2519

THE COMMONWEALTH AT THE CROSSROADS: THE EMINENT PERSONS GROUP AND THE FUTURE

Commonwealth Parliamentary Association
Article for *The Parliamentarian*

2011 – Centennial Year of the CPA

The Hon. Michael Kirby AC CMG

COMMONWEALTH PARLIAMENTARY ASSOCIATION

THE PARLIAMENTARIAN

Centennial Year of the CPA

THE COMMONWEALTH AT THE CROSSROADS: THE EMINENT PERSONS GROUP AND THE FUTURE

The Hon. Michael Kirby AC CMG*

A CENTENARY REFLECTION

The year 1911 was an important one for constitutional evolution. In Britain, the *Parliament Act* was adopted and given the Royal assent. It signalled the further development of parliamentary democracy in the United Kingdom. Henceforth, in contests with the House of Lords, the power of the House of Commons was to prevail. This represented an assertion of popular sovereignty as a core value, placed before the entire world.

On a global level, the British Empire was in 1911, reaching the highest point of its power. King George V and Queen Mary, as Emperor and Empress of India, travelled to India, the "Jewel in the Crown", passing through the new Gateway of India in Bombay. They journeyed to Delhi to witness the transfer of the capital of British India from Calcutta to New Delhi, with its monumental designs conceived in the mind of Sir Edwin Landseer Lutyns.

* Member of the Eminent Persons Group on the future of the Commonwealth (2010-2011). One time Justice of the High Court of Australia (1996-2009).

And the Commonwealth Parliamentary Association (CPA) was conceived and born. Little could those who attended at its birth have dreamed of the great journey for freedom, self-determination and human rights which the CPA would witness, and contribute to, in the century that followed.

Parliamentary democracy became a core aspiration of the Commonwealth of Nations into which that Empire evolved. To the members of the CPA throughout the world, and to the elected parliamentarians who represent the citizens, of the Commonwealth, I offer a citizen's respects, felicitations, praise and gratitude.

AT THE CROSSROADS

The Commonwealth of Nations has reached another crossroads. It is one like the enactment of the Statute of Westminster in 1931; the adoption of the new criteria for membership in 1949; and the effective expulsion of South Africa in 1961, when South Africa withdrew because its apartheid laws were incompatible with the organisation's values and principles.

Now, a new moment of truth has arrived. The Commonwealth, with a fine institutional sense of self-preservation, has recognised this fact. At the CHOGM meeting in Trinidad and Tobago in 2009, it established an Eminent Persons Group (EPG). This body, set up in July 2010, was tasked to advise the 2011 CHOGM in Australia with ways of improving the Commonwealth's institutions to make them stronger and more effective. Most especially to propose ways of building a "stronger, more resilient and progressive [organisation] founded on enduring values and principles".

I was appointed a member of the EPG and have attended its three meetings: two in London and one in Kuala Lumpur. A fourth meeting is scheduled for London in March 2011. The report must be written by mid-2011 to permit the consultations necessary before the Perth meeting of CHOGM in October 2011.

In these remarks, I express only personal views. No final decisions have yet been made by the EPG at the time of writing. A remarkable, and admirably transparent, process of consultation, in person and online, has been conducted. The hope must be to get the Commonwealth through its latest challenge. That there is a challenge cannot be denied. The organisation is looking tired and of declining relevance. In an environment burdened with problems of financial crisis, climate change, endemic poverty, major epidemics, and daily reports of serious human rights abuses, the Commonwealth's institutional machinery has simply not kept pace. Issues that once might have been addressed and solved within the Commonwealth, increasingly now go to the meetings of the G20 or to the United Nations, with its geopolitical groupings.

One particular challenge arises out of the way the Commonwealth has done things in the past. At the end of every CHOGM meeting, a declaration has been issued, expressed in admirable (sometimes even inspiring) language, re-affirming the Commonwealth's commitment to its values. But when it comes to following up these values, between meetings, the Commonwealth's ineffectiveness has been demonstrated for all to see. Despite the creation of a mechanism in the Commonwealth Ministerial Action Group (CMAG), that body has not

responded quickly, decisively and effectively to repeated instances of serious or persistent human rights abuses in Commonwealth countries.

In fairness, CMAG has learned in recent times to react more effectively to instances where one of the core values of the Commonwealth has been threatened: electoral integrity and democratic governance. Thus, suspect elections in Zimbabwe and yet another military coup in the Fiji Islands, drew a substantially decisive response from the Commonwealth. But as for other highly publicised instances of human rights abuses, CMAG has generally been silent. Continued ineffectiveness of this kind spells great danger to the survival of the Commonwealth. One repeated suggestion is the need of a high level Commonwealth advocate for basic Commonwealth values, such as an independent Commissioner for the Rule of Law. Such a person could be a vigilant guardian and valiant defender of the universal principles accepted by the Commonwealth, in all of their generality.

An international organisation that repeatedly proclaims its commitment to core values of human rights, tolerance, respect and understanding, the rule of law, freedom of expression, gender equality, good governance and respect for civil society cannot indefinitely ignore serious or persistent instances in member states where these values are breached. There is a limit to international tolerance of hypocrisy. By every serious case where there is a gulf between the Commonwealth's asserted values and its actual practice, the institution is weakened in the world's eyes. If it is no more than a nostalgic club, linked by history but not really by shared values, the process of fading away will accelerate. Now, therefore, is a moment to decide. The moment may not recur.

As if in an instinct for self-preservation, the last CHOGM realised this. That is why it created the EPG. It is why it went outside the Secretariat for advice: it gathered a group of informed Commonwealth citizens. What was needed was not another long-winded bureaucratic report that would gather dust in a basement at Marlborough House. What was needed was an independent, strong-minded and hard-hitting document that, if accepted, could put the Commonwealth on a new path to contemporary relevance. The world has changed, with Twitter, iPads, the global daily news cycle, fast travel and instant news. But the question remains whether the Commonwealth will have the fortitude and skill to adapt itself to the realities of this new world of change.

CONTEMPORARY CHALLENGES

Take a few of the issues that have been pressed upon the EPG. I emphasise that no decision has been made on any of them. But I mention them in the spirit of transparency that is itself a new way of doing things in a body whose bureaucratic traditions were laid down in Imperial times:

New members: Accession to the Commonwealth is something of a mystery. For most countries, membership emerges because of the previous era of British rule and past or continuing allegiance to the Crown. But now we see new members being admitted which did not share this link and the institutional traditions and experience that came with it. Cameroon, Mozambique and Rwanda. The processes of accession have been secretive. They are quite unlike the rigorous and public steps that must be taken, for example, to join the European Union. As other nations are already knocking on the door, this question may need candid and transparent answers.

HIV/AIDS: The right to access to live-saving health care is one of the most important of fundamental human rights. Responding effectively to new global epidemics is an urgent task in which the Commonwealth could act affirmatively. Yet Commonwealth countries, comprising over 30% of the world's population, contain more than 60% of the people who are living with HIV. At twice the world's rates of infection, HIV and AIDS are therefore a specific Commonwealth problem.

As UNDP has made clear, in a submission to the EPG, many Commonwealth countries will not take the step of reducing the incidence of infection in the only ways that have proved effective in other lands, namely by reducing stigma and reaching out to groups especially vulnerable to infection: disempowered women; men who have sex with men; infecting drug users and commercial sex workers. The silence in responding effectively to HIV by engaging with these groups in Commonwealth countries is the silence of the grave.

Admirable words have been voiced by CHOGM at Coolum in 2002 ("We are deeply conscious of the threat HIV/AIDS posed to hard-won social and economic progress in much of Africa and elsewhere ... The public and private sector and international organisations should [join with us] in a renewed effort to tackle the challenge HIV/AIDS presents to our countries and their people and to humanity itself"). Nevertheless, the actual response has all too often been stigma and isolation. Stubborn refusal to agree on, and implement, recommended strategies to reduce the toll of HIV is paid for in the coinage of Commonwealth lives.

Homophobia and violence: Another, related problem, also specific to the Commonwealth, is hatred and violence targeted at sexual minorities (gays, bisexuals, trans-sexuals). A recent sad instance of this unhealthy attitude can been seen in the brutal murder of the Ugandan campaigner for equal rights for sexual minorities, David Kisule Kato. He was killed on 26 January 2011 by hammer blows to the head, a few weeks after he was 'exposed' as gay in a local newspaper. The killing was condemned by many high level United Nations officials, by US President Obama and the Archbishop of Canterbury. The Commonwealth's reaction was muted.

Stephen Lewis, long-time AIDS ambassador to Africa has called, in January 2011, for the "scourge of homophobia that continues to haunt the Commonwealth" to be high on the agenda of CHOGM. He points out that "men who have sex with men have a 42% HIV prevalence rate in Kenya, the highest rate amongst this vulnerable population in any country. It has been well documented that wherever they exist, draconian homophobic laws drive gays underground, away from effective HIV prevention, treatment, care and support interventions". Clear public voices on this issue have, in the past, been expressed by United Nations leaders. But the Commonwealth has been relatively tongue-tied.

Commonwealth nationality: At present, there is a lot of talk about Commonwealth citizenship. However, when it comes to immigration desks at international airports, that status is generally revealed as completely irrelevant. Whilst issues of the movement of peoples, immigration, and entry for students, conferences and other purposes are controversial subjects, the recognition of Commonwealth citizenship has

not kept pace with the enormous contemporary international movements of Commonwealth citizens. The old bureaucracies, and the laws they implement, have gone on practising old prejudices. There is a need to encourage travel amongst the citizens of Commonwealth countries, for tourism, voluntary work, education and exchange of expertise. The English language and strong educational and cultural traditions inescapably link us together. Some of the ancient barriers (many devised in Imperial times) need to come tumbling down. At the very least, the process should start.

Growing trade and development: Economic development is an essential step in the direction of ending the scourge of poverty and enhancing real protections for human rights. Attention is rarely given to the growing trade among and between Commonwealth countries. Yet international statistics show that this trade is growing more quickly than that between non-Commonwealth countries. In part, this may be because of the efficiency dividend secured by the shared language and common legal and institutional traditions. Without reviving outmoded notions of Imperial trading preference, it is in everyone's interests to increase intra-Commonwealth trade. Simplification of bureaucratic impediments and law reforms must have high priority.

Commonwealth emergency responses: The United Nations has won much credit for its work in international peacekeeping, where some of its best contributions are made for relief of humanity. The Commonwealth could complement these activities by establishing an emergency assistance network to replace the *ad hoc* responses for particular civilian crises. The recent floods in Pakistan, Bangladesh and Queensland, Australia may be instances. Likewise the earthquake in

New Zealand and the tragic loss of miners' lives in that country. As a helping organisation, with long traditions of civilian support by military and para-military forces, the Commonwealth is better placed than any other global organisation to respond quickly to natural crises and civil emergencies.

Youth initiatives: The Commonwealth Youth Programme, with four regional centres (in Africa, India, Guyana and Solomon Islands) is well placed, but poorly funded, to engage with young people in all Commonwealth countries. What is needed amongst the young is a Commonwealth of action, not words. Young people should be more closely engaged, and visibly involved, in Commonwealth activities. The combination of language commonalities and technological skills provide a great potential for volunteer work; education; networking; sporting; musical and cultural activities. There is a need to give leadership where this has sometimes been lacking in projects such as those outlined above. At the moment, the Commonwealth leaders often seem out of touch with the interest and priorities of the young. There is a need to change the branding of the organisation and to have a very visible youth image up front in all significant Commonwealth activities.

Transparency and bureaucracy: One outcome of the Royal Commonwealth Society (RCS) 'conversation' with Commonwealth citizens was a repeated expression of opinion that the Commonwealth followed a somewhat old-fashioned institutional style. For all the dangers of getting caught up in the 24 hour news cycle, there is an urgent need for a strong voice to be provided for the Commonwealth Secretariat (and where appropriate, by the Secretary-General himself). Some things that the Commonwealth does well (like good offices and

behind-the-scenes diplomacy) need to be continued. There are other occasions where, in the language of the EPG at the end of its second meeting in October 2010, “silence is not an option”. The culture of silence and anonymity has to change. Particularly to correct the widespread perception that the Commonwealth says things, but does not act. That it talks the talk. But will not walk the walk.

The foregoing are only some of the issues placed before the EPG by hundreds of submissions. One duty of the EPG will be that of selectivity and choice. The criterion for inclusion will necessarily be the large vision that the EPG members have of the future mission and functions of the Commonwealth.

A CHARTER OF COMMONWEALTH VALUES

Until now, the successive Commonwealth declarations have been expressed in the name of the heads of government. Thus, the “we” and “our” in the statements at the conclusion of CHOGM meetings have all referred to the Commonwealth heads of government themselves. To politicians. Not to the peoples of the Commonwealth. The notion of the people as the foundation of the Commonwealth has not so far been propounded.

When the Commonwealth changed the glue that held its disparate member states and peoples together from allegiance to the British Crown, it did not replace this bond with an equivalent, intangible element, found in the hearts and minds of Commonwealth citizens. There is, of course, enormous respect for Her Majesty Queen Elizabeth II as Head of the Commonwealth. Throughout her long reign, which will celebrate its Diamond Jubilee in 2012, the Queen has been most faithful

and dutiful in the performance of her Commonwealth functions. Her presence and wisdom have been appreciated by the successive parade of Commonwealth leaders, including many independence leaders, from 1952 to the present age.

However, the RCS investigation showed that in, many Commonwealth countries, there is a lack of knowledge about the Commonwealth, its institutions and personalities. This is why it would be desirable to work towards a *Charter of Commonwealth Values*.

Who can doubt that the list of values and principles contained in the *Trinidad and Tobago Affirmation* of November 2009 expressed values and principles that are embraced by the people in all of the diverse nations of the Commonwealth? Whether young or old, men or women, people of every religion, rich and poor, educated and illiterate, on every continent, every land mass and in every ocean. Truly, when the Commonwealth heads of government re-affirmed the Commonwealth values and principles in Port of Spain, they spoke for themselves. But obviously they had in mind the people who had democratically elected them and sent them as leaders to the councils of this unique and worthwhile international body.

The values of the people of the Commonwealth are those of international peace and security; democracy; human rights; tolerance; respect and understanding; respect for the separation of powers and the rule of law; freedom of expression; economic and social transformation and development; upholding gender equality and empowerment; access to health and education; commitment to good governance and respect and protection for civil society. These were the values endorsed in the

Port of Spain Affirmation. They could form the nucleus of a new Commonwealth *Charter*, embracing core values that could be endorsed by Commonwealth citizens in very member country.

A TIME FOR BOLD PROPOSALS

Holding leaders and those under them to account is a large challenge for the Commonwealth. Silence in the face of departures from the proclaimed values and principles is no longer acceptable. The hope must be that the EPG will bravely fulfil the mandate given to it by CHOGM 2009. Where there is doubt, the EPG should, in my opinion, be bold and plain speaking. Political leaders, elected and high officials sometimes have inherent tendencies to caution, inaction. Some will want, or hope, that they can continue business as usual. But such attitudes will prove fatal to the Commonwealth of Nations. Now is the moment to decide.

The members of the EPG and the people of the Commonwealth will not forgive themselves if they let this opportunity for change and renewal slip through their fingers. The heads of government will earn the reproach of history if they fail to follow up the means of refurbishment they have initiated. We will all be the losers if, at this fourth crossroads, we lose our way or, knowing it, fail to step out purposefully in bold and new directions. And in this new journey, the Commonwealth will need the support and energy of the parliamentarians in every land and the Parliamentary institutions that represent and speak for Commonwealth citizens. I hope that the CPA will be a great ally in the process of renewal. That truly would be a worth achievement to mark and remember this centenary year by.

*****