the ministers, we have lunch and -

SO: How far are you aware of the internal politics of the Law Ministers Meetings?

PS: Well, you can see, they're rather curious gatherings in some way, they're not quite as exciting as you might think!

SO: [Laughs]

PS: All in all, they're pretty dull actually! - there was an interesting episode which I sadly missed where the Commonwealth Lawyers' Association did, by invitation, present a paper on gay and lesbian rights and I gather that did actually provoke quite a serious division of opinion along the sort of lines that you can imagine.

SO: **Yes.**

PS: But that's a relatively rare occurrence. Singapore is always very concerned to make sure that there is no trespassing whatsoever on the sovereignty of governments and they have some support, but they invariably take the lead on that. That's why if you look at the final Latimer House Principles document it doesn't contain any effective measures for monitoring the performance of member states. On the other hand with the support of the Secretariat, as Karen's probably mentioned to you, we did have a successful meeting in Nairobi to develop the Latimer House Principles and if you look at the final document, I should have brought a copy of it, sorry, I meant to do that.

SO: **Not to worry.**

PS: You'll see where there was a plan of action which we developed in Edinburgh, on the wings of the Law Ministers Meeting.

SO: **Peter, just though going back to the broader diplomacy of the Commonwealth, you made reference to Don McKinnon's particular role at Abuja in 2003. From your standpoint, where was his input in the struggle for effective implementation after Abuja; how critical was the diplomacy of the Secretary General in actually giving substance to that declaration?**

PS: Well, I think it was very difficult. I think McKinnon himself was supportive and he made the right noises but one has this fundamental limitation that Commonwealth governments are not prepared to submit to any effective monitoring process other than one that they control themselves. So CMAG is a body of foreign ministers; purely it's a governmental body. If the honourable delegate from Singapore, for example, or one of his other likeminded colleagues had a whiff of the idea that governments might be submitting themselves to some kind of monitoring process by Commonwealth non-governmental organisations, that was totally unacceptable. So we're still seeking really a way of finding some kind of mechanism by which Commonwealth governments can be brought to account for failure to observe Commonwealth principles.

Now, if you look at more recent developments - that proposal which emerged from the most recent Eminent Persons Group, to have a Commonwealth Commissioner for the rule of law in human rights. We did actually try to produce quite a detailed proposal, which to try and make it a useful body would have avoided using the word 'Commissioner' *[laughs]* - an office which could collate information. An information clearing house could at least provide some kind of objective assessment of the human rights/rule of law record in Commonwealth countries. What we do, as Karen no doubt mentioned to you, is submit a confidential report to the Secretary General prior to a CHOGM, drawing attention to good and bad practice, as far as the implementation and observance of the Latimer House Principles are concerned. So we can do

that and the Secretary General can make of it what use he may, but you can say that I think the Commissioner proposal is a dead duck.

And then the other proposal of course was a charter from the Commonwealth. Now, the original draft of that - I think Michael Kirby, who seems to have put his hand to it, would admit as much - was very much a back of the envelope job – it was not a tidy document really at all but nevertheless provided the basis. We, as the professional organisation, submitted a redraft, which I'm sure Karen has mentioned to you. To some extent at least it is reflected in the final document that foreign ministers adopted in September and apparently it will go forward to the next CHOGM wherever that may be. It's a charter, although it's not like the UN Charter. The word you used was 'aspiration', well, it is aspirational. There's some value perhaps in bringing together in one document the values of the Commonwealth which have evolved since Singapore, Harare, Auckland, Abuja and Trinidad and Tobago.

SO: Peter, what you're describing here then is a changing role of Commonwealth professional organisations trying to assist governments so that there could be transparency and accountability on the basis of the three pillars supporting democracy. But what you're also describing here is an increasingly introverted, inward looking organisation, with a constructive tension between the professional organisations and Heads of Government, individual, national governments and parliaments or whatever. However, it seems to me that the energy and dynamism of the Commonwealth as a diplomatic actor came when its diplomacy and policy was focused outside the Commonwealth.

PS: What - as on South Africa?

SO: On the issues of majority rights in Rhodesia and South Africa. Now, is it fair to say that the Commonwealth is looking to its internal structures more in its diplomacy, rather than outside?

PS: Well, that's an interesting point. It's certainly become much more concerned in the 21st century with its modus operandi, if I can put it that way. You've had the emergence of the idea of the Chairman in Office who would be a sort of efficient head of the Commonwealth as opposed to the symbolic head and then that idea was rather downgraded in the EPG report. And there is much talk over the last few years of re-energising and modernising the Commonwealth and making it a more efficient organisation to fulfil its objectives. I'm trying to think of whether its role on the wider international stage has expanded. It has moments, you see, if you remember before the Copenhagen summit it produced an environmental declaration.

SO: Yes it did.

PS: Which suddenly seemed to be 'a real blueprint which would be the trigger for effective international action', but of course Copenhagen didn't really go down that route, did it?

SO: No it didn't!

PS: It didn't, but I think I would probably take the view that to regard the Commonwealth as an effective instrument of what you might call high

diplomacy is going to be very difficult if nothing else because of the wide difference of national interests. It's easier to say what the Commonwealth isn't than what it is. You can say it isn't NATO, it isn't the EU, it isn't the UN. I think perhaps one should be less ambitious and see the value of the Commonwealth in functional cooperation as a less exciting but very valuable role.

SO: So again 'the nuts and bolts' of diplomacy rather than the grandstanding?

PS: Exactly, that's right, yes. But in terms of nuts and bolts, remember that over half of Commonwealth countries are small states and that a lot of them are small island states and in many ways that's a very lonely place in the modern world. For example, there's that office in the UN which small states that can't afford their own representation can use; it's funded I think by the Australians. It may be that that helps at places like New York and Geneva. The Commonwealth can help states to deal with the appalling complexities of the world trade system, the WTO. There are actually people in the Commonwealth Secretariat who can provide specialist help.

SO: Are you involved in any of those negotiations or consultancies to small states in, say, negotiating with multinational organisations?

PS: Not directly, no, I haven't been actually, but I know the work does go on and it is very useful and of much value.

SO: Yes.

PS: This comes down of course to the question of the role of the Secretariat. There's a little bit of a worry that it's a tiny organisation in terms of budget. I think it uses the money it gets very effectively but one hears the sinister signs of plans, of strategic plans which would rather downgrade the Secretariat to being, instead of actually doing things, merely 'facilitating'. Saying, "Oh well we can arrange, we'll act as a sort of clearing house" rather than actually doing the training which the Secretariat traditionally has done. It has organised courses for the training of magistrates, looking at the legal field, for the training of court officials. That sort of work is much more useful than bringing law ministers together for an expensive gathering which I often feel is a disproportionate waste of resources these days.

SO: Yes. So, if there's a macro picture of the Commonwealth and its role to the outside world, then it is inaccurate? In fact what you're saying behind the scenes in terms of networks, provision of knowledge, legal support, technical support, that that is very much an unsung role in providing the glue for the Commonwealth -

PS: Yes that's right.

SO: - and material support for its members.

PS: Yes. I think that's why I think that the Commonwealth tends to have a low profile in the old Commonwealth states who obviously don't -

SO: Don't need it?

PS: Don't need it, or indeed have to pay for it! One of the things that should happen is to reform the budget in the Commonwealth Secretariat to make it -

SO: So that the ABC countries aren't quite so important?

PS: They have increased their contributions to some extent but countries like India and Singapore and Brunei can well afford to make very generous contributions [*laughs*] and so I think people in Canada or in Australia or in the UK would say, "Well, so long as the Commonwealth doesn't trouble us too much we don't mind forking out a bit of cash" but -

SO: Woe betide if it actually becomes an irritant in our side on an issue of diplomacy!

PS: Yes, we don't want the sort of - yes that's right.

SO: So, the Commonwealth may not now have a public profile of contributing significantly to the solution of difficult or intractable diplomatic problems that it acquired in the late '70s over Rhodesia, over the contribution towards transition in South Africa?

PS: Yes, I think that's right.

SO: But still there is considerable merit in terms of its supporting role in unglamorous diplomacy.

PS: Yes that's right and good offices. For example, in relation to the problems in the Maldives there has been -

SO: Have you been personally involved in that?

PS: No I haven't, no. That is an example of an occasion where if the host state is willing the Commonwealth can be of very real assistance, but for example in the case of Sri Lanka, the host state isn't willing.

SO: Also in Sri Lanka there's the problem that the judiciary is split.

PS: Yes, although the legal profession has been surprisingly united in opposition to the government.

SO: Yes, but the fundamental issue is that the host nation has not requested Commonwealth assistance.

PS: Well, that's right, you see, that's the Commonwealth principle. You can't go in where you're not asked. Fiji again has been difficult, the regime is not welcoming. So, on the other hand if you look at election monitoring, that's still an important role. The recent elections in Sierra Leone and in Ghana are good examples of the Commonwealth playing a constructive role.

SO: Yes, I was very struck by the fact that the Commonwealth sent Observer Groups in Rhodesia, Zimbabwe 1980, again in Uganda in 1980, and then there was a hiatus until the 1990s, when there were 22 Commonwealth Observer Groups in the 1990s.

- PS: Yes exactly and lots more recently. I suppose one could say that a test is whether the Commonwealth can repeat the role which it played in relation to South Africa in the '80s, '90s, in Zimbabwe in the 21st century, there is a Commonwealth Organisations Committee on Zimbabwe.
- SO: Of which you are a member.**
- PS: Of which I am a member. In fact there's a meeting tomorrow. And in that, I'm ashamed to say, the lawyers have not been as active in that as they might be but the medical side has been very active in assisting.
- SO: So what are the responsibilities, the particular remit of this committee?**
- PS: Well, it's really to promote contacts with Zimbabwe which would assist it in fields of education; social services; nursing; law. But it hasn't got any money for a start, but it can act I suppose as a way of keeping lines of communication open, and we hope to arrange a meeting with SADC, the High Commissioners. I gather there are developments on the new constitution. I gather Reg Austin who was Chair of the Human Rights Commission has actually resigned because he's got nothing to work on; he's got no capacity, but I'm not sure. The Secretariat seems to have been and is quite leery, it seemed to me, of getting involved with Zimbabwe now in the way that Ramphal was very happy to do in relation to South Africa. I often cite this and say, when South Africa was outside the Commonwealth it didn't stop us from being actively involved in promoting circumstances where South Africa might re-join, which is what happened.
- SO: In the case of Rhodesia I was reading just yesterday the documents in the Secretariat archives on doing assessments of what were going to be the manpower requirements of an independent Zimbabwe and where the Commonwealth could assist in training post-independence. It started to provide training for railway management. So, as you say, to offer thoroughly practical assistance.**
- PS: Yes. There is rather less of that I'm sorry to say. I'm not sure to what extent the opinion in Zimbabwe is being mobilised to feel that the Commonwealth might be an organisation it is worth seeking to re-join. Quite frankly, as we know, the state of the rule of law and human rights in some existing Commonwealth countries is pretty poor in ones like Rwanda.
- SO: Peter, what is your view of how the Commonwealth, from your legal standpoint, has altered as an organisation with the admission of Cameroon, Mozambique, Rwanda – all countries with very different linguistic, colonial and legal experiences?**
- PS: I think it is important to preserve the notion that the Commonwealth is a single language organisation. Once you have to go down the road of translation ... The Rwandan Chief of Justice is coming to London the week after next. He'd be somebody interesting for you to ask; what do they make of the Commonwealth! *[Laughs]*. As I understand it, most of the Rwandan elite grew up in Uganda so they speak English. Mozambique: they attend the Commonwealth meetings like Law Ministers Meetings, senior officials meetings, and they obviously send English speaking people, but the idea that

we should have civil law countries in the Commonwealth of course is not a problem. Indeed a lot of the sort of work that the Legal Division does in promoting cooperation in the legal sphere is in areas such as dealing with terrorism or rendition of offenders or corrupt practices which apply across jurisdictions. They are common problems which countries from all legal systems have to tackle. So I don't think that's as great a problem. I think there is of course this very difficult issue of Commonwealth expansion outside the traditional bounds. Where do you stop, in a sense? You could come to the point where the Commonwealth is losing its identity.

SO: It's not the United Nations?

PS: It's not the United Nations. Obviously there's quite an interesting list of countries which would, under the criteria, subject of course to human rights and fundamental values, be eligible. South Sudan is obvious. Burma. Palestine.

SO: Algeria is not such a natural candidate.

PS: No, no it isn't. Nor is Yemen. Curiously enough all the Gulf States which used to be protected were always run from the Foreign Office or the India Office and were never regarded as part of the Commonwealth. So, there is a difficulty about expansion, I don't think it would be much beyond the sort of numbers we've got at the moment.

SO: Peter, I'd just like to ask two final questions please. One is on your view as a representative of the Commonwealth legal fraternity, on the role of the monarchy and Queen Elizabeth. The second is a more general concluding question on, how do you feel the Commonwealth has survived and why?

So the first: on the role of the monarchy?

PS: Well, I think that's a very interesting question. As you know, the role of the monarchy as Head of the Commonwealth was defined in a very subtle way, in the 1949 Declaration relating to the King. The monarch is the symbol of the free association and as such, Head of the Commonwealth. In other words, it's intended not to be a functional role. Obviously there are still 14 countries that actually acknowledge the Queen as Head of State and it's interesting that they've survived for varying reasons. If we look at purely the Headship of the Commonwealth, the Queen has clearly made something of it. She still addresses the Commonwealth on Christmas Day, she attends Commonwealth Heads of Government meetings with meticulous regularity. Obviously she's been around so long that she's known them all since they were in short trousers really, hasn't she? So, I think the personal role of the Queen is unique. The question is; what should happen on the demise of Her Majesty?

When the Queen dies it's quite clear I think from a legal point of view as far as the Headship of the Commonwealth is concerned. I think the question of succession of the monarchy is a different matter which, as you know, has been regulated now in order to ensure that a female child of Prince William and the Duchess of Cambridge will succeed if she is born first. But as far as the Headship of the Commonwealth is concerned, this is not a matter where

there is automatic succession, so it would have to be a matter for consultation.

It's only happened of course once in 1952 when Nehru immediately acknowledged the Queen as Head of the Commonwealth and as India was then the only republic in the Commonwealth, that was the end of the matter. But it's a very different case now. So, well, the question is this; first of all, does the Commonwealth need a symbolic head? Most international organisations don't have such a symbolic head. You could elect: the Heads of Government could choose the host of each CHOGM to be a rotating presidency of the Commonwealth, if you'd like to put it that way. As I say, Chairman in Office was the phrase used, so you certainly don't need a symbolic head.

So, then the issue is; what are the advantages? Well I suppose, you could have another candidate other than the heir to the throne of the United Kingdom and the other realms. How would you choose? The Heads of Government would have to do it. It so happens there's no obvious candidate for the role. I'm sure that the Prince of Wales doesn't want to lose one of his mother's attributes by starting his reign being stripped of the headship of the Commonwealth. For all kinds of political reasons the Heads may feel, "Oh, let's just carry on with the British Monarch in that symbolic way". I'm purely postulating the situation when the Queen dies.

I don't think there's any question nor is there any sentiment in favour of getting rid of the headship so long as the Queen lives. In fact, quite the reverse: unanimity I would think probably in favour of that. But when she dies then there is a very serious question. There's an argument too in a sense that it would be symbolic if the British Monarch ceased to be head of the Commonwealth. As far as the outside world is concerned, they would say, "Right, well, this is clearly an organisation now which no longer has any trails of imperial glory lurking round it". And funnily enough, one of the most useful things that could happen to the Commonwealth is if the Republic of Ireland were to become a member; although after the Queen's very successful visit clearly the monarchy isn't the issue it would have been. Just anecdotally from Irishmen I've talked to, I think they would find it very difficult to join a Commonwealth of which the British Monarch was even the symbolic head. I may be wrong about that.

SO: So, from your standpoint do you think there's an enduring perception of it being the British Commonwealth?

PS: Well, it's always difficult to explain. If you explain to non-Commonwealth people what you're talking about, I've found myself using the phrase the 'former British Commonwealth' so they won't think I'm talking about the Commonwealth of Independent States.

SO: States of the former Soviet Union?

PS: Yes. Interestingly enough, I actually went to the Soviet Union. We had a rather grand organisation called the Anglo/Soviet Symposium on International Law and I went in 1989. We always had to choose a topic to give a paper on and I said, "Well, I'll give a paper on dispute settlement in the Commonwealth". I thought that this was absolutely safe ground because

nobody in Moscow, even if they had heard of the Commonwealth, would think only of in terms of the British Empire. But surprisingly enough they were very interested in the Commonwealth and they even had a research person working in the Institute of State and Law on the Commonwealth and they said, "Well, what sort of body is this?" they were very interested, as the Russians tend to be in categorisation. "What is this animal, the Commonwealth?"

SO: You do know in the early 90s the Russians sent a delegation here to London to find out about the Commonwealth and its relationship to Britain, with a view for considering how could the Commonwealth model be used for the former Soviet states?

PS: Yes exactly, and then of course they did have this Commonwealth of Independent States.

SO: Indeed. This delegation was interested in the Commonwealth model Britain seemed to have developed. They had a seminar with the Director and senior research fellows of the ICwS, facilitated by the FCO.

PS: Yes, so it was interesting. But anyway, as far as the monarchy is concerned, I think it's going to be very difficult when the Queen dies. There's going to be a state funeral attended by a very large number of the Commonwealth Heads of Government or their representatives, so it's very difficult. But if I was asked to give my objective view I would favour the ending of the Headship with her present Majesty.

SO: Tied in to the final question, do you think then the role of Queen Elizabeth as Head of the Commonwealth has contributed to how the Commonwealth has survived, and why?

PS: I think it probably has, yes. There's no doubt about it that she's provided, as we were talking about, that little bit of glue. It's that little bit of glue that makes the Commonwealth special. We have this remarkable old lady as she is now who is Head of the Commonwealth, and remember she's been tirelessly touring the Commonwealth right from the very beginning. It was always the Royal tour, wasn't it, of Commonwealth countries and there was always a Royal representative when a country became independent. Prince Charles, remember, in Harare in 1979.

SO: In Lusaka she went as Head of the Commonwealth to the Lusaka CHOGM meeting and then toured through Zambia as its Queen. But what other explanations are there, in your view, for how the Commonwealth has survived and why?

PS: Well, there's always inertia isn't there!

[Laughter]

And also countries quite like belonging to international organisations which seem quite a good club and going to, "Oh, I'm going to the Heads of Government Meeting" -

SO: The *swank* factor?

PS: High Commissioners, you see, have a certain special position as diplomats in London and indeed elsewhere.

SO: A certain distinction, that's true, and there is the High Commissioners Network.

PS: "I'm not a foreigner".

SO: Ah!

PS: The traditional idea of course that the Commonwealth countries were not foreign to each other that still survives certainly in English law.

SO: Well, after all you've also got the High Commissioners regular meetings at other foreign postings which are a remarkably useful network.

PS: Exactly so.

SO: Len Allison makes that point when he couldn't get into the Zambian government in 1979 he used the High Commissioner network.

PS: Yes exactly, and so more positively as I said earlier, it has functional utility. As you say, diplomatic networking at that informal level; Commonwealth finance ministers always meet before, whatever it is, the finance ministers summit and it's interesting the Commonwealth foreign ministers, I think I'm right in saying, resumed the practice of meeting in September in the wings of the new session in the UN General Assembly. That's where they in fact adopted the Commonwealth Charter. And all those ways in which small countries feel that this is a club they would be glad to belong to because they can look to the Secretariat for help and support and perhaps other members of the Commonwealth within the region. That's presumably why Mozambique and Rwanda joined the Commonwealth, because they felt this would open up a network which wouldn't otherwise be available to them. One of those crude tests of a club is - do you have a list of people who want to be members!

SO: The opposite of Groucho Marx's maxim! [Laughs]

PS: Yes, exactly so.

SO: But thinking along the lines of practical utility: how far in your experience has the Commonwealth also provided diplomatic functionality assistance in Commonwealth members' bilateral relations? Helping to resolve legal disputes with neighbouring countries that are not part of the Commonwealth? I'm thinking Belize/Guatemala, or Guyana's disputes with Venezuela?

PS: Well, it's very noticeable of course that Commonwealth Heads of Government communiques contain reaffirming statements about Cyprus, Belize or Guyana. On Belize, it was a squadron of Harrier jets which Belize, in a sense, was most glad of. It is interesting to look at the role of Australia as a regional hegemon, or peacemaker and at the deployment of Australian and New Zealand aid into the Pacific Commonwealth. Of course there is the fact that there are so many Pacific islanders living in Australia and New Zealand!

SO: So, actually what you've got then within the Commonwealth are regional hegemons: within Africa, you've got South Africa, Nigeria. You've got Australia and New Zealand that provide material assistance and support.

PS: Support yes.

SO: Not simply in financial terms, or developmental terms but also hard power.

PS: Yes there's a little bit of it, yes.

SO: Although that's also outside the Commonwealth. It's both within and without.

PS: Yes, but in some ways -

SO: That twilight zone!

PS: It is the twilight zone again, yes exactly. But how would you dissolve the Commonwealth? It would be a totally cumbersome business, wouldn't it! We've got next Commonwealth Heads of Government meetings already being agreed, but I do think that because of the Sri Lanka situation, the upcoming CHOGM is a very serious crisis. It only needs a few countries, serious countries, to boycott the CHOGM held in Colombo to cause the kind of split which existed between Britain and the African Commonwealth.

SO: So old and new Commonwealth could split again?

PS: Yes, and my understanding is that that's quite a serious issue. It opened up a bit with this discussion of a Commonwealth Commissioner and the monitoring. Derek Ingram was at Perth; he is somebody who could throw a lot of light on that particular issue as whether there is actually a very serious 2013 Commonwealth crisis.

SO: On that note I'm going to end, but thank you very much indeed.

PS: Thank you very much indeed.

[END OF AUDIOFILE]