

Battling with Logic

Introduction

This essay has a two-fold structure because there are two versions; the first written in late 1933 and the second in the late 1950s. The first, 'Battling with Logic', is a carbon copy of a detailed essay summarising the constitutional consequences and contradictions inherent in the Anglo-Irish Treaty and those that arose with subsequent legislation up to the passing of the Removal of the Oath Bill in mid 1933 but before the settlement of the feud over trade and annuities. The second later version took the first, simplified it by cutting c. 50%, and updated it to the establishment of the Republic, but without any further detailed analysis. This was then integrated into his memoirs as a chapter entitled 'External Affairs'.

Because the earlier version was far more detailed, for the purposes of this article, all edited-out sections have been reinserted and are marked as [text].

As the wording slightly differs between the two versions the integration may seem occasionally disjunctive as the basic structure of the later document has been kept. The reinsertions end with the final paragraph of the first that refers to the Catholic Emancipation Centenary and Eucharistic Congress.

His references, originally part of the text, have been put in footnotes. The sub-headings, which are kept, are in the second version only.

Ian Cantwell (2016)

Battling with Logic (External Affairs)

The coming into being of the Saorstat occurred in conditions somewhat different from those which usually accompany the birth or re-birth of a state, such as – a solemn notification issued in order to obtain the recognition of foreign powers, an exchange of diplomatic representations, the exercise of its newly acquired treaty-making capacity and so on.

True, since the ratification of the Anglo-Irish Treaty in December 1922, the Irish Free State [Saorstat] became endowed with almost all those rights through the very fact that they were already inherent in the status of Canada, [i.e. the treaty-making power and the right to receive and send legations] but the first Irish Administration did not seem over eager to give immediate effect to the exercise of this part of sovereign attributes. Of course, the first years of Mr. Cosgrave's administration coincided with a particularly difficult period in the sphere of the State's domestic affair, but, quite independently of this and owing to some special features, characteristic of the birth of the Saorstat, exertions in this direction did not appeal to the rulers of the country as a matter of urgency.

By the very fact of its coming into being the Free State became associated to a great family of peoples – members of the British Commonwealth of Nations, mutually bound by innumerable, if not ostentatious, political and economic affinities. In the case of the Saorstat almost all its vital external problems in the early period of its existence came within the scope of its relations with Great Britain, and consequently all this work could be carried out either by means of direct intercourse between the Irish and British ministers, or through the channel of the Irish High Commissioner in London.

[Another great international organisation could obviously not elude the notices of the Free State Government – the League of Nations, towards which the most careful attention of this Government was directed from the very beginning. This is why any brief survey of the Free State foreign policy must be mostly confined to Anglo-Irish relations and to Irish activities in Geneva.

In connection with the former an attempt to give a correct picture of the Irish community's attitude towards Great Britain would be of great importance, and this because of the strictly democratic form of the Irish Government and its predominant tendency to rule in conformity with the freely expressed will of the people.]

A Constitutional Headache

About the Anglo-Irish relations – I think that any attempt to apply to them standards of reasoning as governed by logic would only create confusion and inextricable constitutional conundrums, and land the person attempting such procedure in some sort of incurable headache. There exists a whole literature dealing with the so-called logical continental mentality as opposed to the experimental British one, a literature which seems to boil down to the assumption that, whilst the continental logic ordains that it is the law, as originated in the legislator's mind and approved by the legislative bodies, which creates certain situations, national or international, in the world governed by the British mentality it is life, tradition, co-existence of people, urge for expansion, sense of progress and so on, that create certain situations which, sooner or later, have to be given a legal expression.

In other words, whilst it is the law that, in the first case, regulates human activities, those are human activities, which in the second case, give birth to the law. Let us take, for example, the Statute of Westminster, 1931: it certainly did not produce any new approach to any constitutional problems; it simply sanctioned certain situations which were already in full operation for a whole decade. Moreover, at the time of its enactment that Statute was already, in many respects, obsolete, which was particularly true in so far as Ireland was concerned.

Anglo-Irish Relations

[It would perhaps be not inappropriate to turn for a moment towards one of the great political events, which occurred lately in Great Britain, and to attempt to trace its repercussions in the Irish Free State.] I was rather lucky in the way that my arrival in Dublin almost coincided with the British General Election in 1929 and the advent of the Ramsay MacDonald Administration. This event provided me with an opportunity to get a picture in cross-cut of the Irish community in their reactions not only to the British elections, but to Great Britain in general.

That community could have been, roughly speaking, divided in those days into three sections: the pro-British minority, Cumann na nGaedheal and Fianna Fail. As regard the first of the three sections, the British election produced the same effect as it would have upon any average English conservative. The various possibilities as adumbrated by the coming into

office in London of a Labour Party were looked upon by this section very much more from the British than the Irish point of view.

The so-called 'Die-Hards' were at that time only beginning to get conversant with the idea of the existence of the Free State as a self-governing Dominion, and their mentality was undergoing a rather painful process of abandoning the conceptions of the Union between Great Britain and Ireland. It was certain not an easy thing for them to get rid of the habit of gazing at London as the predominant factor in Irish internal affairs. It was not until the end of 1931 that the pro-British section could be said to have undergone a rather radical change in favour of Mr. Cosgrave's Administration. [The question must, however, remain open whether by doing so they followed their natural inclinations, as it must not be lost sight of that at this time the lurking spectre of a Republic seemed to be taking more and more a material aspect and it is obvious that in the light of this danger of the Free State as a Dominion within the British Empire must have appeared to their shaken imagination in the shape of a life-boat in an imminent shipwreck.]

That portion of the Irish community which supported Mr. Cosgrave's Government continued to steadfastly abide by the general ideology of Cumann na nGaedheal and took towards the turn in British policy an attitude which is usually taken in relation to political changes in a foreign country to which one is related by a system of close reciprocal interests. In their view the results of the British election were not of a nature to arouse direct reactions in the Saorstát. True, there were still some pending questions between the two countries, several rather minor issues, and it did not seem likely that the interests of the Saorstát could become imperilled in consequence of the changes in Great Britain. In the constitutional domain again it could hardly be feared that a Labour Government would prove to be more obstructive to a further advance than a Conservative one.

The wishes and tendencies of the Dominions [Canada, South Africa and the Free State], although not always identical, coincided in many essential points, and as long as collaboration between them subsisted nothing could be feared from any British Government in the way of hindering the development of the Commonwealth on the basis of a complete co-equality of status of its members. [It cannot be denied that in highly authoritative quarters of the Cumann na nGaedheal the British elections gave rise to some further considerations as to the nature of their possible repercussions on Irish affairs. It must still be kept in mind that in the political ideology of the then ruling Irish party the participation of the Free State in the

Commonwealth, as it was defined by the 1926 Imperial Conference, was unconditionally accepted.]

At the same time a curious note of caution and expectancy crept into the Cumann na nGaedheal reaction to the event: the idea of the Commonwealth was given shape by the British Conservatives who, subsequently, took the responsibility of bringing it into the realm of legal realities, [Now, when the crisis of English political thought arose and brought on the crest of a wave a new and powerful party, lacking all that experience in the matter of governing, which was so characteristic of the Conservatives and Liberals] and it might have naturally been asked, to what extent the new Labour Government would be willing and able to adhere to the idea of a Commonwealth as it was pursued [conceived] by their predecessors in office. When the Irish statesmen were fighting out concessions from the Conservatives they knew that they were coming to terms with a powerful, experienced and well balanced partner.

Now, the Labour Government was certainly a novice in all the forthcoming issues [Even if no conjecture could be reasonably entertained as to the possibility of the Commonwealth idea being disturbed by the Labour men, certainly was none the less lacking as to whether the evolution of this idea would be carried out in the desired direction.] and assurances were lacking as to whether the evolution of the Commonwealth ideas would be carried out by them in the direction as desired by the Free State. But here again, a close collaboration among the Dominions was considered the best shield against any possible surprises. [In the light of this reasoning elections in Canada or South Africa would really matter for the Free State as much as any British elections.]

As to Fianna Fail [, the Republicans], as one of the capital points of their programme consisted in a complete severance of all existing bonds between Ireland and Great Britain, they would have considered the change in British politics as advantageous to themselves only in the highly improbable case of Mr. MacDonald's Government contributing to their republican aspirations by doing the opposite to what Cumann na nGaedheal wanted that Government to do, in other words – by abandoning the idea of the Commonwealth. Whilst admitting that the British Labour Party professed certain ideas different from those which constitute the political faith of the Conservatives and Liberals, the Fianna Fail press pointed out that, with regard to the entity and supreme good of the British Empire, there was no difference in the outlook of the three parties.

[In the Fianna Fail Press the whole interest in the results of the British Elections seemed to have been reduced to a single question: how would the Labour Party use its power to smooth away the political 'crimes' committed by its predecessors in office. Little hope concluded this press, could be entertained that Mr MacDonald's Administration would be willing to clear the way for the aspirations towards freedom of the oppressed peoples within the British Empire.

The British Labour Party does certainly profess certain ideals different from those which comprise the political faith of the Conservatives or Liberals, but not with regard to conceptions affecting the entity and supreme good of the Empire. In this sphere there is practically no difference between the three great English parties and it would be extremely foolish of such great counties as Ireland, India or Egypt to rely in their struggle for freedom and justice upon the good will of the British Labour Party.

Still more advanced were the views of this Republican section which assembled under the banners of an extra-parliamentary opposition. Their attitude towards the ruling British parties was always and continued to be implacably hostile and in their opinion, be it MacDonald, Baldwin or Lloyd George, all of them could be classed alike as imperialists, ever ready to make an equally unscrupulous use of oppression and violence in order that a predatory Empire might continue to exist as a prison for nationalities. Hypocrisy is the only thing under which the British Labour Party tries to keep its imperialistic face concealed. There was only one candidate for the British House of Commons who gained this section of the Irish community's sympathy and it was Mr Saklatvala (Communist) who failed to secure the required majority at the polls]

It may be interesting to note that the Irish Labour Party took an active part in the British elections by sending to the United Kingdom some of its members to carry on propaganda among the Irish exiles. Such interpretation of the party solidarity met with a harsh rebuke from governmental circles which blamed the Irish Labour for becoming involved in the domestic affairs of a foreign country and for obliterating the line of demarcation between the two countries. [showing the true character of the Saorstát as of a separate State. The presumption could not be entirely precluded that, by doing so, the Irish Labour Party nourished perhaps hope that a Cabinet post might be secured in the new British Government for a Catholic member of the party.]

The Experts Speak

It is one thing to ascertain the reactions of the principal Irish parties to some major political event in Great Britain, and, of course, quite a different one to find out whether the relations between the Saorstát and Great Britain were, yes or no, *international* relations. The last presupposes the existence of two or more states, persons of international law, fully endowed with all attributes of sovereignty, becoming involved in some kind of formal or material intercourse of common concern.

Now, could Anglo-Irish relations adequately conform with all those requirements or, taking the issue in a wider aspect, could the relations *inter se* of various parts of the Commonwealth be regarded *par excellence* international? As I was unable to think of anything that would come near to a satisfactory answer, I ascribed this inability of mine to my continental ‘logistical’ mind and, to obtain the necessary enlightenment, I hopefully resorted to some highly qualified British authorities on the subject. This is what I found:

Sir Cecil Hurst: “...the common allegiance to the Crown prevents the relations between different communities of the Empire being international relations.”¹

[The matter underwent deliberation at the 1926 Imperial Conference, which resulted in a rather obscure sentence in the Balfour report elaborated. The following is its text: “The making of the Treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King.” In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.

Professor Berriedale Keith passes on the above sentence a highly authoritative remark dissenting, firstly, from the plausibility of an opinion of the Legal Committee of an abortive Conference being quoted in support of an adopted principle and, secondly, reversing the conclusion of the Report by disclosing that “it was held to be necessary to provide expressly

¹ *Great Britain and the Dominions* p.54

in several Conventions concluded under League auspices against the application to the parts of the Empire *inter se*.” His final conclusion runs, nevertheless, as follows:]

Professor Berriedale Keith: “It may... fairly be said that by international usage and recognition the relations of the Empire *inter se* are not matters of external relations even when the language used... would naturally be interpreted as implying the bonds between the members of the Commonwealth were in truth international in character.”²

Professor Noel Baker [puts the issue under the head of yet ‘unsolved problems of Dominion status’ and when dealing with the question whether international treaties apply to the relations of the members of the Commonwealth *inter se* leans to the opinion that] “... this is a point on which it may be that, as a result of practice, the relations of the members of the Commonwealth will gradually become ‘international’”.³

[Not one word of what has been quoted out of these three prominent English lawyers could reasonably be called into question, as far as the general principles of international law would prevail in one’s reasoning. But deferring to the actual position, how could those principles be satisfactorily reconciled with the fact that the Oath of Allegiance Bill has been duly passed by Dail Eireann in May 1933, and, still less, with the fact that since July 1933 a tariff war has been raging between the Irish Free State and Great Britain, in other words between two “territories forming part of one and the same Sovereign State”, to use the words of the Arms Traffic Conference Proceedings, on which is based the aforesaid passage of the Balfour Report? Could such a situation possibly have arisen within the conceptions of international law, between, let us say, Austria and Hungary, the two component and co-equal partners of the former Hapsburg Monarchy, without striking a mortal blow at the ‘Compromise’ of 1867 and disrupting the monarchy itself?]

But could those authoritative, if somewhat obscure pronouncements be satisfactorily reconciled with the fact that the Oath of Allegiance Bill had been duly passed in 1933, and, still less, with the fact that since 1932 a tariff war, consequential upon the land annuities dispute, had been in full swing between the Free State and Great Britain, in other words – between two “territories forming part of one and the same Sovereign State”⁴

² *The Sovereignty of the British Dominions* p. 350-2

³ *The Present Juridical Status of the British Dominions in International Law* p. 305

⁴ To use the words of the Arms Traffic Conference Proceedings, 1925

Was then the Irish Free State in a state of rebellion [against its suzerain]? No, because the Free State could not be in this state against Great Britain any more than it could have been against, say, Canada or Australia, since all of them were co-equal members of the same association of states, and, above all, it enjoyed the unquestionable moral right to peacefully secede from this association. Besides, all the usual business between the two countries was still being carried out in the normal way, and the Saorstat High Commissioner continued to reside in London.

Did the Free State denounce the Treaty with Great Britain? No, and the Treaty as a whole stood intact. Did the British Commonwealth lose the Saorstat's membership in pursuance of Mr de Valera's policy? No, as the Free State was still holding its position in the association and, as was made clear by Mr de Valera on several occasions, no changes relative to this grave issue were to be expected unless a special mandate was granted by the electorate.

Then what really happened? It happened that on the Oath issue the Free State Government gave one article of the Treaty their own interpretation, and on the land annuities issue denied the validity of an agreement concluded with Great Britain on the ground that it failed to be ratified. By doing so this Government, whether intentionally or not, made a definite advance in the direction of making their relations with Britain decidedly international.

It will be observed that the power to interpret treaties in the light of national interests cannot be inherent in any other international unit than the one whose external sovereignty is not subject to any limitations. On the other hand, the right to decide whether this agreement requires ratification is again incident to those persons of international law only whose internal sovereignty is undeniable. [(although, strictly speaking, such a case could not arise with nations having a longer record in the management of international affairs, as international law and usage have since long classified international engagements as requiring and not-requiring ratification)].

When one party to a treaty gives it, or a portion of it, its own interpretation which fails to secure acquiescence of the other, then, - provided both parties are international units to the full extent - the following consequences must ensue: the controversy may be settled either by negotiations or by arbitration, or by forcible imposition by the strongest party of its own interpretation to the weakest. Wanting these possible solutions the controversy remains unsettled and involves either the breaking off of diplomatic relations or armed conflict, or the application of repressive economic measures, usually followed by retaliatory steps. These

measures might be kept in force not only during the period subsequent to the failure of negotiations but during the negotiations as well. And this is exactly what ensued in Irish-British relations in consequence of the land annuity controversy, with the Oath issue still latent and adding to the first a good deal of bitterness and irreconcilability.]

The paradoxical aspect of the situation, as it could have been watched in those years, consisted in the amazing fact that His Majesty's Government in Great Britain proved to be at economic war with the same Majesty's Government in the Free State. The Crown occupied in those days and is probably still occupying a quite special, unprecedented position in the Commonwealth, possibly not even now sufficiently elucidated by the constitutional law, but no reference to the Crown could overshadow the fact that British-Irish relations had then achieved a stage of evolution in which no room for doubt could be left as to their real character. They were coming more and more to be international relations in the full meaning of the word, and the circumstances that they were passing through a difficult period of conflict could only be adduced as evidence that the process was still advancing.

[No matter what sort of compromise, what sort of way out of the deadlock may ultimately arrived at, there is one thing which no longer admits doubt, and that is that Irish-British relations are becoming more and more disentangled from the half and half formula, which were left attached to them by inter-imperial conventions, and more and more tinged with all those peculiarities which are characteristic of international relations only.

Again, at the World Economic Conference held in London, July 1933, the Irish Free State Delegate, Senator Connolly, made another attempt to place, this time *pro foro externo*, the Irish-British relations on the world plane of international intercourse. When addressing on 22nd June the Sub-Committee on commercial policy, he referred to "punitive tariffs" under which, as he said, the Irish Free State is at present labouring consequently to a tariff policy as adopted by Great Britain pursuant to the refusal on the part of the Free State to hand over certain monies (allusion to land annuities and other sums retained by the Fianna Fail administration and claimed by Great Britain). "I would point out", observed Senator Connolly, "that when the issue was first (?) we offered to submit the matters in dispute to an international tribunal, but the Government of Great Britain sought to impose certain restrictions on the membership of such body that we could not accept without jeopardising our *international status*" (italics by the WTD).

It may be interesting to note the way which the *Morning Post* reacted to the above declaration: "It was rather a pity that Mr Thomas was not in the Geological Museum yesterday to answer the case made by Senator Connolly. He might have taken the opportunity to explain that the Irish Free State is not a sovereign power, as some of the delegates appear to imagine, and that the difference is really a family quarrel, with which the rest of the world has no concern."

The International Treaty for the limitation and reduction of Naval Armament, signed in London on the 22nd April, 1930, may on the other hand, go to show how difficult, sometimes could be a perfectly clear solution of the *inter se* doctrine in the sense desired by the Free State. The Treaty was concluded between eleven countries, four of which (The United States of America, France, Italy and Japan) form distinctly separate states, seven (the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, the Irish Free State and India) are component parts of the British Commonwealth of Nations.

Now it appeared that a continuous discrimination between these component parts, carried throughout the Treaty, would give to it, at any rate to some of its clauses, a practically immaterial aspect since some of the Dominions, such as the Saorstát, having no navy, could not be directly concerned with regard ships, their types, classes and tonnage, their contemplated destruction, replacement or preservation, and so on. Hence some Articles of the Treaty, such as 14, 16/3, 20/a, contain references not to particular parts of the Commonwealth, but to the British Commonwealth of Nations as such.

A conclusion may, therefore, be drawn that, in spite of the thesis as upheld by the Free State to the effect that the Commonwealth represents under no aspect a unit, it still maintains its unitary character in so far as military purposes are concerned. Again, however, such conclusion would stand incompatible with Article 34, page 2, of the Treaty, which preserves for the Free State the position of one of the High Contracting Parties by stipulating that the ratifications have to be deposited in respect to each and all of the Members of the British Commonwealth of Nations, as enumerated in the preamble of the Treaty. Supposing that, pursuant to this stipulation, the Free State Government would not have ratified, then the Treaty would not have take effect in its whole.

In view of the existing tendency to have this Treaty embodied in the future International Disarmament Convention, two course seem to lie open before the Free State Government in order that the *inter se* principle should be disposed of to their best advantage: either to carry

out an amendment to the Treaty purporting to the establishment of the principle that such technicalities as, for instance, transfer of tonnage to different members of the Commonwealth would remain a matter of free arrangement between those members; but in this case again it might be argued that the Commonwealth presents a military unit since all other parties to the Treaty, other than the members of the Commonwealth, would, evidently, take no interest in, and in no possible case interfere with, the repartition of tonnage between the members.

The second course would consist in a policy of waiting until the expiration of the Treaty, i.e. until the 31st November, 1936, of moving then a ready-made formula of the allocation of tonnage to each member of the Commonwealth to be embodied in the renewed Treaty, and of endeavouring to have this formula internationally confirmed.]

The Free State at Ottawa

Unlike on all the previous occasions at which Imperial Conferences were held, the part played by the Free State at Ottawa, in 1932, was neither spectacular, nor effective. Since it became evident that neither would the British Government be prepared to enter into any new agreements with a state, which, in their opinion, repudiated some of the existing contractual obligations, nor would the Free State admit to having committed itself to such repudiation, all hopes for a trade agreement being reached between these two countries had to be abandoned. [from the outset of the Conference.

When speaking at its opening session, the principal Free State Delegate, Mr O’Kelly, Vice-President of the Executive Council, made it plain that no exaggerated expectations were nourished by the Irish Delegation as to the probability of the Conference bearing special advantages to their country. “We must earnestly hope that the Conference will be a success whether or not the people of the Irish Free State can share in the ultimate benefits to the same full extent as the peoples of the other nations whose representatives are gathered here.”⁵

What constituted the sheer loss of the Free State, conditioned by the failure to arrive at any Trade Agreement with Great Britain, was the fact that the Saorstad having been deprived of the benefits as disposed of by virtue of Articles placed under Number 1 in all Trade Agreements concluded at Ottawa by Great Britain with Australia, the Union of South Africa,

⁵ *Report of the Imperial Economic Conference*, Ottawa, p. 86

New Zealand, India, Newfoundland, Southern Rhodesia and Canada. In accordance with these Articles His Majesty's Government in the United Kingdom undertook to ensure the continuance after the 15th November, 1932, of entry free of duty into the United Kingdom of goods, produced or manufactured in the enumerated countries, which accordingly to the British Import Duties Act, 1932, were at the time of the conclusion of the agreements free of duty.]

The conclusion of Trade Agreements with Canada and the Union of South Africa may be registered as the Free State's gain at Ottawa. [The clause of the most favoured nation has been accorded by the Free State to goods, the produce or manufacture of Canada, while the latter extended to the Saorstad goods all the preferences applicable to similar goods, the produce or manufacture of Great Britain and Northern Ireland. In the agreement with the Union of South Africa the Free State secured preferential rebates on three classes of goods, according to exchange tariff preferences to eight classes of goods, the produce or manufacture of South Africa.

Adverting once more to British-Irish relations, it is obvious that the problem of the future compact between the Saorstad and the United Kingdom is of the utmost importance not only for each of these countries but, taking under consideration the position as a dominant factor, held in the world by the British Commonwealth of Nations, any solution of the problem may also be said to be fraught with different repercussions upon world affairs. Several solutions may offer themselves to one's mind, some of them being conditional upon such or other turn in Irish internal affairs.

Supposing that the consultation of the people, as previously contemplated by President de Valera of realising radical constitutional reform, falls out contrary to the idea of a Republic, than the Saorstad may remain within the Commonwealth, but what must be reckoned with in such conditions is that a large portion of the Irish community would not surrender to such position otherwise then reluctantly, and that the attitude to be conjecturally taken by this section of the people may be the cause of grave difficulties for any Government in office. If, on the other hand, all happens according to Fianna Fail's wishes and the people's mandate for a Republic would be proclaimed, with, as it is to be presupposed, a denunciation of the Treaty with Great Britain as a preliminary condition to it.

But what seems to assume a quite exceptional importance in the case of such turn of events is the question whether Great Britain is going to remain a passive observer of the developments

in the Free State, or will she give proof of an active policy aiming at an adequate, lasting and mutually satisfactory settlement with the Saorstát. Will Great Britain wait until a *fait accompli* takes place across the Irish Sea or will she make an attempt to anticipate the events and to draw out of them best possible advantages for herself?

Since any act of coercion seems to be outlawed from the inter-Commonwealth relations, the way of peaceful proposals and negotiations remain the only one to be taken into consideration. Will Great Britain keep silence or will she make an offer to the Free State, implying her *désintéressement* as to whether this State stays within the Commonwealth or goes out of it, and as to its future form of Government, and suggesting at the same time an alternative to the present Treaty under the aspect of a Treaty of close alliance between the two countries so construed as to appease all justifiable apprehensions to which a lack a friendly compact gives rise?

The future will show which of these ways would from the British point of view be the right to follow, and if there is any possibility of settlement between the two islands, one of them being one of the greatest powers in the world, the other deriving its strength from the patriotism of its inhabitants more than from any other sources, but being, none the less, predestined by nature itself for an amicable and mutually advantageous co-existence. *Mutatis mutandi* may we be permitted on this occasion to call our readers' mind all the tribulations through which passed the relations between France and Belgium until they reached their present happy stage?]

The Saorstát and the League of Nations

That great international organisation could obviously not elude the notice of the Free State Government and it was towards it that their most careful attention had been directed from the very beginning. The solemn entry of the Irish Free State on the stage of world-wide political intercourse took place on September the 10th 1923, when, at the Fourth Assembly of the League, it was unanimously elected to the membership of the League.

[“On behalf of Ireland,” said on this momentous occasion President Cosgrave, “one of the oldest yet one of the youngest of nations, and speaking for the Irish Government and the Irish Delegation, I thank this Assembly of the League of Nations for the unanimous courtesy and readiness with which our application to be admitted to membership of the League has been received and approved... Lofty ideals have inspired the best minds having faith in the power

of goodwill and of joint international endeavour to operate for good through this Council of Nations.

It is our earnest desire to co-operate with our fellow-members in every effort calculated to give effect to these ideals, to mitigate and, whenever possible to avert, the ancient evils of warfare and oppression; to encourage wholesome and discourage unwholesome relations between nation and nation; to enable even the weakest of nations to live their own lives and make their own proper contribution to the good of all, free even from the shadow and the fear of external violence, vicious penetration, or injurious pressure of any kind... Ireland counts on having no enemy and on harbouring no enmity in the time to come. *Si tollis libertatum, tollis dignitatem.*

These are the words of a famous Irishman of the sixth and seventh centuries. Inscribed on his tomb at Bobbio, in Italy, they met our eyes when, a few days ago, a happy conjuncture enabled the members of the Irish Delegation to assist at the celebration of the thirteenth centenary of St. Columbanus, pioneer of Ireland's moral and intellectual mission amongst the nations of Western Europe.]

After a certain period of lull in the Free State's international activities a new and stimulating swing in this direction had been given by Mr McGilligan's speech delivered in the Dail in June, 1929:

"We have assumed," said the Minister for External Affairs, "an irrevocable share in the burthens of international life, a share which we could not have shirked and would not have postponed. If our influence is to be increasingly felt in the promotion of progressive causes, and if our efforts are to be thrown more and more into the balance of forces working for peace and harmony of the world, our new responsibilities must be solemnly understood and seriously undertaken."⁶

The next two steps on the path towards assuming "an irrevocable share in the burthens of international life" consisted in, first, the signing of the Optional clause of the Statute of the Permanent Court of International Justice, and, second, in the Saorstat being elected to a non-permanent seat on the Council of the League of Nations.

⁶ *Parl. Deb. Offic. Rep.* 1929 Vol. 30 no 3 col. 794

The formula for submission to the jurisdiction of the Permanent Court, as signed by Mr McGilligan, [“On behalf of the Irish Free State, I declare that I accept as compulsory, *ipso facto* and without special convention, the jurisdiction of the Court in conformity with Article 36 of the Statute of the Permanent Court of International Justice for a period of twenty years and on the sole condition of reciprocity”] required much peremptoriness and civic courage on the part of the Irish Delegate since, in adopting that jurisdiction under no other conditions than that of reciprocity, the Free State placed itself in a position of complete isolation in respect of all other members of the British Commonwealth.

[whose representatives shared the restrictions in the matter as expounded by the British Delegate, Mr. Henderson: “Disputes,” declared the latter when substantiating the standpoint of the British Commonwealth, “are excluded, because the Members of the Commonwealth, though international units individually in the fullest sense of the term, are united by their common allegiance to the Crown. Dispute between them should, therefore, be dealt with by some other mode of settlement, and for this provision is made in the exclusion clause.”

And this is the text of the clause under which the British Government reserved the aforesaid disputes out of the competence of the Permanent Court: “Disputes with the Government of any other member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree”.

Two more declarations were made at Geneva in addition to the above declaration of Mr. Henderson, one emanating from the South African Delegate, the other – from the Canadian. “With regard to the reservation,” stated the first, “as to disputes between Members of the British Commonwealth of Nations, I wish to state that, although in the view of my Government such disputes are justiciable by the International Court of Justice, my Government prefers to settle them by other means – hence the reservation.”

“The Dominion of Canada,” declared the second of them, “has excluded from the purview of the Court legal disputes with other Members of the British Commonwealth for the sole reason that it is its expressed policy to settle these disputes by some other methods, and it has deemed opportune to include its will as a reservation, although a doubt may exist as to such reservation being consistent with Article 36 of the Statute of the Court.”

The authoritative circles in the Saorstat never denied that the policy of co-ordination between the members of the Commonwealth is and would in any matter be greatly desirable but what they would not give their *placet* to the making of any issue at Geneva conditional upon a preliminary and necessary agreement between those members. If such thesis was to prevail, then the very *raison d'être* of being represented with the League of Nations by several distinct Delegations would become sufficiently undermined to have them all superseded by one Delegation set up by the Commonwealth as a whole. But, if so, what would become of the recognised position under which this organisation dispose not of one of so many voices as there are members to it, members at the same time of the League?

The idea of an association of states free and equal in status can survive as long only as each of them enjoy the liberty of action in whatever case it thinks fit to resort to this liberty. After all, the course as adopted by the Free State at Geneva did not imply any derogation from its rights as hitherto recognised and affirmed, and the fact that some other Dominions thought appropriate to follow a different course, could not inflict any restrictive interpretation upon the status of the Free State. All suggestions that the Free State was acting in the matter so as to create an “anti-British” atmosphere among the members of the Commonwealth must be rejected as nonsensical, but working obviously to the benefit of those factors which were watching the ever improving British-Irish relations with an unfriendly eye.

The first signs of the Free State's activities, initiated in order that the advisability of the Optional Clause being signed by the Members of the Commonwealth should be recognised, may be traced as far back as the Sixth Assembly of the League. Again it is to be supposed that the insertion of paragraph (a) under Section VII of the Balfour Report, 1926, was effectuated at the instance of the Irish Delegates predominantly.

The paragraph states that, although the members of the corresponding Committee were unanimous in favouring the widest possible extension of the method of arbitration for the settlement of international disputes, the feeling was that it was premature to accept the obligations under Article 36 of the Statute of the Permanent Court of International Justice. A general understanding was reached that none of the Governments represented at the Conference would take any action in the direction of the acceptance of the compulsory jurisdiction of the Permanent Court, without bringing up the matter for further discussion.

Further developments took, as Mr. McGilligan explained in Parliament, the following course: “In 1928 the Canadian Delegates at the League indicated that they were prepared to pledge

their faith to arbitration as a means of settlement of international disputes and the principal Canadian Delegate (Mr Mackenzie King) indicated His Government's readiness to accept the jurisdiction of the Permanent Court. The Irish Delegate, Mr Blythe, also indicated his Government's desire to move forward to the signature of the Optional Clause and to accept as compulsory the jurisdiction of the Court. The British Government inquired in 1929 as to the attitude of the Free State in the matter and notified that they were considering the acceptance of the compulsory jurisdiction of the Court. The Saorstat Government answered that they always had been in favour of signing and were very definitely on the line leading to acceptance of this jurisdiction."⁷]

They all agreed that disputes with other members of the Commonwealth should be excluded from the jurisdiction of the Permanent Court since, as ran the declaration of the British Delegate, "the Members of the British Commonwealth, though international units individually in the fullest sense of the term, are united by their common allegiance to the Crown."

At the Tenth Assembly of the League a long discussion took place between the members of the Commonwealth on this subject and the Saorstat was left alone in its attitude towards having the Optional Clause signed without reservation. [Two reasons guided the Irish Delegate in refusing to sign a declaration like those, signed by Great Britain, South Africa and Canada, the first of them being that it would have been contrary to the general line of policy as adopted by the Free State, as also to this principle of liberty of action (which we have referred to above) which could not, in the opinion of the Irish Delegate, be abandoned even for the sake of unanimity. The second reason was that this Delegation felt grave doubts as to such reservation being consistent with Article 36 of the Statute of the Court, doubts as to the validity of a reservation against certain states, members of the League.

"However," added Mr. McGilligan when putting the matter before the Dail on the 26th February, 1930, it is a point which may not be very material, because I still go back to what I said in the Seanad, and I want to emphasise it again, that we do recognise a certain relationship established by the Treaty as between ourselves and other members of the British Commonwealth of Nations, and in certain disputes arising hereafter between ourselves and any one of these either nations we would seek other means before we would go to the Court of International Justice."

⁷ Parl. Deb. Offic. Rep. 1930 Vol. 33 no. 3 col. 885

When the question was raised by a Deputy, whether there was any authority to decide whether the British reservation was valid and consistent with the Covenant, the Minister replied: "The Court itself decides. If a dispute arises and if it is a question whether or not the Court has a right to decide, the Court itself is the final authority to say whether it has or has not."⁸

Now, we think that, although any inference to the effect as if the British Declaration has, purely and simply, put inter-Commonwealth disputes outside the definition of international disputes would not be quite consistent with the careful reading of this Declaration, none the less, grave doubts may arise whether the Court of International Justice would ever assume the task of ruling if any given *inter se* dispute lies or not, within its competence. It may be taken for granted that as long as the British reservation exists any such invasion of the Court into the domain of the Commonwealth political constitution must be considered beyond the bounds of possibility.

Furthermore, it is to be noted that both the 1929 Report⁹ and the 1930 Imperial Conference Report stressed the desirability of the establishment of a Tribunal for the solution of differences and disputes which may arise between the members of the Commonwealth, and that the latter even contains indications as to the scope of competence of such Tribunal and as to its constitution. Thus the view expressed in the British, South African and Canadian reservations, appeared to gain ground within the Commonwealth since the happenings of the Tenth General Assembly of the League.

The situation of deadlock, as it arose in the land annuities issue, is mainly due to the fact that neither would Great Britain admit any concession as regards the principle of the *inter se* Commonwealth disputes being reserved from the Optional Clause, nor would the Free State budge an inch from the principle as established by the apposition of the Irish signature under the Clause without reservation. It may be assumed that the case would otherwise have long ago been tested by either an international or an inter-Commonwealth tribunal.]

At the Fourteenth Plenary Meeting of the Eleventh Assembly of the League, in September, 17th, 1930, the Irish Free State was elected to a non-permanent seat on the Council of the League, and it seems pretty obvious that, although the Irish Delegation sought election as a separate political unit, quite irrelevantly to its membership of the Commonwealth, all the

⁸ Ibid col. 895

⁹ Report of the Conference on the Operation of Dominion Legislation

component parts of the latter gave it their unanimous support, and the British and Dominion Delegates were the first to publicly congratulate Mr Blythe, the principal Irish Delegate, on his Country's [momentous] success.

["Ireland," said on this occasion Mr. McGilligan, to whose assiduous efforts in the first instance, goes the credit of this fateful election, "has now a mandate from the Assembly to press her views within the Council, and as the Council's main duty is to provide for the settlement of disputes and the reduction of armaments, the Irish Government hopes that Ireland's membership of that body will help towards bringing disarmament within measureable distance of realisation."]

On election to the Council the Saorstát was appointed Rapporteur for Health Questions and also for Opium traffic. The Free State Delegate acted as President of the Committee of Three which was set up to consider the Bolivia-Paraguay and Columbia-Peru disputes. He was also member of the Committee of the Nineteen appointed by the Special Assembly to deal with the Sino-Japanese dispute and, later, the Free State succeeded Japan as Rapporteur on Minority questions.

The Irish delegate to the Council acted as President of the Sixty-eight and Sixty-ninth Sessions of the Council and as President of the Opening Meeting of the Thirteenth Session of the Assembly. It was on this occasion that Mr de Valera delivered a speech which has echoed lively throughout the world and was commented on by some organs of the press as a blow of fresh air in the somewhat stiffening atmosphere of the League.

["Let us be frank with ourselves, there is on sides complaint, criticism and suspicion. People are complaining that the League is devoting its activities to matters of secondary or minor importance, while the vital international problems of the day, problems which touch the very existence of our peoples, are being shelved or postponed or ignored. People are saying that the equality of States does not apply here in things that matter, that the smaller States, whilst being given a voice, have little real influence in the final determination of League action, that they have not that which they were intended, and are entitled, to have under the Covenant...

Do not misunderstand me. A great deal of the criticism which I have described is, without a doubt, unjustified... But, the one effective way of silencing criticism of the League, of bringing to it support millions who at present stand aside in apathy or look at its activities with undisguised cynicism, is to show unmistakably that the Covenant of the League is a

solemn pact, the obligations of which no State, great or small, will find it possible to ignore. The only alternative to competitive armaments is the security for national rights which an uncompromising adherence to the principles of the Covenant will afford.

The avoidance of wars and of the burden of preparatory armaments is of such concern to humanity that no State should be permitted to jeopardise the common interest by selfish action contrary to the Covenant, and no State is powerful enough to stand for long against the League if the Governments in the League and their peoples are determined that the Covenant shall be upheld.

May God assist us in the exalted task before us and may He not permit that we should fail” – ended President de Valera in Irish his impressive appeal to the peoples of the world, and appropriate to this invocation must come the recollection of another event which, formally related to the Free State’s external policy, is particularly enlightening in as much as it represents one of the predominant guiding forces of the Irish Nation’s psychology and as such should not be omitted in any survey of this Nation’s activities

We allude to the creation in Dublin of the Papal Nunciature (one of the four now existing Legations in the Irish metropolis) and the attitude taken on this solemn occasion by the Free State Government as well as by the whole of the Irish Community. The Most Reverend Paschal Robinson, first Nuncio Apostolic to the Saorstát, arrived in Dublin in January 1930, and his coming took place among scenes of universal enthusiasm and was marked with all the features of a truly national event. “The people felt that the Holy Father, in giving his formal recognition to the Irish Free State by sending his Ambassador to live in our Capital, was strengthening the bonds between Ireland and Rome. They felt too, that the Pope’s action was a sign that God’s blessing was upon the work of all those who were labouring for the Saorstát and for the peace and progress of the Irish people.”¹⁰

When speaking at a State banquet, held on the 15th January, 1930, in honour of the Papal Nuncio, President Cosgrave did not hesitate to place the moment of his arrival in Dublin among those of the life of the Nation: “When it behoves the people to rise above the petty trials and burdens of the passing day, to stand aside from the stream of life’s incessant activities and to look back... over the long centuries during which the Nation was being evolved out of the minds and hearts of countless generations of men.”

¹⁰ *The Star*, December 1931

The Nuncio, on his part, when presenting on the same day his credentials to His Excellency the Governor General, said *inter alia*: “Throughout the centuries of her suffering, Ireland has ever clung to her ancestral faith, so closely interwoven with all that is most precious in her national tradition. That that faith is as living in the hearts of her children as ever in the past was shown by the magnificent demonstration in which she celebrated the centenary of her religious liberty. And now that she is about to prepare for an even greater celebration and a more glorious demonstration of her Catholic zeal, her Government, interpreting the desires of so many faithful Catholics, has wisely sought to draw more closely together the ties which have ever united her with the Holy See.

The two events to which the Nuncio alluded – the Catholic Emancipation Centenary of 1929 and more particularly the Eucharistic Congress, held in Dublin in June, 1932, striking in the unheard of numbers of people gathered under the banners of the faith, magnificent in dignity, edifying in devotion and touching in the display of unswerving fidelity to the Holy See, will live, never to be forgotten, in the memory of all those who had the privilege to share them with the Irish Nation.

We do not think we could find any better termination of this work than by expressing our profound and reverent admiration for the true and splendid foundations of the Irish national spirit as they showed themselves, equally inherent in all classes and sections of the community, on the glorious occasion of those two great Catholic celebrations.]¹¹

An attempt to bring to an end the ‘economic war’ between Great Britain and the Free State was first carried out sometime early in 1935, and an agreement had been reached covering the British imports of coal and Irish exports of cattle, which somewhat reduced the mutually suffering losses. But later, in the course of the same year, an incident occurred in the British House of Commons which went to show that the misgivings that were felt in Ireland about the attitude of the British Labour towards the Commonwealth ideas were not entirely unfounded.

It was Mr Thomas, the Labour Dominion Secretary who, of all the responsible British Statesmen was the one to use in respect of the Free State some rather threatening words purporting, in contradiction with the very basic idea of the Commonwealth being a *free*

¹¹ Final sentence of Battling with Logic, the rest is in his memoirs only

association of nations, to warn the Saorstát that the British Government would take any steps in their power to prevent it from quitting the Commonwealth.

Abdication of Edward VIII

The reaction of the Free State Government to the abdication of Edward VIII was quick and constitutionally far-reaching. Whilst in Great Britain and all other Dominions this dramatic event and the accession of George VI were, purely and simply, legalised by the appropriate bodies, in the Free State those events provided a back-ground only for decisions of a different nature. Two Bills were passed, one of them removing the Crown altogether from the Constitution, - a fate to be shared by the King's Representative, the Governor General, - the other one - setting forth the functions of the Crown as those of an "instrument of international relations", in other words - limiting those functions to the signing of the letters of credence of the Diplomatic Agents and of the Consular Exequaturs, and to the signing of the international treaties in their final form (those functions to be exercised on the advice of the Free State Government exclusively).

In this connection another constitutional riddle arose: in view of the disappearance of the office of Governor General who, as the Crown's representative, was entitled to receive the letters of credence from the Heads of foreign Missions, who was the person to replace him in those functions? A practice was established by which the letters of credence were remitted to the Chief Executive, the Prime Minister, An Taoiseach, until such time as those function became ultimately vested with the only person entitled to it - the Head of the State.

The Governor Generals

There were three of them: 'Tim' Healy, James McNeill and Domnal Buchalla (Mr Buckley). I do not remember the first of them, but both my wife and I were on friendly terms with Mr and Mrs McNeill (the latter to become later Eire's Ambassador in the Netherlands). A rather unpleasant incident occurred at an official reception at the French Legation, an incident which left people to think that the members of Mr de Valera's Government were in a state of open conflict with Mr McNeill. A perfect gentleman, as he was, he drew his conclusions and resigned.

Domnal Buchalla, Mr de Valera's nominee, gave me the impression of considering it his patriotic duty to help his Government to reduce the Governor General's Office to nothingness

by completely effacing himself. He lived in a private house in Monkstown and his only contacts with the Diplomatic corps were limited to our signing his book on the New Years' Days.

My only personal meeting with him took place at some School Theatricals. My seat was just behind his and he suddenly turned around to me – I do not think he knew who I was – and talked to me in Irish. As the inflexion of his voice seemed to imply that an answer was expected I said, rather stupidly, something in Polish and the conversation flicked out. I see in my private register of events that he 'abdicated' on the next day after the abdication of Edward VIII, and he did it by simply putting his signature under an Act abolishing his own Office.

The Imperial Conference in London, in 1937, was conspicuous by the absence of the Irish Delegation, but the same year became memorable in Irish history as it was on the 29th of December of that year that the new Constitution became the law of the country. The old Saorstát Eireann had to sink into oblivion, instead of which *Eire* was called, or should I say – re-called into being.

Faced with this new development the British Government declared that, whilst the adoption of the new name could not, in any way, affect Northern Ireland as an integral part of the United Kingdom, the British Government were prepared to consider the new Irish Constitution as not infringing the status of Ireland as a Member of the Commonwealth.

Next – the first President of Eire is elected; an Anglo-Irish Agreement concluded; Berehaven, Cobh and Lough Swilly evacuated by British Naval forces; the 'economic war' definitely settled; an Anglo-Irish Trade Treaty signed. The thirties of the current century became crowded with epoch-making events in the Life of Ireland. A lull of about nine years and then – the Republic.

Thus the aspirations of a Nation became reconciled with the constitutional and international law, and peace descended upon the minds of all those legally minded scholars who were fighting so hard and so long to find in their mental make-up a pigeon-hole where to safely deposit Eire under a definite classification.