THE BRITISH COMMONWEALTH IN INTERNATIONAL LAW. By J. E. S, Fawcett. [London: Stevens, Library of World Affairs, No. 61. xvii + 243 pp. £2 17s. 6d.]

When Noel Baker published his "Present Juridical Status of the Dominions in International Law" in 1929, it was still possible to regard the Empire as a single international legal unit comprising the United Kingdom, the Dominions, the Empire of India and the Colonies. A fundamental change was brought about by the enactment of the Statute of Westminster, by the role of the Dominions in the Second World War, by the membership in the United Nations — differing somewhat from that in the League — and by the increase in the number of independent members of the Commonwealth, a description which is the result, like so much else in British legal history, of habit rather than of agreement or decision (p.1). Mr. Fawcett's *British Commonwealth in International Law* set out to be a new edition of Noel Baker, but it is in fact a new book devoted to a study of the status and internal workings of the Commonwealth from the point of view of international law. In many ways, however, it is as much or more a study in constitutional as it is in international law.

At a time when criticisms are being made in some Commonwealth countries of the denial of the rule of law in others, particularly of so-called international obligations in the realm of human rights — it is submitted that the learned author makes too much of the "human rights standards of the United Nations Charter" in Canadian decisions (p.41) — it is as well to be reminded that it is an established principle of Commonwealth practice that courts will enforce statutes even if contrary to international law, and even though State responsibility may result (p.17). There has been no general adoption of international law into the municipal law of Commonwealth countries: "Only particular customary or conventional rules of international law, which have been duly established and recognised, are observed and applied. It is suggested that there has been a reception of such rules, and effect is given to them, when one of two conditions exists: that action of Crown servants implementing the rule cannot be impeded or prevented by proceedings in the courts; and that a court judgment or order applying the rule cannot be impugned" (p.18). Those Commonwealth constitutions which expressly refer to international law are generally hortatory (p.31).

Mr. Fawcett's view on Commonwealth practice concerning the reception of international law throws some light on the monist/dualist controversy. It "is based upon a distinction between international law and municipal law in terms, not of their characteristics as law, but of the different subject matter with which they deal and the different functions in society which they perform" (p.73).

The crisis in Southern Rhodesia and the assumption by Mr. Smith, the Prime Minister, that he is entitled to attend Conferences of Commonwealth Prime Ministers as of right, lends added interest to the author's comment that though admission is not yet by election, nor as of right (p.85), there is no longer any real reason why a Dominion becoming a Republic need apply for re-admission (p.86). He postulates as conditions of membership (a) consultation *re* admission, (b) acceptance of the Queen as Sovereign or Head of the Commonwealth, accompanied by willingness to consult on matters of common interest, and to pursue internal policies not conflicting with the view that all races in the Commonwealth are equal in

status, and (d) independence — all of which have a tendency to imply that the Commonwealth is an international organisation, although not an international person (pp.87-8), and the Head of the Commonwealth has no treaty power as such (p.176). Mr. Smith argues that Southern Rhodesia has succeeded to the right of the Central African Federation, which itself succeeded to the right of the former Southern Rhodesia, to attend Conferences. But if the Commonwealth consists of independent States it is difficult to see how either territory had any 'right'. From the constitutional point of view there has been much argument in and out of the United Nations as to how far the United Kingdom may interfere in Rhodesian affairs. Two comments by Mr. Fawcett are relevant here. In the first place he reiterates that the Anglo-Irish Agreement of 1921, drawn in far more solemn form than any agreement with Rhodesia, was not a treaty and lacked international legal validity (p.158). Further, he questions the right of the Central African Federation to deal — as it did — with problems of, for example, Katanga, since external affairs are a matter for the United Kingdom "so long as the Federation is not a separate international entity" (p.114). Whatever the propaganda put out by the *colons* in Southern Rhodesia, it is clear that, at present, the territory is neither independent nor a member of the Commonwealth. If Mr. Fawcett's preconditions for membership are correct, so long as the present racial policy is pursued it is doubtful whether it is eligible for Commonwealth membership — it may be equally doubtful whether non-Commonwealth States will consider it eligible for membership of the international society or the United Nations.

The British Commonwealth in International Law is a fascinating work, not least in Chapter 4 concerning internal relations of the Commonwealth and the *inter se* doctrine. It will prove a boon to international and constitutional lawyers alike and should provide a wealth of ideas for postgraduate theses.

L.C. GREEN.